

NAZIR HOOSEIN AND ANR.

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v

DARAYUS BHATTENA AND ORS.

MAY 12, 2000

[A.P. MISRA AND M.B. SHAH, JJ.]

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Companies Act , 1956—Sections 175 , 193—Meeting convened by respondents 1 to 3 , without serving any notice upon appellant no. 1 and other directors supporting him and passing resolutions removing appellant no. 1 and instead appointing respondent no. 1 as Chairman and appointing 12 additional directors—Challenge to—Consent Order passed by the High Court that a fresh meeting of the Board of Directors be held under the chairmanship of a third person, one S to reconsider afresh the agenda of the said impugned meeting—Held, as a consequence of the consent order, what was resolved previously in the impugned meeting is wiped off and has become non-est—Thus, the resolution appointing respondent no. 1 as Chairman of the Board and consequently authority of respondent no. 1 to preside under it also dissolved—No fresh authority having been conferred, respondent no. 1 could not preside in Board's meeting—In view of this, the appointment of 12 additional Directors cannot be sustained as the resolution appointing them stands obliterated in view of the consent order passed by the High Court—Further, the resolution passed in another meeting chaired by respondent no. 1 regarding the induction of new life members also does not survive after passing of the consent order—However, in order to keep the interest of the life members, their cases directed to be placed before the next Annual General Meeting to be held for its consideration.

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Minutes of meeting—Recording of—Minutes recorded by the secretary and the one by the Chairman at variance with each other—Acceptance of—Held, the Chairman of the Board is under an obligation to authenticate the minutes of the meeting of the Board and is empowered to exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes—In the present case because of conflict between two groups, a via media was found to eliminate the ensuing mistrust by appointing a third agreeable person as Chairman and even if there be conflict, the minutes prepared by such third person is to be accepted and not of the other belonging to one of such conflicting group—Hence, the minutes prepared by the

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- A *Chairman are to be accepted as authentic and not the minutes prepared by the Secretary which are relied on by one of the conflicting groups.*

B The appellants and respondent nos. 1 to 3 were the Directors of a company and the first appellant was the Chairman of the Board of Directors of the Company. The nucleus of conflict started when in a Board's meeting held by respondent nos. 1 to 3, appellant no. 1 was removed and respondent no. 1 was appointed in his place as the Chairman of the Board of Directors. In the said meeting, which was held without serving any notice upon appellants, resolutions were also passed shifting the office to the house of respondent no. 1 and appointing 12 additional Directors which included respondents 4 to 8 along with 7 others.

C The appellants filed a suit before the City Civil Court challenging the said resolutions. The City Civil Court did not interfere with the resolution so far the shifting of the office and removal of appellant no. 1 as a Chairman but enjoined the 12 additional Directors from acting as Directors. Aggrieved by one part of the order, viz, non-interference with shifting of the office and removal of appellant no. 1, the appellants filed an appeal before the High Court. On the other hand, respondent nos. 1 to 3 and 5 additional Directors, being aggrieved by the other part of the order, viz, enjoining 12 additional Directors from functioning, filed a cross appeal.

E Subsequently, a notice was issued for a meeting of the Board of Directors for the co-option of another set of 12 additional Directors, in place of the enjoined Directors which included respondent nos. 4 to 8. This led the appellants to file another application for injunction to restrain these respondents from holding the said meeting. Pursuant to it, the Court directed that any resolution passed at the meeting shall not be implemented for two weeks which was subsequently extended. In the said meeting presided by respondent no. 1, 12 new additional Directors were appointed till such time as the injunction against the first set of 12 additional Directors remained in operation. Another meeting was proposed to be held under the chairmanship of respondent no. 1, for which notices were served upon Directors including respondents 4 to 8, which according to the appellants was in breach of the order of the Court not to implement the resolution appointing respondents 4 to 8 as Directors. On an application thereafter made by the appellants, the Court by an order recorded respondents' statement that co-opted Directors will not be permitted to participate in the said meeting.

H The High Court passed a consent order that a fresh meeting of the Board

of Directors be held with only those who were on the Board of Directors before the impugned meeting removing appellant no. 1 and instead appointing respondent no. 1 as Chairman. The said meeting was to be held under the Chairmanship of a third person, one S, an advocate. With these directions, the High Court disposed of the appeal.

Thereafter, in pursuance to the aforesaid consent order, a meeting of the Board of Directors was held under the Chairmanship of S. There was difference in the recording of the minutes between one recorded by the Secretary of respondent no. 1 and the other submitted by S. A dispute arose as to the question of acceptance of the minutes.

Subsequently, another meeting was held presided by respondent no. 1 instead of S and attended by respondent nos. 4 to 8. The meeting was also attended by appellants under protest. In the said meeting, the minutes of the previous meeting, as per the minutes prepared by the Secretary of respondent no. 1 and not as prepared by S, were approved.

