
(2017) 01 CAL CK 0040
In the Calcutta High Court
Case No : C.S. No. 78 OF 2015

Subrata Ghosh

APPELLANT

Vs

Sabitendra Nath Roy

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Companies Act, 2013 — Section 102, Section 196(3)

Citation : (2017) 2 CalLT 104

Hon'ble Judges : Shivakant Prasad, J.

Bench : Single Bench

Advocate : Mr. Reetobrato Mitra, Mr. Rudrajit Sarkar and Mr. Indradeep Basu, Advocates, for the Plaintiff; Mr. Balaram Mukherjee, Mr. Sanjoy Banerjee and Ms. Sanchita Barma Roy, Advocates, for the Defendants

Final Decision : Disposed Off

Judgement

Shivakant Prasad, J.—This is suit for a decree that a scheme be framed for management and administration of M/S. Mitra and Ghosh Publishers Pvt. Ltd., for declaration of special resolution taken in the meeting dated August 4, 2014 and entire resolutions passed in the annual general meeting held on 26th September, 2014 except the resolution relating to annual accounts and declaration of dividend are illegal null and void and for a decree declaring that the defendant Nos. 1 and 2 are not directors of the proforma defendant restraining them from taking any steps on the basis of purported resolution of annual general meeting held on September 26, 2014.

2. Plaintiff's case in brief is that the proforma defendant previously was a partnership firm by name and style Mitra and Ghosh reputed publishing house in the State of West Bengal between late Gajendra Kr. Mitra and late Sumatha Nath Ghosh constituted in 1934. After incorporation of the proforma defendant as a private limited company on 7th January, 1973, late Gajendra Kr. Mitra and late Sumatha Nath Ghosh were allotted 40% each of the paid up share capital of the proforma defendant. The defendant Nos. 1, 2 and 3 employees of the said firm

for their years of service were allotted 5% each of the paid up share capital of the proforma defendant and the balance 10% was held by other shareholders. The plaintiff is the son of Sumatha Nath Ghosh who inherited 234 shares of his father. While the balance 46 shares were inherited by his sister Sumita Talukdar. Over and above 5% shares held by the defendant Nos. 1 and 2, they acquired 366 shares jointly after the death of Gajendra Kr. Mitra which has been fraudulently shown as individually held by defendant no.1 in Audited Annual Accounts of 2012-13 and 2013-14. Specific case of the plaintiff is that as per clause 36 of Articles of Association of the company, the plaintiff having 335 shares enjoys 335 votes as on 26/09/2014 but in spite of holding major shares in the proforma defendant company, Board of Directors of defendant 1 to 5 had not consulted him. The defendant Nos. 1 and 2 have been seeking extension of their tenure as directors of the company for which, they are statutorily disabled. A notice was issued to the shareholders regarding a purported annual general meeting scheduled to be held on 26th September, 2014.

3. On 16th September, 2014, the plaintiff wrote a letter to the defendants that the notice is incomplete as it does not include the list of a "Special business" which should include the draft resolution to be passed as ordinary or special resolution along with the explanatory statement pursuant to Section 102 of the Companies Act, 2013. In the said Annual General meeting, the defendant No. 1 and other defendants along with the plaintiff passed resolutions approving annual accounts for the year 31st March, 2014 and declaration of dividend. Although the plaintiff raised objection in the meeting regarding reappointment of defendant Nos. 1 and 2 as Joint Managing Directors such objection was not recorded in the Minute Book. On 15th October, 2014 the plaintiff sent a letter of complaint to the Regional Director, Eastern Region, Ministry of Corporate Affairs, defendant no.6 and the Registrar of Company, WB Ministry of Corporate Affairs, defendant no.7 regarding illegality of the resolution reappointing defendant Nos. 2 and 3 as directors who are more than 70 years of age. Defendant No. 7 forwarded a reply dated November 12, 2014 by the defendant No. 1 on 26th November, 2014. On receipt of said reply, the plaintiff learnt that notice dated 4th August, 2014 had been served on the plaintiff and received on behalf of the plaintiff by one R. Ghosh purported to be his wife, who had never received such a notice. The notice of meeting for passing a special resolution was never issued on behalf of the proforma defendant seeking continuance of defendant no.1 and 2 as directors of the said company.

