IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Present
Mr. Justice Faisal Arab
Mr. Justice Sajjad Ali Shah
Mr. Justice Munib Akhtar

Civil Appeal No. 91-K of 2017
(On appeal from the order dated 06.11.2017 passed by the High Court of Sindh, Karachi in High Court Appeal No. 137 of 2017)

Rahat and Company thr. Syed Naveed Hussain Shah (formerly partner) residing at 52-A, Overseas Cooperative Housing Society, Block 7 and 8, Karachi. ...Appellant (s)

Vs.

Trading Corporation of Pakistan Statutory Corporation, Finance and Trade Centre, Shahrah-e-Faisal, Karachi and acting through its Secretary or Chief Executive Officer. ...Respondent (s)

For the appellant: : Mr. Amir Raza Naqvi, ASC.

For the respondent: : Mr. Sarfraz Ali Metlo, ASC.
Dr. Raana Khan, AOR.

Date of hearing: : 08.08.2019

ORDER

Munib Akhtar, J.- At the conclusion of the hearing it was announced that the appeal was being dismissed. The following are our reasons for having done so.

2. The appeal arises out of Suit 196/1996 filed on the Original Side of the Sindh High Court. The plaintiff was originally the Rice Export Corporation of Pakistan ("RECP"), a company registered under the law relating to companies, and the present appellant (a partnership firm) was the defendant. RECP was

subsequently merged with the Trading Corporation of Pakistan (sometime in 2001), which is also registered as a company and is the present respondent. Briefly stated, the claim was for settlement of accounts and for recovery of a sum of Rs. 56,803,786.64 in relation to the delivery and supply of rice. In the suit issues had been framed on 12.05.1997. On or about 16.10.2010 an application under Order 14, Rule 5 CPC was filed by the appellant (i.e., the defendant) for the framing of an additional issue, which was proposed in the following terms:

> "Whether the suit has been competently filed without authorization by the Board of Directors of Rice Export Corporation of Pakistan (the original plaintiff) if not its effect?"

The application was allowed on or about 08.09.2016 and the issue was framed in terms as prayed. It was directed that it be tried as a preliminary issue. By an elaborate order dated 18.01.2017 a learned Single Judge, after considering the evidence led on the issue and the case law relied upon by both sides decided the issue against the defendant. The defendant preferred an appeal against the said order, which was dismissed by a learned Division Bench of the High Court by the impugned judgment dated 20.09.2017. Against this dismissal, leave to appeal was sought and granted vide order dated 14.12.2017.

3. Before us, learned counsel for the parties reiterated the submissions made on their respective behalf both before the learned Single Judge and the learned Division Bench. Mr. Faisal Siddiqui, Advocate, was appointed as amicus curiae to assist the Court, and we are grateful to both the learned counsel appearing for the parties and the learned amicus for the assistance that has been rendered. The learned amicus submitted that the matter of ratification of a suit filed without proper authorization of a board resolution ought also to be taken up in this appeal. Although it was conceded that such a question was beyond the scope of the additional issue that had been framed in the suit, the learned amicus submitted that it was touched upon by the learned Division Bench in the impugned judgment and could therefore be considered. It was submitted that it was an important question that required an authoritative pronouncement from this Court. The learned amicus cited certain decisions not just from our country but also from the English and Indian jurisdictions.

4. The issue now before us has come up repeatedly both before the High Courts and this Court and the point in contention is succinctly stated in the additional issue that was framed in the suit, as set out above. One of us (Munib

Akhtar, J.), while in the High Court, has had occasion to consider in some detail the relevant case law in *Pak Turk Enterprises (Pvt) Ltd. v. Turk Hava Yollari (Turkish Airlines Inc.)* 2015 CLC 1 ("*Pak Turk*"). The matter arose out of an application under s. 20 of the Arbitration Act, 1940 (filed as a suit on the Original Side of the High Court) and what fell for determination was an application under Order 7, Rule 11 CPC seeking rejection of the plaint. The basis for the application was the same as stated in the additional issue before us. After considering the authorities, the application was dismissed. In particular, the following judgments of this Court were considered at length: *Muhammad Siddiq Muhammad Umar and another v. Australasia Bank Ltd.* PLD 1966 SC 685 ("*Australasia Bank*"), *Ifthikhar Hussain Khan of Mamdot v. Ghulam Nabi Corporation Ltd.* PLD 1971 SC 550 ("*Khan of Mamdot*") and *Central Bank of India Ltd. v. Taj ud Din Abdur Rauf and others* 1992 SCMR 846 ("*Central Bank of India*"). Without intending any disrespect to the High Courts, we will focus only on these judgments, and two other judgments of this Court (not considered in *Pak Turk*): *Telecard Ltd. v. Pakistan Telecommunication Authority* 2014 CLD 415 and *Al-Noor Sugar Mills Ltd. v. Federation of Pakistan and others* 2018 SCMR 1792. Of these, in our view it is the first two judgments that are pivotal and require the greatest attention.

