

(1967) 03 CAL CK 0012

In the Calcutta High Court

Case No : Company Petition No. 254 of 1966

In Re: Coal Marketing Co. India Private Ltd.

Date of Decision : 21-03-1967

Acts Referred:

Companies Act, 1956 — Section 166(1), 166(2), 167, 168, 186(1)

Citation : AIR 1968 Cal 119 : (1968) 1 CALLT 412 : (1967) 37 CompCas 720 : 71 CWN 449

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

Bench : Single Bench

Advocate : Subrata Roy Chowdhury, for the Appellant;

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—The important question for determination on this application is, how far the Courts can call, hold, conduct or control Annual General Meetings of the companies, beyond the time appointed by the Companies Act I have come to the conclusion that the Courts have no such power under the present law in India.

2. This is an application u/s 633(2) of the Companies Act, 1956 for an order that upon the undertaking of the petitioners to hold the annual general meetings of the Coal Marketing Co India Private Ltd. which ought to have been held on the 12th February 1961, 12th February 1962, 12th February 1963, 12th February 1964 12th February 1965 and the 31st January 1966, within six months from the date of the order the petitioners be relieved wholly from their liabilities for not holding such annual general meetings. The present application also seeks to relieve the petitioners for not filing balance-sheets and profit and loss accounts for the years ending on the 30th June 1960, 30th June, 1961, 30th June, 1962, 30th June, 1963, 30th June 1964 and 30th June 1965. The application is presented by Charu Chandra Chatterjee, Balchand Mundra and Lahoriram Parasar who describe themselves as Directors of the Coal Marketing Company of India Private Limited.

3. This is an extraordinary application. To come forward with an application to hold six annual general meetings of 1960, 1961, 1962, 1963, 1964 and 1965,

not held at all so far and to hold them all in 1967 is to make a farce of Company law and Company management. How can there be annual general meetings any more of those years? This is really an application to convert Statutory annual general meetings which must be held annually under the Companies Act into Quinquennial meetings, unknown under the Companies Act. The matter has a history which must be set out first before proceeding to discuss the law.

4. The company was incorporated on or about the 29th July 1951. From 1963 attempts like the present have been going on. On the 23rd December 1963 there was an order of B. C. Mitra, J. relieving the then Directors of the company from liability for not holding the annual general meetings of 1961 and 1962 and for not filing balance-sheets and profit and loss accounts for 1961, 1962 and 1963 on the Directors' undertaking to do the said acts within six months. The undertaking was violated by the Directors. Although the undertaking expired on the 23rd June 1963, the Directors did not hold the annual general meetings in terms of their undertaking to the Court. A second attempt was again made and these very Directors obtained another similar order from B. C. Mitra, J. for the second time on the 20th July 1964 relieving them again from liability for not holding annual general meetings of 1961, 1962 and 1963 and for not filing annual returns of 1961, 1962, 1963 and 1964 and balance sheets and profit and loss accounts of 1961, 1962, 1963 and 1964 again upon these Directors' undertaking to do the said acts within six months. The Directors for the second time violated this undertaking. This undertaking expired on or about the 20th January 1965. No step was taken within that time to hold the annual general meetings or to file annual returns or the balance-sheets or the profit and loss accounts. Again these Directors for the third time came to this Court and obtained a similar order from A. K. Mukherjea, J., relieving the Directors from liability for not holding these annual general meetings, for not filing these balance-sheets and for not filing the annual returns on the Directors again undertaking to do the said act within six months. It is extraordinary how the petitioners describing themselves as the Directors could come repeatedly before this Court and get repeatedly such orders from this Court inspite of their repeated violations of solemn undertakings to the Court. These orders are not only irregular, but illegal and beyond the powers and jurisdiction of this Court. The result has been really deplorable.

5. Now this is the fourth attempt before me to ask for a similar order. I protest against the use made of this Court in this manner. I shall state briefly the reasons for my protest and for refusing this application.

