



Confirmation of Minutes not Necessary - Affirms Supreme Court

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Minutes of company meetings constitute a very important document and therefore extraordinary care is taken in recording minutes. There is a general practice of confirmation of the recorded minutes at the subsequent meeting. Recently the Supreme Court has ruled that such confirmation is not necessary. Read on to know the details of the ruling.

One of the most important documents to be maintained by every company is the record of the business transacted at general meetings and the meetings of the Board and the Committees. Technically, such a record is called 'minutes' under the Companies Act, 1956 (the Act).

Section 193 of the Act requires every company to make minutes of every such meeting within 30 days of the conclusion of the said meeting. A normal practice that is prevalent amongst most of the companies is to have, 'confirmation of the minutes', as the first item on the agenda of a meeting of the Board or a Committee. It is a common practice with most companies to read, confirm and sign the minutes before the start of the meeting of the Board / Committee. A question that has raised doubts in many minds from time to time is, 'whether it is necessary to have the minutes confirmed at the next meeting'?

Section 193, also, *inter-alia*, provides that, 'Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed-

- (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;
- (b) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose."

As is evident, the section requires initialing of each page and signing and dating of the last page of the minutes of each meeting. The section also indicates the period within which the minutes of different meetings should be signed. However, nowhere it is mentioned in the section that the minutes of any meeting need to be confirmed at the subsequent meeting.

In spite of such a clear provision, most of the companies have the minutes of a Board/Committee confirmed at the subsequent meeting. In fact, it would not be wrong to say that there is belief amongst many persons (professionals included) that unless the minutes of a board/committee meeting are confirmed, they are not final and lack in legal enforceability.

Several years back a similar issue had come for the consideration of the Karnataka High Court and it was held by the High Court that it was not necessary to have the minutes confirmed. [*Karnataka Bank Ltd v. A.B. Datar*, (1994) 79 Comp Cas 417 at p. 436].

Recently, the same issue came up for the consideration of the Supreme Court of India in the matter *Kerala State Electricity Board v. Hindustan Construction Co. Ltd.* [2009] 91 SCL 183 (SC)].

In this case a dispute had arisen between the two parties about the payment to be made by the former for the work done by the later party. In that regard the Board of Directors of the appellant company namely, Kerala State Electricity Board (KSEB) had taken certain decisions at its board meeting held on 30th April 1994 and the minutes were prepared accordingly incorporating those decisions. However, the issue arose about the validity of the decisions taken at the previous meeting as the said minutes were not confirmed in the subsequent board meeting. Consequently, the matter came up before the High Court of Kerala for its consideration.

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Accordingly, before the matter reached the apex court, it was the turn of the High Court of Kerala to consider the question about the issue concerning the confirmation of minutes of a board meeting. The High Court held that, *“the subsequent decision taken not to confirm the minutes at its meeting held on 30-5-1994 cannot in any way dilute the decision taken earlier by the Board on 19-4-1994. The High Court was of the view that non-confirmation of the minutes cannot have the effect of wiping out the decision taken. Accordingly, the directions as noted above were given”*.

Being aggrieved by the decision of the High Court, KSEB went in appeal before the Supreme Court. It was contended on behalf of the appellant that the High Court was wrong in concluding that non-confirmation of minutes did not have the effect of wiping out the decision taken earlier. In fact, the appellant argued that, *“When the minutes of the meeting are not confirmed at the subsequent meeting it means that the decisions taken at the earlier Board’s meeting were intended not to be given effect to. The inevitable conclusion is that the decision is not enforceable.”*

Countering the stand taken by the appellant, it was submitted on behalf of the respondent that the Board’s decision was taken unanimously and the effect of non-confirmation of minutes would not affect the decision which had already been taken.

The apex court remarked that it was evident from the minutes of 30-4-1994, which were not confirmed at the meeting held on 30-5-1994, that the said minutes were merely noted by the Board and it had decided to discuss the issue further. The Supreme Court also observed that the varying stands taken by the appellant at different points of time showed that the object was to avoid payment. The apex court also noted that the ad-hoc committee which was appointed consisted of experts in the respective fields and also Additional Secretary and Under Secretary to the Government. Twenty-one sittings were held, site visits were made and voluminous documents were considered. After a very detailed consideration of the whole matter, recommendations were made for making payment of Rs. 808.26 lakhs as against claim of Rs. 1688.08 lakhs by the respondents. In the meantime, after considering the recommendations and the report the Board had decided to make a payment of Rs. 250 lakhs as an interim payment. On 30-4-1994, unanimously a decision was taken by the board of the appellant to pay Rs. 808.26 lakhs as noted by the *ad hoc* committee. The apex court, therefore, observed that, *“in order to test the rival submissions the only thing that needs to be considered is the effect of non-confirmation of the minutes”*. The court, while making a reference to Shackleton on the Law and Practice of Meetings, 10th Edn., page 86, dwelt upon the essential points from (a) to (h) involved in drafting of Minutes. The court also made a reference to its earlier decision in *Chetkar Jha v. Viswanath Prasad Verma* [AIR 1970 SC 1832]. In that case, the apex court had, *inter-alia*, held that, *there was no question of any confirmation at the next meeting of a decision already taken, as a decision once taken did not require any confirmation. The apex court in Chetkar Jha (supra) had held that, “when minutes of a meeting are placed before the next meeting the only thing that can be done is to see whether the*

decision taken at the earlier meeting has been properly recorded or not. The accuracy of the minutes and not the validity of the decision is, therefore, before the meeting. Once a decision is duly taken it can only be changed by a substantive resolution properly adopted for such a change.”

In KSEB’s case (*supra*) the Supreme Court has held that in view of its stated position, the Kerala High Court had rightly concluded that the decision taken by its board on 30-4-1994 had to be given effect to. The Court, agreeing with the contention of the counsel for the respondents reiterated that, *the non-confirmation of minutes does not have any effect on the decision taken at the earlier meeting”*.

The pronouncement of the apex court in KSEB’s case (*supra*) should put to rest all the doubts about the effect of non-confirmation of minutes on the decisions taken at an earlier Board meeting. Any lawful decision taken by a duly convened and constituted meeting of the Board or Committee would not become ineffective merely for want of confirmation by the subsequent meeting. In fact, for making any change in the decision already made, the proper course would be to pass a fresh resolution to that effect at the next meeting of the board or the committee, as the case may be. □