



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEGAL VALIDITY AND SHAREHOLDER REMEDIES IN THE POSTPONEMENT AND DELAY OF ANNUAL GENERAL MEETINGS UNDER INDIAN COMPANY LAW.

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ABSTRACT:

Annual General Meetings (AGMs) ensure corporate governance through transparency and shareholder engagement. The Companies Act, 2013 mandates AGMs, with penalties for delays. The NCLT can intervene if AGMs aren't held. Remedies exist under Sections 96, 97, and 441, including Tribunal applications and compounding fees. Courts emphasize AGM deadlines, though fines don't always nullify meetings. Postponements require shareholder consent; legislative compliance is key.

Keywords: Annual General Meeting, Companies Act 2013, NCLT, shareholder rights, corporate governance, postponement, penalties.

REVIEW OF LITERATURE:

The timely conduct of Annual General Meetings (AGMs) is a critical aspect of corporate governance, ensuring transparency and shareholder participation in key decision-making processes. According to the Companies Act, 2013, companies are mandated to hold their first AGM within nine months from the end of the financial year, and subsequent AGMs within six months, not exceeding fifteen months between two AGMs. The TaxGuru¹ article titled “Holding AGM – Due Date and Penalty Provisions” (2023) offers a comprehensive overview

¹ TaxGuru, Holding AGM – Due Date and Penalty Provisions, TaxGuru (2023).

of these statutory deadlines, alongside penalties applicable for delays, including monetary fines imposed on both the company and its officers. It further highlights the provisions under Section 97, empowering the Tribunal to intervene when AGMs are not convened as required, reflecting the legislature's intent to uphold shareholder rights and prevent managerial abuse. This literature emphasizes the procedural rigidity surrounding AGMs and underscores legal ambiguities regarding postponements and delayed meetings, forming a relevant foundation for examining loopholes and shareholder remedies in Indian company law.

The Companies Act, 2013 mandates that every company, other than a One Person Company, must convene an Annual General Meeting (AGM) within the prescribed timelines to ensure accountability and shareholder participation. The article titled "*Annual General Meeting Under Companies Act, 2013*"² by ClearTax highlights the legal consequences of default in holding AGMs within the stipulated period or any extension granted. It explains that under **Section 97**³, the Tribunal holds the authority to order the conduct of an AGM either suo moto or upon an application by a director or member. Further, if the company fails to comply with the Tribunal's order, both the company and its officers in default are subject to a fine of up to ₹1 lakh, with an additional fine of ₹5,000 per day for continuing defaults. This literature underscores the strict statutory framework designed to safeguard shareholder rights and the serious financial implications of non-compliance, making it highly relevant for examining procedural lapses and enforcement issues in corporate law.

The *Annual General Meeting* guidance⁴ note published by the Institute of Company Secretaries of India (ICSI) offers an in-depth explanation of the legal framework, procedures, and statutory requirements governing AGMs under the Companies Act, 2013. It emphasizes the importance of AGMs as a key platform for ensuring corporate transparency, accountability, and shareholder participation in crucial matters such as the adoption of financial statements, appointment of directors, and declaration of dividends. The document also elaborates on the timelines for conducting AGMs, the process for seeking extensions, and the penal provisions under **Sections 96**⁵ and **99**⁶, reinforcing the Tribunal's authority to intervene in cases of default. Notably, the guidance addresses practical scenarios involving postponement, adjournment, and

² ClearTax, Annual General Meeting Under Companies Act, 2013, ClearTax

³ Companies Act, 2013, § 97 (India).

⁴ ICSI, Annual General meeting

⁵ Companies Act, 2013, § 96 (India).

⁶ Companies Act, 2013, § 99 (India).

default in holding AGMs, providing clarity on compliance obligations and legal remedies available to shareholders. This literature serves as a vital regulatory resource, reinforcing the procedural rigor and corporate governance expectations associated with AGMs in India.

ANNUAL GENERAL MEETING:

The concept of an Annual General Meeting (AGM) began from a simple formal gathering and has now evolved into a crucial platform for transparency, accountability, and shareholder engagement within companies. These meetings used to serve as a means for directors to report on the company's financial performance and address shareholder concerns. However, as time has gone on, they have expanded to include voting on key issues, electing board members, and facilitating communication between leadership and shareholders.