6. In the first place it is put forward as a ground that because the Company's auditors George Read and Company could not complete their job and that their senior partner died, therefore the meetings could not be held, the annual returns, balance sheets, and profit and loss accounts could not be filed. This ground is attempted to be supported by a letter from George Read and Co. dated 12th October 1965. But then that can be no ground for not holding annual

general meetings or filing balance-sheets or profits and loss accounts or annual returns in 1961, 1962 and 1964, long before his death. The death of the senior partner of George Read and Co. in 1965 could not obviously be a reason for such non-observance of the mandates of the Statute; nor could it be a ground for violating solemn undertakings by these petitioners to this Court both under orders dated 23rd December 1963 and 20th July 1964, a year and two years before the death of the senior partner of George Read and Co.

7. The second ground put forward by the applicants is that one Mr. B. Mukherjee, Chartered Accountant of M/s. N. Sarkar & Co., internal auditors, was supposed to approach this Company for appointment as auditor of the company but again Mr. B. Mukherjee died. All this was happening on the 12th October 1965 and 13th June 1966. On that date viz. on the 13th June 1966 one Mr. Ajit Kumar Ghosh, Chartered Accountant, was appointed auditor of the company in place of George Read and Co. On those facts I consider that the excuse put forward on the ground of change of auditors or death of auditors is absolutely frivolous and does not explain non-compliance with the Statutory requirements from 1961 to 1964.

8. Thirdly, it has been suggested that these annual general meetings could not be held and the balance-sheets and annual returns could not be filed because the books of account and other papers of the company were lying in different suits and proceedings. That also is utterly frivolous plea. The Registrar of Joint Stock Companies points out in paragraph 9 of affidavit of Jethalal Gokaldas Gatha, Additional Registrar of Companies, West Bengal, that in the Company Petition No. 93 of 1965 heard on the 18th August 1965 it was stated by this very applicant Charu Chandra Chatterjee on oath before the Court of A. K. Mukherjee, J. that the company had got back all the necessary books of account and documents and further undertook to the Court on behalf of himself and the other Directors to file the documents within six months from that date. On that undertaking he got the relief order D/-12th May 1965 for the third time.

9. The excuse is clearly false also from another point of view. If there was any genuine difficulty in holding the annual general meetings, filing balance-sheets, profit and loss accounts and annual returns, then one would expect that the company and its Directors would come before the time and take necessary steps. A mere glance at the dates will make the point quite clear. After the third order made on the 12th May 1965 on the undertaking of these Directors to complete these acts within six months from that date and which expired on the 12th November 1965 these Directors took no steps whatsoever to make either this application or any other application. They flouted this Court's order and they violated their own undertaking. They did not move the Court or any other authority under the Companies Act, from 12th May, 1965 until the present application on the 19th December 1966, which is about a year and a half after the violation of the undertaking and non-compliance with the order of the Court I cannot help coming to the conclusion that the company and its Directors have bluffed this Court and have repeatedly taken time and have done nothing.

10. Indeed the Registrar of Companies applied to the Chief Presidency Magistrate, Calcutta on the 30th November 1966 who fined each Director of the Company Rs. 200 for not filing annual return on 31-1-66 and for not holding annual general meeting on 31-12-65 and for not filing profit and loss account for 1965 on 31-1-66. The fine was paid by each Director of the company. Monied Directors always flaunt their monies and pay the fine without the least compunction because the fines are mostly paid out of Company's funds in some shape or other. Fines unless exemplary have little or no deterrent effect to tone up the present company administration. The idea is growing fast today that all that the Companies Act does to punish the recalcitrant Directors, who flagrantly commit breaches of the Companies Act, disobey their own undertaking to the Court repeatedly and who violate orders of the Court is to let them off on payment of paltry fines and permit them to be easily relieved of their statutory liabilities and obligations. This is really travesty of law and justice.

11. The power to grant relief which this Court has u/s 633 (1) and (2) Is a discretionary power. It should be exercised only where the Court is satisfied that the defaulting Director has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused. It is then only that the Court may relieve him either wholly or partly from his liability on such terms as it thinks fit. This satisfaction is not a mere ritual. It is not met by a mechanical averment in the petition or affidavit. This satisfaction must be reached after a serious and careful consideration of the whole question that the director ""acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused." That is the language of Section 633(1) which applies to any pending proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, which includes Directors. It is under Sub-section (2) of Section 633 that this application is brought and that Sub-section (2) deals with a case not pending but "where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of negligence default, breach of duty misfeasance or breach of trust". On that apprehension that officer is allowed to apply to the High Court for relief. The High Court's power to relieve on such application is the same as it would have if this High Court was the Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under Sub-section (1).

