

(1970) 05 CAL CK 0013
In the Calcutta High Court
Case No : Suit No. 4038 of 1969

Feroz M. Bhasania

APPELLANT

Vs

United Breweries Ltd.

RESPONDENT

Date of Decision : 26-05-1970

Acts Referred:

Companies Act, 1956 — Section 174(4), 174(5), 186, 193, 194

Citation : (1971) 1 ILR (Cal) 367

Hon'ble Judges : Ghose, J

Bench : Single Bench

Advocate : A.K. Sen, T.P. Das and B. Chaudhuri, for the Appellant; Amiya K. Basu, D.P. Mukherjee for United Breweries Ltd., Somnath Chatterji, T.K. Bose for Ruttonji and Co. Ltd. and D.K. De, for the Respondent

Judgement

Ghose, J.—This is an application made by the Plaintiff, a shareholder of the company being the Defendant No. 12, inter alia, for an injunction restraining the Defendants Nos. 1, 2, 3 and 12 from proposing or passing a special resolution changing the name of the Defendant No. 12 at the ninth Annual General Meeting of the Defendant No. 12, also for an order directing the appointment of a Receiver of the books of accounts of the Defendant No. 12 for the period April 1, 1965 to March 31, 1969, and to have the same audited, as well as for an injunction restraining the Defendants from having the accounts of the Defendant No. 12 for the period April 1, 1965 to March 31, 1969, passed at the sixth, seventh, eighth and ninth Annual General Meetings of the company.

2. The Plaintiff is a partner of a firm, Ruttonji and Co., of No. 26 Ganesh Chandra Avenue, Calcutta. On or about March 12, 1958, permission was obtained by the said firm to establish a brewery in West Bengal. The said firm also obtained sanction of the Government of India under the Industries (Development and Regulation) Act for the establishment of the said new undertaking. The said firm also obtained allotment of a plot of land at Kalyani from the State of West Bengal. For implementing the aforesaid, the Petitioner, together with others,

promoted a company by the name of Ruttonji and Co. Ltd. After being promoted the said company " obtained the sanction to establish the said industrial undertaking as well as the allotment of the said plot of land transferred to it and issued in its name. The said company constructed the brewery and completed the same at an enormous expense. A brewing licence was, however, obtained in the joint names of the said firm of Ruttonji and Co. and Ruttonji and Co. Ltd., the Defendant No. 12, on or about August 3, 1965. The said company, the Defendant No. 12, was promoted as the Petitioner and other partners of the said firm of Ruttonji and Co. had not sufficient means to establish the factory and/or the said industrial undertaking of a brewery for manufacturing beer.

3. Soon thereafter, disputes and differences arose between the two groups of share-holders as well as the Directors of the Defendant No. 12. An Annual General Meeting was fixed to be held on September 28, 1965, at the registered office of the said company. Inasmuch as there was no quorum for the said meeting on that date under Sub-Section 4 of Section 174 of the Companies Act, 1956, the said meeting stood adjourned to the next week on the same day and place i.e. October 5, 1965. It is alleged that the said meeting was duly held in part on that day and so far as the rest of the meeting was concerned the same was¹ adjourned to the following day at No. 14 Ananda Chatterjee Lane, Calcutta. The Minutes of the said meeting will appear from annexes. F and G of the petition.

4. The Petitioner's contention before me is that the sixth to ninth Annual General Meetings cannot be held inasmuch as the fifth Annual General Meeting of the company was not held. On the adjourned date of the said meeting, although quorum was not necessary at all in view of Sub-section (5) of Section 174 of the Companies Act, only one share-holder seems to have been personally present. The other- two were only present by proxies and thus not entitled to speak at the said meeting. Thus, in my opinion, one man present in the meeting could not form a meeting and no resolution including that for election of Chairman could be proposed or seconded or passed in the said meeting. The said meeting, in my opinion, prima facie could not therefore be validly held.

5. In the absence of special powers the Chairman of a meeting cannot adjourn the meeting while any of the business for which the meeting was called remains to be considered or done. The Chair-man purporting to act as Chairman of the said meeting on October 5, 1965, after the meeting was purported to have been held in part, adjourned the rest of the business of the meeting to the following day. No special power authorising or empowering the said Chairman to adjourn the said meeting to the next day, i.e. October 6, 1965, has been placed before me. In that view of the matter, in my opinion, prima facie the said meeting could not be adjourned or held on the following day, i.e. on October 6, 1965. For the aforesaid reasons, in my opinion, prima facie the fifth Annual General Meeting of the said company was not validly held.