Thereafter, the appellants filed a second suit for the declaration that the resolutions passed prior to the consent order of the High Court were null and void, i.e. resolutions pertaining to appointment of 12 additional Directors, which included respondent nos. 4 to 8 ; removal of appellant no. 1 as Chairman of the Board; appointment of respondent no. 1 as Chairman of the Board; shifting of the administrative office of the company; appointment of the second set of 12 additional Directors in place of the 12 aforesaid injunctioned additional Directors; and enrolment of new additional life members of the company. The Trial Court dismissed the appellants' injunction application and also the contention that the consent order by the High Court in the preceding proceedings wiped off the earlier resolutions passed by the Board of Directors. Aggrieved, the appellants filed an appeal before the High Court which was dismissed with the direction for holding the Annual General Meeting under Chairmanship of the Company Registrar, to hold the election afresh of the Board of Directors. Hence the present appeal.

On behalf of the appellants, it was contended that a composite reading of the orders passed by the High Court in first proceedings clichingly proved that the impugned resolutions were scored off, that the first respondent unambiguously admitted this position in his affidavit in reply to the affidavit of appellant no. 1 in the second suit filed by the appellants; that the appointment of first respondent as the Chairman of the Board of Directors and of the 12 additional Directors is also knocked off; that the withdrawal of both the appeals

A before the High Court and the suit shows that entire dispute stood dissolved and settled between the parties; that all resolutions passed in meetings at the behest of the first respondent where he presided as Chairman, were patently illegal and had no force of law.

B On behalf of the respondents, it was contended that the meeting held prior to the consent order the High Court were validly held; that even the Court did not grant any stay against holding of these meetings; that these meetings were attended by duly qualified Directors; that the meetings were chaired by respondent no. 1 whose appointment as the Chairman was held to be valid by a competent Court; that as per Section 175 of the Companies Act, members present at the meeting could elect one among themselves to be the Chairman; hence no illegality arose even otherwise, if respondent no. 1 presided the meeting; that there was no order of the Court setting aside these resolutions.

D Allowing the appeal, this Court

E HELD : 1. Consequent upon the passing of consent order, once the parties agreed to hold a fresh meeting under the Chairmanship of a third person, one S, an advocate, to re-consider afresh the agenda of the meeting in which appellant no. 1 was removed and respondent no 1 was appointed as the Chairman, then it implicitly voices, what was resolved in the said meeting earlier is wiped off and has become non-est. The effect of the consent order was to undo what was done in the impugned meeting and considered the matter afresh. This was done in the background of the appellants' case that it was held without notice to the appellants. Hence all that was passed previously cannot be treated to be alive after the consent order. Thus, the resolution appointing respondent no. 1 as Chairman of the Board and consequently authority of respondent no. 1 to preside under it also dissolved. Thus without any fresh authority respondent no. 1 could not preside in any Board's meeting. Consequently, the meeting presided by respondent no. 1 as Chairman, in which new life members were inducted, cannot be held to be proper. The said resolution does not survive after passing of the consent order. However, on the other hand a submission is, even where there is no Chairman or in case Chairman not present or as in the present case it is in dispute, it is open for the Board of Directors to elect anyone to function as such in any meeting. But this is neither the respondents' case nor it is shown that he was elected as such on that date. Thus the said meeting was not only not conducted in the proper perspective but it also suffers from procedural irregularities. This

was part of the tussle between the two groups to gain the majority over the other. However, it would not be proper to reject the life members' application. So, in order to keep the interest of the life members, it is directed that their cases be placed before the next Annual General Meeting to be held for its consideration. As for removal of appellant no. 1 and appointment of respondent no. 1 in his place, it was fairly agreed to that both will not preside the meetings of the Board; instead S will preside. In other words, one could be treated to be the Chairman of the Board. [283-D-H; 288-H; 289-A; 284-A]

Clark v. Workman, (1920) 1 I.R. 107, referred to.

The conduct of Meetings, T.P.E. Curry and J. Richards Skykes, Twentieth Edition, referred to.

2. The minutes recorded by the Secretary and the one by the Chairman are at variance. In the Secretary's report there is no reference of the consideration by the Board for the appointment of 12 additional Directors, while in the report of the Chairman it records so. With reference to minutes of the proceedings as to who shall initial or sign, the sub-section 1-A of Section 193 of the Companies Act, 1956 mandates, every page of every book shall be initialled or signed including the last page of the record of proceedings by the Chairman of the Board. Under Explanation to sub-section (6) of the aforesaid Section, Chairman is empowered to exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes. Thus, this section casts an obligation on the Chairman of the Board to authenticate the minutes of the meeting of the Board. In the present case when the court directs S to preside the meeting of the Board he acts as the Chairman in the said meeting. This apart, in the past, because of the conflict between two groups, a via media was found to eliminate this mistrust by appointing a third agreeable person then even if there be conflict, the minutes prepared by such third person is to be accepted and not of the other who belong to one of such conflicting groups. Hence for all these reasons the minutes prepared by S in his capacity as Chairman are to be accepted as authentic.

