

**(1964) 02 MAD CK 0042**

**In the Madras High Court**

**Case No :** Company Petition No. 66 of 1963

**In Re: Dalmia Cement (Bharat) Ltd.**

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**Date of Decision :** 28-02-1964

**Acts Referred:**

Companies Act, 1956 — Section 17, 17(1)

**Citation :** AIR 1964 Mad 76

**Hon'ble Judges :** Veeraswami, J

**Bench :** Single Bench

**Advocate :** L.V. Krishnaswami Iyer, for the Appellant; G. Rangaswami Iyengar for the State, for the Respondent

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## **Judgement**

Veeraswami, J.—This petition by Dalmia Cement (Bharat) Ltd., is under S. 17 of the Companies Act, 1956, for confirmation of the Special Resolution of the company dated 28-6-1963, to add certain objects to the existing objects of the company. In substance the additional objects proposed are to enable the company to do export business in all varieties of goods and commodities. The Registrar of Companies who has filed an affidavit seems to be of the opinion that, having regard to the existing objects of the company, the proposed objects may not fall within the purview of S. 17(1). He points out that the petitioner has not specifically set out the facts and circumstances relating to the existing circumstances and as to how the additional objects can conveniently and advantageously be combined with the existing business of the company.

2. Section 17(1)(a) and (d) has employed language of wide amplitude; and it is difficult to confine its scope by a statement that it will be applicable to this or that situation. Whether a company can carry on its business more economically or more efficiently is a matter for the judgment of the directors. They alone are best fitted by reason of their experience in the particular business to decide whether the business can be carried on more economically or more efficiently by adding fresh objects. The Court, of course, on given facts may apply its mind and see whether the directors may reasonably and fairly form that opinion. I consider that the Court can do no more about it. Clause (d) of sub-section (1) of S. 17

reads:

To carry on some business which under existing circumstances may conveniently and advantageously be combined with the business of the company.

Here again, my observations with reference to clause (a) apply with equal force. Whether the ingredients of clause (d) are satisfied will no doubt be a matter for this Court to judge. But whether the business can conveniently or advantageously be combined with the business of the company will depend a great deal upon the opinion of the directors. If the directors consider that under the existing circumstances, it will be convenient and advantageous to combine the new objects with the existing objects, and if it appears that that conclusion may be fairly arrived at, this Court will not go behind it and hold an enquiry as to whether the opinion of the directors is well-founded or is justified. In the very nature of things, such an enquiry will not be possible for this Court to undertake.

3. There is also the further aspect. In my opinion, S. 17(1) should not be narrowly interpreted. As a matter of fact, Courts have approached the section in a liberal way. It is not necessary to cite authority for it. The whole object of the section is enabling.

4. In this case, the existing circumstances are these. The objects of the company include import, export in cement, alumina cement, lime and lime-stone, kanker and bye-products thereof and building materials generally. The other objects are certainly not confined to the main object of carrying on business in cement. One of the objects is that the company can carry on the business of iron foundries, steel foundries, non-ferrous metal foundries, mechanical engineers, structural engineers, electrical engineers, manufacturers of cast iron and steel pipes, manufacturers of grinding medias and agricultural implements and other machineries, tool makers, metal workers, boiler makers, mill wright, mechanists, iron and steel converters, smith, wood workers, builders, painters, metallurgists, water supply engineers, gas makers, farmers printers, carriers and merchants, and can buy, sell, manufacture, repair, convert, alter, let on hire and deal in machineries, implements, rolling stocks and hardware of all kinds. It is unnecessary to enumerate the other items of business which the company can carry on even under the existing objects. They even include lending money with or without security and to underwrite shares, stock and securities, to draw, accept and negotiate bills of exchange, promissory notes and other negotiable instruments, to enter into partnership and to promote companies.

The range of the company's business under the objects is very wide indeed. In their reply affidavit the company states that the petitioner is engaged in the manufacture of a variety of products and has developed business contracts abroad and some of the products have been successfully exported. The company also states that it has the opportunity to take advantage of these business contracts to put through the export or import of various commodities which possess the necessary potential. It is pointed out in the affidavit of the company

that to run a smooth and effective export business it is necessary that the company should be free to export a variety of commodities according to the needs of the foreign markets from time to time and that the proposed enlargement of the export business can be conveniently as well as advantageously combined with the current business of the Company. It is not possible to say that this view of the company is not fair or reasonable or it is so obvious that the export business cannot be combined with the existing business of the company. Having regard to the present objects of the company. I am inclined to think that the proposed objects may well be within the ambit of S. 17(1)(a) and (d).

5. Prayer (1) in paragraph 11 is ordered. The petitioner in whose petition the Registrar was given notice and is now appearing will pay the costs of the Registrar, fixed at Rs. 150.