12. The word "relieve" in both the Sub-sections (1) and (2) of Section 633 of the Companies Act does not in my interpretation include power to extend the time to hold five successive annual general meetings not held in their respective years but to hold them all subsequently in the 6th or 7th year. The power u/s 633 is a power to relieve from liability. The expression "relieve from liability" appears in Sub-section (1) and the word "relieve" in Sub-section (2) must be read in that context, specially when it refers to the Court before which a proceeding for such negligence, default, breach of duty, misfeasance or breach of trust could be brought under Sub-section (1). Relief from liability in this context means relief

from the consequences namely fines and penalties, that follow u/s 168 of the Act from the negligence, default, breach of duty, misfeasance or breach of trust. Relief from liability cannot mean power to suspend operation of the Companies Act directing holding of annual general meetings or filing annual returns, balance-sheets and profit and loss accounts. It cannot be over-emphasised that the words of Section 633 of the Companies Act are confined to relieve "officers" of the Company from fines and penalties, and not the company from calling, holding or conducting Annual or even other meetings of the Companies according to this Statute and suspending the operation of the relevant sections of the Companies Act in respect of such meeting and extend such time. I, therefore, hold that on a proper interpretation of Section 633(2) of the Companies Act this Court has no power by way of relief from liability for the default mentioned therein to extend time for holding the annual general meetings to file Statutory annual returns or balance-sheets or profit and loss accounts.

13. In any event, this power of relief is discretionary. I am satisfied on the facts on records of the Directors who are the present applicants before me that no discretion should be exercised in their favour. In any event they cannot be granted the relief which they are now seeking u/s 633(2) of the Companies Act to obtain permission to hold the annual general meetings of 1961, 1962, 1963, 1964 and 1965 in the year 1967.

14. I am inclined to accept the views expressed by Shelat J. In *Re: Tolaram Jalan and Others*, on the point that a petition under Sub-section (2) of Section 633 of the Companies Act is for relief against liabilities for fines or penalties to file balance-sheets and Auditors' Report, as was the case there, and not for extending time for (a) holding annual general meetings, (b) filing annual returns and (c) balance-sheets after so many years.

15. It will be appropriate at this stage to review certain relevant sections of the Companies Act on the annual general meeting of companies. Section 166 of the Companies Act demands that every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next. There are only two provisos under that section, one proviso permitting a company to hold its first annual general meeting within a period of not more than 18 months from the date of its incorporation and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year. The other proviso permits the Registrar for any special reasons to extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months. It is also provided by that section that the first annual general meeting shall be held within 18 months of the Company's incorporation and that the next annual general meeting of the company shall be held by it within 9 months after

the expiry of the financial year in which the first annual general meeting was held and thereafter the annual general meeting shall be held by the company within 9 months after the expiry of each financial year. This is followed by a proviso permitting the Registrar for any special reason to extend the time within which the annual general meeting (not being the first annual general meeting) shall be held by a further period not exceeding six months it is also provided in that section that except in the cases referred to in the proviso which is immediately mentioned, not more than fifteen months shall elapse between the date of one annual general meeting and that of the next.

16. The above is a fair summary of the provisions of Section 166(1) of the Companies Act it shows the anxiety of the statute to direct that the annual general meeting is a meeting of a very special character and it must be held within the times mentioned in the statute and the only permissible extension is the extension expressly recognised in the statute and in the provisos just mentioned The present application does not come within the time limit or the exemptions provided in the statute, and is plainly beyond them.

17. The only other provision is in Section 166(2) of the Companies Act which by way of proviso says : "Provided that the Central Government may exempt any class of companies from the provisions of this sub-section subject to such conditions as it may impose." This much is clear that the present application seeking court's permission to hold past years' annual general meetings in the 7th or 8th year is not covered by Section 166 (1): nor is it covered by any exemptions with regard to such time which can only be granted by the Registrar under the proviso of Sub-clause (a) or Sub-clause (c) of Section 166(1) of the Act, or by the Central Government u/s 166(2) of the Act.

