(1965) 07 CAL CK 0002

In the Calcutta High Court

Case No : Company Petition No. 225 of 1964

In Re: Indian Aluminium Co. Ltd.

Date of Decision : 19-07-1965

Acts Referred:
Companies Act, 1956 — Section 13, 16, 17, 173, 5
English Companies Act, 1948 — Section 107, 2, 4, 5

Citation : (1967) 1 ILR (Cal) 373

Hon'ble Judges : Datta, J

Bench : Single Bench

Advocate : S. Banerjee and Sridhar Chatterji, for the Appellant;R. Pyne, for Registrar of Companies and S.C. Sen, for State of West Bengal, for the Respondent

Final Decision : Dismissed

Judgement

Datta, J.—This is an application by Indian Aluminium Company Limited, inter alia, for the confirmation of a resolution passed by the Extra-ordinary General Meeting of the company held on August 28, 1964, whereby it was resolved-that the registered office of the company should be changed from Calcutta in the State of West Bengal to some place in the State of Mysore.

2. This company was incorporated on December 7, 1938, inter alia, to conduct and carry on the business of general metal founders, casters, spinners, rollers and workers of metals and their alloys including aluminium, sodium and their alloys and metalic combinations of all kinds, electrical, mining and civil engineers, metal and mineral merchants, miners, carriers and contractors and to carry on any business relating to the winding and working of iron ore, coal, bauxite, magnesite and other minerals or metalic ores or substances of all descriptions, the production and working of aluminium hydroxide, alumina, magnesia and other oxides and the winding and working of salts and other combinations thereof and of any other chemical pro ducts.

3. The company has an authorised capital of Rs. 10,00,00,000 which has practically been subscribed and paid up. The company has issued Convertible

Loan Stock and Debenture Stocks to the extent of more than Rs. 10,00,00,000 and other liabilities exceeding a sum of Rs. 2,00,00,000. The company''s financial position is sound for its assets exceed its liabilities by Rs. 11,47,29,344.

4. The company has at present a rolling mill at Belur, West Ben gal (bauxite mining rights at Lohardaga) and an alumina plant at Muri, Bihar, a smelter at Hirakud, Orissa, smelter near Always, Kerala and aluminium powder and paste plant at Kalwa, in Maharastra. In addition, the company is now setting up an aluminium foil rolling and finishing mill in Maharastra. It also proposes to build the first stage of a large integrated aluminium industry, starting with 30,000 tonnes per annum smelter together with related alumina and bauxite facilities, in Mysore State with a view to draw power from the Saravati Project which is in a position to supply electricity at a very cheap rate. When these industrial undertakings would be completed in the States of Mysore and Maharastra, the investments of the company would be preponderantly confined to these two States. It will also be noticed that even when this first stage of the integrated aluminium plant is completed in Mysore, its total investment in land, buildings, plant, machinery and equipment in that State will greatly exceed its investment in similar items in any other State in the Union of India.

5. In order to set up this integrated aluminium industry in Mysore State, the company has also applied for permission from the Government of India under the Industries (Development and Regulation) Act, 1951. In these circumstances, on July 13, 1964, the Board of Directors by its Secretary, Mr. T.D. Sinha, issued the following notice with an explanatory statement as required by Section 173 of the Companies Act, 1956.

6. The said notice and the explanatory statement are set out below:

NOTICE is hereby given that an Extra-ordinary General Meeting of Indian Aluminium Company Limited will be held at its registered office, 31, Chowringhee Road, Calcutta-16, on Friday, August 28, 1964, at 11-30 a.m., for the purpose of considering and if thought fit, passing the following two special resolutions:

(1) That subject to the sanction of the High Court at Calcutta being obtained the Registered Office of the Company at pre sent situate in the State of West Bengal shall be removed to and be situate in the State of Mysore.

(2) That subject to the sanction of the High Court at Calcutta being obtained the Memorandum of Association of the Company be altered by the substitution of the words ''State of Mysore'' in place of the word ''Bengal'' in Clause II of the Memorandum of Association.

