

(1971) 11 CAL CK 0013

In the Calcutta High Court

Case No : Company Petition No. 222 of 1970

In Re: Bharat Commerce and Industries Ltd.

Date of Decision : 16-11-1971

Acts Referred:

Companies Act, 1956 — Section 17, 17(3)

Citation : (1973) 43 CompCas 162

Hon'ble Judges : Ramendra Mohan Datta, J

Bench : Single Bench

Advocate : S.C. Sen, for the Appellant; P.C. Sen. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ramendra Mohan Datta, J.—This is an application for the confirmation by the court of the special resolution passed by the above named company relating to the proposed change of its registered office from Calcutta to New Delhi.

2. It is urged on behalf of the petitioner that the powers conferred on court u/s 17 of the Companies Act, 1956, in respect of change of the registered office from one State to another are of a limited nature. Once the court is satisfied that the special resolution has been duly passed and the necessary formalities regarding the service of the notice on the Registrar or on the other parties interested, have been complied with as provided by Section 17 of the Companies Act, 1956, the court after hearing the parties will have no other consideration but to confirm the said special resolution as a matter of course. It is urged following the well-established principle that the shareholders are the best persons to decide the questions relating to the internal management and affairs of the company, and that their decision should not be interfered with by the court if the formalities have been so complied with by the company in passing its special resolution. All that the court is to consider in confirming the special resolution is whether the formalities prescribed by the Companies Act, 1956, have been complied with or not.

3. Section 17 can be divided into two parts. The first part relates to the change

of the place of its registered office from one State to another and the second part relates to the alteration of the provisions of its memorandum with respect to the objects of the company. Both the parts relate to the alteration of the provisions of the company's memorandum of association. In this case, this court is concerned only with the first part of Section 17 of the Companies Act, 1956.

4. It is significant to note that in the matter of shifting the registered office of a company within the same State the statute does not require any confirmation of such special resolution by the court (see Section 146 of the Companies Act, 1956). The court has been given special powers u/s 17 to consider whether such a special resolution should be confirmed or not. The court has to be moved on petition for the said purpose. Such a special resolution shall not take effect until and except in so far as the same is confirmed by the court. Sub-section (3) and Clauses (a) and (b) thereof provide:

" (3) Before confirming the alteration, the court must be satisfied--

(a) that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and

(b) that, with respect to every creditor who, in the opinion of the court, is entitled to object to the alteration, and who signifies his objection in the manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined or has secured to the satisfaction of the court;

Provided that the court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by Clause (a)."

5. The above provision, to my mind, clearly indicates that the persons whose interests might be affected by the alteration should be given notice so that the court might be in a position to consider whether such persons' interest would be required to be protected before the court would decide to confirm the said special resolution. Once such a person or persons who might be affected by such special resolution objects to the same being confirmed and if, in the opinion of the court, the interests of such a person or persons are likely to suffer the court has to go into the merits of such special resolution in order to satisfy itself about the bona fides of the company or its shareholders to pass such a resolution.

6. Sub-section (4) of Section 17 provides that after the petition is presented notice thereof would be caused to be served on the Registrar whose objection and suggestion would be considered by the court before making an order on the application.

7. Sub-sections (5) and (6) of Section 17 indicate that the court's power is not limited to the extent as contended for on behalf of the petitioner but the court would be in a position to consider the whole aspect of the matter. The order to be made by the court under this section is discretionary.

8. Such discretion has to be exercised by taking into consideration the facts and circumstances of each case in the matter of exercising its discretion. The court is required to take into consideration the rights and interests of the members of the company and of every class of them as well as the rights and interests of the creditors of the company and of every class of them. These safeguards have been specially provided so that the persons dealing with the company and the persons who are interested in the company as ex-members thereof might not suffer any prejudice by reason of the confirmation of the alteration. In making the order it is incumbent upon the court to consider such rights of the above persons or class of them but this does not mean that the court shall not consider the rights of any other person or persons whose interests might suffer prejudice by reason of such change of the registered office. As stated above, every case has to be judged on its own merits and for that purpose the court has been given wide powers to confirm the alteration either wholly or in part in the manner it thinks best or to refuse the same if the facts justify such refusal.