[284-B-C; 285-B-E]

3. According to the minutes authenticated by S, the Board considered the question of appointment of 12 additional Directors and after discussion between the two contesting groups, which is also recorded therein, the proposal of appellant no. 1 that this item does not survive as it had been agreed to hold the Annual General Meeting was accepted and objection of respondent no. 1 that they should be appointed was rejected by the majority of 4:2. Thus, the

- A** question of appointment of 12 additional Directors would be treated to have died both on account of consent order and the resolution rejecting the objection of respondent No. 1 that they should be appointed. [285-F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3425 of 2000.

- B** From the Judgment and Order dated 10.2.99 of the Bombay High Court in A.O. No.1058/98 in N.O.M. No. 6325/98 in S.C. Suit No.6559 of 1998

M.M. Sakhardande, Nikhil Sakhardande, Ms. Meenakshi Sakhardande, S.R. Grover and Ms. S. Tandon for the Appellants.

- C** Navin Parikh and V.D. Khanna for the Respondents.

The Judgment of the Court was delivered by

MISRA. J. Leave granted.

- D** The present appeal is directed against the order dated 10th February, 1999 passed by the Bombay High Court in A.O. No. 1058 of 1998 in No. M No. 6325 of 1997 in Suit No. 6559 of 1997 dismissing appellants' appeal from Bombay City Civil Court order dated 9th September, 1998 dismissing aforesaid appellants' notice of motion in the aforesaid suit. In the suit following interim injunctions were sought:-

- E** "[a] Respondents 1 to 3 from acting on the resolution dated 13.11.97,
- [b] Respondents from enrolling new members,
- F** [c] Respondents 4 to 8 from acting as directors of the suit Club and restraining Respondents 1 to 8 and life members enrolled after 7.11.95 from casting their votes at the AGM,
- [d] Respondents 1 to 8 from holding Board of Directors' meeting dated 19.12.97 and
- [e] for an order appointing Mr. Satish Shah. Advocate as a Chairman of the meetings of the Club/Company"
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- The appellants are the Directors of the Indian Automotive Racing Club (hereinafter referred to as "the Company". As per the appellants, appellant no.1 is the Chairman of the Board of Directors of the said Company. Respondent nos. 1 to 3 are the Directors and respondent nos. 4 to 8 are Additional
- H** Directors allegedly appointed along with 7 others under the challenged

resolution dated 29th March, 1997. The appellants challenged this resolution to be illegal and void, as it stood obliterated by the agreed and consent order dated 30th June, 1997/2nd July, 1997 in A.O.No.274 of 1997 before 'the High Court. A

In order to appreciate the controversy it is necessary to shortly dwell upon certain antecedents and essential short matrix of facts. At the annual General Meeting of the Company held on 29th December, 1993 the appellants and respondent nos. 1 to 3 were elected as Directors and the first appellant as the Chairman of the Board of Directors. The case of the appellants is, on the 8th November, 1995 respondent nos. 1 to 3 with under current designs, purportedly held a meeting, without serving any notice upon appellant no. 1 and other 4 Directors supporting him and passed the following resolutions:- B C

“[a] to shift the office of the Club to Respondent No. 1's office;

[b] to remove appellant No. 1 as Chairman;

[c] appoint Respondent no. 1 as Chairman in his place and D

[d] appoint 12 additional Directors on the Board of Directors.”

Thereafter on the 13th November, 1995, another meeting was held by the same group, viz., respondent nos. 1 to 3, to approve the minutes of the meeting held on 8th November, 1995. On the 16th November, 1995, the appellants and two other Directors filed the first Suit No. 7179 of 1995, challenging the said resolutions passed at the behest of respondent nos. 1 to 3, and 4 out of the 12 newly appointed Directors. On the 18th March, 1997, the City Civil Court by means of an order did not interfere with the resolution, so far the shifting of the office and removal of appellant No. 1 as a Chairman but enjoined the 12 additional Directors which included defendant nos. 4 to 8. from acting as Directors. Aggrieved by one part of the order, viz., non-interference with shifting of the office and removal of Appellant No. 1, the appellants filed FAO No. 274 of 1997 before the High Court. On the other hand, respondent nos. 1 to 3 and 5 additional Directors being aggrieved by the other part of the order, viz., enjoining 12 Add. Directors from functioning filed a cross appeal. E F G

Subsequently on 21st March, 1997 a notice was issued for a meeting of the Board of Directors for the 29th March, 1997 for the co-option of another set of additional 12 Directors, in place of the enjoined Directors which included respondent nos. 4 to 8. This led to the appellants, to file another H

