



IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(STATUTORY ORIGINAL JURISDICTION)

1872  
26.08.22

COMPANY MATTER NO. 113 OF 2021

IN THE MATTER OF:

An application under Section-81(2) and 85(3)  
read with Section 396 of the Companies Act,  
1994.

-AND-

IN THE MATTER OF:

Fahmida Islam, shareholder & Chairman of  
Beach Hatchery Ltd. having its Office: Concord  
tower, Apt. 903, 9<sup>th</sup> Floor, 113 Kazi Nazrul  
Islam Avenue, Bangla Motor, Dhaka-1000.

.....Petitioner.

-VERSUS-

The Registrar of Joint Stock Companies &  
Firms, TCB Bhaban (6<sup>th</sup> Floor), 1 Karwan  
Bazar, Dhaka-1215 and others

.....Respondents.

Mr. M. Belayet Hossain with  
Md. Borhan Miah, Advocates

.....For the Petitioner.

The 30<sup>th</sup> day of June, 2022

Present:

Mr. Justice Muhammad Khurshid Alam Sarkar

By filing this application under Section 81(2) read with 85(3) and 396 of  
the Companies Act, 1994 (briefly, the Companies Act), the applicant prays for  
permitting to call and hold the Annual General Meetings (AGMs) of the  
company, namely, Beach Hatchery Ltd for 20/7, the calendar years 2019, 2020  
& 2021 upon condoning the delay thereof and, also, for exoneration from the  
fine incurred for default.

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It is stated in the petition that the petitioner is the Managing Director of the company; namely, Beach Hatchery Ltd. which was duly incorporated as a public limited company under the provisions of the Companies Act having its registered office at Concord Tower, Apt 905, 9<sup>th</sup> Floor, 113 Kazi Nazrul Islam Avenue, Bangla Motor, Dhaka 1000. The company is carrying on its businesses with the specification elaborated in the MOA (Annexure-'A'). Since its incorporation, the Company regularly held its Annual General Meetings. The company has duly held its last AGM on 28<sup>th</sup> March, 2019 for the calendar year 2018. In the said AGM, the audited financial statements for the financial year ended 30<sup>th</sup> June, 2018 were duly adopted by the shareholders.

AS per the AoA of the company and Section 81 of the Companies Act, the AGM for the calendar year 2019 was needed to be held by 30<sup>th</sup> December, 2019 to fulfill the requirement of one AGM in each calendar year and despite sincere and bona-fide intention on the part of the management to hold the company's AGM for the calendar year 2020 and subsequent AGM in compliance with Sections 81 and 85(3) of the Companies Act, it was not possible to do so due to on-going pandemic. Further, the accounts of the company could not be audited by the appointed auditor in due time. Section 82 of the Companies Act makes the defaulting company and its responsible officer/s liable for a fine which may extend to ten thousand taka and in case of continuing default, with a further fine which may extend to two hundred fifty taka for every day after the first day during which such default continues. However, no proceeding has been initiated yet against the company and/or any of its officials for imposing aforesaid fine against them for not holding the AGMs in time

Mr. M. Belayet Hossain, the learned Advocate for the petitioner Submits

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that no proceeding has been drawn yet against the company or any of its officials under Section 396 of the Companies Act for not holding the AGMs of the company in the years 2019, 2020 & 2021. He prays to this Court that if any penalty has been incurred for not holding AGMS within statutory time it may kindly be exonerated as there was no intentional lach on the part of the petitioner or any other officers of the company. He contends that despite sincere and bona-fide intention on the part of the management to hold the company's AGMs for thee 219 calendar years 2019, 2020 & 2021 in compliance with Sections 81 and 85(3) of the Companies Act, it was not possible to hold the said AGMs due to reasons as stated above and the time period which is stipulated in law to hold AGMs had already lapsed by the time and, therefore, the Court may condone the delay. He next submits that this application is filed bona fide and no shareholder or Director would be prejudiced if delay is condoned for holding the AGMs of the company for the calendar years 2019, 2020 & 20021: He submits that as the respondent-company and the concerned officials did not make the default intentionally the penalty under Section 82 of the Companies Act for not holding the AGMs may kindly be exonerated. He contends that in view of the settled principle of law that the Company Court has the ample power to give ancillary directives in the matter of holding AGM(S) under Section 85(3), of the Companies Act, this Court may Order to call and hold the AGMs for 20/2 the calendar years 2019, 2020 & 2021. In such view of the matter, an Order of direction to hold pending AGMs may kindly be passed for securing ends of Justice.