9. The English law on this branch relating to the change of the registered office is not similar to the Indian law because in England the question of changing the registered office from one State to another does not arise. Accordingly, the English principle will not be helpful in deciding this point.

10. In my opinion once the objection is made by the person concerned whose interests might suffer prejudice by reason of such change the court would be justified in requiring the company to satisfy the court about the bona fides of its passing such resolution. Under such circumstances, the court would examine the reasons set out in the petition for such change of the registered office in order to find out whether the resolution has been passed in good faith or mala fide. The court would satisfy itself from the facts placed before it that it would be just, fair and equitable that the special resolution should be confirmed. To my mind the principle that the shareholders are the best persons to decide matters relating to the internal management of the company has to be considered subject to the question of good faith which the court would in such circumstances consider. The court would refuse to confirm such a resolution if it would be found to be unfair or unjust or inequitable.

11. Rule 38 of the Companies (Court) Rules, 1959, require that the petition must contain the reasons for the alteration of the memorandum and in Form No. 11 thereof a form has been set out which requires that the reasons for such alteration have to be set out and the petition must also contain an averment as follows ;

" No one will be prejudiced by the proposed alteration of the memorandum of association of the said company, and it is just and equitable that the alteration should be confirmed by the court."

13. Accordingly, in my opinion, the question of bona fides is a material consideration for the court in confirming or refusing to confirm a special

resolution of the company in an application u/s 17 of the Companies Act, 1956. Under those circumstances, it is necessary to examine the reasons set out in the petition herein.

14. The facts leading to this application are that the company has its registered office at Calcutta. The company runs its mills at four different States, viz., Madhya Pradesh, Maharashtra, Mysore and East Punjab. The company also earns freight by letting out on hire four helicopters belonging to the company in several places in the State of Assam. The main business of the company is to manufacture yarn and textile goods at the different mills situate in the said States of Madhya Pradesh, Maharashtra, Mysore and East Punjab.

15. Before holding the extraordinary general meeting the company gave a notice to the shareholders. The said notice contained an explanatory statement. The relevant portion dealing with the unlawful activities of the employees of the company ran as follows:

" Recently the company has been faced with unprecedented disturbances led by just two or three employees of the companies and some outside elements in its registered office with the result that the management of the different units scattered all over India had become virtually impossible from Calcutta. In the interests of the company and its shareholders and for carrying on business more efficiently and economically it was essential to effect a change of the location of the main administrative office. The shareholders of the company are also scattered throughout the country and the company is not in a position to ensure registration of transfer of their shares when called upon to do so or to arrange the smooth holding of the meeting of its shareholders at its registered office in the State of West Bengal."

16. The extraordinary general meeting was held on May 30, 1970. Twenty-one shareholders were present in person and by proxy. None opposed either on behalf of the shareholders or on behalf of the creditors of the company.

17. On the basis of the said special resolution, the company made the application for confirmation thereof by this court. Notice was caused to be issued on the Registrar. The State of West Bengal also appeared pursuant to a notice but did not oppose at the hearing of this application nor did it file any affidavit in this proceeding.

18. Besides the Registrar of Companies, the other party who opposes this application is an employees' union by the name of " Birla Brothers and its Allied Concerns Employees" Union ". One Rajendra Nath Chatterjee is the secretary of the said employees' union. He has affirmed an affidavit-in-opposition to the petition herein on July 24, 1970. It appears from the said affidavit that the said union is a trade union registered under the Indian Trade Unions Act. The said union was formed by the employees of the several Birla concerns in Calcutta including the employees of the above company. It is alleged that the proposed transfer of the registered office from West Bengal to Delhi is mala fide and is

sought to be made with an ulterior object as stated in the said affidavit. Some time in August, 1969, the employees of the several Birla concerns in Calcutta organised themselves and formed the aforesaid union. The employees of this petitioner-company who were working at its registered office at No. 10, Camac Street, Calcutta, joined the said union. Since then, there were disputes and differences by and between the management of the various Birla concerns including the petitioner-company and the respective employees. In respect of such disputes and differences the said union took up the cause of the various employees of the various concerns in which the Birlas were interested. There were certain negotiations but ultimately on the question of the recognition of the said union the negotiations with the respective managements fell through. Thereafter, the employees of the several Birla concerns under the guidance of the said union continued their trade union movement and submitted their charter of demands some time in November, 1969.