A application on the 27th March 1997, for injunction to restrain these respondents from holding the said meeting. The court, by an order dated 27.3.1997, however, did not injunct the said meeting, but directed that any resolution passed at the meeting shall not be implemented for two weeks which was subsequently extended. As scheduled the said meeting was held, in which again 12 newly additional Directors were appointed, including respondents 4 to 8 till such time as the injunction against the first set of twelve additional Directors remained in operation. Next on 11th April, 1997 notices were issued and served upon Directors including those covered by the aforesaid order dated 27th March, 1997, proposing a meeting for the 17th April, 1997. This, according to the appellants, was in breach of the order dated 27th March 1997, not to implement the resolution appointing them as Directors. On an application thereafter made by the appellants, the court by an order dated 17th April 1997 recorded respondents' statement that co-opted Directors will not be permitted to participate in the said meeting. That meeting was held on the 17th April 1997, under the Chairmanship of respondent no. 1. The appellants though attended the meeting but did so under protest and without prejudice, which was recorded in the minutes of the meeting. It is relevant to record, in this meeting, question of the induction of more new life members came up for consideration. Relevant portion of the discussion as recorded in the minutes is quoted hereunder:

E “Mr. Hussain (Appellant No. 1) raised the topic of new applicant and whether the old practice would be adopted in deciding membership of new applicant.

F Regarding the interview the life member category applicant Mr. Bhathena (Respondent No. 1) pointed out that in the past each Life Member applicant was not physically called for the interview..... Mr. Bhathena proposed and Mr. G.L. Goenka seconded and it was resolved that all Life members applications, as well as any other 3 categories, be invited and become members in their respective categories.”

G When this series of on-going resolutions was going on at the behest of respondent no. 1 and the appellants were protesting repeatedly through various applications in court, as aforesaid, then reached some understanding between the parties.

H On the 30th June/2nd July, 1997, the appellants' appeal from order, as aforesaid, came up for admission in the High Court. On this date, a consent

order was passed that a fresh meeting of the Board of Directors be held with only those who were on the Board of Directors on the 8th November, 1995 under the Chairmanship of Mr. Satish Shah, Advocate to consider the earlier agenda of the 8th November, 1995. Hence, the High Court passed the following order on the 2nd July 1997: A

“In view of this appeal stands disposed of Civil application also does not survive. Same also stands disposed of. In view of the fact that appeal has been disposed of, nothing survives in the Suit. Parties to withdraw the suit”. B

This is how proceedings in the first Suit No. 6559 of 1997 is said to have culminated. C

Thereafter in pursuant to the aforesaid consent order, a meeting of the Board of Directors was held on 4th July, 1997 under the Chairmanship of Mr. Satish Shah. Two major decisions were taken therein. First 16th September, 1997 was fixed as the next date for holding the Annual General Meeting, and secondly, it turned down the proposal to appoint 12 additional Directors by the group of respondent no. 1 by the majority of 4 to 2. When parties are at variance then they try to pull other down, disputes start cropping up from an insignificant to other magnified issues. One of such dispute raised is of the recording of the minutes of the meeting dated 4th July, 1997. According to respondent no. 1, it was the prerogative of the Secretary to write the minutes and thus the minutes recorded by him should be accepted. This dispute is because of the difference in the recording of the minutes between one recorded by the Secretary of respondent no. 1 and the other submitted by Mr. Satish Shah. The significant difference is in the recording of Item No.6, of the agenda of the 8th November 1995, under which the appointment of twelve additional Directors was considered. There is neither recording nor any reference about this consideration in the minutes prepared by the Secretary, while in the recording by Mr. Satish Shah, it clearly records this. The relevant part of his report under Item no. 6 is quoted hereunder:- D E F

“To. appoint 12 additional Directors whose influence, contact would assist the club to procure attractive sponsorships as also those who could spare time to assist in organising and running events.” G

Mr. Hoosein (Appellant No. 1) said that this item did not survive because it had been agreed in principle to hold the Annual General Meeting. Mr. Swadi, Mr. Futehally and Mr. Bhiwandiwalla concurred. H

A Mr. Bhathena (respondent No. 1) and Mr. Goenka opposed. Mr. Bhathena said that "he was disagreeing because in his view fresh blood was required on the Board. Mr. Rao abstained. The view of Mr. Hoosein was adopted by a majority of 4 to 2."

(Emphasis supplied)

B It was thought, the aforesaid meeting will resolve the conflict and parties shall restrain themselves from precipitating any other issue till the Annual General Meeting. But it was so done. Now the succeeding facts and resolutions gave rise to the cause for the filing of the present second suit. On the 6 November, 1997, notice was issued proposing a meeting for the 13th

C November, 1997 for the "Adoption of the previous minutes" and for fixing a date for holding the Annual General Meeting. On the 13th November, 1997, a meeting was held in which the appellants raised objection about respondent no. 1 presiding the meeting instead of Satish Shah and about the presence of respondent nos. 4 to 8. The appellants' demand for fixing an early date of Annual General Meeting was overruled and the minutes of the meeting dated

D 13th November, 1995, 29th March, 1997, 17th April, 1997, and minutes of meeting dated 4th July, 1997 (held as per courts order under chair of Mr. Satish Shah), as per the minutes prepared by the Secretary of respondent no. 1 and not as prepared by Mr. Satish Shah, were approved. Thereafter a notice was served, proposing for a meeting on the 19th November, 1997 to approve and confirm the minutes of the meeting dated 13th November, 1997. The

E appellants attended the meeting and reiterated their demand, but the same was overruled. Thereafter, on 18th December, 1997 the appellants filed the aforesaid suit No.6559 of 1997 for the declaration that the resolutions dated 13th November, 1997 and 19th November, 1997 are null and void, including the induction of new life members after November 1995, as also the appointment

F of 12 new additional Directors which included respondent nos. 4 to 8.

