

(1971) 08 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Civil Original 37 of 1971

In Re: Industrial Cables (India) Limited Industrial Area

Date of Decision : 26-08-1971

Acts Referred:

Companies Act, 1956 — Section 17, 17(1), 189

Citation : (1974) 1 ILR (P&H) 257

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : D.S. Dang and R.N. Narula, for the Appellant; D.N. Awasthy, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—The only question which calls for decision in this application for confirmation of the special resolution of the petitioning company, dated April 30, 1971, adding two new items to the objects clause of its Memorandum of Association is whether the new businesses sought to be authorised under the amended objects clause can or cannot be "conveniently and advantageously combined with the business of the company under existing circumstances" within the meaning of that expression as used (subject to minor modification) in Clause (d) of Sub-clause (1) of Section 17 of the Companies Act, 1956 hereinafter called the Act.

2. The Industrial Cables (India) Limited, Rajpura, Punjab, hereinafter called the Company, was registered as a Public Limited Company on March 20, 1956, with registered office at Rajpura (Punjab) with an authorised capital of Rs. 1,20,00,000. Capital worth Rs. 63,10,000 was issued and capital worth Rs. 63,03,725 was subscribed. The financial year observed by the company is from the 1st of November of each year to the 31st of October in the next year. Its latest audited balance-sheet for the year ending October 31, 1970, indicates that besides the paid-up share capital of Rs. 63,03,725, it has resources and surpluses amounting to Rs. 33,93,368 (Paise rounded off to the nearest rupee). The assets of the company (as disclosed in the above mentioned balance-sheet being worth

Rs. 3,29,68,866 and its liabilities being Rs. 2,32,71,773 the excess of its assets over liabilities comes to Rs. 96,97,092. This is the book value of the company's assets worked out on pre-devaluation basis. The market value of its assets must, therefore, be substantially more. The abovementioned figures reveal that the financial position of the company is very good and not only has the company sufficient working capital but is also in a position to muster necessary financial resources to branch out in the new lines of the proposed activities if its special resolution is confirmed.

3. The objects for which the company was formed are set out in Clause (3) of its Memorandum of Association and have been reproduced verbatim in paragraph 4 of this application. The scheme of the objects is that entries (i) to (vii) therein deal with mechanical, electrical and engineering works, entries (viii), (xi) and (xii) relate to, business of merchants and carriers, entry (ix) deals with textiles and entry (x) with mining businesses. (A printed copy of the Memorandum and Articles of Association of the company is Annexure "A" to the petition). Entry (xiii) which deals with Zamindari, agriculture, land and finance, development of land and buildings and earning of rental income is directly relevant for the purpose of deciding this petition and is, therefore, quoted below:

To carry on all or any of the business of or usually carried on by zamindars or land companies; and to irrigate, cultivate, improve and develop any lands and properties whether belonging to the company or not and to develop the resources thereof by clearing, fencing, cultivating, planting manuring, farming, letting, or otherwise, with power to advance money to other persons for any of the purposes aforesaid.

4. On March 29, 1971, the Board of Directors of the company passed its resolution No. 14 in the following words:

The Managing Director put before the Board a note in connection with diversification of the Company's activities and emphasised its importance. He further went on to explain significance of carrying on scientific research or associating with Scientific Research Associations and informed the Board that it is necessary to amend the object clause of the present Memorandum of Association of the Company.

Resolved that approval be and is hereby, granted for the amendment of clause No. 3 of Memorandum of Association of the Company, to enable the company to diversify its activities allied or otherwise and Secretary be and is hereby authorised to take such actions as may be necessary for the amendment of the object clause of the Memorandum of Association.

Further resolved that the Secretary be and is hereby further authorised to take the approval of shareholders by way of special resolution in the Annual General Meeting being held on 30th April, 1971 and make a petition to the High Court and to take such actions as may be required to comply with the various formalities as provided by the Company Act, 1956 for the amendment of

Memorandum of Association.