4. Defendants have contested the suit by filing written statement denying all material particulars made in the plaint and contended inter alia, that Sumatha Nath Ghosh died on 10th April, 1984 who had 280 shares which was inherited by his son, the plaintiff herein and his daughter, Sumita Talukdar and admitted that the plaintiff holds 335 shares. Defendants' specific contention is that after the death of Sumatha Nath Ghosh, Gajendra Kumar Mitra had acquired name and fame in the market due to his farsightedness who had advised other shareholders that his shares would stand in the name of Sabitendra Nath Roy

and Manish Chakraborty and himself. If the majority of the shares are tied up in such a group of efficient and able persons of publishing business work together, then the company would improve and prosper. On 25.03.1983 said Gajendra Kumar Mitra published his last Will and Testament bequeathing 80% of the shares of the proforma defendants to Sabitendra Nath Roy and Manish Chakraborty in equal share, i.e., 40% each. The said Will was probated under PLA No.182 of 1995. Thus, the defendants are holding 243 shares under share registered folio nos.13 and 45 and under share registered folio no.4 and the defendant no.1 holds 411 shares in his name. The defendant nos.1 to 5 hold majority shares, accordingly, they elect Board of Directors. The plaintiff as a shareholder can send suggestions in writing before the Board of Directors which can be placed in the Board meeting. It is true that the joint Managing Directors are old persons, but they still work in the office as other directors working for eight hours a day. The receipt of the notice bears the signature of a fictitious employee without any seal. It is submitted that the Board of Directors duly served notice of the meeting dated 4th August, 2014 mentioning the agenda and the same was received by the plaintiff's wife R. Ghosh, but the plaintiff did not attend the meeting. It is also pointed that efficiency of defendant nos.1 and 2 are tested for a continuous period of 42 years who have given untiring service for the last 42 years for smooth running and functioning of the business of the proforma defendant no.8.

5. On the above pleadings, following issues are framed for determination of the disputes between the parties:

- (1) Whether the suit is maintainable?
- (2) Whether the alleged receipt of the letter dated 16th September, 2014 of the plaintiff is fictitious?
- (3) Whether the plaintiff has committed any act of forgery or fraud?
- (4) Whether the defendants and the proforma defendant company are entitled to get relief as prayed for in their written statement filed on 26.06.2015?

Decision with reasons

6. The above issues are taken up together for the sake of convenience in discussion and for brevity. The question which fell for consideration before this court is as to whether there has been violation of provision of Sections 102 and 196 of the Companies Act, 2013. Before taking up the issues for discussion, it would be profitable to reproduce Section 196 as under:

"196. (1) No company shall appoint or employ at the same time a managing director and a manager.

(2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time:

Provided that no re-appointment shall be made earlier than one year before the

expiry of his term.

"(3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who ?

(a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person."

(b) is an undischarged insolvent or has at any time been adjudged as an insolvent;

(c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or

(d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

(4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule:

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.

(5) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid."

7. It is admitted on behalf of the defendants that the plaintiff has 335 shares in the proforma defendant. In this suit the plaintiff has challenged the notice of Board's meeting dated 4th August, 2014 for adopting a special resolution as required by Section 196(3) of the said Act on the score that said notice was never served upon the plaintiff. Mr. Balaram Mukherjee, learned Advocate for the defendants submitted that Mrs. Ratna Priya Ghosh, wife of the plaintiff had received the notice dated July 7, 2014 on the same day for adopting a special resolution for reappointment of Directors who had attained the age of 70 years