The respondents contested the said claim of the appellants. Their reply is that the suit is misconceived, non-maintainable. Mr. Satish Shah's minutes can not be relied, because it is the prerogative of the Secretary and it is his

G obligation to prepare the minutes of that meeting. Further, all decisions and resolutions other than the resolution dated 8th November, 1995 are valid and binding on the appellants. When earlier suit was withdrawn all interim orders came to an end.

The trial court dismissed the appellants' injunction application and

H also the contention that the consent order dated 30th June, 1997 wiped off

the earlier resolutions passed by the Board of Directors. The appellants earlier sought injunction in the earlier suit, against holding of this meeting dated 17th April, 1997 in which new life members were to be taken in and the court did pass an order not to implement any resolution passed therein. The appellants being aggrieved by the dismissal of the injunction application filed an appeal before the High Court which was dismissed. The High Court held, there was no effective resolution annulling, rectifying or modifying the resolution dated 8th November, 1995. The court rejected the appellants' contention that order dated 30th June 1997, wiped of all the earlier resolutions passed. It held, neither party agreed nor the Court set aside the resolution dated 8th November, 1995. It ordered for holding the Annual General Meeting under the Chairmanship of Shri A.P. Kothari, the Company Registrar, to hold the election afresh of the Board of Directors. Aggrieved by this the appellants have filed the present appeal.

The main thrust of submission on behalf of the appellants is, "whether the consent order dated 30th June 1997 wipes off:

- (i) the resolution dated 8th November 1995, in which:
 - (a) 12 additional Directors were appointed;
 - (b) Appellant no. 1 was removed as the Chairman of the Board;
 - (c) The respondent no. 1 was appointed as the Chairman of the Board of Directors; and
 - (d) The administrative office of the company was shifted.
- (ii) the resolution dated 29th March 1997 appointing the second set of 12 additional Directors in place of the 12 aforesaid injunctioned additional Directors;
- (iii) the resolution dated 17th April 1997 enrolling, according to respondent no.1, 57 additional life members of the company.

The submission is, on composite reading of the orders dated 30th June 1997 and 2th July 1997, in the background of the aforesaid meeting dated 4th July, 1997 of the Board of Directors, it clinchingly proves that the impugned resolution dated 8th November 1995 is scored of. In further support, it is submitted that the first respondent unambiguously admits this position in his affidavit in reply to the affidavit of appellant No. 1 in the notice of motion in Suit No. 6559 of 1997. There respondent No. 1 clearly averred that there

A could be no dispute that the meeting to be held under the Chairmanship of Mr. Satish Shah would consider the matter de novo and except the resolution passed in the meeting held after 8th November 1995 all other resolutions are valid, implidely admit that the meeting and the resolutions dated 8th November 1995 were not valid. Thus, it proves that the clock was set back to 8th November 1995. Hence all edifices built on it subsequently, through various resolutions since looses its base and also goes. In any case, the appointment of first respondent as the Chairman of the Board of Directors and of the 12 additional Directors is also knocked off. In fact withdrawal of both the appeals before the High Court and the suit shows that the entire dispute including removal of first appellant as the Chairman, appointment of 12 additional Directors including induction of life members stood dissolved and settled between the parties. In view of this, all resolutions passed in a meeting at the behest of the first respondent where he presided as Chairman, are patently illegal and have no force of law.

D Challenge to the resolution dated 29th March 1997 is also the same. Its base is also the resolution dated 8th November 1995, which was also held under the Chairmanship of the first respondent and it also stands wiped off by the consent order dated 30th June 1997. As said before, when this meeting was to be held, appellants applied for injunction to restrain respondents from holding this meeting. On this Court ordered that any resolution passed in this meeting shall not be implemented. By this resolution, as aforesaid, 2nd set of 12 additional Directors was appointed.

F Next challenge is to the resolution dated 17th April 1997. This resolution is also challenged on the same ground, viz., it was illegally chaired by respondent No. 1. Even for this meeting court directed resolution passed therein shall not be implemented. Submission is, this meeting was also held in not haste to overreach the order of the Court. On 10th April 1997 the aforesaid A.O. 274 of 1997 was adjourned to 21st April 1997 for admission. Coming to know of this, on the 11th April 1997 notice was issued for a meeting on the 17th April 1997. This clearly exhibits, the unholy motive of the respondents to overreach the order of the Court. At this meeting it is said 57 new life members were enrolled. This was opposed by the appellants in the meeting which was turned down by the respondent No. 1.