Any member of the Company entitled to attend and vote at this meeting is entitled to appoint a proxy to attend and vote instead of himself and such proxy need not be a member of the Company.

By Order of the Board T.D. Singh Secretary

July 13th, 1964

EXPLANATORY STATEMENT AS REQUIRED BY SECTION 173 OF THE COMPANIES ACT, 1956

Your Company has submitted an application to the Government of India under the Industries (Development and Regulation) Act, 1951, for a licence to build the first stage of a large integrated aluminium industry, starting with a 30,000 tonnes per annum smelter together with related alumina and bauxite facilities. The proposed smelter will draw power from the Sharavathi project in Mysore State and is expected to be located as close to the source of power as possible. A separate application has been submitted for establishing a rolling mill in Maharashtra State.

When these industrial undertakings have been completed a large integrated aluminium industry will have been established by the Company with its principal units in Mysore State. In the circumstance and as the construction and operation of the abovementioned projects will, in your Directors opinion, be facilitated if the registered office of your Company is transferred from Calcutta to a suitable location in Mysore State, your Directors have decided to place before you resolutions set out in the above notice for your consideration and they recommend their adoption.

Under the provisions of the Companies Act, 1956, the change in the location of the Company''s registered office will be subject to confirmation by the High Court at Calcutta and the necessary steps in this connection will be taken if the special resolutions now placed before you are passed.

7. At the meeting held on August 28, 1964, the resolutions were passed by an overwhelming majority. The resolutions were opposed by one Dr. Satyen Basu holding 572 ordinary shares in the company and one Mr. Dwipendra Nath Ghose holding 233 ordinary shares. Mr. A.K. Nag, a holder of 4 preference shares, also opposed these two resolutions. Thereafter, the Chairman proposed and Mr. P.V. Subramanian seconded the following resolution:

That subject to the sanction of the High Court at Calcutta being obtained the Memorandum of Association of the company be altered by the substitution of the words ''State of Mysore'' in place of the word ''Bengal'' in Clause (2) of the Memorandum of Association.

8. The resolution having been put to vote was adopted by an overwhelming majority. Those who opposed voted against this amended resolution. Thereafter on or about September 18, 1964, this application for confirmation was made. In the petition more or less the above facts were stated and emphasis was laid on the proposed investment in the State of Maharastra and the proposed investment in the State of Mysore where cheap electricity is available and thereafter, the company summarised its case in these words:

Having regard to the foregoing and as to construction and operation of the abovementioned purchase will be facilitated with the registered office of the company''s transfer from Calcutta to a suitable location in Mysore State the company desires to effect such transfer.

9. In the application those three gentlemen who opposed the change in the location of the registered office to a different State did not appear. At the time of hearing, however, the State of West Ben gal, upon which a notice was directed to be issued as a person interested in the matter, appeared and objected to this change in the location of the registered office. The grounds of opposition may be stated in their words as follows:

The revenue of the State would be affected and it would cause substantial loss, amongst others, under the following heads: (a) The income tax allocation for the State would be reduced. The company would be assessed for income tax by the income tax authorities exercising jurisdiction at the place where its registered office would be situated, (b) There will be complete loss of revenue from sales tax, (c) Retrenchment of staff both present and potential which would further increase unemployment in the State, (d) Recruitment of staff will altogether stop.

