

(1981) 03 KL CK 0008
In the High Court Of Kerala
Case No : S.A. No. 371 of 1979

Cardamom Marketing Co. (Travancore) Ltd. and Another	APPELLANT
Vs	
N. Krishna Iyer	RESPONDENT

Date of Decision : 16-03-1981

Acts Referred:

Companies Act, 1956 — Section 174, 174(4), 256, 256(4)

Citation : (1981) 2 ILR (Ker) 44

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; V. Khalid, J

Bench : Division Bench

Advocate : M. Ramanatha Pillai, for the Appellant; S. Easwara Iyer, for the Respondent

Final Decision : Allowed

Judgement

Khalid, J.—The appellants are the plaintiffs in O.S. No. 138 of 1975 of the Munsiff's Court, Kottayam. The 1st plaintiff is a public limited company (hereinafter called " the company ") and the 2nd plaintiff a shareholder and secretary of that company. The defendant claims to be a director and chairman of the company. The suit was filed for a declaration that the respondent ceased to be a director of the appellant-company from February 7, 1974, and for other reliefs. The trial court dismissed the suit on the ground that the suit was bad for mis-joinder of parties and cause of action and also on the ground that the respondent continued to be a director of the company by virtue of Section 256(4) (b) of the Companies Act, for short, " the Act ". In appeal, the subordinate judge reversed the finding of the trial court regarding mis-joinder but confirmed the other finding about the status of the respondent, and dismissed the appeal. Hence the second appeal.

2. The second appeal was admitted and notice was given to the respondent on the following substantial questions of law :

"(1) Is it a prerequisite for the applicability of Section 256(4)(b) of the

Companies Act that an earlier meeting should have been held ?

(2) Whether the general provisions contained in Section 174 of the Companies Act is applicable to a case coming u/s 256(4)(b) of the Act ?"

3. A few more facts are necessary. The company was functioning smoothly till its 27th annual general meeting. The said meeting was notified to be held on January 31, 1974, on which date the respondent's term of office as director expired. It could not be held on that day for want of quorum. It was adjourned and another meeting was held on February 7, 1974, under the chairmanship of the respondent, who was then a director. On February 7, 1974, nobody was proposed or elected in the place of the respondent. It was also not resolved that the vacancy need not be filled up. The respondent's case is that the meeting on February 7, 1974, was an adjourned meeting within Section 256(4)(b) of the Act and since nobody was proposed on that day, he should be deemed to have been reappointed. The appellant's case on the other hand is that there was no meeting on January 31, 1974, and hence the meeting held on February 7, 1974,,was not one contemplated by s, 256(4)(a). The question that falls for consideration in this case, therefore, is the scope of Section 256 and the impact of Section 174(4), if any, on it.

4. The second appeal comes before us on reference by one of us. Section 174 of the Companies Act bears the caption " Quorum of meeting ". Section 174(1) prescribes the quorum. Section 174(2) provides that unless the articles of the company otherwise provide, the provisions of sub-ss. (3), (4) and (5) shall apply with respect to the meetings of a public or private company. Section 174(3), (4) and (5) can be usefull extracted:

"(3) If within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting, if called upon the requisition of members, shall stand dissolved.

(4) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board may determine.

(5) If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum."

5. u/s 174(3) a meeting called upon the requisition of the members shall stand dissolved if a quorum is not present within half an hour from the time appointed for holding it, and in any other case the meeting; shall stand adjourned to the same day in the next week. Sub-clause (5) deals with the adjourned meeting. Reliance is placed on Section 174(4) by the res-pondent's advocate-to contend that a meeting even if without a quorum is presumed to be a meeting and a quorum is not necessary for a meeting to be adjourned. This submission is made for the purpose of validating the meeting notified to be held on January 31,

1974, for the purpose of adjournment.

6. We will examine the two sections closely. Section 174(4) lays down the law regarding meetings in general. In all meetings coming within the ambit of Section 174 where the necessary quorum is not present, the consequence as laid down in the sub-sections should follow. Whether this section governs Section 256 is the question that has to be decided. Section 256 is a special provision. It comes under Chap. II under the heading " Director " and " Constitution of Board of Directors". The scheme of the various provisions in this chapter would indicate that they contained special provisions. In Section 174(4) there is a statutory mandate for a meeting without quorum in cases other than where the meeting is called upon the requisition of members to be adjourned to the next week. There is no mention therein of such a meeting being adjourned for any reason other than the fact that there is no quorum. That cannot apply to a meeting contemplated u/s 256(4) of the Act. For better appreciation of this case, we read Section 256(4)(a) and (b):

" (4) (a) If the place of the retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place, 9emphasis* supplied)

(b) If at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless..."