H For the respondents the aforesaid submissions were challenged. Submission is, both meetings dated 29th March, 1997, and 17th April, 1997, were validly held. Even the court did not grant any stay against holding of

these meetings. These meetings were attended by duly qualified Directors. The meetings were chaired by respondent no. 1 whose appointment as the Chairman was held to be valid by a competent court by an order dated 18th March, 1997 in the Notice of Motion No. 6337 of 1995 in the earlier suit No. 7179 of 1995. Reference is also made to Section 175 of the Companies Act, 1956 - i.e. members present at the meeting could elect among one of themselves to be the Chairman, hence no illegality would arise even otherwise, if respondent no. 1 presided the meeting. The order by consent on 30th June, 1997 did not and could not wipe off what was done on the aforesaid two dates of meetings. There is no order of the court setting aside these resolutions.

The crux of the grievance of the appellants which requires our consideration is three fold: (i) removal of appellant no.1 and the appointment of respondent no. 1 as Chairman of the Board of Directors by means of resolution dated 8th November, 1995; (ii) The induction of 12 additional Directors through resolution dated 29th March, 1997; and finally (iii) the induction of 57 life members through resolution dated 17th April, 1997, both of these two last meetings were presided by respondent no. 1.

The aforesaid facts reveal that the proceedings of the first suit culminated in the passing of the consent order dated 30 June/2nd July, 1997. It was expected that litigation would come to an end but that was not to be. The present second suit is filed in view of resolution dated 13th November, 1997 which in effect brings back to life the matter which was subject matter of the earlier suit. In the meeting dated 13th November, 1997 the minutes of the meeting dated 13th November, 1995, 29th March, 1997 and 17th April, 1997 including the minutes of the meeting dated 4th July, 1997 as prepared by the Secretary and not by Mr. Satish Shah, were approved. The meeting dated 19th November, 1997 approved and confirmed the minutes of meeting dated 13th November, 1997. The question is, whether passing of the consent order in the earlier suit obliterates the meetings and resolutions passed on 29th March, 1997 and 17th April, 1997? Also what was the resolution passed in the meeting dated 4 July, 1997 and in this context, whether the minutes prepared by the Secretary or what is prepared by Mr. Satish Shah should be accepted?

It is very unfortunate, though very common, in any organisation, including companies, there is tussle for holding dominant position to control the functioning of such organisation. It is often said, "it is not like sportsman spirit". Meaning, the spirit of a sportsman is treated to be highly cooperative even in the hour of defeat. He is always in the best of spirit. But such spirit

A now even in the field of sports seems to have receded to oblivion. The present company is also one of such companies, working in the field of sports. But this spirit between the parties is lacking. The battle of supremacy to control started between respondent no.1 and appellant since 8th November, 1995 leading to two separate suits and the battle is still raging for about five years.

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Now, we proceed to test the submissions for the appellants regarding the consent order obliterating the resolutions dated 29th March and 17th April, 1997. As we have said, the nucleus of conflict started on the 8th November, 1995 when in this Board's meeting, appellant no. 1 was removed

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and respondent no. 1 was appointed in his place as the Chairman of the Board of Directors and 12 additional Directors were also appointed. When the first suit was filed by the appellants, they challenged this meeting as it was held without any notice to them. The very texture of this resolution shows two clear distinctive groups, and the group of respondent no. 1 by removing appellant no. 1 came in full control of the Board. Next another meeting was

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held on the 13th November, 1995 to confirm the resolution dated 8th November, 1995. It is at this stage, appellants filed their first suit on the 16th November, 1995 along with injunction application, in which 12 additional Directors were enjoined to function. However, undaunted another meeting was held under the Chairmanship of respondent no. 1, of the Board of Directors on the 29th

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March, 1997 in which resolution was again passed appointing another set of 12 additional Directors till injunction against earlier 12 additional Directors remained in operation. When this stress and strain between the parties was going on, with various interim orders of the court, good sense prevailed on both the parties which led to the passing of the consent order. Through the

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consent order, dated 30th June and 2nd July, 1997, the parties agreed for holding a fresh meeting of the Board, under the Chairmanship of Mr. Satish Shah, to consider afresh the original agenda of 8th November, 1995. In this regard submission for the appellants is, even concerned respondents including respondent no. 1 understood that agenda was going to be considered *de novo*. For this, reliance is on the following affidavit filed by respondent no. 1 in reply to the notice of motion filed before the trial court by the appellants.

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The relevant portion of the said statement is reproduced below:-

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"I say that. the gravamen of the charge, *inter alia*, levelled in the previous suit revolved round the allegation that the Meeting of the Board of Directors of the Club held on 8th November 1997 was never held and no notice therefor was given. In view of the fact that the

Club is primarily brought into existence to promote motor sports, it was felt that no scope would be left for any complaint and therefore it was agreed that the items of Agenda of the said meeting which was held on 8th November 1995 should be convened *de novo* and under the said Mr. Satish Shah, Advocate.” A

On the other hand, learned counsel for the respondents submits that neither the said consent order nor the resolution passed on the 4th July, 1997, in any way set asides any resolutions passed prior to the said consent order. Thus, it would be deemed that they continued notwithstanding holding of the said meeting dated 4th July, 1997. B