10. When this matter was opened for the first time I indicated that, prima facie, the ground given in the petition did not impress me and that it seemed to me that the real ground lies elsewhere. Thereafter time was taken to consider the position and if necessary to place further materials before me. Thereafter a reply was filed by the company wherein it was stated, inter alia, that the construction and operation of the new project will be facilitated by transferring its registered office from Calcutta to a place in the State of Mysore. It was further stated that after due consideration the directors of the company decided to have the registered office of the company from Calcutta to Mysore State subject to the approval of the company''s shareholders and of the Hon''ble High Court at Calcutta. It was further said that if the registered office of the company was transferred to the State of Mysore the company would gain added confidence and goodwill of the Mysore Government. It was also stated that the industrial licences are expected to be issued in favour of the company in the near future. Thereafter, again when the matter was opened J indicated that the materials in the reply did not seem to improve the matter. Thereupon time was again taken to consider the matter and when hearing of the application was again considered copies of certain correspondence between the Government of Mysore and the Indian Aluminium Co. Ltd., were placed before me evidently in order to satisfy me that my suspicion, that it was one of the terms of the agreement between the State of Mysore and the company that the company should make an application for transfer of the registered office, is without substance. It may be noticed that the letter dated December 9, 1964, written by the Secretary to the Government of Mysore to M/s. Indian Aluminium Co. Ltd. gives the terms. It, however, appears from the letter dated January 9, 1965, that there was a draft forwarded by the company to the Secretary to the Government of Mysore on September 7, 1964. The said draft was not placed me. It, however, appears that

no formal agreement has been yet entered into. In view of another query made the company placed another set of correspondence before me indicating that the company has received tentative sanction for the relative licence. A chart was also placed before me which shows that the total investment is Rs. 3,356 lakhs in Bihar, Rs. 488 lakhs in Kerala, Rs. 445 lakhs in Orissa and Rs. 290 lakhs in West Bengal and the proposed investment in Maharastra is Rs. 1,091 lakhs and the proposed investment in the State or Mysore is Rs. 1,784 lakhs. The figure for Mysore only relates to the first stage or phase of the integrated aluminium plant contemplated to be set up in the State of Mysore and it is said that when the entire scheme is put through, the investment will be 2 or 3 times than that indicated above. These materials were not on affidavits but nonetheless I looked at them. This was not opposed by the State of West Bengal.

11. It is now necessary to consider the law on the point.

12. It may be considered on the basis that Sub-clauses (a) to (g) of Clause (1) are applicable even in the case of the change of the registered office from one State to another.

13. It will be noticed that under Sub-clause (b) of Clause (1) of Section 13 the State in which the registered office of the company is to be situate is a requirement of the Memorandum of Association. u/s 16 of the Companies Act a company cannot alter the conditions contained in its Memorandum except in the cases, in the mode and to extent, for which express provision is made in this Act. There is express provision in the Act in Section 53 for change of the registered office from one place to another within the State. There the company at its will can make the changes provided an appropriate resolution is passed by the company without the intervention of the Court. The company only is required as a condition subsequent to give notice to the Registrar of Joint Stock Companies and if there be failure to, give the prescribed notice the officers expose themselves to penalties. In Section 17, however, the provision for change of the registered office from one State to another has been made. Therefore, it is necessary to set out Section 17 of the Act.

17. Special resolution and confirmation by Court required for alteration of memorandum. (1) 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 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;

(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.

(2) The alteration shall not take effect until and except in so far as, it is confirmed by the Court on petition.

(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 determined or has been 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).

(4) The Court shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also 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.

(5) The Court may make an order confirming the alteration either wholly or in part and on such terms and conditions, if any, as it thinks fit and may make such order as to costs as it thinks proper.

(6) The Court shall, in exercising its powers under this section, have regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors of the company and of every class of them.

(7) The Court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it thinks fit for facilitating, or carrying into effect, any such arrangement:

Provided that no part of the capital of the company may be expended in any such purchase.

14. Section 17 requires that the company should pass a special resolution with a view to attain one or more of the objects mentioned in Sub-clauses (a) to (g). The passing of the resolution, however, is ineffective until the Court confirms it.

The Court must before it confirms the resolution see that notices to debenture-holders or every other person or class of persons interested in the matter have been duly sent. It also requires that the Court should issue a notice to the Registrar. The Court must further satisfy that the creditors have either consented to or have been paid or have been otherwise satisfactorily adjusted.

15. The Court is again burdened with its duty to keep in view the rights and interests of the creditors and members and every class of them and it also follows from Clause (3), that the Court is also to consider the right and interest of other parties to whom notices have been issued. The powers of the Court thereupon are embodied in Clause (2) read with Clauses (5) and (7) of the section, so that the Court may thereunder adjourn the matter, confirm with or without a condition or partly confirm with or without a condition or reject the application.