5. As regards *Australasia Bank, Khan of Mamdot* and *Central Bank of India*, it was held in *Pak Turk* as follows (paras 12-26, pp. 8-15; emphasis by way of underlining of paras 23 and 24 supplied; elsewhere, in italics, in original):

> "12. … I start with the two foundational cases, the judgments of the Supreme Court in *Australasia Bank* and *Khan of Mamdot*.
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> 13. *Australasia Bank* was a recovery suit filed at Lahore by the respondent bank against the appellants, who were its customer. The plaint was signed by one Mr. Muhammad Khan, who was described therein as the principal special officer and general attorney of the bank. One of the issues framed by the trial court was as follows: "Whether Mr. Muhammad Khan is competent to file this suit on behalf of the plaintiff bank?" At the trial, neither the Articles of Association of the bank, nor any resolution of the board of directors was produced. The only document produced was a registered power of attorney whereby Mr. Muhammad Khan was appointed as a "general attorney" of the bank and to which the seal of the bank had been affixed. Mr. Muhammad Khan deposed that he had the authority to file the suit on such basis and on instructions received from the bank's managing director. The learned trial court decided the issue noted above against the plaintiff-bank. The issue on the merits was also decided against the bank, with the result that the suit was dismissed.
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> 14. The bank preferred an appeal to the High Court. There was a difference of opinion between the two learned judges who heard the

appeal and the matter was therefore referred to a third learned judge. The latter decided that in order to enable him to give decision additional evidence was required, in the shape of the Articles of Association of the bank and also the evidence of the managing director. Such evidence was recorded by and in the High Court itself. The Memorandum and Articles of Association were tendered in evidence, as was a resolution of the bank's board of directors, showing that the board had approved granting the power of attorney to Mr. Muhammad Khan, and they were empowered to do so. The managing director was also examined and indeed extensively cross examined on his testimony. The third learned judge concluded that the suit had been competently filed and also gave decision on the merits in favor of the bank. The appeal was accordingly allowed.

15. Being aggrieved by this decision, the customer preferred an appeal to the Supreme Court. One question that arose for consideration was whether additional evidence ought at all to have been recorded in the High Court. To this the Supreme Court, after a detailed consideration, gave an affirmative answer. On the question relevant for present purposes, namely whether the suit had been competently instituted, the Supreme Court observed as follows (pg. 695, emphasis supplied):

> "It was apparent from the pleadings that the suit was being instituted by a constituted attorney of a public limited company. He could only do so if he was duly authorised in that behalf and occupied one or other of the offices mentioned in Rule 1 of Order XXIX of the Civil Procedure Code. A copy of the power of attorney had been produced which showed that Muhammad Khan had been empowered in that behalf but the question still remained to be ascertained as to whether those who gave him that power were competent to do so, as the authority was on behalf of a public limited company. *For this purpose a reference to the Articles of Association of the company was certainly necessary see whether the Directors were competent to delegate such power. It was not necessary to see whether the Directors had in fact approved of the giving of such power-of-attorney to the person who presented the plaint*. This was, however, proved by the production of the resolution of the Board of Directors *as a matter of abundant caution*. The additional evidence was to that extent, therefore, in our opinion, rightly admitted. This was all that was required. It was not necessary to call the Managing Director as the Court calling for the additional evidence itself realized subsequently. *Even the production of the resolution could have been dispensed with, as it was not strictly necessary*."