and scheduled such meeting on 4th August, 2014 at 12 noon at 86/1 Mahatma Gandhi Road, Kolkata-700073. Adverting to the said notice being part of Exbt.-D, it is pointed out that Shri S. N. Roy, Manish Chakroborty and Smt. Jayashree Paul had attained 70 years of age and a special resolution is required in terms of the said provision of the Companies Act for their continuance as Directors of the company annexing the explanation to the said notice being Annexures-"A-1", "A-2", "A-3". This notice has been disputed by Mr. Reetobrato Mitra, learned Advocate for the plaintiff inviting my attention to evidence of Ratna Priya Ghosh who has denied her signature on the receipt of the said notice appearing at page 35 of the plaint being part of the Exbt.- "D". It appears from the notice dated 3rd September, 2014 Exbt.- "B" that 42nd Annual General Meeting of the said Company was scheduled to be held on 26th September, 2014 at 3 p.m. to transact business on four agenda including reappointment of the defendant Nos. 1 and 2 as Directors due to retire in coming Annual General Meeting. The said notice for Annual General Meeting was received by the plaintiff as depicted from the letter of the plaintiff dated 16th September, 2014 Exbt.- "C" addressed to the Board of Directors of the proforma defendant wherein he raised objection to the effect that the notice sent by the company for the Annual General Meeting was incomplete as it does not include the list of special business to be transacted at the meeting. This special business should, inter alia, include draft resolution to be passed as ordinary or special resolution along with the explanatory statement pursuant to Section 102 of the Companies Act, 2013. Since most of the Directors are more than 70 years of age, the explanatory statement should specify, inter alia, name, date of birth, educational qualifications and experience of all such Directors. For appointment/reappointment of Directors under Section 196 of the Company's Act, 2013, the draft resolution along with explanatory statement need special resolution to be approved at the said meeting. It is pertinent to note that such notice dated 16th September, 2014 was received by the company on 16.09.2014 at its office.

8. The plaintiff requested the company to send a modified notice including all the ordinary and special business to be transacted at the meeting along with required draft resolution at the earliest but of no effect.

It is evident that the plaintiff was not duly served with the notice for adopting a special resolution for reappointment of defendant Nos. 1 and 2 as Directors of the proforma defendant.

9. It is reflected from agenda No.3 of the notice dated 3rd September, 2014 that directors will retire in coming 42nd Annual General Meeting of the defendant company and being eligible they will offer themselves for re-appointment. Although such an agenda was given in the said notice Ext. A for a special business to be transacted at the meeting but no special draft resolution along with explanatory statement was enclosed in the said notice in terms of Section 102 of the Companies Act, 2013, which provides,

"102. (1) A statement setting out the following material facts concerning each

item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:?

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of?

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and(ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1),-

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than-

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and

(b) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent of the paid-up share capital of that company, also be set out in the statement.

(3) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement under sub-section (1).

(4) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub-section (1), being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be

liable to compensate the company to the extent of the benefit received by him.

(5) If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more."

10. It reveals from the Minute Book being the part of Exbt. D in the said 42 Annual General Meeting of the company that Subrata Ghosh was very much present and the resolution was adopted to the following effect :-

"With regard to special resolution passed on August 4, 2014 whereby Sri Sabitendra Nath Roy and Sri Manish Chandra Chakraborty were approved to continue as Joint Managing Directors of the company, even after attaining 70 years of age as per the new provision of the Company's Act, 2013 and it is noted that Smt. Jayasri Pal did not get the majority votes for the continuance as a director and hence she resigned."

11. Resolution further revealed that Smt. Pal was responsible for proof reading and her health does not permit her to be regular with the Company's affairs. The resolution shows that one Paltu Datta minor shareholder has monitored and proposed for the resolutions to be taken at the meeting. Mr. Mitra submitted that objection raised by the plaintiff was not recorded in the Minutes Book in as much as he had earlier written to the company vide his notice dated 16th September, 2014 Exbt. B that the notice sent to the plaintiff by the Board of Directors of the defendant No. 8 company for holding annual general meeting was not complete. The said notice was duly received by the defendant company on the same date at its office. Therefore, objection so raised in the said notice should have been mentioned in the Minute Book of 42nd Annual General Meeting of the Company. The fact that Shri Subrata Ghosh raised objection for not having received any notice for the special resolution ought to have been mentioned in the Minutes Book. Mr. Mitra has relied on an authority in case of Charanjit Lal Choudhury v. the Union Bank of India and Ors. reported in AIR 1951 SC 41 which decision has been relied in case of Life Insurance Corporation of India v. Escort Ltd. and Ors. reported in AIR 1986 SC 1370 wherein it has been clearly observed at paragraph 52 and paragraph 78 respectively as under :-