19. It is not necessary to go into the details of the agitations made by the employees in that connection but it is sufficient to mention for the purpose of this application that disputes and differences by and between the employees and the management in respect of the various concerns including the petitioner-company cropped up and the same were at all material times placed before the Labour Directorate of the Government of West Bengal. In paragraph 27 of the said affidavit it is alleged that the union representing the employees in the said industrial disputes will be seriously prejudiced in the pending conciliation/adjudication proceedings on the said dispute if the said special resolution would be confirmed by this court because such an order of this court if made is likely to make the said conciliation/adjudication proceedings infructuous. It is also alleged in the said affidavit that the services of the employees of the petitioner-company are not transferable and that the decision to shift its registered office from Calcutta to New Delhi was mala fide, illegal and was taken with the object of causing harassment and/or hardship and/or inconvenience to its employees and staff; because once the confirmation is made, the same would involve automatic transfer of employees from Calcutta to New Delhi which could not be done by the company directly. It is further contended on behalf of the said employees' union that, save and except the said object of victimising the employees of the petitioner-company, there was no other reason which might be called just or reasonable or legitimate for shifting the registered office.

20. Furthermore, the fact that the petitioner-company declared a closure of its registered office and stopped payment of the salary to its employees since February 23, 1970, has been totally suppressed in the petition. It is significant that such vital facts which prompted the directors and the persons who are in the management of the company to take action to shift the registered office have been suppressed even from the shareholders as would be revealed from the explanatory statement to the said notice dated April 29, 1970. The said explanatory statement is completely silent about the same and did not give any indication whatsoever about the closure of the registered office and of the fact of

the non-payment of salary of its employees employed at the registered office at the date of the said notice. This is clear proof of want of bona fides on the part of the management in respect of the passing of the said special resolution. The other grounds which have been mentioned in the said notice and in the petition herein by themselves could not be of much substance for the purpose of shifting the registered office at the date of the said notice. Those grounds had all along been there but in spite thereof, the company never thought of shifting its registered office from West Bengal to New Delhi or to any other place.

21. As stated above, the said employees' union filed an affidavit-in-opposition to the petition and has taken several points to contest this application. It is urged that the effect of the shifting of the registered office of the company to New Delhi would involve loss of revenue to the State of West Bengal. It is also urged that the further effect would be that there would be future unemployment in respect of the State of West Bengal. In my opinion such grounds could not be urged on behalf of the said employees' union. The State of West Bengal did not choose to oppose this application. Mr. P.C. Sen appearing on behalf of the said employees' union referred to the various decided cases of this court and of the Orissa High Court and contended that the question of loss of revenue and the loss of employment should be held to be relevant considerations in deciding an application u/s 17 of the Companies Act, 1956. He relied on the case of *Orient Paper Mills Ltd. v. State*, [1958] 28 Comp. Cas. 523, A.T.R. 1957 Orissa 232 and in the case of *In Re: Orissa Chemicals and Distilleries Private Ltd.*, and an unreported decision of Sushil Kumar Datta J. delivered on July 19, 1965, in *In re Indian Aluminium Co. Ltd.*, Unreported in Company Petition No. 225 of 1964 (Cal.) and also on certain passages from the case of *In re Westburn Sugar Refineries Ltd.*, Ex parte [1951] A.C. 625 : [1951] 1 All E.R. 881 . As against those cases. Mr. S.C. Sen appearing on behalf of the company relied on the case of *Mackinnon Mackenzie & Co. Private Ltd.*, In re [1967] 37 Comp. Cas. 516 : [1967] 71 C.W.N. 340 (Cal.) which was relied on by a Division Bench of this court in the case of *Rank Film Distributors of India Ltd. v. Registrar of Companies and the State of West Bengal*. The said Division Bench of this court observed that the questions relating to the loss of employment and the loss of revenue of the State could not be matters of relevant considerations in an application u/s 17 for transfer of the registered office from one State to another. In the case of *In re R. Akoojee Jadwet & Co. Private Ltd.*, A.N. Sen J. by his judgment dated December 24, 1969, in Company Petition No. 114 of 1969 (Cal.) considered an application u/s 17 of the Companies Act, 1956, and also observed that the question of loss of revenue and loss of employment to the territory cannot be matters of relevant considerations.