Two points, of fundamental importance, require attention. Firstly, the Supreme Court held that an examination of the Articles of Association was necessary in order to ascertain whether the directors were empowered to delegate the power of instituting legal proceedings to someone else. Secondly, and perhaps even more importantly, the Supreme Court observed that it was *not* necessary to see whether, in fact, the board had actually done so. The production of the resolution passed in this regard was considered to have been only "a matter of abundant caution", and it was expressly noted that it could have been dispensed with "as it was not strictly necessary".

16. The reason why the Articles of Association had to be examined was because the power of attorney under which Mr. Muhammad Khan acted was given under seal, and as the Supreme Court observed, "as a rule the Articles of Association of a company contain special provisions prescribing for the manner in which the seal of the company may be affixed and that those who deal with a company are bound to see that the document on the face of it accords with those provisions of the Articles" (pg. 696). It was not enough for a person dealing with the company to be satisfied with the power of attorney as presented simply because it had the company's seal affixed to it. Any person so dealing with the company had to satisfy himself that the seal had been affixed in the manner as prescribed by the Articles. But that was all that he was required to do. Anything else was covered by the rule of indoor management, which was explained as follows by the Supreme Court (pg. 696):

> "According to this rule persons dealing with a company are bound to read the public documents of a company, i.e. its Memorandum and Articles of Association, and to satisfy themselves that the transaction entered into or proposed to be entered into is not inconsistent therewith, but they are not bound to do more, nor are they required to enquire into the regularity of the internal proceedings or what has been called 'the indoor management of the company', for, they are entitled to assume that all other things have been done regularly."

Having seen the Articles of Association of the respondent bank, and the formalities prescribed therein for affixing the bank's seal to an instrument, the Supreme Court was satisfied "that Muhammad Khan was properly and lawfully empowered by the Directors who themselves had express power given to them under the Articles of Association to delegate their authority and the delegation so made empowered Mr. Muhammad Khan to sign, execute and present plaints on behalf of the company" (pg. 697). The suit was held to have been competently filed. The customer-appellants also failed to satisfy the Court on the merits and the appeal was accordingly dismissed.

17. It is of great importance to note, and the relevance of this point will emerge later, that in *Australasia Bank* the litigation was between a company (the bank) and a third party (its customer), in a situation where the rule of indoor management was applicable.

18. I turn to consider the decision in *Khan of Mamdot*. This was also a recovery suit, but with a difference. The suit had been brought in or around 1952 by the respondent company against the Khan of Mamdot (who had passed away by the time of the Supreme Court appeal and was represented there by his heirs). The suit was brought to recover the unpaid amount in respect of a cold storage plant that the company stated had been sold and supplied by it to the Khan of Mamdot. The suit was defended, and it was pleaded that in fact, the company owed a sum of Rs. 100,000/- (as will be appreciated, a huge sum of money in those days) to the defendant. In settlement thereof, the company agreed to transfer shares in the company worth Rs. 50,000/- to the defendant and for the balance supply certain plant and machinery. The Khan of Mamdot averred in his defence that 500 shares worth Rs. 50,000/- were transferred to him but that the plant and machinery supplied was defective and incomplete.

19. It is crucial for present purposes to note that on becoming a shareholder (and member) of the company, the Khan of Mamdot also became its director. In the written statement, the defendant took the objection that no notice was received by him, as director, of the board meeting at which it was decided by the directors to sue him through one Mr. Khurshid Mehmood, who was himself a director of the company, and who was authorized to file the suit at the meeting. It was contended by the defendant that in such circumstances, Mr. Khurshid Mehmood had not been properly authorized and the suit had not been competently filed.

20. On these pleadings, the issue relevant for present purposes was as follows: "Was Mr. Khurshid Mahmood authorised by the Ghulam Nabi Corporation to institute the present suit on their behalf?" The suit went to trial and evidence was led on this and other issues. This issue was decided against the company and while other issues were decided in favor of the latter, since it failed on the issue of institution, the suit was dismissed. The company preferred an appeal to the High Court. In respect of the above mentioned issue, additional evidence was recorded by and in the High Court and it was then decided in favor of the company and against the Khan of Mamdot. The other points were also decided in favor of the company, with the result that its appeal was allowed and the suit decreed.