18. The other difficulty on the way of the present application is Section 167 of the Act which gives power to the Central Government to call an annual general meeting in case of a default. That section in substance provides that if default is made in holding the annual general meeting in accordance with Section 166, the Central Government may notwithstanding anything in this Act or in the articles of the company, on the application of any member of the company call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Central Government thinks expedient in relation to the calling, holding and conducting of the meeting. It is provided there that a general meeting held in pursuance of Section 167(1) shall, subject to any directions of the Central Government, be deemed to be an annual general meeting of the company u/s 167(2) of the Act. This, therefore, is a clear statutory recognition of what should be done in case there is any default in holding the annual general meeting within the time required by the statute. Two things are clear. First, the default can be excused u/s 167 of the Companies Act. Secondly, it can also be excused by the Central Government which alone has the power under this section to permit calling of such a meeting, notwithstanding anything contained in the Companies Act. That in my judgment excludes the

Court's power to extend time to hold the annual general meeting for which all statutory time has expired.

19. If these two sections are read with Section 186 of the Companies Act, the legal position seems to be quite clear. Section 186 of the Companies Act provides for power of the Court to order a meeting to be called. It is provided there in that section that if for any reason it is impracticable to call a meeting of the company, "other than an annual general meeting" in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the Articles, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, (a) order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit; and (b) give such ancillary or consequential directions, as the court thinks expedient including even modifying the operation of the Act and the Company's Articles in respect of calling, holding and conducting of the meeting. Such meeting so called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted. The crucial words are "other than an annual general meeting," in Section 186(1) of the Act. This expression makes is quite clear that Parliament did not want this Court to exercise any power with regard to annual general meeting but granted this power to the Court to order meeting in respect of meetings other than the annual general meeting. This is express statutory exclusion of Annual General meeting from the court's power to order meetings. The annual general meeting therefore, in case of default, can only be called by either the directions of the Registrar within the meaning of the exemption u/s 166(1) of the Companies Act or by the Central Government u/s 167 of the Act. I am, therefore, disinclined to so interpret Section 633 of the Companies Act and Sub-section (2) thereof as to whittle down the clear prohibition upon the Court to grant any extension of time with regard to calling, holding and conducting of an annual general meeting. I wish to emphasise again that the language of Section 633 of the Companies Act is confined to relieve an "officer" of the company, and not intended to relieve the company from holding its annual general meetings and suspend the operation of the relevant mandatory provisions of the Companies Act and extend time to hold Annual General meetings. The analogy of the English law is misleading on this point.

20. In the 12th Edition of Buckley on the Companies Act, the learned editors at p. 319 commenting on Section 131 of the English Companies Act, 1948 state:--

"By Section 112 (3) of the 1929 Act, the Court was for the first time empowered to convene a meeting in the event of default to hold an annual meeting. This marked a departure from the principle established under the Acts previously in force that, since the Court would not interfere with the Internal management of companies, it would not convene, or direct the convening of, a meeting for general purposes, even if it had jurisdiction to do so. The power to convene a

meeting under this section is now transferred from the Court to the Board of Trade, upon whom a number of ancillary powers are also now conferred:"

21. But even then Section 131 (3) of the English Companies Act, 1948 expressly provides that "where a meeting so held is not held in the year in which the default in holding the Company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated."

22. Palmer's Company Law, 20th Edition, at p. 129 speaks of these provisions u/s 131 or 135 of the English Companies Act 1948 as procedures to break the deadlock. No doubt they are provisions to resolve the deadlock. But the provisions being statutory and the Company being a creature of the statute, the deadlock must be resolved only according to the procedure prescribed by the statute and not otherwise.