22. On behalf of the Registrar of Companies the said points have also been agitated. In any event, I am bound by the Division Bench judgment of this court delivered in *Rank Film Distributors of India Ltd. Vs. The Registrar of Companies, West Bengal and Another*, and, accordingly, I reject the said contentions raised on behalf of the Registrar of Companies and by the said employees' union.

23. On the question as to whether the said employees" union have any locus standi to come and to agitate before this court that the proposed transfer of the registered office would prejudicially affect the interests of its members in this application, I am satisfied that the employees" union which is a registered body and which represents quite a number of the employees employed at the registered office of the company, has the right to appear and to oppose this application on the ground that their interests would be likely to be prejudicially affected if such special resolution would be confirmed by this court. It is always open to the employees concerned to bring it to the notice of the court through their union or even individually, if the company in passing such resolution did not act bona fide so as to enable the court to examine the reasons set out in the petition to consider whether it would be just and equitable to confirm such a resolution.

24. In the petition it is admitted that due to unprecedented disturbances at the registered office instigated by 2 or 3 employees of the company at the instance of the outside elements it had become impossible to manage the business and affairs of the company from Calcutta and that there had been no change in the situation.

25. It is urged on behalf of the petitioner-company that 15 out of the 18 employees have already filed affidavits signifying their consent to the transfer. Accordingly, there could be no reason to doubt that the interests of the employees would be affected or prejudiced by reason of such change of the registered office. On behalf of the said employees" union it is contended that altogether there are 33 employees including the employees of Bharat Airways who are members of the employees" union. Accordingly, the employees" union should be deemed to be representing the remaining employees who are members of the union.

26. Mr. P.C. Sen appearing on behalf of the employees" union has referred to the Supreme Court case of State of Bihar Vs. Kripa Shankar Jaiswal, where it was observed that to constitute an industrial dispute it was not a requisite condition that it should be sponsored by a recognised union. A dispute would become an industrial dispute even where it was sponsored by a union which was not registered. It is contended that the said employees" union is a registered trade union and is the trade union representing numerous employees of the Birla group of industries including that of the petitioner-company. I am satisfied that this employees" union has the locus standi to appear before this court and to contest this application. At the prayer made by them this court granted leave to appear in this application and to file their affidavit to contest the same because this court was prima facie satisfied that the order for change of the registered office could be likely to be prejudicial to the interests of the employees who were members of this union. Moreover, it is urged that this employees" union represents the employees who are employed in various other Birla concerns and all such employees of all Birla concerns who are represented by the said union

are likely to be affected by the result of this application. Under those circumstances, as stated above, I am satisfied that this employees' union has the locus standi to appear and to contest this application.

27. Mr. S.C. Sen appearing on behalf of the petitioner-company admitted in the course of his arguments that the petitioner was not denying the fact that the said agitation by the employees was the main ground for effecting transfer of the registered office from Calcutta to New Delhi. It is necessary here to set out the said ground as pleaded in paragraph 10 of the petition:

" Recently the company was faced with unprecedented disturbances at the registered office instigated by 2 or 3 employees of the company at the instance of outside elements. The employees of the company in general did not approve of or participate in this disturbance and have, in fact, joined the company's present head office at No. 10, Ring Road, Lajpatnagar, New Delhi. As a result of the said disturbance, the management of the business and affairs of the different units of the company situate at different place in India became virtually impossible from Calcutta, and the business of the company at its registered office came to a standstill. There has been no change in the situation yet. The shareholders of the company are also scattered throughout the country and in the present disturbed condition, the company is not in a position to ensure registration of transfer of their shares when called upon to do so or to arrange for holding of the general meetings of its shareholders at its registered office under congenial atmosphere. Further, by reason of the aforesaid disturbance it has become impossible to comply with the statutory provision, namely, filing of returns, preparation and audit of accounts, etc., which has exposed the company and its management to the risk of prosecution without any fault on their part. In the interest of the company and its shareholders and for carrying on the business of the company more efficiently and economically it is essential to effect a change of the location of the registered office of the company. "

