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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 29.07.2025***

Judgment pronounced on: 11.08.2025

\+ FAO (COMM) 163/2025, CM APPL. 36952/2025

DRHARORS AESTHETICS PRIVATE LTD .....Appellant

Through: Mr. Anirban Bhattacharya, Mr. Apoorv Agarwal, Ms. Saloni Singh, Mr. Rajeev Choudhary, Mr. Abhiraj Das, Advs.

versus

DEBULAL BANERJEE .....Respondent

Through: Mr. Puneet Singh Bindra, Mr. Dhiraj Mhetre, Mr. Sanampreet Singh, Mr. Suraj Dhawan and Mr. Nikhil Singh, Advs.

\+ FAO (COMM) 164/2025, CM APPL. 36956/2025

DRHARORS AESTHETICS PRIVATE LTD .....Appellant

Through: Mr. Anirban Bhattacharya, Mr. Apoorv Agarwal, Ms. Saloni Singh, Mr. Rajeev Choudhary, Mr. Abhiraj Das, Advs.

versus

RAHUL SHAWEL .....Respondent

Through: Mr. Puneet Singh Bindra, Mr. Dhiraj Mhetre, Mr. Sanampreet Singh, Mr. Suraj Dhawan and Mr. Nikhil Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Appeals have been filed by the Appellant Company under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as "the Act"] read with Section 13(1A) of the Commercial Courts Act, 2015, assailing the Order(s) dated 09.06.2025 [hereinafter referred to as the "Impugned Order"] passed under Section 9 of the Act by the learned District Judge, (Commercial Court)-01, South-East District, Saket Courts, New Delhi [hereinafter referred to as the "District Judge"], whereby the Appellant Company has been restrained from convening Board Meetings dated 15.04.2025 and 12.05.2025 concerning the proposed removal of the Respondent(s) from the Directorship of the Appellant Company.

2. These are two connected Appeals arising from similar facts and involving the same Appellant. With the consent of learned counsel for the parties, they are being heard and disposed of by this common order. For the sake of convenience, the facts are being drawn from FAO (COMM) 164/2025 captioned ***Drharors Aesthetics Private Limited v. Rahul Shawel***.

FACTUAL MATRIX:

3. A dispute arose between the Appellant Company, engaged in the business of dermatological and aesthetic services, and the Respondent, its erstwhile Director. Pursuant to a Memorandum of Understanding dated 23.09.2023, executed between the Respondent, Dr. Navnit Haror, Dr. Vineeta Pathak, and Mr. Debdulal Banerjee, it

was agreed to incorporate a new entity for the purpose of expanding the business, with specific roles delineated for each party. In terms thereof, the Respondent was entrusted with responsibilities relating to growth, franchise development, marketing, and day-to-day operations. Subsequently, he was appointed as a Director by way of an Executive Employment Agreement dated 19.10.2023, entitling him to monthly remuneration and certain shareholding rights, as further detailed in a Shareholders' Agreement dated 08.11.2023.

4. It is the case of the Respondent that pursuant to his efforts, the Appellant Company significantly expanded its operations within a short span of time. However, in March 2025, several disputes arose between the parties. The Respondent alleged that he was abruptly denied access to official email systems, his salary was withheld, and he was served with short-notice communications convening Board Meetings, initially on 01.04.2025, and later re-scheduled to 04.04.2025 and 15.04.2025, without being furnished with any particulars or reasons for the proposed deliberations, which ultimately included consideration of his removal from Directorship.