As the respondent No.1-company is a listed company, the Dngladesh Securities Exchange and Commission (BSEC) was notified to attend the hearing of this matter but at the time of hearing of this matter no one was present before this Court to oppose the petition.

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Having considered the statements made in the substantive petition, supplementary affidavits and the documents annexed thereto as well as the submissions of the learned Advocate for the petitioner, I am of the view that the delay in holding the pending AGMs of the company for the calendar years, 2019, 2020 & 2021 occurred due to the failure of assigned auditor in completing the audit work in time due to the ongoing pandemic and, thus, I find that the approach of the petitioner before this Court for filing this petition is bonafide. Therefore, this Court should pass necessary directions for calling and holding the AGMs for the calendar years 2019, 2020 & 2021 of the company.

Hence, I find merit in this petition. The delay, in the circumstances, should be condoned and, accordingly, this petition deserves to be allowed.

In the result, the petition is allowed.

Accordingly, the entire period of delay that has occurred in holding the Annual General Meetings of the company for the calendar years 2019, 2020 & 2021 are hereby condoned.

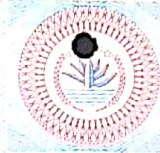
The Managing Director on behalf of the company is hereby entrusted with the power to call, conduct and hold the Annual General Meetings of the company for the calendar years 2019, 2020 & 2021 upon scheduling the date, time and place of the Annual General Meetings of the Company for the calendar years 2019, 2020 & 2021 within 8 (eight) weeks from the date of drawing up of this Judgment and Order. The Managing Director of the company or any other person of the company who were liable to pay fine of Taka 250 (two hundred fifty) for each day's delay are relieved/exonerated from paying the said fine.

The Registrar of Joint Stock companies and Firms is directed to accept all Fillings and Returns accordingly, in connection with the said AGMs.

The applicant has expressed her willingness to spend an amount of Taka



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2,50,000/- (two lac and fifty thousand) only as part of company's CSR expenditure. Accordingly, the respondent-company will donate Taka 2,50,000/- (two lac and fifty thousand) only through Pay Order (which is to be deposited to the concerned company section) to Fulchari Hazi Sattar Trust, Upzaila Road, Kalirbazar, Fulchari, Gaibandha. Bank Account No. 2050 4550 2000 00305, Islami Bank Bangladesh Limited, Kalirbazar Branch (Code No. 455), Fulchari, Gaibandha. e-mail- [kalirbazar455@islamibankbd.com](mailto:kalirbazar455@islamibankbd.com). On furnishing receipt of payment, the order may be drawn up. it so prayed for.

Muhammad Khurshid Alam Sarkar

Composed by: Mahfujur Rahman

Read by:

Exd. by:

১.সই মহরী নকলের দরখাস্তের তারিখ	25.08.22
২. অনুলিপির হিসাব নিবন্ধনের তারিখ	25.08.22
৩. কোর্ট ফি স্ট্যাম্প জমাদানের তারিখ	25.08.22
৪. নকল প্রস্তুত হওয়ার তারিখ	25.08.22
৫. নকল সরবরাহের তারিখ	28.08.2022

প্রত্যায়িত অবিকল প্রতিলিপি

সহকারী রেজিস্ট্রার  
বাংলাদেশ সূপ্রীম কোর্ট, হাইকোর্ট বিভাগ  
(১৮৭২ইং সনের ১নং আইনের  
৭৬ ধারামতে ক্ষমতা প্রাপ্ত)

27.8.22

25/8/22

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