

(1966) 12 CAL CK 0010
In the Calcutta High Court
Case No : Company Petition No. 218 of 1966
In Re: Bharat Mining Corporation Ltd.

Date of Decision : 12-12-1966

Acts Referred:

Companies Act, 1956 — Section 17(I)

Citation : (1967) 37 CompCas 430 : 71 CWN 359

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Arya Mitter, for the Appellant; D.P. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application to alter the memorandum of association of the company in terms of the resolution set out in paragraph 6 of the petition passed at a general meeting. The alterations relate to the objects clause.

2. The company is the Bharat Mining Corporation Limited. The objects of this company in the memorandum are set out mainly in Article 3 and its 22 sub-clauses. What is now intended to be done is to add new sub-clauses (23) to (34) after Clause 3, Sub-clause (22), of the existing objects. The intended new clauses are as follows :--

" (23) To enter into contracts with the Government and other persons for:

(A) Construction of buildings, walls, boundary walls, bridges, dams and embankments.

(B) Levelling of land, tanks, river beds and canals.

(24) To construct buildings and houses and give them on lease or rent.

(25) To construct buildings and houses and sell them.

(26) To do all kinds of fabrication works of steel, aluminium, copper, zinc and alloys.

- (27) To purchase, sell and erect various types of machineries and their parts.
- (28) To purchase, sell, acquire and otherwise deal in shares, debentures and securities of other limited companies.
- (29) To purchase and let on hire commercial vehicles for road transportation of goods and commodities.
- (30) To finance purchase of goods of third parties against mortgage of the goods purchased.
- (31) To sell goods on hire purchase system.
- (32) To lend money on interest with or without security.
- (33) To build hotels and restaurants and run and manage them as owners.
- (34) To buy and sell land, buildings, hotels, restaurants and business premises."

3. The fate of this application depends on a proper application of Section 17 of the Companies Act, 1956. The learned counsel for the petitioner relies mainly on Section 17(a), (b) and (d) of the Act. These statutory provisions state that a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company so far as may be required to enable it, (a) to carry on its business more economically or more efficiently, (b) to attain its main purpose by new or improved means, and (d) to carry on some business which, under existing circumstances, may conveniently or advantageously be combined with the business of the company. The question, therefore, in this application is whether the proposed alterations satisfy the tests so laid down by these statutory provisions.

4. Scanning and analysing the proposed alteration, I have no doubt in my mind that they do not satisfy the statutory requirements. I do not think that these alterations are required to enable the company to carry on its business more economically or more efficiently or that they are necessary to attain its main purpose by new or improved means or that they come within the concept of "some business which, under existing circumstances, may conveniently or advantageously be combined with the business of the company." The business of the company as its name implies and the memorandum and the objects indicate is mainly mining. It is called a mining corporation; no doubt, it has other subsidiary and ancillary powers as stated in the articles and in the memorandum. But they are in essence associated objects and related purposes. Its main business is mining.

5. The proposed Causes 23, 24 and 25 in my view are unnecessary and illogical as being covered, for all practical purposes, by existing Clause 3(5) of the memorandum. If these Causes 23, 24 and 25 are intended to be "new" business, then certainly they do not satisfy the specific statutory standards involved in the words "economically", "or more efficiently", "to attain its main purpose by new or improved means" or "which may conveniently or

advantageously be combined with the business of the company". "The business of the company" is not really a business to deal independently with construction of buildings, walls, bridges, dams and embankments, levelling of land, tanks, river beds and canals or to construct buildings and houses and give them on lease or rent or to construct buildings and houses/and sell them independently (as contemplated in proposed Causes 23 to 25) but all of them or any of them can be resorted to in connection with the business of the company under Clause 5 of the memorandum. "The business of the company" is mining. These proposed clauses, if introduced, will make it also a real estate company.

6. Again the proposed Clause (26) to do all kinds of fabrication works of steel, aluminium, copper, zinc and alloys is already covered by Clause 3(4)(a) of the existing memorandum of association. Proposed Clause (27) to purchase, sell and erect various types of machinery and their parts without qualification, will convert this company of a mining corporation into a machine company. So far as machinery is required the company is already covered by Clause 3(6) of the existing memorandum. Proposed Clause (28) is covered by existing Clause 3(14) of the memorandum. Proposed Clause (29) is similarly covered by Clause 3(4)(g) of the existing memorandum. Proposed Clause (30) is covered also by existing Clause 3(14) of the existing memorandum. Proposed Clause (31) is to sell goods on hire purchase system which is a different type of business altogether. Proposed Clause (32) is already covered by existing Clause 3(20) of the memorandum. Proposed Clauses (33) and (34) relate to building hotels and restaurants, and doing business in them will be an activity which has nothing to do with the business of the company.

7. In this view of the matter, I do not think that this court should sanction the proposed alterations of the objects. The principles are sufficiently well-settled by such decisions of this court as *In the matter of In Re: Bhutoria Brothers (Private) Ltd.*, , *In the matter of Indian Iron & Steel Company Limited* [1957] 27 Comp. Cas. 361 : 61 C.W.N. 374 and *In the matter of In Re: Standard General Assurance Co. Ltd.*, . It is unnecessary for me to discuss here again those well-settled principles. With the name of the company as the Bharat Mining Corporation Limited, it will be not only illogical but misleading to the world dealing with this company to introduce these independent and separate businesses which cannot, by any means, be called business, which, under the existing circumstances, may conveniently or advantageously be combined with the business of the company as in Section 17(1)(d) or that these new businesses are necessary to enable the company to carry on its existing business more economically or more efficiently or to attain its " main " purpose by new or improved means as in Section 17(1)(a) or (b) of the Act.

8. The Registrar of Joint Stock Companies has appeared through learned counsel to oppose this application. No doubt the Registrar has not filed any affidavit-in-opposition but I do not think any affidavit is necessary, for his opposition is based on principles which I have discussed above and which arise on the existing

memorandum and the proposed changes or alterations.

9. For these reasons, this application is dismissed. There will be no order as to costs.