28. It is difficult to appreciate why the registered office of the company has to be shifted from Calcutta to New Delhi because of the disturbances created by only 2 or 3 employees of the company. In the absence of any detailed particulars it is difficult to appreciate the said grounds for transfer and, in any event, this court cannot accept the contention that there has been no change in the situation yet. Without going into the merits of the disturbances created therein it is quite clear that the transfer would prejudicially affect the interests of the employees of the registered office.

29. Mr. S.C. Sen on behalf of the company has admitted that the other grounds mentioned in the petition were subsidiary grounds and the same were added because they were also considered relevant by and on behalf of the company when the company thought of changing the registered office due to the main ground of disturbances created by the said employees. In other words, the additional grounds were added to strengthen the main ground of transfer.

30. I have searched in vain to find out a genuine ground at this stage for shifting the registered office from West Bengal to New Delhi. Considering the entire facts of this application it is quite obvious that the main reason which prompted the company to shift its registered office from West Bengal to New Delhi was to force the employees to give up their trade union activities by causing harassment which is involved in the transfer of the registered office. Once the registered office is transferred by an order of this court the employees would have no other alternative but to join the Delhi office without being able to question the validity of such transfer of their job.

31. It is not necessary for this court to go into the details of the agitation by the employees concerned. This court cannot go into such question as to whether the employees were behaving in the manner permitted by law or not vis-a-vis the directors or the management of the company. These are matters for the industrial tribunal if the same would be referred thereto. All that this court is concerned with is to take notice of the fact that the disputes, which the employees called industrial disputes, still exist. This court also takes into consideration the fact that there was closure of the registered office of the company since in or about March, 1970, and that the employees who were unwilling to work in the Delhi office and who did not act in accordance with the wishes of the management were not paid their salary since February 23, 1970. As to whether the management of the petitioner-company was justified in taking such action or not is not for this court to consider or to decide. This court also takes into consideration the fact that the shareholders were kept completely in the dark about the fact of the said closure and of the non-payment of the salaries to the employees as will be evident from the said notice and the explanatory statement thereof. This court also takes into consideration the fact that immediately after the passing of the resolution and before obtaining the order of confirmation of this court the special resolution has been given effect to and the registered office has already been shifted from 10, Camac Street, Calcutta, to 10, Ring Road, New Delhi.

32. In paragraph 13 of the petition the company admits that at least 2 or 3 employees may not agree to work in any other unit or office of the company except at its Calcutta office. Accordingly, the retrenchment of at least a few employees is certain to happen if the prayer for shifting the registered office is confirmed by this court. It is true that if there would be any retrenchment that would be the matter for the industrial court, and the same could not be considered by this court, but all that this court is concerned with is that the interests of some of the employees, at least as admitted in this petition, would definitely suffer by reason of such change. Whether the closure was justified or not is not for this court to decide but the fact of the closure being effected was a matter which ought to have been disclosed in the petition itself and in the explanatory statement to the notice to the shareholders and by reason of such non-disclosure the petitioner becomes guilty of suppression of material facts. To my mind, the special resolution cannot be called fair or just or equitable or necessary

in the facts and circumstances of this case and should not be confirmed by this court.