21. Against the aforesaid decision, the Khan of Mamdot preferred an appeal to the Supreme Court. One question raised was whether additional evidence could have been recorded by and in the High Court. The Supreme Court, relying in part on its earlier decision on this question in *Australasia Bank*, held that the additional evidence recorded was admissible, but only in part and to the extent as noted (see at pg. 558). On the issue whether the suit had been competently filed, the Supreme Court concluded that when the relevant evidence was considered (i.e., as recorded by the trial court and the additional evidence to the extent held permissible and admissible), the suit had not been properly filed by a duly authorized person. This was because the Khan of Mamdot had not received notice of the meeting of the board at which the aforementioned Mr. Khurshid Mehmood had been authorized to bring suit against the former. It was observed as follows (pp. 559-60):

> "The question, therefore, is whether in such circumstances can it be said that the meeting of the 28th September 1951, was properly held and any business done in that meeting was a valid one. In my opinion, the meeting held on the 28th September 1951, cannot be said to be a proper meeting. In Halsbury's Laws of England, Third Edition, Volume 6, at page 315, the following statement of law is made :-
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> > "A meeting of directors is not duly convened unless due notice has been given to all the directors, and the business put through at a meeting not duly convened is invalid. Whether or not there was a regular board meeting is immaterial for purposes of binding the company if all the shareholders consent to what is done. It is not necessary to give notice of an adjourned meeting. If no fixed notice is required, the notice must be fair and reasonable."
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> In the case of *H. M. Ebrahim Sait v. South India Industrials Ltd.* [AIR 1938 Mad. 962] it was held that in law a meeting of directors is not duly convened unless due notice has been given to all the directors. On the facts of the present case, I am satisfied that due notice of the

> meeting was not given to the deceased appellant and, therefore, the resolution passed in the meeting of 28th September 1951, cannot be said to be a valid one. In my opinion, no valid authority was conferred on Mr. Khurshid Mahmood and, therefore, he was not competent to institute the suit. I would, therefore, hold that the learned trial Judge was perfectly justified in dismissing the suit on this ground."

It is to be noted that on the merits the Khan of Mamdot's appeal would have been dismissed but since the suit itself was not competently instituted the appeal was allowed. The Supreme Court itself regarded this as a "technical ground" and for this reason left the parties to bear their own costs (see at pg. 563).

22. It is of crucial importance to note the difference between *Australasia Bank* and *Khan of Mamdot*. The former case involved a third party and an application of the rule of indoor management. The latter case involved, as it were, an insider, i.e., the defendant in his capacity as a director of the company itself. In such circumstances, the rule of indoor management could have no application. The Khan of Mamdot had two distinct capacities. One was as the putative defendant in the suit for recovery of the unpaid amount. The second was as a director of the company. Notwithstanding that (as presently relevant) the whole purpose of the board meeting was to resolve to sue him, the Khan of Mamdot *qua* director was entitled to a notice of the meeting. The company was, in law, obligated to give him due and proper notice of that meeting, just as it would have been obliged to do in respect of any other meeting of the board. No matter that on such notice, he would have opposed the resolution or may (in the circumstances) have chosen not to attend the meeting at all. Due and proper notice had to be given. Since as a matter of fact it was found that no such notice had been given, that vitiated the meeting and the entire proceedings and any decision taken thereat. Mr. Khurshid Mehmood could not, in law, have been properly authorized and therefore the suit had not been competently filed.

23. In my respectful view, the position is clear. *Australasia Bank* and *Khan of Mamdot* lay down separate and distinct rules, which relate to different fact-situations. The two rules cannot and ought not be conflated or applied as though they relate to different aspects of the same fact-situation or are facets of the same principle. The rule laid down in *Australasia Bank* can be regarded as the general rule, applicable where the defendant in the suit (or other legal proceedings) is a third party, to whom or in relation to whom the rule of indoor management would apply. I again draw attention to what the Supreme Court said at pp. 695-97, especially the passages reproduced in paras 15 and 16 above. Where the rule of indoor management applies, the Supreme Court has held that even production of the board resolution itself is, strictly speaking, not necessary. All that is required is to see whether, as a matter of form, the Articles of Association have been complied with, and that is all, for which purpose it is only an examination of the Articles that is required.