We have considered the submissions made by the parties including the various orders passed, both in the earlier and the present suit. In our considered opinion, the culmination of the appeal, the suit by its withdrawal as per court’s order, as a consequence of the consent order indicates one and the only inference that once the parties agreed to hold a fresh meeting under the Chairmanship of Mr. Satish Shah to re-consider afresh the agenda of the meeting dated 8th November, 1995, then it implicitly voices, what was resolved in the said meeting earlier is wiped off and has become non-est. The very re-consideration of the earlier agenda clinchingly reveals that what was done then is wiped off. How can earlier resolution dated 8th November, 1995, would survive when it is to be considered afresh? Of course, it is open to the Board to pass the same modify or pass entirely different resolution. Thus company would be bound by the resolution passed in this later meeting. The High Court committed error of law by concluding to the contrary. The High Court misdirected itself and misconstrued the consent order that “neither parties agreed nor did the court set aside the resolution of the Board of Directors dated 8th November, 1995”. The effect of the order passed by the court was to undo what was done on the 8th November, 1995 and consider the matter afresh. This was done in the background of the appellants’ case that it was held without notice to the appellants. This is also clearly spelt out from the aforesaid quoted statement of respondent no.1 himself. The meeting which was held under the Chairmanship of Mr. Satish Shah was not a meeting to confirm, modify or annul the resolutions dated 8th November, 1995 but was to consider the agenda afresh. Hence, all that was passed on the 8th November, 1995 cannot be treated to be alive after the consent order followed by resolution dated 4th July, 1997. Thus, appointment of 12 additional Directors on that date also goes. So far removal of appellant no. 1 and appointment of respondent no. 1 in his place, it was fairly agreed to that both will not preside the C D E F G H

A meetings of the Board, instead Mr. Satish Shah will preside. In other words, no one could be treated to be the Chairman of the Board.

B Next we proceed to scrutinize the resolution dated 4th July, 1997, which was held as a consequence of the court's order, under the Chairmanship of Mr. Satish Shah. But here again we find a dispute is raised, whether the minutes prepared by the Secretary or the one by the Chairman Mr. Satish Shah be accepted. We find the minutes recorded are at variance between the two. The relevant variance is under item no. 6. In the secretary report there is no reference of the consideration by the Board for the appointment of 12 additional Directors, while in the report of Mr. Satish Shah it records so under item no. 6, which is reproduced below:

C *"Item No. 6: To appoint 12 additional Directors whose influence, contact would assist the club to procure attractive sponsorships as also those who could spare time to assist in organising and running events.*

D Mr. Hoosein said that this item did not survive because it had been agreed in principle to hold the Annual General Meeting. Mr. Swadi, Mr. Futehally and Mr. Bhiwandiwalla concurred.

E Mr. Bhathena and Mr. Goenka opposed. Mr. Bhathena said "that he was disagreeing because in his view fresh blood was required on the Board. Mr. Rao abstained. The view of Mr. Hoosein was adopted by a majority of 4 to 2."

Before drawing our conclusion we may refer to Section 193 of the Companies Act, 1956. The relevant portion of Section 193 is quoted below:-

F *"Section 193: Minutes of proceedings of general meetings and of Board and other meetings:*

(I-A.) Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each books shall be dated and signed -

G (a) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the Chairman of the said meeting or the Chairman of the next succeeding meeting.

.....

H (6) If default is made in complying with the foregoing provisions of

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to Articles of association is void and is not regularized by mere acquiescence and consequently resolutions carried by the casting vote of such a chairman are inoperative.” A

It cannot be disputed that the Chairman of the Board of Directors is the central figure in holding the meeting and is the controlling factor in the conduct of meeting. He authenticates the minutes of the meeting and performs such other functions as empowered under the Companies Act. A Chairman is always elected by the Board of Directors thus he had the full support of the majority of Directors which helps him in the control of meeting and recording authenticated minutes. B

In the present case unfortunately since 1994 no Annual General Meeting could be held both on account of the aforesaid dispute and also as per the respondents, the accounts could not be finalised. When appointment of Mr. Satish Shah to chair Board meeting was made both appellant no. 1 and respondent no. 1 fairly conceded their claim to preside over the meeting. Thus their serious dispute got temporary respite. Still the question remains, as to who could have presided in the meeting dated 17th April, 1997, which was antecedent to the consent order. It is true by that date consent order was not in existence and the tussle between the two was continuing. If the resolution dated 8th November, 1995 evaporated, authority of respondent no. 1 to preside under it also dissolved, unless some fresh authority was given to him. Thus without any fresh authority respondent no. 1 could not preside in any Board’s meeting. In fact this meeting dated 17th April, 1997, at that point of time was challenged and the court on this date enjoined the respondents to implement the resolution passed in this meeting. It is during continuation of this injunction order, the said consent order was passed. Consent order was to consider 8th November, 1995 agenda *de novo*. In view of this then how could resolution passed in this meeting survive after passing of the consent order. C D E F

In the meeting dated 4th July, 1997, no resolution was passed as to who shall henceforth preside in the meeting of the Board of Directors. The resolution dated 4th July, 1997 could be construed that the parties differed the question as to who shall preside the meeting till holding of fresh election of the Board of Directors in the Annual General Meeting. It is significant in the minutes recorded by Mr. Satish Shah that before item no. 1 was taken up Mr. Bhiwandiwalla and Mr. Bhathena (respondent no. 1) stressed the need to hold an early Annual General Meeting. Another Director Mr. Swadi also suggested the same for electing a new Board which could finalise the accounts. Finally, G H

A Mr. Bhiwandiwalla suggested the following:-

“(i) that the Accounts be finalised and approved as soon as possible.

