(1957) 07 CAL CK 0037

In the Calcutta High Court

In Re: Fort Gloster Jute Manufacturing Co. Ltd.

Date of Decision : 22-07-1957

Acts Referred:
Companies Act, 1956 — Section 17, 9

Citation : 68 CWN 481

Hon'ble Judges : G.K. Mitter, J

Bench : Single Bench

Advocate : P.P. Jinwala and Sankar Ghose for the Company, for the Appellant;Ajoy K. Basu for the Registrar, for the Respondent

Judgement

G.K. Mitter, J.—This is an application on the part of Fort Gloster Jute Manufacturing Co. Ltd., for the alteration of its Memorandum of Association by enlarging its object clause and introducing a new sub-clause being sub-clause (c) to clause 3 in the existing objects clause. The object with which the company was incorporated is to be found in paragraph 3 of the petition, which includes, inter alia.

(a) To purchase or otherwise acquire the business and goodwill of the Fort Gloster Jute Manufacturing Co. Ltd., carried on at Calcutta and Fort Gloster under the Agency of Messrs. Kettlewell Bullen & Co., and all or any of the moveable and immovable property belonging to the said company.

(b) To carry on at Fort Gloster aforesaid and elsewhere the business of Spinners and Weavers of Jute and similar materials and to purchase and send the raw material and manufactured articles,

(c) To erect upon any portion of the said property or upon any other property which may be purchased or leased by the said company such mills, buildings, houses etc. as may be necessary,

(d) To export manufactured goods to other markets, if necessary,

(e) To carry on any other business which may seem to the company capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of or render profitable any of the company''s property or rights.

In paragraph 6 of the petition it is stated that "the directors of the company having regard to the present position of the jute industry considered it prudent that the company should be free to broaden the scope of its activities by engaging in other types of business. To obtain the necessary capital for broadening the activities of the company the directors of the company considered that it would be desirable to increase the authorised capital of the company from "Rs. 42,00,000 to Rs. 2,00,00,000/-" by creation of new-shares.

2. In October 1956 the managing agents of the company sent a circular letter to all the shareholders of the company recommending a plan for increasing the capital of the company and an extraordinary general meeting of the company was held and resolutions passed including the addition of subclause (b) to clause 3 of the objects clause which is as follows:--

(i) To carry on the business of manufacturers of and dealers in wires, cables and lines of all kinds electricians and electrical engineers, contractors and manufacturers of and dealers in tramway, electric and other apparatus, mechanical or chemical engineers and in all apparatus and things required for or capable of being used in connection with the generation, accumulation, distribution, supply and employment of electricity or other energy for lighting, heating, sound and power or any of them, compressed air, gas, steam, oil or any of them or otherwise.

(ii) To carry on the business of constructional engineers, mechanical engineers, iron founders, iron master coke manufacturers, miners, public woris and general contractors, manufacturers of ferromanganese, manufacturers of and dealers in bridges and steel frame buildings and steel and iron structures of all kinds and manufacturers of and dealers in agricultural implements and other machinery etc.

(iii) To carry on the trades or businesses of manufacturers of chemicals and manures, distillers, dye makers, gas makers and makers of chemical and identical preparations of all kinds.

(iv) To carry on the business of manufacturing paper envelopes cardboard, and millboard in all the various branches of the business and to manufacture any other articles which can be manufactured out of compressed paper or paper stock and to buy and sell in either a raw or partially prepared state all such fibres, fibrous substances or materials as may furnish materials for paper manufacture and to cultivate and prepare the same for use and to sell or consign such to cultivate and prepare the same for use and to sell or consign such of the materials so prepared as may not be suitable for the manufacture of paper or other articles manufactured by the company.

(v) To carry on the business of manufacturing, buying, selling, exchanging, converting, altering, importing, exporting, processing, twisting or otherwise handling, or dealing in Rayon Yarn, staple fibre, staple fibre yarn cotton hemp and such other fibre, fibres or fibrous materials or allied products, by products or substances or substitutes for all or any of them or yarn or yarns for textiles or other use as may be practicable or deemed expedient.