16. It has been emphasised that the directors of the company after due consideration decided to have the registered office of the company transferred from Calcutta to Mysore State subject to the approval of the company''s shareholders and of the Hon''ble High Court at Calcutta. This raises one aspect of the matter which is often canvassed in an application u/s 17. It is said that the Court should not embarrass itself by encroaching into the internal management of the company but should leave the matters of business to those who are best experienced in the matter, that is to say, the management of the company. It is often said differently that the Court should trust the wisdom of the businessmen. This contention receives support generally from observations made in British and American Trustee and Finance Corporation v. Couper (1894) A.C. 399 which was a case relating to reduction of share capital where confirmation by Court is required. It is also borne out by Poole v. National Bank of China (1907) A.C. 229, another House of Lords case where it was a case of confirmation of a scheme. This principle coming nearer in considering Section 5, the counterpart of Section 17 in the English Act was expressed in Re Parent Tyre Co. Ltd. (1923) 2 Ch. 222. There the learned Judge indicated that the businessmen''s decision was an important determining factor though in the case of one object the learned Judge disallowed it on the ground that it would be destructive or inconsistent with the old business. His Lordship the Hon''ble Mr. Justice G.K. Mitter who followed the case in Re Parent Tyre Co. Ltd. (1923) 2 Ch. 222 in an application u/s 17 has put an additional limitation, namely, that the proposed object should not be speculative, in Fort Gloster Jute Manufacturing Company (1957) 68 C.W.N. 481. B.C. Mitra, J. again when following the case of Re Parent Tyre Co. Ltd. (1923) 2 Ch. 222 in an application u/s 17 introduced further additional grounds of exceptions (See In the matter of In Re: Standard General Assurance Co. Ltd., . In effect though their Lordships followed Re Parent Tyre Co. Ltd., they watered down the principle considerably. It may, however, be noticed that this emphasis on the businessmen''s wisdom is not discernible in the English case of Re John Brown and Co. Ltd. (1914) W.N. 434 and Re Bolsom Bros. (1928) Ltd. (1935) Ch. 413 (C.A.). It is also somewhat inconsistent with the case of In Re: Bhutoria

Brothers (Private) Ltd., .

17. It is also often said that when the shareholders have by an overwhelming majority adopted the resolution or when there is no objection from that quarter the Court should grant confirmation of such a resolution. In my opinion, the endorsement of the resolution made by the shareholders at a meeting is often illusory for it is well-known that the shareholders are mostly apathetic to the affairs of the company except as to dividend and leave the management to a person or a set of persons in whom they had after due consideration or otherwise reposed confidence at the time of the purchase of the shares. It often happens that a very few shareholders are present at such meeting. It is also well-known that even a fewer persons come to Court to resist the alterations. It may be said, as was said by Chitty, J. In Re Governments Stock Investment Co. (1891) 1 Ch. 649, that it may be that the absentee shareholders have not come forward to oppose it in Court which entails considerable trouble and expenses for they know that ft would be scrutinised by the Court. That the endorsement by the shareholders of the view of the management or the shareholders'' view is not paramount has also been indicated in the case of Orient Paper Mills Ltd. and Another Vs. The State, . This is also the view expressed in Jayantilal Ranchhoddas Koticha and Others Vs. Tata Iron and Steel Co. Ltd., . This is also the view expressed in this Court by Mookerjee, J. In the matter of Bhutoria Brothers (P) Ltd. (Supra), where his Lordship observed that

there is still a residuary power and duty of the Court to see that this expression of view by the share-holders is a sensible one....