7. Sub-sections (1), (2) and (3) of Section 256 relate to the ascertainment of directors retiring by rotation and filling of vacancies. Under Sub-clause (3), in the place of a retiring director, either the retiring director or some other person can be appointed to fill up the vacancy. It is then that Sub-clause (4) comes into operation. Section 256(4)(a) provides for a meeting to be convened for the purpose of filling up the vacancy and also provides for such a meeting to stand adjourned till the same day in the next week when the place of the retiring director is not so filled up and that meeting has not expressly resolved not to fill the vacancy. The sub-section, on its terms, deals with the adjournment of a meeting not for want of quorum but for other reasons mentioned therein. This provision, therefore, cannot be controlled by Section 174(4). Section 174(4), as already indicated, prescribes adjournment of the meeting for want of quorum. Not so Section 256(4)(a). The adjournment of the meeting under this section comes in only when the meeting has not expressly resolved not to fill the vacancy. This postulates the fact that a meeting contemplated in Section 256(4)(a) is a valid meeting at which decisions could be taken. It is not a meeting where decisions cannot be taken. In a meeting without quorum no decision can be taken.

8. Though Section 174(4) loosely refers to a meeting without a quorum also as a meeting, the distinction between such a meeting and a meeting that Section 256(4)(a) contemplates cannot be lost sight of. A meeting in which its participants could deliberate and whereat decisions could be taken is a meeting different from a meeting without a quorum. Section 256(4)(a) deals with an adjourned meeting, that is, a meeting held on account of the adjournment of the earlier meeting, whereat no decision was taken, and not a meeting consequent upon an adjournment of an earlier meeting for want of quorum. If the meeting that was adjourned is one which does not satisfy Section 256(4)(a), the fact that no decision was taken at the adjourned meeting will not bring in the consequences mentioned in Section 256(4)(a). In other words, it is only when there was a valid meeting held u/s 256(4)(a), at which meeting no decision was taken about the filling up of the vacancy of the retiring director and which meeting stood adjourned to the following week, that the consequences mentioned in Section 256(4)(a) would follow. In this case, the meeting on January 31, 1974, was without quorum. It was, therefore, not a meeting which could take any valid decision. Therefore, the meeting on February 7, 1974, is not an adjourned meeting attracting Section 256(4)(a). It is true that no decision was taken on February 7, 1974. But the respondent cannot claim to continue as a director or deem to be re-appointed as director for that reason on the strength of Section 256(4)(a) because the meeting held on February 7, 1974, does not satisfy the requirement of Section 256(4)(a).

9. Reference was made at the bar to the decision in *The Traco Enterprises Private Limited Vs. Alexander Palathinkel and Others*, . Raman Nayar J. was dealing with a petition u/s 101(1) of the Companies Act, 1956, for the confirmation of a resolution for reduction of share capital. In that case, Article 13 of that company prescribed that three members personally present should be a quorum for the general meeting. At the meeting in question only two members were present. The court held that it was not a meeting at all and, therefore, no resolution to be confirmed. We agree, with respect, with the statement of law made there. A meeting without quorum is not a meeting whereat any decision could be taken.

10. A decision in *Re London Flats, Ltd.* [1969] 2 All ER 744 : [1970] 40 Comp Cas 593 (Ch D) was also referred to at the bar. Shorn of unnecessary details, that case related to a meeting which originally started with the applicant and the respondent therein, who alone were entitled to attend and vote. The respondent purported to appoint himself as a liquidator, at which time the applicant left the meeting. In that case, what the court had to consider was not a question of quorum but the question whether there was any meeting at all. It was held that if a quorum was present at the beginning of a meeting the subsequent departure of a member reducing the meeting below the number required for a quorum did not invalidate the proceedings of the meeting after the departure. It was, however, held that a single shareholder cannot constitute a meeting and the decision at that meeting was a nullity for the reason that the moment when the respondent was in the course of purporting himself as liquidator the applicant left

the meeting and for that reason there was no meeting. The facts of that case differ from the case on hand. What was decided there was that when there is only one person there is no meeting together and hence no meeting. In this case, there was no quorum ; in the absence of a quorum there may be a meeting, but not a meeting capable of deliberating and taking any decision. That is the crux of Section 256(4)(a). We, therefore, hold that it is a prerequisite for the applicability of Section 256(4)(a) that an earlier meeting should have been held and that Section 174 of the Act is not applicable to a case coming within Section 256(4)(a). In this case, no meeting was held on January 31, 1974, and the meeting held on February 7, 1974, is not an adjournment coming within Section 256(4)(a).

11. In the result, we set aside the decree and judgment of the courts below and declare that the respondent ceased to be a director from February 7, 1974. He is directed to surrender all assets, records and seal of the plaintiff-company to the trial court within one month from today. The trial court will pass appropriate orders for their entrustment to the 2nd appellant when moved. We allow the second appeal with costs.