24. *Khan of Mamdot* can be regarded as a special rule, which applies when the defendant is, for one reason or another, an "insider" (as it were). There, it may be necessary (but this depends on the fact-situation) to actually examine and consider whether, in fact or in law, the board resolution was passed or not and if so, in what manner, e.g., at a properly

> convened board meeting. But even this clearly has a factual element. It is only once the facts have been ascertained that the legal consequences that follow can be determined and applied.
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> 25. It is also, in my view, highly significant that in *Khan of Mamdot*, *Australasia Bank* was not regarded as throwing any light as would be relevant for deciding whether the suit was competently filed, in the facts and circumstances of that case. As noted above, *Australasia Bank* was cited, but on a completely different point, relating to the recording of additional evidence in the High Court. It is also pertinent to note that the author of the judgment in *Australasia Bank*, Hamoodur Rehman J., was a member (by then as Chief Justice) of the learned Bench that decided *Khan of Mamdot*. Hamoodur Rehman CJ., expressly recorded his agreement (at pg. 563) with the judgment (which was authored by Waheedudin Ahmed J.).
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> 26. Before proceeding further, it is also pertinent to note a decision of the Supreme Court … in [*Central Bank of India*]. The suit was filed by the appellant bank at Lahore for recovery of sums owed by the respondents. One of the objections taken, on which an issue was framed, was that the suit (which had been filed by an attorney) was not competently instituted. Evidence was led and although the power of attorney was produced, it was concluded that neither the Articles of Association nor the board resolution by which the power of attorney had been granted were produced. The relevant issues were decided against the appellant and its suit was dismissed. An appeal was preferred to the High Court, but it was dismissed on the ground that the board resolution had not been produced. The bank preferred a further appeal to the Supreme Court, and leave was granted to consider whether the power of attorney as had been brought on record constituted sufficient authority for institution of the suit, in light of the decision in *Australasia Bank*. On a detailed consideration of the record, the Supreme Court concluded that at least the relevant portion of the Articles of Association, which dealt with the power of the directors to delegate their powers, had indeed been produced and brought on the record. It was held that a joint reading of these Articles and the power of attorney showed that the suit had been competently filed through the attorney. It was observed as follows (at para 10, pg. 853; emphasis supplied): "As held by this Court in [*Australasia Bank*], once it is proved that the power of attorney has been executed and the relevant articles under which the Directors can delegate their respective powers to institute and prosecute suits on their behalf have been proved, *it is not necessary to prove the resolution by which the directors have resolved to grant such a power of attorney to the attorney*". The bank's appeal was accordingly allowed. In my respectful view, this decision is a clear application by the Supreme Court of what I have described above as the general rule."

After considering the cases decided by the High Courts (only one of which requires attention as set out later in this judgment below), it was concluded as follows in *Pak Turk* (pg. 22):

> "38. Turning now, once again, to the facts and circumstances of the present case, in my view it is clear that the present proceedings involve, insofar as the present plaintiff is concerned, a third party (i.e., the present

> defendant) in a situation to which the rule of indoor management is applicable. The controlling authority therefore is *Australasia Bank* and not *Khan of Mamdot*. As is clear, all that is required is an examination of the Articles of Association. The production of the board resolution is not, as such, strictly necessary, although it may be produced by way of abundant caution. The objection in the present application is not based on any non-production of the Articles of Association. In any case, this is a document that is in the public domain and may be produced at any time for examination and consideration by the Court.
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> 39. To sum up the foregoing analysis and discussion, I conclude that the objection taken by learned counsel for the defendant necessarily has a crucial factual element, which cannot be decided at this stage or in any case (in view of paragraph 26 of the plaint) must be assumed in favor of the plaintiff, in line with the well established principles that apply when rejection of the plaint is contemplated. Furthermore, on a proper and correct reading of the cited cases, the controlling authority applicable in the present case is *Australasia Bank*, which does not require (or at any rate does not penalize) non-production of the board resolution. On either basis, the plaint cannot at this stage be rejected."

6. The foregoing observations and conclusions are approved. They correctly state what was decided by this Court in the three judgments considered, as well as the conclusions of law that are to be derived from the same.