3. This application was presented before P.B. Mukharji, J. on May 28, 1957 when his lordship was pleased to direct that notice of this application should be given to holders of debentures and other creditors of the company and to its shareholders and from affidavits filed herein it appears that advertisements were jade in newspapers for that purpose.

4. No shareholders, creditor or holder of debentures comes forward to oppose this application. Under sec. 17 of the Companies Act, I of 1956 notice of the alteration of the Memorandum of Association has to be given to the Registrar and he is to be given a reasonable opportunity to appear before the court and state his objections and suggestions, if any, with respect to the confirmation of the alteration. Section 17 by sub-section (1) provides as follows:--

A company may, by special resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the object 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,

(c) to enlarge or change the local area of its operations,

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company.

(e) To restrict or abandon any of the objects specified in the memorandum,

(f) To sell or dispose of the whole, or any part, of the undertaking or of any of the undertakings, of the company, or

(g) To amalgamate with any other company or body of persons.

The Registrar of Joint Stock Companies, West Bengal has affirmed an affidavit herein on April 4, 1957 in paragraph 4 whereof he states that "the proposed alteration in the memorandum of the petitioner company do not show that the business of the company will be carried on more economically and efficiently nor do they show that such changes are necessary to attain its main purpose by new and improved means *** that the proposed objects cannot be conveniently and advantageously combined with the business of the petitioner company which is mainly jute manufacturing. By these proposed objects the company vests itself with the right to indulge in activities wholly alien to the primary object of the company which normally would have induced the share-holders to subscribe further shares of the company.

5. Apart from any authorities I should have thought that the question as to

whether a company should enlarge its scope of operation or embark on some new kind of business different to that which is already being carried on is a matter which primarily concerns only its members and creditors and if the members and creditors including holders of a debenture do not object and if it be not shown to the court that the new business which the company proposes to indulge in is of a speculative type or is otherwise objectionable the court should not stand in the way of the alteration of the objects clause. The point taken by the Registrar that it has not been shown in the affidavits that under the existing circumstances the business of the company cannot conveniently or advantageously be combined with the proposed new business to be started by the company is not a new one. It came up for consideration in the case of Parent Tyre Company Limited (1) 1923, 2 Ch. 222. There Lawrence, J. observed "whether the proposed new business is one which may be conveniently or advantageously combined with the business of the company carried on at the time when the special resolution is passed must, in my judgment, be determined by the persons engaged in the business of the company." The main business of the company in that case has come to consist in the holding and management of large investments in two other companies and on the advise of its directors the company wanted to alter its Memorandum of Association so as to enable it to carry on new business including buying, selling, and dealing in real and personal estate of every description. His Lordship further observed as follows (See p. 228) :

It is essentially a business proposition, whether an additional business can or cannot be conveniently or advantageously carried on under existing circumstances with the business of the company. The additional business, of course, must not be destructive of or inconsistent with the existing business it must leave the existing business substantially what it was before, but the additional business may be one which is different from the original business and yet may well be capable of being conveniently and advantageously combined with the business which is being carried on. I think it would be placing too narrow a construction upon s. 9 (of the Companies Consolidation Act, 1908) to hold that, because the additional business involves a new departure which was not contemplated by the original memorandum, therefore it does not fall within the purview of the section.

With respect, I agree with the above dictum. As I have already said whether a new or additional business is to be undertaken by the company is primarily a matter which concerns its directors, managers and shareholders, subject of course, to the wishes of the creditors who have lent money to the company either with or without security. It is well known that at present the jute industry finds itself in great difficulty. This is not a temporary phase of the industry but is one which has been current for some years past and one cannot foresee whether there is going to be a change in the fortunes of the industry in the near future. If, in a state of affairs like this, the directors of the company approach the shareholders for sanction by a special resolution to the alteration of its

Memorandum so as to undertake new and additional kinds of business which do not go to destroy the business already carried on by the Company I do not see why the court should take any exception to such alteration. I shall, therefore, sanction the alteration of the Memorandum of Association as prayed for. The applicant must pay the costs of the Registrar. Certified for counsel.