Statutorily, under **Section 96 of the Companies Act, 2013**, all companies, except a One Person Company, are required to hold an annual general meeting (AGM) every year, ensuring that no more than fifteen months elapse between two successive AGMs. The first AGM must be conducted within nine months from the close of the first financial year, and if held within this period, no AGM is required in the year of incorporation. The Registrar may, for special reasons, allow an extension of up to three months for holding AGMs, except for the first. As per **Section 96(2)⁷**, every AGM must be held during business hours (between 9 a.m. and 6 p.m.) on a day that is not a National Holiday, either at the registered office or within the same city, town, or village. However, unlisted companies may hold their AGMs anywhere in India with prior written or electronic consent of all members. The Central Government also has the authority to exempt companies from these provisions, subject to prescribed conditions.

DEFAULT OF ANNUAL GENERAL MEETING

In the case of default where a company fails to hold its Annual General Meeting (AGM) within prescribed timelines, A member of the company has the right to apply to the Central Government under the Companies Act. Upon receiving such an application, the Central Government is empowered to issue orders directing the company to call the meeting and can also impose specific conditions or directions for conducting the same. This ensures that shareholders' rights are protected and critical business decisions, such as the approval of financial statements and appointment of auditors, are not unduly delayed.

⁷ Companies Act, 2013, § 96 (2) (India).

If a company defaults in holding its AGM, it is liable to a fine that may extend up to ₹50,000. Furthermore, if the default continues, the company faces an additional fine of ₹2,500 for each day of continued default. The directors and other officers responsible for the default are also personally liable to similar penalties, ensuring accountability at the management level.

Compliance requirements linked to AGMs include the obligation to lay audited financial statements before the shareholders (as per Section 210⁸), file annual returns with the Registrar of Companies (Section 159⁹), and submit copies of balance sheets along with statements explaining any failure to hold the AGM (under Section 220¹⁰). Failure in timely filings can result in penalties ranging from ₹500 per day to imprisonment for directors and officers involved, especially for non-compliance under Section 210.

Additionally, the Act emphasizes reading Section 166¹¹ and Section 210 harmoniously, advising companies to convene AGMs by whichever of these time limits is earlier — six months after the financial year ends, fifteen months after the previous AGM, or before the calendar year concludes. Recent circulars clarify that if AGMs are held within Section 166's deadline but beyond Section 210's, no penalty is attracted provided statutory filings are made on time thereafter.

REMEDIES UNDER SECTION 96, 97 AND 441 OF THE COMPANIES ACT, 2013

As per **Section 96 of the Companies Act, 2013**, every company, other than a One Person Company, is obligated to convene an Annual General Meeting (AGM) each year, ensuring that no more than fifteen months pass between two consecutive AGMs. For newly incorporated companies, the first AGM must be held within nine months from the end of the first financial year, and if held within this time, no separate AGM is needed for the year of incorporation. The Registrar has the authority to extend the time for holding subsequent AGMs by up to three months, though this extension does not apply to the first AGM. AGMs must be conducted between 9 a.m. and 6 p.m. on days other than National Holidays, at the company's registered office or within the same city, town, or village. However, unlisted companies can hold AGMs

⁸ Companies Act, 2013, § 210 (India).

⁹ Companies Act, 2013, § 159 (India).

¹⁰ Companies Act, 2013, § 220 (India)

¹¹ Companies Act, 2013, § 166 (India).

elsewhere in India if unanimous consent is given by all members.

In the event of a default in holding an AGM, Section 97 grants the National Company Law Tribunal (NCLT) the power to act upon a request made by any member. The Tribunal may direct the company to hold the AGM and issue appropriate instructions, including allowing the meeting to be valid with just one member present, either in person or by proxy. Any meeting conducted as per these directions is treated as a valid AGM under the law, securing both regulatory compliance and shareholder rights.