"52. The petitioner as a shareholder has undoubtedly an interest in the company. His interest is represented by the share he holds and the share is a movable property according to the Indian Companies Act, with all the incidence of such property attached to it. Ordinarily, he is entitled to enjoy the income arising from the shares in the shape of dividends; the share like any other marketable commodity can be sold or transferred by way of mortgage or pledge. The holding of the share in his name gives him the right to vote at the election of Directors and thereby take a part, though indirectly, in the management of the company's affairs. If the majority of shareholders sides with him, he can have a resolution

passed which would be binding on the Company and lastly, he can institute proceedings for winding up of the Company which may result in a distribution of the net assets among the shareholders."

12. Conclusively, it is held that plaintiff holding the major shares in his name has right to vote and thereby to take part in the management of the Companies affairs. So he had a right being the majority shareholder to have a resolution passed which would be binding on the company. It is, therefore, a clenched position of law that a Board of Directors conduct its meeting according to the rules and the procedures contained in its governing document which procedures may allow the Board to conduct the business as per the rules jotted down in the Articles of Association.

13. Mr. Mitra invited my attention to the Memorandum of Association Exbt. E and Articles of Association Exbt. F. In the Article of Association Exbt. F, qualification for directors is dealt with in its Clause 13 which provides "Unless and until otherwise determined by the Company in General Meeting the qualification of a Director shall be the holding in his own right and not jointly with any other person share of the Company of the aggregate nominal value of Rs. 100/-. A director may act before acquiring his qualification. The Company in General Meeting may from time to time increase or reduce the number of Directors and their qualification."

14. It follows therefrom that a Director must hold in his own right share of the Company of the aggregate nominal value of Rs. 100/- but not jointly with any other persons. The said Article of Association also provides for Retirement of Directors in Clauses 26 to 28 which read thus :-

"26. Subject to the provisions of these Articles, the Directors for the time being shall retire from office at the first Annual general meeting of the company and thereafter in every alternate year. A retiring director shall be eligible for re-election and shall act as a director throughout the meeting at which he retires.

27. The company may from time to time in general meeting increase or reduce the number of directors and determine in what rotation such increased or reduced number shall go out of office.

28. Any casual vacancy occurring in the Board of Directors may be filled up by the remaining directors, but any person so chosen shall retain his office only until the next following annual general meeting of the Company and shall then be eligible for re-election."

15. Provisions regarding General Meetings are enumerated in Clauses 34, 35, 36, 37, 38 and 39. Clause 34 provides that-

"Seven days notice at the least exclusive of the day on which the notice is served, or deemed to be served, but inclusive of the day for which the notice is given, specifying the place, the day and hour of the meeting and in case of a special business the general nature of such business, shall be given in the

manner as prescribed hereinafter mentioned or in such other manner (if any) as may be prescribed by the company in a General Meeting to such persons as are under the regulations of the Company entitled to receive such notice from the company but accidental omission to give such notice to or the non-receipt of such notice by any such person or persons shall not invalidate the proceedings at any such General Meeting. A Meeting may with the written consent of the members be called by short notice and in such manner as provided in the Act."

16. I find that the notice to convene annual general meeting was duly served and received by the plaintiff to which the plaintiff wrote to the Board of Directors of the Company on 16th September, 2014 alleging incomplete notice pertaining to appointment and re-appointment of retiring directors who had exceeded their age limit of 71 years.

17. Mr. Mitra further invited my attention to the Clause 36 of Article of Association Exbt. F providing,

" Every share holder who has been duly registered in the books of the company who is not disqualified by any of the clauses of these Articles shall be entitled to vote at such meeting and shall have one vote in respect of every one share."