7. We turn now to consider *Telecard Ltd. v. Pakistan Telecommunication Authority* 2014 CLD 415 ("*Telecard*"). It is a short judgment comprising of only two paras. The relevant extract, from the first para, is as follows (emphasis supplied):

> "… admittedly the appellant is a limited company and the appeal has not been filed by someone having due authority under the articles of association of the company authorization by the board resolution. It is a settled law that a lis cannot be initiated on behalf of the company which is a juristic person, *without having due authority either in terms of the articles of association or by the board resolution*. This is conspicuously missing in the present case."

In our view, the foregoing is simply an application of what has been called the general rule in the *Australasia Bank* case in *Pak Turk* and approved as above.

8. The last judgment requiring attention is *Al-Noor Sugar Mills Ltd. v. Federation of Pakistan and others* 2018 SCMR 1792. An objection was taken by the respondents that the relevant board resolutions regarding the filing of the appeals before this Court were not timely filed, but were presented only subsequently (para 12, at pg. 1799). After reproducing the judgment in *Telecard*, and referring to *Australasia Bank* (from which also a passage was extracted) and

considering the record before the Court it was held that the objection taken was without merit. In our view, there is nothing in this decision as is contrary to what was held in *Pak Turk* and as approved herein above.

9. The facts and circumstances of the present case in our view are covered by the general rule laid down in *Australasia Bank*. The present appellant is clearly a third party dealing at arm's length with the respondent (or, more pertinently, its predecessor, the RECP). The doctrine of indoor management is clearly applicable here. Thus, there was, as such, no need even to frame an issue regarding whether a board resolution had been passed or not. Attention is again drawn to para 23 of *Pak Turk*, reproduced above. All that was required was to consider the Articles of Association. Since the Articles are a public document, they could have been produced before the Court at any stage, even without being formally tendered in evidence. Indeed, for future guidance of the courts, we hold and direct that if any objection of the nature as encapsulated in the issue under consideration is taken at any stage (i.e., whether in a written statement at the trial stage or in para wise comments or reply filed at the appellate or other similar stage), the court should refrain from straightaway framing an issue or recording an objection in this regard. Experience shows that such objections are, more often than not, frivolous and an abuse of the process of the court, intended only to delay, derail or frustrate consideration of the dispute on the merits. The court should, if at all it considers this necessary, require the Articles of Association to be produced. If an examination of the same, and an application of the doctrine of indoor management as explicated in *Australasia Bank* satisfy the Court that the suit/appeal etc. has been properly instituted then any objection taken in this regard should be regarded as concluded in favor of the company. It is only if, after such examination and consideration, the court is of the view, for reasons to be recorded, that the matter still remains unresolved that an issue should at all be framed (or the objection otherwise entertained for further consideration at the appellate etc. stage) and evidence led or the record summoned (as the case may be) and the parties heard accordingly.

10. We turn now to consider a Division Bench judgment of the Sindh High Court, in *Abdul Rahim and others v. United Bank Ltd*. PLD 1997 Kar 62 ("*United Bank*") that was also considered in *Pak Turk*. The reason for doing so is that this High Court judgment in particular is still cited from time to time. It was observed in *Pak Turk* as follows (pp. 17-20):

"32. I turn to consider the last of the cases listed in para 4 above, the Division Bench judgment of this Court in *United Bank*. As noted above, the issue of whether the suits by the company (i.e., the respondent bank) were competently filed was considered at paras 35 to 37 (pp. 105-112). The learned Division Bench considered a number of decided cases (listed in para 35) and stated its conclusions in para 37. As presently relevant, it was observed as follows (para 37(v) at pp. 110-112):