A compounding fee is a financial remedy under Section 441¹² of the Companies Act, 2013, allowing companies to settle certain statutory defaults, like failure to hold Annual General Meetings (AGMs), by paying a prescribed fine instead of facing prosecution. In the referenced NCLT order, GRA India Pvt. Ltd. admitted delays in conducting AGMs for several years. By filing a compounding application, the company acknowledged its violations and sought to resolve the matter by paying a reduced penalty, especially as a “Small Company” under Section 446B¹³. This process avoids criminal proceedings while promoting regulatory compliance through financial settlement.

WHO CAN APPLY TO THE TRIBUNAL TO CONDUCT THE MEETING?

Cannanore Whole Body CT Scan and Research Centre P. Ltd. v. Saibunnisa S.V.¹⁴

Paragraph 102 of this judgement spoke about who can apply for an order for holding a meeting, the Company Law Board found the effect of the provisions as follows “It is clear that a member and not the company is empowered to invoke the provisions of s. 167.” It was found that the company cannot seek directions against itself. The Company Law Board cannot in the exercise of its inherent powers act in violation of law. The discretion has to be exercised according to the known principles of law. An application, if filed by the company, will not be in consonance with the provisions of Section 167¹⁵ of the Companies act, 1956 i.e. Section 97 of the Companies Act, 2013.

¹² Companies Act, 2013, § 441 (India).

¹³ Companies Act, 2013, § 446B (India).

¹⁴ (1998) 93 Comp. Cas. 99.

¹⁵ Companies Act, 1956, § 167 (India).

M. Sampath v. AKMN Cylinders P. Ltd.¹⁶

This case found that an applicant whose membership has been disputed by the company does not have any locus standi to make an application under the section 97 to the tribunal, seeking for an order for AGM.

**VALIDITY OF A MEETING CONDUCTED AFTER THE LIMITATION
HAS BEEN EXCEEDED?**

Hungerford Investment Trust Ltd. v. Turner Morrison & Co. Ltd.¹⁷

In paragraphs 220 and 221 of the judgment, it was held that a default in holding an Annual General Meeting (AGM) beyond the time limit prescribed by Sections 166¹⁸, 167 and 168¹⁹ of the Companies Act, 1956 is penalizable solely by a fine. The Court held that such a breach does not render the meeting void or illegal, preserving the AGM's legality while imposing statutory penalties for the default.

Sadhan Kumar Ghosh v. Bengal Brick Field Owners Association and Others²⁰

Paragraph 23 speaks about how the Hungerford decision as above was overturned in appeal and therefore had no persuasive value. Paragraph 24 confirms that holding an AGM is a statutory duty governed by fixed time limits (extendable solely by the Registrar). Paragraphs 25 and 26, supported by Division Bench rulings in Ambari Tea, Shree Hanuman Properties, and Bejoy Kumar Karnani, make clear that a company lacks suo motu authority to hold its AGM beyond the prescribed period. Consequently, the decision reinforces strict statutory compliance, rendering ex post facto relaxation, as in Hungerford, non-applicable and affecting the legal position by tightening enforcement of AGM timing.

**CAN A MEETING CALLED BY THE BOARD OF DIRECTORS BE
POSTPONED WITHOUT THE CONSENT OF SHAREHOLDERS?**

Rajpal Singh v. State of U.P. (1968)²¹

It will be an undue restriction on the power of the Board, if it were to be held that the Board would not have the implied or the ancillary power to postpone an Annual General Meeting for

¹⁶ (1998) 29 CLA 455

¹⁷ ILR 1972 (1) Cal 286.

¹⁸ Companies Act, 1956, § 166 (India).

¹⁹ Companies Act, 1956, § 168 (India).

²⁰ 2010 SCC OnLine Cal 2684

²¹ (1968) 1 Com. L.J. 21

which they have issued a notice.

Smith v. Paringa mines, limited²²

This case considered the validity of a board's attempt to postpone a general meeting of shareholders after it had been properly convened. The court found that although directors are empowered to fix the time and place of a general meeting, they do not have the inherent authority to postpone such a meeting unless explicitly permitted by the articles of association. The articles in this case provided for adjournment *with the consent of the meeting* but made no mention of postponement powers. The court reasoned that allowing directors to postpone a meeting could result in abuse—potentially delaying meetings indefinitely to suppress shareholder action. Therefore, it was held that once a meeting has been duly called, it must proceed as scheduled unless adjourned in accordance with the articles. The attempted postponement by the board was declared invalid, and the meeting held by shareholders was deemed lawful.