18. In my opinion, the section militates against giving businessmen''s wisdom an emphasis which has been recently given in the decisions of our Court. It may, however, be noted that the question of exercising of jurisdiction by the Court u/s 17 cannot arise unless the businessmen have passed a resolution. Once it is passed the Court has to see whether the procedural requirements have been fulfilled or not. If they are fulfilled the Court has to examine whether on the materials before it, it is in furtherance of any or more of the objects mentioned in Sub-clauses (a) to (g). If not, the Court should not confirm it. If it does, even then, the Court has to consider the interest of the absentee shareholders and every other interested person as also other provisions of law which may make the new objects illegal or ultra vires. Hence in such a case the Court has to independently, in my opinion, before endorsing the view of the company, come to a conclusion on the materials before it that the proposed alterations or alteration is in order to attain any one or more of the objects stated in Clauses (a) to (g) of Clause (1) that advantages or sacrifices are more or less evenly distributed as between different classes of persons interested in the alteration if such alteration leaves room for redistribution of advantages and sacrifices and that it is not illegal, ultra vires, or otherwise injurious to the public interest. It may, however, be noticed that these factors are only illustrative and cannot be decisive for it will depend on the facts of each case which other facts may become relevant or not.

19. It is often said that in the case of an application u/s 17 the onus is on the shareholders or parties objecting to the change. This proposition receives support from the English decision of In Re English, Scottish and Australian Chartered Bank (1893) 3 Ch. 385 and also from the decision of this Court in relation to a scheme by Bose, J., as he then was, in In Re: Hindusthan General Electric Corporation Ltd., . In my humble opinion, it does not seem that the rule of law laid down in those cases is in consonance with the provisions of Section 17. In a case of confirmation by the Court the burden is not on the parties who are objecting to the alterations but it is on the Court for the duty devolves under Clause (2) upon the Court and not on the parties. The supporting and objecting parties may however assist the Court in making up its mind as to whether it will endorse the view of the company with or without qualification or reject it or pass any other order. Hence, in my opinion, the burden of proof has no room in an application u/s 17 in the ordinary sense as it does in an ordinary suit.

20. It is now necessary to consider whether the assumption made that Sub-clauses (a) to (g) are attracted in a case where the company passed a resolution for an alteration of the registered office from one State to another is well-founded on a construction of Section 17. It may be noticed that the relative provisions of the Indian Companies Act are borrowed from the corresponding English sections. Sections 2, 4, 5 and 107 of the English Companies Act, 1948, are followed in Sections 13, 16, 17 and 53 though there are minor changes here and there. In Eng land the question of change of the registered office from one State to another does not arise. Even if it does no distinction has been drawn as between England and Scotland. In India, however, the Parliament has thought it fit to import in Section 17 a clause which is absent in the analogous section of the English Act which is Section 5. The words are:

so as to change the place of its registered office from one State to another.

The section otherwise is in consonance with the corresponding English section. In my opinion, this departure from the English Act and the incorporation of these words in the section suggest that this phrase is unrelated to Sub-clause (a) to (g). This is borne out by the word ''or'' and further the words "with respect to the objects of the company...be required to enable it" are significant. It may also be noticed that the change of registered office from one State to another hardly fits in and can be interlinked with the Sub-clauses (a) to (g). At the most it may be said that it may be interlinked with Clause (a). In my opinion, however, on a true construction of Section 17 the change of the registered office from one State to another is unrelated to Sub-clauses (a) to (g).

21. Therefore the question for consideration arises if Sub-clauses (a) to (g) cannot guide the Court where there are other provisions in the Act which can give guidance to the Court on this subject. Hence, it is necessary to consider other provisions of the Companies Act, 1956. The location of the registered office determines the jurisdiction of the particular High Court. It also determines if the word ''jurisdiction'' can be used in the register of companies of that particular