General meeting of the company was held after due notice on April 30, 1971, in pursuance of the above-quoted resolution of the Board of Directors. At that meeting, the following special resolution was duly passed in accordance with Section 189 of the Act:

Resolved as a Special Resolution that in order to enable the Company to carry on its business more economically and efficiently and to attain its main purposes by new and improved means as well as to enable it to carry on fresh business which under the existing circumstances can conveniently and advantageously be combined with the existing business of the Company, the provisions of the Object clause of its Memorandum of Association be and are hereby altered in the manner set out below:

(A) After the present Sub-clause (xiii) and before the present sub-clause (xiv) of Clause (3) of the Company's Memorandum of Association, the following shall be inserted as sub-clause (xiii-a):

(xiii-a) To carry on the business of hotel, restaurant, cafe, road house hotel, holiday camp, caravan site and apartment-house keepers and to provide all services that may be necessary, desirable or advantageous in connection with the said business, and to fit up and furnish any property for the purpose of letting the same to visitors or guests. whether in single rooms, suites, chalets, caravans, moveable structures, cottages, as shops; offices; show windows, or otherwise, and to buy, sell, import produce, manufacture or otherwise deal in food and food products, meat, groceries, fruits, confectionery, wine, spirit, beer and alcoholic beverages, tobacco, druggist supplies, beverages, linen, furniture furnishings and other articles. (B) After the present Sub-clause (xxix) and before the present sub-clause (xxx) of Clause (3) of the Company's Memorandum of Association, the following shall be inserted as Sub-clause (xxix-a):

(xxix-a) To subscribe, donate, establish, provide, maintain, conduct, subsidise, undertake carry on and promote studies, research laboratories, experimental workshop for scientific and technical researches and experiments, tests of all kinds and scientific and technical investigations and inventions by providing subsidising, endowing or assisting laboratories, workshops, libraries, lectures, meetings and conferences and by providing, or contributing to the remuneration of scientific or technical professors or teachers and by providing or contributing to the award, scholarships, prizes, grants to students or otherwise and generally to encourage, promote and reward studies, researches, investigations, experiments, tests, and inventions of any kind that may be considered by the Company likely to assist in business which the Company is authorised to carry on or otherwise useful for the Company.

A copy of the resolution of the Board of Directors and a copy of the special resolution passed unanimously in the general meeting of the company have been filed with the petition as Annexures there to. Broadly speaking, the objects

sought to be added by the alteration in question cover two fields viz.,

(1) to empower the company to make donations or subscriptions, etc., for scientific research; and

(2) to fit up and furnish any property as a guest house or a hotel, restaurant, etc., and to do business of hoteliers, etc.

5. Notice of this petition was issued to the Registrar of Companies, Punjab. The petition was also published in the Official Gazette, the English Daily-"Indian Express" and in the Punjabi Daily-"Jathedar". The Registrar has filed his affidavit, dated July 17, 1971, in paragraph 3 of which he has raised objection to the proposed amendment contained in Sub-clause (xiii-a) as introduced by the special resolution relating to fitting up and furnishing any property as guest-house or hotel, etc., and letting out those properties as hoteliers, etc., in the following words:

With reference to the contents of para 7 of the said petition, the deponent submits that the additional objects as stated in Sub-clause (xiii-a) of the Memorandum of Association cannot be conveniently and advantageously combined with the existing business of the company. The company is at present engaged in the manufacture and sale of cables. The new business proposed to be set up by the company namely the business of hotel, restaurant, cafe, road house, hotel, holiday camp, caravan site and apartment-house keepers, etc., is not in any way directly or indirectly connected with the said business. The existing sub-clauses of the object clause of memorandum of association also do not indicate any connection of the said new business with any of the present-objects. The proposed alteration does not fall under any of the Clauses (a), (b) or (d) of Sub-section (1) of Section 17 of the Companies Act, 1956.

The Registrar has, however, stated that so far as the second proposed addition in the object clause of the Memorandum of Association of the petitioning. company is concerned (viz., Sub-clause (xxix-a) authorising the company to make donations, etc., for scientific research) the Registrar does not oppose the same. No other objection against any of the two proposed amendments has been received from any source.