18. Accordingly, it is submitted that the plaintiff alone has 335 votes being the major shareholder and his consent for reappointment of the defendant Nos. 1 and 2 was imperative. I am in agreement with such submission of Mr. Mitra. The Minute Book relating to the special resolution and the general meeting respectively held on August 4, 2014 and September 26, 2014 were not communicated to the plaintiff and he only came to know after receipt of communication by Registrar of Company Affairs in response to his complaint dated 14th October, 2014 with the authority of defendant No. 6 and 7 whereby the plaintiff requested the authorities of Company's affairs to remove the directors exceeding more than 70 years of age by application of Section 196 of Companies Act, 2013 on the ground that he had 33.5% shares in the defendant No. 8 company. It is reflected that defendant no.1 aged 82 years and defendant no.2 aged 76 years hold shares 41% and 51% respectively whereas Smt. Jayshree Pal aged 73 years holds 9.4% shares and two other directors namely, Smt. Indrani Roy daughter of defendant No. 1 and Shri Paltu Datta aged 40 years holds 2 shares each.

19. The plaintiff has ventilated his stand that the notice to convene annual general meeting was incomplete and had requested the Board of Directors to send revised notice segregating the business between "ordinary" and "special. The plaintiff had written to the Board of Directors on 16th September, 2013 to segregate the business between ordinary and special because a special business need be attached with draft resolution along with an explanatory statement that needs "special resolution" to be approved. The said letter of the plaintiff was not addressed to by the defendants and no revised notice for appointment or reappointment of defendant no.1 and defendant No. 2 for having attained more

than 70 years of age was given to the plaintiff for taking special resolution and approval of the same.

20. As I have observed herein above that in response to complaint made by the plaintiff, the Registrar of Companies Affairs communicated by its letter being No. MCA/ROC/ KOL/IPC/COMP/28654/3946 dated 24.11.2014 enclosing the entire information and the reply of the defendant No. 8 company by their letter dated 12.11.2014 by which the Registrar of Companies Affairs obtained an explanation by way of reply to the same. Mr. Balaram Mukherjee, learned Advocate for the defendants submitted that in the reply dated 12.11.2014 of the defendant company sent on behalf of the company to the Registrar of Companies Affairs it is reflected that on July 7, 2014 notice for special resolution by courier was handed over to every shareholders/Directors of the company to hold such special resolution meeting on 4th August, 2014 as necessary formalities under Section 196 of the Companies Act, 2013 and that before August 4, 2014 by the end of July, 2014 Mr. Subrata Ghosh, plaintiff had called one of the Directors Shri Paltu Dutta and confirmed that he would attend that special resolution meeting and allow the resolution, but would need to be compensated for allowing the special resolution and alleged that Shri Ghosh had demanded a huge sum of Rs.1,00,000/-. The said conversation went sour as Shri Paltu Dutta refused blatantly and Shri Subrata Ghosh then threatened that such special resolution shall fail since he holds 33.5% shares. I am unable to accept such a bizarre allegation levelled against the plaintiff as none on behalf of defendants company including the said Paltu Dutta came on the dock to face trial to substantiate the said allegations against the plaintiff of having demanded a sum of Rs.1,00,000/- for approval of reappointment of the defendant nos.1 and 2 and so also for appropriating pension of his deceased mother.

21. I have already discussed that it is imperative for the Board of Directors to conduct its meeting according to rules and procedure contained in its governing documents such as Article of Association and Memorandum of Association. The Article of Association provides that every shareholder has a right to vote. Therefore, the plaintiff had/has 335 votes and voting right inasmuch as he holds 335 votes in the defendant-company. The plaintiff was present in the Annual General Meeting held on 26th September, 2014 who had levelled allegations in his letter dated 16th September, 2014 addressed to the Board of Directors of the Company prior to the date of holding Annual General Meeting on 26th September, 2014. Therefore, there should have been note of protest so made by the Managing Director in the Minute Book recording the resolution taken in the 42nd Annual General Meeting. It is well known that the appointment and reappointment of Directors of a Company is voted upon by the shareholders in general meeting.