23. The English provision in Section 135 of the English Companies Act, 1948 providing for the power of the Court to order meetings is very different from Section 186 of the Indian Act which expressly excludes annual general meetings. But even then such provisions as Section 135 of the English Act of 1948 and Section 186 of the Indian Companies Act, 1956 require that there must be reason to hold that it is impracticable to call a meeting of the company in a manner prescribed by the Act or the Articles. I am entirely satisfied on the records and facts of this case that nothing satisfactory has been shown to me why it was impracticable for this company to hold its annual general meetings in 1961, 1962, 1963, 1964 and 1965 and to file the Statutory returns, profit and loss accounts and balance-sheets in respect of those years. It follows, therefore, that even if I had the power, which I hold I have not, I would not exercise that power in favour of the applicants.

24. It is unnecessary for me here to discuss the conflict of views between *In Re: Tolaram Jalan and Others*, and *Thakur Dan Singh Bist and Others Vs. Registrar of Companies*, or such other decisions as are reported in 1962 32 Com Cas 341 (Punj) and 1963 33 Com Cas 163 (Punj).

25. Mr. Ray Chowdhury, learned Counsel for the petitioners realised the difficulties in the way of his clients. He, therefore, submitted that this Court should treat this application as an application to get relief from fines and penalties, on the line of the application in *In Re: Tolaram Jalan and Others*, . I am afraid I really cannot treat this application as such. It is an entirely different application with different reliefs and prayers. It is an application which openly and expressly seeks for extension of time to hold annual general meetings, file balance-sheets and profit and loss accounts and other statutory returns after several years have elapsed. The penalty for default in complying with Sections 166 and 167 of the Companies Act. as provided in Section 168 of the Act is *inter alia* that every officer of the company who is in default shall be punishable with fine which may extend to Rs. 5,000 and in case of continuing default with a

further fine which may extend to Rs. 250 for every day after the first during which such default continues. The heavy fine indicated in Section 168 shows that while the Statute does not go to the length of saying that this default would lead to extinction of the company it does indicate the severity in penalising the defaulter to the extent mentioned therein. At the Bar, learned counsel made an interesting reference to a very old decision of this Court under the old Companies Act viz., *Brahmanbaria Loan Co., Ltd. Vs. In re, .* In dealing with Section 76 of the Indian Companies Act of 1913 the learned Judge came to the conclusion that the section was not intended to enable the Court to make an order which will excuse persons responsible for failure to call a general meeting from the consequences of their omission and the terms of that Section 76 of the Indian Companies Act, 1913 were mandatory and made no reference to the balance-sheets the preparation of which has nothing to do with the matter. See the observation of Buckland, J. at pp, 410-41. It will not be necessary to refer to that decision any more because the Act has changed. It would also not be necessary in this context to refer to the English decision in *re, El Sombrero Ltd.* reported in 1958 8 All E. R. 1.

26. Finally it was submitted by Mr. Ray Chowdhury, learned counsel for the applicants, that under Rule 7 of the Companies Rules, the Court has power to enlarge or abridge time in any case in which it shall deem fit. In the first place, I do not consider it to be a case at all fit in which I should enlarge the time. The matter, therefore, ends there. In the second place, this power of the Court to enlarge or abridge time is only confined to the time appointed by this Rule or fixed by an order of the Court for doing any act or taking any proceeding. If the Statute and the interpretation of its relevant section show that the Court itself has no power to extend time for holding the annual general meeting, this question does not arise and such an order of the Court will then not only be irregular and outside the Court's jurisdiction but illegal being against the Statute.

27. Mr. Roy Chowdhuri's submission that I should treat this application as an application to relieve the petitioners of any possible fine that might be imposed in the possible future proceeding that might be brought does not appeal to me in the facts of the case I have already discussed this point. I shall only conclude by saying that fine has already been paid by the Directors on or about 30th November 1966 on the Registrar's complaint to the Chief Presidency Magistrate for not filing the annual return on 31-1-66 and for not holding the annual general meeting on 31-12-65 and for not filing profit and loss account of 1965 on 31-1-66 The last of the fines was therefore paid I do not see why I should now treat this application as an application to relieve fines that might be imposed for defaults prior to the defaults mentioned in the order for fine which is mentioned.

28. I consider this application to be devoid of all merits and frivolous. I, therefore, dismiss it with costs.

Certified for counsel.