> "[T]here appears to be some inconsistency as to how competence/ authority of a person to institute a suit has to be determined. In [*Australasia Bank*] a Full Bench of the Supreme Court clearly stated that it is the articles of the company which have to be seen to assess as to whether a person filing the suit was properly authorized, while the requirement to produce a resolution of the Board of Directors could be dispensed with. In [*Khan of Mamdot*], the earlier case of [*Australasia Bank*] was not referred therein, a Full Bench of the Supreme Court took the view that in case a resolution from the Board of Directors is not passed and proved after a duly convened meeting, a suit filed even by a director-incharge is to be taken as an incompetently instituted suit. In the subsequent case of *Central Bank of India* the learned Judge of a Division Bench of the Supreme Court followed [*Australasia Bank*], however, no reference was made to [*Khan of Mamdot*]. In *Central Bank of India* it was emphatically stated that there was no requirement of law to prove resolution passed by the Board of Directors. In [*Habib Bank Ltd. v. Green Garments Manufacturers* PLD 1978 Kar 1027] a learned Single Judge of this Court made an attempt to reconcile [*Australasia Bank*] and [*Khan of Mamdot*] by holding that in case a suit is filed in consequence of a power of attorney no resolution of Board of Directors is required. With due respect we cannot subscribe to this distinction or reconciliation as the same is not borne out from the principles of law extracted in the two decisions of the Supreme Court (referred supra). We would reconcile the two decisions of the Supreme Court on another plane. It is settled that the business and affairs of a company are to be conducted strictly in consonance with the articles of association subject of course to the operative laws. The business and affairs of a company include the power, competence and authority to institute legal action (See H.M. Ebrahim Saith v. South India Industries Ltd, AIR 1938 Mad. 962). By deduction, the factum of competence and authority to institute legal proceedings would also have to be determined strictly in consonance with the articles of the company. Such interpretation would also be in consonance with [*Australasia Bank*] and *Central Bank of India* wherein it has been categorically stated that where the competence to institute legal action is challenged reference has to be necessarily envisaged to the articles. Where articles of the Company confer power on a particular person or director to institute legal action and that person or director institutes the suit there can be no additional requirement of a resolution of the Board of directors for the simple reason that such power is to be exercisable by a real person. However, where the power to institute the suit is conferred upon an artificial person or body e.g. the Board of Directors or a Committee … the requirement to produce and prove the resolution passed by that artificial person or body cannot be dispensed with since such a person can only take a decision as a body through a resolution passed in a duly convened meeting and not otherwise. The above principles would also become applicable in the case of delegation or sub-delegation of powers i.e. in case the delegator is a real person (when articles confer

> the powers to institute legal action on a real person) all that would be required would be to scrutinize the articles and then the power of attorney to see whether it has been properly executed and confers the power so claimed. There would be no requirement to produce or prove the resolution from the Board of Directors in this regard. If on the other hand, the delegator is an artificial person/body (when the articles confer the power to institute legal action on e.g. the Board of Directors or some committee) the resolution passed by that artificial person/body i.e. the Board/ Committee shall become indispensable. However, there would be no requirement to produce or prove a separate power of attorney. In this backdrop we would venture to reconcile [*Australasia Bank*], [*Khan of Mamdot*] and *Central Bank of India* by presuming that in [*Australasia Bank*] and *Central Bank of India* the articles conferred the power to institute or defend legal proceedings to a real person i.e. a director. Thus the requirement to produce or prove a resolution from the Board of Directors was dispensed with. However, in [*Khan of Mamdot*] the articles conferred the power to institute or defend legal proceedings upon an artificial person/body i.e. the Board of Directors in view whereof the requirement to produce and prove the resolution thereof authorising institution of the suit was found to be indispensable".

33. I have set out para 37(v) in its entirety because it requires careful consideration. With the utmost respect, the observation of the learned Division Bench that there is some inconsistency with regard to how the competence or authority of a person to institute a suit is to be determined, and a need to reconcile the judgments of the Supreme Court (*Australasia Bank* and *Central Bank of India* on the one hand and *Khan of Mamdot* on the other), needs reconsideration. It is to be noted that the learned Division Bench has first set out what it regards to be the correct principle. This is that where the Articles of Association empower a particular person or director to institute legal proceedings, then there is no need to produce any board resolution "for the simple reason that such power is exercisable by a real person". But where the power to institute legal proceedings is conferred on "an artificial person or body" such as the board itself or a committee thereof, then the requirement to produce and prove the resolution cannot be dispensed with "since such a person can only take a decision as a body through a resolution passed in a duly convened meeting and not otherwise". After having laid down the principle, the learned Division Bench has, "in this backdrop", then sought to reconcile the Supreme Court judgments by "presuming" that in *Australasia Bank* and *Central Bank of India*, the relevant provisions of the Articles conferred the power to institute legal proceedings on a "real person", whereas in *Khan of Mamdot*, the Articles conferred this power "upon an artificial person/body".