5. It is further contended that despite repeated requests, the Respondent was not furnished with any documentation substantiating the alleged financial irregularities or operational mismanagement cited against him. Instead, on 09.04.2025, a special notice and agenda were issued for convening a Board Meeting on 15.04.2025, the stated purpose of which was the proposed removal of the Respondent and another Director. The Respondent contended that such actions were arbitrary and in breach of the contractual and statutory protections

available to him. Invoking the arbitration clauses contained in the Employment Agreement and Shareholders' Agreement, the Respondent approached the Commercial Court under Section 9 of the Act, seeking interim relief restraining the Appellant Company from proceeding with the said Board Meeting. It was contended that the notices issued for convening the Board Meetings and the proposed Extraordinary General Meeting ('EGM') were violative of Section 169 of the Companies Act, 2013, inasmuch as the Respondent was not afforded a reasonable opportunity of being heard prior to the proposed removal. It was further alleged that no reasons or material justifying such removal were provided, thereby rendering the entire process arbitrary, *mala fide*, and contrary to the norms of corporate governance.

6. The Respondent further alleged that he had not been served with adequate notice under Section 173(3) of the Companies Act, 2013, which mandates a minimum of seven days' written notice for convening Board Meetings. It was specifically contended that the meetings dated 01.04.2025, 04.04.2025, 15.04.2025, and 12.05.2025 were either held or proposed to be held on insufficient notice, thereby violating statutory mandates and depriving the Respondent of a fair opportunity to respond.

7. In support of his plea, the Respondent relied upon the decision of this Court in ***Chhaya Devi &Anr. v. Rukmini Devi & Ors.***[1], wherein it was held that any attempt to remove a Director must be preceded by due compliance with Section 169 of the Companies Act,

[1]2017 SCC OnLine Del 10290

2013 and must be accompanied by a meaningful opportunity of being heard, including disclosure of reasons and the documentary basis for such proposed removal.

8. The Appellant Company, on the other hand, submitted before the District Judge that the proposed removal was necessitated due to serious financial irregularities, breach offiduciary duties, and acts of sabotage allegedly committed by the Respondent. It was contended that the notices were duly issued in compliance with the Articles of Association and the applicable provisions of the Companies Act, 2013, and that the Respondent, by invoking Section 9 of the Act, was seeking to obstruct the lawful functioning and governance of the Appellant Company.

9. After hearing both sides, the District Judge *vide* the Impugned Order, granted interim protection to the Respondent by restraining the Appellant Company from acting upon the agendas of the Board Meeting and the EGM scheduled for 15.04.2025 and 12.05.2025, respectively, insofar as they pertained to the proposed removal of the Respondent from the Board. The District Judge held that *prima facie* the Respondent had not been afforded a reasonable opportunity of being heard, as mandated under Section 169 of the Companies Act, 2013, and that the notices convening the meetings were issued in contravention of Section 173(3) of the Companies Act, 2013, thereby justifying the grant of interim relief to prevent irreparable harm. However, the District Judge declined to grant any interim relief in respect of the Respondent's claims for unpaid salary and allotment of shares, holding that such issues required detailed factual inquiry and

would be appropriately addressed in the arbitral proceedings.

CONTENTIONS OF THE APPELLANT:

10. Learned counsel for the Appellant contended that the Impugned Order is legally unsustainable, as it grants what is, in effect, final relief under the guise of interim protection under Section 9 of the Act. It was contended that the right to remove a Director is a statutory power conferred upon the shareholders and the Board under the Companies Act, 2013, and that the injunction granted by the District Judge effectively restrains the Company from exercising such right, thereby interfering with its internal governance without adjudication on merits.

11. He further contended that the notices for the Board Meeting dated 15.04.2025 and the EGM scheduled for 12.05.2025 were issued strictly in accordance with the Articles of Association and the applicable provisions of the Companies Act, 2013. The Respondent was fully aware of the serious allegations levelled against him, including breach of fiduciary duties, financial mismanagement, and wilful obstruction of the Company's operations. It was further emphasized that the Respondent had failed to disclose material facts in the petition preferred by him under Section 9 of the Act, and had approached the Court with unclean hands.

12. It was further contended that the Respondents' conduct, including his refusal to convene meetings, obstruction of internal audits, and withholding access to critical business decisions, had effectively paralyzed the functioning of the Appellant Company. In

such circumstances, his removal was necessary to safeguard the interests of the Appellant Company and its shareholders. It was, thus, argued that the interim injunction granted by the District Judge unjustifiably interfered with the Appellant Company's internal management and amounted to judicial overreach.