State. It also determines generally the place of collection of taxes, Central and otherwise. These are one aspect of the matter. There are, however, other sections which deal with the question of registered office. The registered office determines the place where the several registers required to be kept under the Act are maintained. The registered office also determines the place where the principal account books of the company have to be maintained. The registered office again determines the place where the shareholders are entitled to inspect documents which are permissible to them under the Act. The registered office again determines the address ordinarily for all communications and also ordinarily for service of Court''s processes on the company. The location of the registered office generally again determines the location of the Annual General Meeting or other meetings of the company. It also determines generally the place where the Board meetings take place. In the case of Banking companies and Insurance companies there are further implications. The Banking and Insurance companies have to publish their statements of account at the registered office. It is the registered office which determines the place of filing of the several returns required by the Act including documents relating to charges and the like. Therefore, in my opinion, the question of change in the registered office has to be viewed from these functions and incidences laid down in the above sections. It may, however, be mentioned that though these are guiding factors I am not prepared to say that these are always decisive factors and no other consideration can be taken into account.

22. The main and only ground indicated in the petition is that the transfer of the registered office will facilitate the above projects in Maharastra and in particular, Mysore. This is a conclusion arrived at by the company primarily from the facts that a large investment will be made in the State of Maharastra and a larger investment will be made in Mysore, where cheap electricity is available. It is, however, not said in the petition why and how the construction and operation of these two new ventures will be facilitated by the transfer of the registered office. Hence, in my opinion, the company did not place sufficient materials before the shareholders and far less before the Court on this point. Hence, in my opinion, the Court should not confirm it. If it is said that reasons are the shifting of the importance of the productive activity from the East to the West and the South-West, it does not appeal to me. It does not appear from the affidavit that the old productive centres, that is to say, the centres in Bihar, Orissa, Kerala and West Bengal were started at one and the same time. In case they were started all at one and the same time, the company chose West Bengal though the company''s investment was the least in the State of West Bengal. In case the different productive units or productive centres were started at different stages in different States, it is significant that the company did not make any application for a change of the registered office though, according to the chart handed over, investment in the State of West Bengal was the least compared with the investments in the States of Bihar, Orissa and Kerala. If that is so, there is no understandable reason why the company should want to change its registered

office now. In case, this is a valid ground, it follows that in future if the company wishes to set up a larger unit than what they proposed to do now in the State of Mysore, then there would be a valid ground for change in the registered office. In my opinion, it cannot be so for the section nowhere states that that would be a relevant factor which should be taken into consideration and far less than that would be a decisive factor and further the functions and incidents of the registered office are hardly affected by the change in the importance of one centre rather than another. In other words, the setting up large units will not in any way affect the functions of the registered office in Calcutta except that it will increase the volume of work and call for additional staff. This would have been so if the larger unit was started within this State. Hence, this cannot, in my opinion, make any difference to the position.

23. It is not suggested in the affidavit that the registered office would be situated on the site of the new plant in Mysore. On the other hand the suggestion is that it will be in some town in the State of Mysore though it has not decided what actual town it would be. It is not stated and could not be stated that the Board of Directors will supervise the day to day construction and operation of the unit in the State of Mysore or Maharastra. It is not even said and possibly could not be said, that the Managing Director is a technical person who will supervise the day to day construction and operation of the unit in the State of Mysore. It is not said that the holdings of the shareholders have changed in such a way that it would be more convenient for the shareholders or the great majority of them, to have the registered office in the State of Mysore. It is not stated that the directors or majority of them hail from Mysore and that it is likely to be so in the future. It is not stated that the directors or majority of them ordinarily carry on business in the State of Mysore and the future directors are likely to do so. It is not said that one of the terms of the agreement as between the company and the Mysore State is that the company should make an attempt to locate the registered office in the State of Mysore. Therefore, the consideration of construction and management cannot be a valid ground more so in this case, because even if the presence of the Managing Director was necessary for day to day construction and operation, he could not be present at the same time in two places, both in Maharastra and Mysore where large amounts are going to be invested.

24. It may be noticed here that the shares are held mostly by foreign companies or by foreign collaborators and the new shares proposed to be raised will also by foreign collaborators. It is immaterial to these collaborators or firms whether the registered office is situate in Calcutta or in the State of Mysore or in any other part of India. The other shareholders purchased the shares on the faith that the registered office will be situated in the State so that they may be in a position to take advantage of the provisions of the Companies Act by being present at the meetings and if necessary, looking at the relevant register and the account books. The shareholders who had acted on this faith will be deprived of these advantages. There has been no reason suggested why their interests should be prejudiced. It may be noticed that this has worked up satisfactorily from 1958.