(ii) that all the members of the present Board should resign and an entirely new Board should be elected; and

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(iii) that in any event the Annual General Meeting should be convened as early as possible even if the Accounts were not ready.

The other members were agreeable to this and it was resolved that the Annual General Meeting should if possible be held on 16th September, 1997.”

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This also indicates that the Board desired holding an early Annual General Meeting and in favour of all members of this Board resigning. In this context presiding by respondent no. 1 as Chairman of the meeting held on 17th April, cannot be held to be proper. However, on the other hand a submission is, even where there is no Chairman or in case the Chairman not present or as in the present case it is in dispute, it is open for the Board of Directors to elect any one to function as such in any meeting. But this is neither the respondents' case nor it is shown that he was elected as such on that date. His authority if at all was only through the resolution dated 8th November, 1995. Strong submission for the respondents was that appointment of respondent no. 1 as Chairman was held to be valid by a competent court of law by order dated 18th March, 1997 in Notice of Motion No. 6337 of 1995. But this order was challenged by the appellants through A.O. No. 274 of 1997 in the High Court. It is in this extent that consent order was passed which obliterated various resolutions including of 8th November, 1995. So this submission of respondents has no force.

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Lastly, we have considered the question of induction of 57 new life members. So far in their application no defect could be pointed out. It is true, these new life members are not parties before us. It will be in the best of interest that question of their induction as life members instead of rejecting, be placed for consideration, in the Annual General Meeting to be held by the Company. So we come to the conclusion, that meeting dated 17th April, 1997 was not only not conducted in the proper perspective but it also suffers from procedural irregularities. This was part of the tussle between the two groups to gain the majority over the other. However, it would not be proper to reject the life members' application. So in order to keep the interest of the life

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members, we direct that their cases be placed before the next Annual General Meeting to be held for its consideration. A

Since the dispute, as to who shall preside, is still not resolved, in spite of this long drawn litigation which can only come to an end by fresh election of the Board of Directors in the next Annual General Meeting, it is proper in the interest of the Company that neither appellant no. 1 nor respondent no. 1 presides in any Board of Directors' meeting. B

Thus, so far the direction of the High Court to hold Annual General Meeting under the Chairmanship of Mr. A.P. Kothari, the Company Registrar seems to be proper, hence needs no interference to that extent. The relevant portion of this is quoted hereunder: C

“However, it is clear that a meeting of the Board of Directors has been held pursuant to an order passed by this Court and it is common ground before me that the Board of Directors decided to hold the annual general meeting of the company immediately, in this view of the matter, therefore, in my opinion, it would be just and proper to direct that the Annual General Meeting of the Company should be held for holding elections to the Board of Directors of the Company. In my opinion, considering that the parties are fighting, it would be proper to direct that the Annual General Meeting should be held under the Chairmanship of Shri A.P. Kolhari, the Company Registrar.” D E

Hence for all the aforesaid reasons we allow the appeal of the appellants, set aside both the judgments of the High Court dated 10th February, 1999, except to the aforesaid extent, and the trial court order dated 9th July, 1998, and further direct holding of Annual General Meeting at the earliest under the Chairmanship of Mr. A.P. Kothari. Registrar Company as aforesaid. Even if any prior meeting before Annual General Meeting is to be held of the Board of Directors, the same shall also be presided by the same Mr. A.P. Kothari, Registrar. In view of the aforesaid findings our conclusions are: F

- (A) Neither appellant no. 1 nor respondent no. 1 shall preside in any of the meetings of the Board of Directors. G
- (B) The appointment of 12 additional Directors cannot be sustained. Hence resolutions dated 8th November 1997, 29th March, 1997 and 17th April, 1997 stand obliterated in view of the consent order dated 30th June/2nd July, 1997. H

- A (C) So far resolution dated 17th April, 1997 for the induction of 57 life members, in view of our findings, they not be deemed to have been inducted on that date as member but their induction as such would be placed for consideration before the Annual General Meeting to be held later.
- B (D) Annual General Meeting shall be held under the Chairmanship of Mr. A.P. Kothari, Registrar, Company who shall expedite the holding of Annual General Meeting at a very early date possibly within three months of this order being communicated to him.

Accordingly, the aforesaid appeal is allowed. Costs on the parties.

- C Office shall send a copy of this order to Mr. A.P. Kothari, Registrar, Company.

M.P.

Appeal allowed.