13. Lastly, it was contended that the disputes raised by the Respondent, including claims relating to unpaid remuneration and allotment of equity shares, are matters squarely covered by the arbitration clause contained in the Shareholders' Agreement, and therefore any adjudication of such disputes, particularly at the pre-arbitral stage, lies beyond the limited scope of Section 9 of the Act, which is intended solely to preserve the subject matter of arbitration and not to grant conclusive or determinative relief.

14. In support of his contentions, reliance was placed by the learned counsel for the Appellant on the judgment of the Supreme Court in ***Life Insurance Corporation of India v. Escorts Ltd. & Others***[2] to submit that the matters pertaining to the internal management of a company, including the appointment or removal of directors, fall within the exclusive domain of the shareholders and the Board, and that judicial interference is warranted only in cases of clear statutory violation. Reliance was also placed on the judgment dated 24.09.2018 passed by this Court in ***Ravinder Sabharwal and Another v. XAD Inc. and Others***[3], to submit that injunctive relief under Section 9 of the Act, cannot be granted so as to restrict the statutory rights of

[2](1986) 1 SCC 264
[3](2018) SCC OnLine Del 1148

shareholders to seek removal of a Director, particularly where the foundational disputes are arbitrable and the petitioner has failed to demonstrate any grave and irreparable harm.

CONTENTIONS OF THE RESPONDENT:

15. *Per contra*, learned counsel for the Respondent supported the Impugned Order and submitted that the interim protection granted by the District Judge was justified in view of the procedural irregularities and lack of *bona fides* underlying the Appellant's attempt to remove the Respondent from Directorship. It was submitted that the impugned notices were issued in violation of the mandatory requirements under Sections 169 and 173(3) of the Companies Act, 2013, and that the Respondent was not afforded any reasonable opportunity of being heard prior to the proposed action.

16. It was contended that the Board Meeting notice dated 01.04.2025 and the Special Notice dated 09.04.2025 failed to disclose any specific allegations or documentary material in support of the proposed resolution for removal. The Respondent asserted that the purported allegations of misconduct, including vague references to "substantial liabilities" and "operational challenges," were devoid of particulars and were employed merely as a pretext to oust him from the management in order to wrest control of the Appellant Company.

17. Learned counsel for the Respondent further submitted that the Respondent had been appointed as Director pursuant to the Executive Employment Agreement dated 19.10.2023 and the Shareholders' Agreement dated 08.11.2023, both of which clearly delineated his

contractual entitlements and the mutually agreed dispute resolution mechanism. It was emphasized that despite the Respondent's substantial contributions to the growth of the Appellant Company, including the expansion from two to nineteen wellness centres, his remuneration was withheld, access to official communication systems was suspended, and attempts were made to remove him in a manner contrary to both contractual stipulations and statutory protections.

18. Reliance was placed by the learned counsel for the Respondent on the judgment passed by this Court in ***Jai Kumar Arya & Ors. v. Chhaya Devi & Anr.***[4] to submit that the interim protection under Section 9 of the Act may be granted in cases involving procedural impropriety in the proposed removal of Directors, particularly where statutory safeguards under the Companies Act, 2013 are alleged to have been violated. It was submitted that the injunction in that case was justified in order to prevent irreparable harm and to preserve the status quo pending resolution of disputes through arbitration.

19. Lastly, it was submitted that, permitting the Appellant to act on the impugned agendas would cause grave and irreparable prejudice to the Respondent by effectuating his removal without any adjudication on merits, thereby jeopardizing his reputation, equity rights, and position within the Company. It was contended that the interim protection granted by the District Judge was necessary to preserve the subject matter of arbitration and to ensure that the Respondent's claims were not rendered infructuous.

[4]2017 SCC OnLine Del 11436

ANALYSIS*:*

20. Having considered the rival submissions of the parties and perused the material placed on record, this Court finds that the principal issue for consideration is whether the interim injunction granted by the District Judge under Section 9 of the Act, restraining the Appellant Company from acting on the agenda of proposed Board and General Meetings concerning removal of the Respondent as a Director, was warranted in the facts and circumstances of the case.