This has not been said why it cannot work out satisfactorily in future.

25. In the affidavit-in-reply an additional ground was suggested. It was this:

I believe that by having the registered office of the company transferred to the State of Mysore the company would gain added confidence and goodwill of the Mysore Government.

It is firstly not a matter of knowledge but a matter only of belief of a particular person. It does not again indicate in what direction the company will gain added confidence and it does not again indicate in what direction the goodwill of the State of Mysore will manifest itself It seems to me that if these resources of the company and its past record have not instilled sufficient confidence in the State of Mysore, then nothing else can do. It again seems to me that the agreement is not a matter of goodwill so much as an economic bargain between the two States on the one hand, one State and on the other hand, a very powerful organization like this company. This is, in any event, a ground which may change with the changes of the management of the company and with the changes of those who are at the helm of the affairs of the State. Therefore, this ground is an uncertain and slippery basis for a Court to make an order.

26. The State of West Bengal opposed it on various grounds. It was stated on behalf of the State of West Bengal that the company was nursed in the State or West Bengal and the removal of the registered office from the site will entail financial loss. The State of West Bengal will be burdened with retrenched staff. In any event, the State of West Bengal will not get increased addition by way of employment and taxes by reason of this expansion. The company stated before me that there would be no retrenchment by the change and the office will remain here in Calcutta. In my opinion, that is not a sufficient answer. The added expansion will undoubtedly increase the volume of work at the registered office and thereby increase the employment in the State or is likely to increase the employment of persons resident in the State. Hence, this would be a loss to the State. The Corporation taxes are collected by the centre and not by the State. Hence, it was said that this would make no difference to the revenue of the State. In a way it is correct because no direct benefit arises from these Corporation taxes to the State. It is, however, well-known that the total amount of collection as also the income tax have always been an important argument for increased allotment to the State out of the amount distributable or distributed by the centre to the particular States. Hence, in my opinion, in view of this indirect bearing, this contention on behalf of the State of West Bengal cannot be rejected outright and in my opinion, has great force. It was said that the change in the registered office will not make a change in the incidence of sales tax for it is determined by the sales within the State. It seems to me that prima facie this is correct though there may be cases where it may not be applicable. In this connection of impact of revenue on the question of the transfer of the registered office from one State to another, reference may be made to the two cases decided in Orissa, one by Mr. Justice Rao, Orient Paper Mills Ltd. v. State (Supra)

and the other by Mr. Justice Barman, In the matter of In Re: Orissa Chemicals and Distilleries Private Ltd., . It was suggested that the Court should not take a parochial view of the matter and run counter to the principle of integration. In my opinion, the Court is not directly concerned with the principle of integration or of giving effect to it. It is however concerned indirectly with the principle of integration in so far as it is embodied in the section. It is for the Court only to enforce and give effect to the law indicated by the Parliament. If that section entails a parochial view the Court has no option but to give effect to it. In this connection also the said decisions of the Orissa High Court may be referred.

27. In my view whether the Sub-clauses (a) to (g) are applicable or not, and/or whether the materials placed without a supporting affidavit are considered or not, no valid and sufficient reason has been shown for the change or disturbance of the status qua.

28. It may be noticed that the company has only obtained tentative sanction and that the arrangements with foreign collaborators and the State of Mysore are still tentative. In these circumstances, if I were of a different opinion on the merits, I would have adjourned this application until these matters were finalised, but the view, however. I have taken of the principal grounds relied upon and the points canvassed before me, I think it to be unnecessary.

29. In the result, in my opinion, the company has not made out good grounds and consequently, I decline to confirm the resolution and accordingly, reject this application.

30. In my opinion, I will not, however, award any cost to the State of West Bengal but will award cost only to the Registrar of Companies which is assessed at 25 gms.

