

(1922) 12 BOM CK 0034
In the Bombay High Court
Case No : Criminal Appeal No. 633 of 1922

Emperor	Vs	APPELLANT
Nasurbhai Abdullabhai Lalji		RESPONDENT

Date of Decision : 20-12-1922

Acts Referred:

Companies Act, 1913 — Section 131, 76

Citation : (1923) 25 BOMLR 224

Hon'ble Judges : Norman Macleod, J;Crump, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—The first accused, the Standard Aluminium & Brass Works Ltd., and accused Nos. 2 to 6 as directors of the said Company were charged before the Third Presidency Magistrate with having committed offences under Sections 76 and 131 of the Indian Companies Act VII of 1913. The facts are not in dispute. The Company was registered on February 27, 1920. obtained a certificate from the Registrar on November 3, 1920, and commenced business on January 3, 1921. The statutory meeting u/s 77 was held on March 30, 1921, A general meeting was held on the same day. Then u/s 76 the Company had to hold a general meeting within fifteen months of that date, that is to say, before June 30, 1922. It must be admitted that no general meeting within the meaning of that term under the Articles of Association was held before June 30, 1922, nor was any balance sheet, audited by the auditors of the Company, prepared and read before the Company in a general meeting. It appears then that there can be no doubt that the Company and its officers had committed a default u/s 76 and Section 131 of the Indian Companies Act. But reliance was placed by the accused on the fact that certain share-holders of the Company sent in a requisition to the directors for the holding of an extraordinary meeting, and according to that requisition an extraordinary meeting was held on June 29. It was very strenuously argued before the Magistrate that the holding of that meeting was a

compliance with the provisions of Section 76.

2. Article 60 provides for the statutory meeting required by Section 77 of the Indian Companies Act. Then under Article 61 other general meetings shall be held once in the year 1921, and in every subsequent year at such time and place as may be prescribed by the Company in general meeting, and if no other time or place is prescribed at such time and place as may be determined by the directors. The first of such general meetings may be held on the same day as the statutory meeting. Under Article 62 the general meetings referred to in the last preceding clause shall be called ordinary meetings; all other meetings of the Company shall be called extraordinary meetings.

3. It seems to us it is quite impossible for us to hold that extraordinary meetings, such as the one which was held on the requisition of the shareholders on June 29, was a general meeting within the meaning of that term in Section 76. Reference was made before the Magistrate to certain English cases, but we do not think there is any need to refer to cases decided under the English Act, as we have before us the Indian Companies Act and the Articles of Association of the Company, and we need only consider what is prescribed by that Act read with the Articles.

4. The convictions were, therefore, right unless any of the accused could prove that they were not directors at the time the default was committed. But that has not been proved. Only in the case of accused No. 2 it was argued that he could not knowingly be a party to the default, as he had sent in his resignation to the Company on March 24, and under Article 97 he ceased ipso facto to be a director at the time when the notice was sent in. Although afterwards he did attend meetings of the Board and actually presided at the meetings as Chairman, his contention now seems to be that he presided as a private individual. When we asked what meetings he had attended after he had sent in his resignation, we were told he presided at meetings on June 24 and June 28, and as it was quite impossible for the Company to hold a general meeting before June 30, in the absence of any notices having been sent out under Article 64 he could not be liable for the default. We doubt very much whether that argument would be successful. But there is no need to consider it because on reference to the Minute Book the attendances of accused No. 2 at the Board, meetings can be seen. He presided at the meeting of March 9. He was absent from the meeting held on May 16. The first minute of that meeting is as follows:-"Mr. Hajibhoy A. Thaver was appointed Chairman in the absence of Mr. Nasurbhai A. Lalji (that is to say the second accused) from Bombay." It is curious to note that we can find no reference to the letter of accused No. 2 resigning his office as director in the minutes of that meeting, although there is a reference to a letter received from Dadabhoy S. Madan resigning his office of director which was by a resolution accepted. At the time of the meeting of June 13 the second accused had returned to Bombay and presided as Chairman. Again he presided at meetings of June 19, June 22, June 24 and June 28. Then in accordance with the provisions

of the Articles of Association he resigned his office as director on June 30. There is no substance, therefore, in the defence which has, been urged before us on behalf of the second accused which as a matter of fact was not urged before the learned Magistrate. We can only consider that the statement of the second accused which he made to the effect that after his resignation was sent the Board for reasons best known to them did not choose to accept it, and in ignorance of the law on the subject he did attend some meetings, does him very little credit.

5. Then accused Nos. 3 and 5 have not improved their case by alleging as an excuse for not complying with the provisions of Section 131 that the auditor had conspired with some of the shareholders to delay in bringing out his report on the Company's accounts. The auditor in his evidence said he had asked to see the securities for the Rs. 2,47,000 drawn by the Agents and had not seen them up to that day. Further comment on these allegations of this accused is unnecessary. In any event, even if such a conspiracy had been proved, that would not prevent & default on the part of the accused being committed.

6. Accused No. 4 complained that the Magistrate had unjustifiably fined him Rs. 50 more than accused Nos. 2, 3 and 5. The Magistrate says:

From the attitude taken up by the accused No. 4, Vaikunth Ambalal Desai, I have bad reason to think that he had been misguiding the other accused in wrongly interpreting the law to them.

7. We can safely rely on the Magistrate's appreciation of the attitude of this accused.

8. This case took a very long time before the Magistrate and he remarked at the end of his judgment:

In conclusion it only remains for me to say that I was obliged to write a somewhat lengthy judgment after a regular trial by reason of the legal defences set up in the case. If that was not so, I should have disposed of the case in summary trial u/s 278 of the Act.

9. The Magistrate was obviously right. None of these defences set up by the accused at very great length had any substance whatever, but the Magistrate was obliged to deal with them also at very great length in a very able judgment. If the accused had been better advised with regard to the attitude that ought to have been taken up before the Magistrate, they would have admitted the default, and pleaded extenuating circumstances. If that had been the case, we have no doubt the matter would have terminated in a way more satisfactory to the accused than it did. The appeal will be dismissed.