35. With the utmost respect, the foregoing can hardly be the correct and proper manner to interpret and apply decisions of the Supreme Court. One does not (indeed, cannot) start by formulating a principle and then "reconcile" Supreme Court decisions to that principle or on the basis thereof, all the while making certain factual presumptions, which may or may not be correct. Indeed, with the utmost respect, in *Australasia Bank*, the presumption is patently incorrect, since the relevant Articles have been stated in some detail in the judgment (see at pg. 696).

> 36. In my respectful view, for the reasons stated in detail herein above, there is no inconsistency between the Supreme Court judgments nor is there any need to reconcile them. The fact-situations and the relevant principles involved were separate and distinct and were dealt with accordingly by the Supreme Court. The learned Division Bench has specifically noted that in *Khan of Mamdot*, *Australasia Bank* was not cited (in any context relevant for present purposes), and in *Central Bank of India*, only *Australasia Bank* was cited. From these apparent omissions, the learned Division Bench appears to have concluded that the result has been some inconsistency, which requires reconciliation. Once it is appreciated that the principles involved are separate and distinct, the reason for *Khan of Mamdot* not referring to *Australasia Bank* (in the present context), and *Central Bank of India* referring only to the latter and not the former at once becomes clear. With the utmost respect, the learned Division Bench has proceeded on a miscomprehension of the judgments of the Supreme Court and has sought to resolve a perceived problem and reconcile a putative inconsistency that simply does not exist."

11. The foregoing observations and conclusions with regard to *United Bank* are approved. With respect, the learned Division Bench there clearly made errors of law with regard to its understanding and proper application of the judgments of this Court. Accordingly, the view taken in *United Bank* is disapproved. It is not good law and ought not to be followed or applied. Furthermore, and quite obviously, anything contained in the other judgments of the High Courts, whether those considered in *Pak Turk* or otherwise, that is inconsistent with what had been held and approved herein above must also now yield to this judgment, and to that extent must be regarded as disapproved and not good law.

12. We turn now to the request of the learned amicus that the matter of ratification of a suit filed without competent authority (i.e., of a proper board resolution) also be considered. The learned amicus correctly admitted that the point does not, as such, arise here on the issue as presented in the appeal. His contention that it is mentioned in passing in the impugned judgment by the learned Division Bench (at para 11 thereof) is correct as far as it goes, but, with respect, does not go far enough. However, the learned amicus has referred to several decisions of the High Courts in this country where, according to him, there is a conflict of views. In some cases it is held that the defect cannot be ratified, while in others apparently an opposite conclusion is reached. On such basis it is submitted that an authoritative pronouncement from this Court is desirable.

13. In our view, since the matter does not as such arise in this appeal, an definitive pronouncement is not possible. That must await a case where the issue arises as such for determination. However, a tentative view may be expressed. As

noted above, the learned amicus has referred to certain decisions from the English and Indian jurisdictions. Without considering the decisions of the High Courts of our country in any detail (which analysis must be deferred to some other case where the point actually arises), we are tentatively of the view that the stance taken by the English Court of Appeal in *Presentaciones Musicales SA v. Secunda and another*[1994] 2 All ER 737 and the Indian Supreme Court in *United Bank of India v. Naresh Kumar and others* AIR 1997 SC 3, namely that any defect can be cured by subsequent ratification, is correct and is to be preferred over any view to the contrary. In the first cited case, the Court of Appeal held as follows (pg. 743):

> "It is well recognised law that where a solicitor starts proceedings in the name of a plaintiff - be it a company or an individual - without authority, the plaintiff may ratify the act of the solicitor and adopt the proceedings. In that event, in accordance with the ordinary law of principal and agent and the ordinary doctrine of ratification the defect in the proceedings as originally constituted is cured: see *Danish Mercantile co Ltd. v Beaumont*[1951] 1 All ER 925, [1951] Ch 680, since approved by the House of Lords. The reason is that by English law ratification relates back to the unauthorised act of the agent which is ratified: if the proceedings are English proceedings, the ratification which cures the original defect, which was a defect under English law, must be a ratification which is valid under English law."

The view taken by the Indian Supreme Court in the above cited decision is as follows (pp. 5-6; emphasis supplied):

> "10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. *In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or*

implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer."

14. For the foregoing reasons, the appeal stood dismissed.

Judge

Judge

Judge

Karachi, the
8th August, 2019
Approved for reporting
Saeed Aslam/-