33. Mr. P.C. Sen appearing on behalf of the employees" union contends that the company has not only stopped payment of the salary of the 19 employees who were employed in the registered office at No. 10, Camac Street, Calcutta, but has also stopped payment of the salary of the 10 or 11 other employees who were employed with Bharat Airways which is branch organisation of this company. All these said 29 employees including the employees of the Bharat Airways are members of the employees" union. Even assuming that 18 of these employees voluntarily affirmed affidavits in favour of the company and are agreeable to the transfer of the registered office of the company the remaining employees who are represented by the employees" union are likely to suffer great hardship, harassment and inconvenience by reason of such transfer. It is contended by the learned counsel that by punishing the said employees and by transferring the registered office from this State to the Union Territory of Delhi the company intends to thwart the lawful trade union activities of these employees of the employees" union. It is admitted by and on behalf of both the parties that those employees who have since joined the Delhi office have not only been reinstated in the service of the company but have also been paid the full salary from February 23, 1970.

34. In my opinion Mr. P.C. Sen's contention that the disputes pending before the conciliation officer are likely to be prejudiced if the registered office is transferred at this stage, has great force. Such pending disputes would undoubtedly be rendered infructuous if the registered office would not remain in Calcutta any longer and if such transfer is confirmed by this court since the employees will have no other alternative but to submit to the court order of change of the registered office.

35. In my opinion no valid, bona fide or substantial ground has been made out on behalf of the petitioner to enable this court to confirm the special resolution passed by the company in its extraordinary general meeting.

36. The next point that was urged on behalf of the said employees" union was that the petitioner-company had no power to call the extraordinary general meeting herein for the purpose of passing of the said special resolution because the provisions of Section 169 of the Companies Act, 1956, and of Article 76 of the articles of association of the company were not complied with. Sub-section (2) of Section 169 provides that the requisition shall be signed by the requisitioners and shall be deposited at the registered office of the company. It is urged that the registered office being closed the requisition was not deposited at the registered office. The said Sub-section has been made mandatory and that would appear from the explanation to the said section whereby it is provided that the said meeting for passing the said special resolution would not be deemed to have been duly convened if notices were not given as is required by Sub-section (2) of Section 189.

37. On behalf of the Registrar of Companies this application was strenuously contested. It is urged on behalf of the Registrar of Companies that the special resolution was not passed at the properly held meeting because the special resolution could be passed only in an extraordinary general meeting which could be convened only at the registered office of the company. The notice itself provided that the meeting would be held at No. 10, Ring Road, Lajpatnagar IV, New Delhi-24. It is urged that the meeting held at the said office instead of at the registered office was invalid and the petitioner-company had no jurisdiction or right or authority to hold its general meeting at the said address at New Delhi and to pass the special resolution there. Accordingly, the said special resolution, and the said general meeting are illegal, invalid, void and of no effect. Mr. S.C. Sen, on behalf of the petitioner-company, in my opinion, rightly argues that assuming but not admitting that there was irregularity in holding the said meeting for the purpose of passing of the said special resolution, yet the same could not be agitated by an outsider. The said point regarding irregularity of the meeting or the proceedings thereof could be challenged as between the shareholders of the company and the company itself. Any outsider other than the members could not be allowed to raise any such objection regarding the defect, if any, in the notice or in the meeting. These are procedural matters affecting the company and its members. Neither the employees' union should be allowed to take such points nor the Registrar of Companies should be allowed to take such points. Mr. S.C. Sen refers to Section 195 of the Companies Act, 1956, which provides for drawing presumptions about the regularity of the meeting held where minutes have been duly drawn and signed. Under those circumstances, I do not accept the contentions raised on behalf of the said employees' union and on behalf of the Registrar of Companies on this point and I reject the same.

38. The only other point which remains to be considered and which has been raised on behalf of the petitioner-company is that for each of the grievances raised by the employees' union there is a remedy provided in the Industrial Disputes Act. If the transfer would be held to be illegal or invalid then the industrial court could provide for adequate compensation for the same. If the change of the registered place would involve retrenchment of any of the employees that also could be remedied by allowing compensation. Even in case of non-payment of salary the industrial court could order compensation to be paid to the aggrieved worker. I have already indicated that I have not decided nor have I intended to decide any of the said questions but I have considered the question of bona fides and mala fides in the manner I have indicated above and I am satisfied that the special resolution has not been passed bona fide. Under those circumstances, in my opinion, this application should not be allowed.

39. Accordingly, I make an order dismissing this application with costs. Certified for two counsel.