6. Mr. Basu appearing on behalf of the company contended that by an order

dated July 8, 1969, passed by the Appellate Court in an appeal preferred against an order dismissing an application for direction to call an extra-ordinary general meeting of the said company u/s 186 of the Companies Act, certain directions were given on the basis that the persons elected as Directors on the meeting held on October 5 or 6, 1965, were to tender their resignation. Thus, the said order dated July 8, 1969, consented to by all the parties, proceeded on the basis that the said Directors were validly elected at the fifth Annual General Meeting and the Petitioner is now estopped from asserting that the fifth Annual General Meeting of the company was duly held. I am unable to accept this contention of Mr. Basu. Consent order dated July 8, 1969, was passed in order to arrive at a settlement of all disputes and differences between the parties with regard to the constitution of the Board of Directors of the Defendant No. 12 and was not made specifically on the basis that the fifth Annual General Meeting was validly held.

7. Mr. Basu further submitted that prima facie the fifth Annual General Meeting of the company has to be found to have been duly held in view of the minutes of the proceedings of the said meeting. Presumptions as to the correctness of such minutes are attracted under the provisions of Sections 193 to 195 of the Companies Act, 1956. So, until contrary is proved it is to be held prima facie that the said fifth Annual General Meeting was duly held. Mr. Basu further relied on the returns filed with the Registrar of the Joint Stock. Companies and contended that the Registrar had accepted that the said meeting was duly held. But, in view of the aforesaid finding made by me, I am unable to accept the aforesaid contentions of Mr. Basu.

8. The second part of the prayer of the applicant before me is with regard to the changing the name of the company from Ruttonji & Co. Ltd. to Kalyani Breweries Limited at the ninth Annual General Meeting of the company. I have already prima facie held that the fifth Annual General Meeting of the company was not held validly. The Annual General Meetings of a company for successive periods are inextricably connected with one another. In a meeting for a particular year the auditor of subsequent year has to be elected by the company. Previous year's balance has to be shown in the balance-sheet of a particular year as well. Accounts for subsequent periods cannot be shown in the balance-sheet or audited unless auditors are appointed in an Annual General Meeting for a particular year for the subsequent year. If Annual General Meeting for a particular year of a company be not held subsequent Annual General Meetings, in my opinion, cannot be validly held.

9. With regard to the special resolutions in connection with the change of name of the company the case of the applicant is really based on annex. B to the petition and in particular Clause (2) thereof. The said Clause (2) is set out hereunder:

(2) To implement the permission granted above, Messrs. Ruttonjee & Co., agree to Phipson & Co. Private Ltd., forming a fully owned subsidiary Company under the name Ruttonjee & Co. Private Ltd., in the following manner?

The Articles of Association of the Company will provide for Messrs. F. Bhesania and H. Bhesania as two permanent Directors of the Company out of a total of six Directors, Messrs. F. Bhesania and H. Bhesania will be described as the subscribers to the Memorandum and Articles of Association of the Company. The Company will be registered and the Memorandum and Articles submitted to the West Bengal Excise together with Building Plans for approval.

The use of the name "Ruttonjee" will mean that no approach will be necessary either to the Central Government or to the West Bengal Government to go forward with the project. It should be here mentioned that while applying to the Ministry of Industry and Commerce the application was made in the name of Messrs. Ruttonjee & Co. and it was" stated that a company would be set up to handle the Brewery. No other information has been given to approach made by Messrs. Ruttonjee & Co. to the Government of India regarding the capital formation of the proposed Company.

10. I may state at once that the said agreement between the promoters of the company inter se cannot be binding upon the company itself after the company was promoted in the absence of an express agreement to that effect by and between the company and the other parties claiming their right that the company cannot change its name. The said agreement, even if entered by joint stock company, in my opinion, may be contrary to the provisions of Section 9 read with Section 21 of the Companies Act, 1956. The said sections are as follows:

9. Act to override memorandum, articles, etc.- Save as otherwise expressly provided in the Act?

(a) the provisions of the Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or_ in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act, and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

21. Change of name by company?A company may, by special resolution and with the approval of the Central Government signified in writing, change its name. Under the provisions of the Companies Act, a company, in accordance with the provisions of the Companies Act, is entitled to change its name subject to the passing of a special resolution to that effect and obtaining the approval of the Central Government. This right conferred by the Statute, in my opinion, cannot be restricted by agreement between the company and others. The said agreement will be void in view of the provisions of Section 9 of the Companies Act, 1956. Thus, although the said special resolution may not be passed at the

ninth Annual General Meeting of the company, the company has, in my opinion, right to change its name in accordance with the provisions of the Companies Act. Thus, no order of injunction, in my opinion, can be passed against the company restraining it from changing its name from Ruttonji and Co. Ltd. to Kalyani Breweries Ltd.

11. With regard to the applicant's case of tampering with the books of accounts of the company, in my opinion, sufficient grounds have not been set forth in the petition to warrant the appointment of Receiver of the books of accounts of the company. In that view of the matter this part of the prayer of the applicant must also fail.

12. In the facts and circumstances of the case I pass the following orders:

The interim order is made absolute. Costs will be costs in the cause. Operation of the order will be stayed for four weeks.