22. Culling out from the discussion herein above, now the question which falls for consideration, whether the plaintiff had received notice dated 7th July, 2014 proposing to convene meeting for taking special resolution required by Section

196 of the Companies Act, 2013. Section 149 of the said Act provides for obligation to constitute the Board of Directors. The Board of Directors of a Company is undoubtedly a centre to its decision-making and governance process, but that has to be as per the procedures contained in the Article of Association, Exhibit-F. So, there is obligation on the part of the company to constitute and maintain the Board of Directors as per the provisions of law and to disclose particulars of the Director so to be appointed in the public domain through statutory filing of information. The information ought to have been furnished with regard to resolution taken and appointment so made by the defendant company to the Registrar of Company Affairs, but that does not appear to have been complied with and it was only when the plaintiff lodged complaint with the authorities of the Company Affairs about the irregularities by the defendant company in the matter of re-appointment of the retiring Directors who had attained more than 71 years of age. Under the provisions of Section 196 of the Companies Act, 2013, which also applies in private companies, special resolution to appoint a person who is over 70 years of age as a Managing Director or a whole-time Director or Managing Director has to be adopted upon notice to all the members of Board of Directors and shareholders. According to the plaintiff, notice for convening such meeting to adopt a special resolution was not sent to him, though the defendant company has produced an acknowledgement card containing signature of one R. Ghosh, wife of the plaintiff which has been disputed by Smt. Ratnapriya Ghosh as that of hers. The defendant nos.3 and 4 do not have requisite qualification to be elected and appointed as Directors of the company in view of Clause 13 of the Articles of Association, Exhibit-F corroborated by the oral testimony of the plaintiff in his answer to question Nos. 29, 30, 31, 34 and 35.

23. Said Smt. Ghosh has put her signatures on her deposition and also submitted her passport and voter identity card bearing her signatures for comparison of the disputed signature on the above acknowledgement card as directed by this court having regard to provisions embodied in Section 73 of Evidence Act for comparison of signature, writing or seal with others admitted or proved.

24. On comparison of admitted signatures of Smt. Ratnapriya Ghosh on her passport and the voter identity card with that of the signature on the acknowledgement as to service of the alleged notice with great care, I am fully satisfied to hold that the disputed signature on the acknowledgment is not that of the witness Smt. Ghosh.

25. Conclusively, I hold that the notice dated 7th July, 2014 scheduling a meeting on 4th August, 2014 for adopting special resolution for reappointment of defendant Nos. 1 and 2 as Directors of Company was not duly served on the plaintiff.

26. Thus, I find that the Board of Director of the proforma defendant has not complied with the provision of Section 102 and 196(3) of the Companies Act, 2013, resultantly, the special resolution dated 4th August, 2014 for

reappointment of retiring directors and subsequent meetings on that behalf held on 26th September, 2014 are null and void.

27. In the result, suit succeeds.

28. Hence, ordered that, the CS No. 78 of 2005 is decreed on contest against the defendants with costs. The plaintiff do get a decree of declaration that the special resolution adopted in the meeting dated 4th August, 2014 and resolutions passed in the Annual General Meeting held on 26th September, 2014, barring resolutions relating to annual accounts and declaration of dividend, are illegal, null and void.

29. The defendant company will hold a meeting for adopting special resolution for reappointment of directors who are aged more than 70 years by giving prior notice to all directors and shareholders in presence of the plaintiff being the major shareholders of the defendant company maintaining legal formalities as required under provision of Section 102 and 196 of the Companies Act, 2013 within two months from the date hereof.

30. Department and all parties to act on the signed photocopy of this judgement.

Shivakant Prasad, J.

Later-

13.01.2017

After passing of the judgment learned Advocate for the defendants prays for stay of the decree. Prayer is considered and rejected.

G.A. No. 3590 of 2016 pending in the suit thus stands disposed of.