21. A perusal of the Impugned Order reveals that the learned District Judge found *prima facie* merit in the contention of the Respondent that the notices for Board Meeting and EGM were issued in contravention of Sections 169 and 173(3) of the Companies Act, 2013. It was observed that the notice period did not meet the statutory minimum of seven days, and that the notices lacked sufficient particulars regarding the grounds for proposed removal, thereby denying the Respondent a reasonable opportunity of being heard. On this basis, the learned District Judge concluded that permitting such meetings to proceed would cause irreparable harm to the Respondent and, accordingly, proceeded to grant an injunction restraining the Appellant Company from acting upon the agenda.

22. However, it is trite law that the remedy under Section 9 of the Act is equitable and discretionary in nature, and is primarily exercised to preserve the subject matter of arbitration or to prevent frustration of the arbitral proceedings. Such power must be exercised cautiously, particularly where the interim relief sought effectively amounts to

grant of final relief or impinges upon statutory powers conferred under the Companies Act, 2013.

23. In the case of ***Life Insurance Corporation of India*** (*supra)*, the Supreme Court categorically held that the right of shareholders or the Board to convene and hold meetings is a statutory right, and that judicial interference in such internal governance matters must be minimal. The appropriate remedy, if at all, lies in challenging the outcome of such meetings, not pre-emptively restraining their convening.

24. In the present case, the meetings sought to be convened were for the purpose of considering serious allegations pertaining to financial irregularities, breach of fiduciary duties, and obstruction of audit processes. These issues, by their very nature, warranted urgent deliberation by the Board. In such circumstances, recourse to the proviso to Section 173(3) of the Companies Act, 2013, which permits shorter notice for the transaction of urgent business, cannot be held to be *per se* illegal or unjustified.

25. In order to evaluate the legality of the interim injunction granted, it is necessary to briefly examine the scope of Sections 169 and 173(3) of the Companies Act, 2013, which govern the process for removal of a Director and the notice requirements for Board Meetings respectively. The said provisions read as under:

> *"**169. Removal of directors.***
>
> *(1) "A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a*

reasonable opportunity of being heard: Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,4(a)in any notice of the resolution given to members of the company, state the fact of the representation having been made; and(b)send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company),and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting: Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

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173. Meetings of Board

(3) "A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address

registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereofby at least one independent director, if any."

A plain reading of the above provisions demonstrates that while the statute guarantees a Director the right to a reasonable opportunity of being heard prior to removal, it also expressly permits Board Meetings to be convened at shorter notice, subject to the prescribed conditions. The legislative intent behind Section 173(3) of the Companies Act, 2013 is to ensure that companies are not prevented from acting swiftly in matters of urgency, especially where the Articles of Association so permit. However, the District Judge appears to have overlooked this statutory balance, focusing solely on the short notice period without adequately considering either the urgency involved or the permissibility of convening meetings on shorter notice under the Act.

26. Moreover, the Impugned Order does not record any findings on the existence of a *prima facie* case, balance of convenience, or irreparable harm, principles that are fundamental to the grant of interim relief. Nor is there any observation suggesting that the Appellant acted in a *mala fide* or oppressive manner. On the contrary, the urgency cited by the Appellant, including concerns relating to obstruction of audit processes and financial mismanagement,

constituted a legitimate basis for invoking the statutory exception under the proviso to Section 173(3) of the Companies Act, 2013. In such circumstances, the blanket restraint imposed on the convening meetings amounts to a pre-emptive adjudication of contested facts and results in an unwarranted freezing of the Company's governance functions.

