

(1921) 06 BOM CK 0004
In the Bombay High Court

In re: Indian Companies Act. and Sir Hormusji A. Wadia, Kt.

Date of Decision : 09-06-1921

Acts Referred:

Companies Act, 1956 — Section 91B

Citation : AIR 1921 Bom 372 : (1921) 23 BOMLR 1104

Hon'ble Judges : Pratt, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pratt, J.—This is a petition by the liquidators of the Coronation Mills Co. Ltd. for rectification of the register by the deletion of the names of Sir Shapurji B. Broacha, Mr. Chhoi and Mr. Kuka in respect of 79, 60 and 61 shares respectively.

2. The company was incorporated in 1902 with a share capital of Rs. 7,00,000 made up of 1400 shares of Rs. 500 each. Two hundred of these shares were not issued, and, on the 17th of November 1919, the directors held a meeting at which five directors were present. These were the two liquidators and the three gentlemen above-named. At this meeting the following resolution was passed:-

That the 200 shares which have not been taken up, be sold at the rate of Rs. 1200 per share to Sir Shapurji B. Broacha and Messrs. Chhoi and Kuka in the proportions of their present holdings.

3. In accordance with this resolution, shares were allotted as stated in the petition.

4. By the Articles of Association, the allotment is in the absolute discretion of the directors, and the sole question raised in this petition is, whether the allotment is a valid one. The Articles of Association require a quorum of at least three for a directors' meeting, and Article 104 is in the same terms as Section 91 B of the Indian Companies Act, and, under this Article, by the operation of this section, no director can as a director vote on any contract or arrangement in which he is either directly or indirectly concerned or interested.

5. The case for the petitioners is that the three directors, Sir Shapurji, Chhoi and Kuka, were interested in the contracts or arrangement which were subject to the resolution, and that therefore there was no quorum for its consideration, for no director is entitled to join in forming a quorum for the consideration of matters in respect of which he is not entitled to vote: *In re Greymouth Point Elizabeth Railway and Coal Company Limited*. [1904] 1 Ch. 32.

6. The case for the respondents is that an allotment of shares is a contract and that the resolution is in effect three contracts of allotment to each of the three directors and that four directors were entitled to vote for allotting shares to the fifth and to form a quorum for that purpose.

7. The authorities are against a single resolution being split up in this way: *Young v. Naval, Military, and Civil Service Co-operative Society of South Africa*¹¹ [1905] 1 K.B. 687. and particularly the recent and similar case of *Neal v. Quinn*. [1916] W.N. 223.

8. Mr. Desai challenges these cases and contends that they confuse contract with resolution. I think, however, that these cases are correctly decided. An allotment of shares is a contract and it may be conceded that the three contracts were the subject of one vote recorded in one resolution. The question is, whether that one vote is divisible as suggested into three votes. I think not, firstly, because in fact it was one vote and not three, secondly, because each of the contracts was not considered separately on its merits, and, thirdly, because each director was interested in the allotments to the other two and probably voted for them in consideration of an allotment to himself.

9. Again, although there were three contracts, there was only one arrangement, i. e, an arrangement for the disposal of an unissued block of 200 shares and the resolution dealt with the matter

10. Therefore, whether the subject-matter be considered as three contracts or as one arrangement, the three directors were not entitled to vote and that there was no quorum. The resolution and the allotments were, therefore, invalid.

11. I need hardly say that there is no reason to doubt the bona fides of the directors, but although there was no moral delinquency, the allotment is bad in law.

12. I, therefore, order the rectification of the register as prayed, and allow this petition with costs.