Johny Chandy and Others v. Catholic Syrian Bank Ltd. and Others²³

The Kerala High Court considered whether the Board of Directors of a company has the power to postpone an Annual General Meeting (AGM) that had already been convened. The Court, in para 11, acknowledged that although the Companies Act does not expressly confer the power to postpone a convened meeting, such a power could be implied as incidental or ancillary under Section 291 of the Companies Act, 2013, which vests the Board with general powers of management. Citing *J.M. Patel v. A.G. Mehta*²⁴, the Court noted that the authority that convenes a meeting may also have the implied power to cancel or postpone it, provided it acts in good faith. The Court emphasized that this question of bona fides could not be conclusively determined without full evidence at trial (para 14), but prima facie, the postponement could not be said to be wholly unjustified. In para 15, the Court concluded that there was no need to delve further into other arguments, since it had found the Board had prima facie authority to postpone the meeting and had not been shown to have acted mala fide.

²² [1906] 2 Ch. 193 (Eng.)

²³ AIR 1995 Ker 362

²⁴ AIR 1989 SC 1289

Panorama Developments v. Fidelis Fabrics²⁵

Times have changed and a strict view as the one adopted in *Smith v. Paranga Mines Ltd.* would cause considerable practical difficulties in the working of a company. The company normally acts through its Board of Directors and if the Board of Directors are held to be not even having the power of discretion to take steps or to alter the steps taken to fulfil the statutory obligations of the Company, within the framework of the Statute, it will impede the smooth working of the company. In a given situation the Court would also be justified in implying a term, if necessary, to give efficacy in the business sense, to the article of a company, to make it smoothly workable.

CONCLUSION:

In conclusion, legislative compliance determines whether a postponed AGM is lawful. Courts often place a strong emphasis on following the deadlines for AGMs specified by the Companies Act. Although there may be fines for exceeding the statutory limit, the meeting is not always nullified. However, as demonstrated in cases such as *Sadhan Kumar Ghosh v. Bengal Brick Field Owners Association*, it is not permitted to seek to convene an AGM for longer than the allotted time without a legal extension from the Registrar. Unless specifically permitted, board decisions to postpone an AGM are subject to various restrictions.

REFERENCES:

Cases referred:

1. Cannanore Whole Body CT Scan and Research Centre P. Ltd. v. Saibunnisa S.V., (1998) 93 Comp. Cas. 99.
2. M. Sampath v. AKMN Cylinders P. Ltd., (1998) 29 CLA 455 (CLB-SB).
3. Sadhan Kumar Ghosh v. Bengal Brick Field Owners Association and Others, 2010 SCC OnLine Cal 2684, (2011) 163 Comp. Cas. 495.
4. Hungerford Investment Trust Ltd. v. Turner Morrison & Co. Ltd., ILR 1972 (1) Cal 286.
5. Rajpal Singh v. State of U.P., (1968) 1 Com. L.J. 21.
6. *Smith v. Paranga Mines, Limited*, [1906] 2 Ch. 193 (Eng.).
7. *J.M. Patel v. A.G. Mehta*, AIR 1989 SC 1289.
8. *Johnny Chandy and Others v. Catholic Syrian Bank Ltd. and Others*, AIR 1995 Ker 362, (1995) 84 Comp. Cas. 520 (Ker.).

²⁵ (1971) 3 All ER 16 (Eng.)

9. Panorama Developments v. Fidelis Fabrics, (1971) 3 All ER 16 (Eng.).

Websites and Articles:

1. TaxGuru, Holding AGM – Due Date and Penalty Provisions, TaxGuru (2023).
2. ClearTax, Annual General Meeting Under Companies Act, 2013, ClearTax
3. ICSI, Annual General meeting
4. RNA-CS, Annual General Meeting and Consequences of Default in Holding Annual General Meeting, RNA-CS