27. In this regard, the reliance placed by the District Judge on the judgment of ***Chhaya Devi*** (*supra*) to hold that an injunction could be granted against the convening of an EGM, is wholly misplaced. The said judgment was expressly set aside by the Division Bench of this Court in the case of ***Jai Kumar Arya*** (*supra*), wherein it was categorically held that an injunction restraining the holding of an EGM is impermissible. Thus, the District Judge relied upon a judgment which was already set aside in the year 2017 itself. The Court emphasized that allegations of procedural impropriety or lack of opportunity of hearing do not justify an injunction preventing the convening of a shareholders' meeting, particularly when remedies under the Companies Act, 2013 are available. Accordingly, the interim injunction granted by the trial court in that case was vacated. In the present case as well, there is no material on record to suggest that the Appellant Company has acted in a manner warranting such an extreme measure. On the contrary, the Appellant Company has, *prima facie*, demonstrated compliance with statutory procedure in convening the meeting to deliberate on serious governance issues.

28. In the case of ***Ravinder Sabharwal*** (*supra),* this Court has held that no injunction can be granted to restrain the holding of an EGM,

even where the Director sought to be removed alleges that no opportunity of hearing was provided. The Court emphasized that any such hearing can only take place at an EGM itself, and that the suit seeking to pre-empt the meeting was premature and not maintainable. This decision reaffirms that interim relief under Section 9 of the Act must not obstruct the functioning of corporate bodies, particularly where the Companies Act, 2013 provides adequate statutory remedies. In the present case, the injunction granted by the District Judge effectively curtailed the statutory right of the Appellant Company to convene a Board Meeting and deliberate on serious governance issues, a matter squarely within the internal domain of corporate management and not amenable to injunctive interference.

29. The approach adopted by the District Judge also appears to rest on an incorrect appreciation of the settled principles governing the grant of interim relief. No findings have been recorded on the existence of a *prima facie* case, the balance of convenience, or the likelihood of irreparable harm to the Respondent, each of which is a *sine qua non* for the exercise of equitable jurisdiction under Section 9 of Act.

30. It is also relevant to consider Section 100(4) of the Companies Act, 2013, which reads as under:

> ***Section 100 - Calling of extraordinary general meeting***.
>
> *(4) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves*

within a period of three months from the date of the requisition.

This provision prescribes timelines for calling an EGM and clarifies the method of computing such timelines. Notably, the day on which the notice is served and the day of the meeting itself are excluded in calculating the notice period. Furthermore, where an injunction restrains the convening of a meeting, the time during which the injunction operates is excluded from the reckoning of the statutory period, effectively tolling the running of the timeline. This legal principle prevents prejudice to the requisitionists due to judicial delays and aligns with the legislative intent to balance procedural rigour with operational flexibility. The District Judge appears to have overlooked this important aspect while assessing the adequacy of notice and the timing of the Board and General Meetings.

31. The impugned injunction, therefore, suffers from a foundational infirmity. It fails to adequately considerthe statutory safeguards enshrined in the Companies Act, 2013, which provide appropriate remedial mechanisms to address procedural irregularities or to challenge adverse decisions, including arbitration and statutory challenges. The pre-emptive restraint imposed by the District Judge, without justification or due regard to the proper legal principles governing timeline computation, has unjustifiably stalled a lawful statutory process and disrupted the corporate governance of the Appellant Company.

CONCLUSION

32. In view of the foregoing discussion on the factual matrix as well

as the applicable legal principles, this Court is of the considered view that the injunction granted by the District Judge, restraining the Appellant Company from convening Board and General Meetings for considering the removal of the Respondent from Directorship, was neither legally tenable nor supported by sufficient factual foundation. The Impugned Order effectively paralysed the internal corporate functioning of the Appellant Company and extended relief akin to final adjudication, despite the absence of any conclusive findings on the essential elements of interim relief, namely, the existence of a *prima facie* case, balance of convenience, or the likelihood of irreparable harm.

33. Accordingly, the present Appeals are allowed. The Impugned Order(s) passed are hereby set aside.

34. The parties are left to pursue their respective remedies in accordance with law, including under the Companies Act, 2013 or before the Arbitral Tribunal, as and when constituted.

35. Pending applications stand disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 11, 2025/*jn/pl*