6. It has not been disputed, and indeed it is clear from the balance-sheets and profit and loss accounts of the company shown to me, that the company is already dealing in buying and selling lands and property. The annual report of the company for the period ending October 31, 1964 (filed with L.M. 105 of 1971) shows amongst its "Current Assets" land for sale at Mewla worth Rs. 3,29,256 as on October 31, 1963 and worth Rs. 6,912 at the end of the relevant period. This, and other entries to which reference is hereinafter made, clearly show that the land was treated and shown by the company all along as one of its stock-in-trade. On the expenses side of the trading account of the company in the same annual report, cost of land sold is shown to be Rs. 3,22,344.25 paise. On the income side Rs. 5,27,275 are shown to have been earned by sale of land (plots).

In the 12th annual report and accounts for 1967-68 (also filed with the same L.M.) "Land for sale at Mewla and Hissar" is shown amongst "Current Assets" to be worth Rs. 76,087 as on October 31, 1967 and worth Rs. 21,935.51 Paise at the end of the year. In the profit and loss account for, the same period, profit on sale of land at Hissar is shown as Rs. 57,336.51 paise by subtracting Rs. 78,043.49 paise the cost of the land sold from the sale proceeds amounting to Rs. 1,35,380. The profit earned by the sale of land at Hissar is shown under the heading "Stock in hand as on 31st October, 1968". In the balance-sheet contained in the annual report and accounts of the company for 1969-70, land for sale at Mewla is shown under "Current Assets" as worth Rs. 6,912 on the opening day and worth the same value on the closing day. Under the heading "Income" in the profit and loss account for the same year, Rs. 27,500 is shown on the income side to have been received for the year ending October 31, 1969, by sale of land at Hissar. My reference was invited to these facts and figures by Mr. Dang, the learned Advocate for the company, to show that the business of dealing with land and property on an extensive scale is one of the existing businesses of the Company. It cannot, therefore, be said the proposed new business is not connected with the existing businesses of the company. Relevant portion of Section 17(1)(d) of the Act states

17(1) A company may, by special resolution, alter the provisions of its memorandum-with respect to the objects of the company so far as may be required to enable it

(a)....

(b)....

(c)....

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

(e)....

(f)....

(g)....

Whereas Mr. Dang contends that the new business in question is covered by the above-quoted provision, Mr. D. N. Awasthy, the learned Counsel for the Registrar, submits to the contrary.

7. The principles on which a special resolution amending the objects clause of the Memorandum of Association of a company may or may not be confirmed by the Court u/s 17(1)(d) of the Act may be summarised thus

(1) A company is normally free to alter its objects clause as it is for its members to decide as to what business the company should carry on from time to time. The Court cannot embark on an enquiry into the question whether the opinion of

the members of the company is or is not justified or well-founded. This is particularly so when the resolution of the company is unanimous and there is no objection to the proposed alteration by any creditor or any other persons interested in the company. The Court will not lightly interfere with the unanimous decision of the shareholders subject to the restrictions contained in Section 17;

(2) It is not necessary that the proposed new business must be ancillary or similar to the existing business or businesses of the company. "Some business" in Section 17(1) means and implies some new business not already provided for in the object clause and not necessarily ancillary to the existing businesses. The proposed new (business may even be entirely new and may amount to a departure from the old businesses;

(3) The special resolution is not confirmed by the Court if it is found that the proposed new business would be so inconsistent or incongruous with its existing businesses as to be destructive thereof. This is clearly suggested by the use of the word "combined" in Section 17(d) of the Act as two mutually destructive things cannot be combined together;

(4) The resolution will be confirmed only if the Court finds that the company is in sound financial position to embark upon and carry on the. new businesses and that the substratum of the company has not already been so corroded as to make it improbable for the company to carry on the new business profitably

(5) The expected and intended advantage of the proposed new businesses to the shareholders of the company must also be kept in view; and

(6) No hard and fast, inflexible and rigid, rule can be laid down for determining whether the proposed new business can or cannot be conveniently and advantageously combined with the business of the company. This question has ultimately to be decided in accordance with the facts and. circumstances of each case that may come up before the Court and must be decided in the perspective of the question being essentially a business proposition which has normally to be determined by the persons engaged in the business of the company and without the Court introducing a new bar to the amendment of the objects clause of a company, which restriction is not prescribed by the Legislature. Nor is the interest of the public at large relevant in all cases.

8. It does not appear to me to be necessary to refer to the facts and circumstances of cases covered by a chain of authorities, to which my attention was invited in this respect by the counsel for the Petitioner. In fairness to Mr. Dang, however, I may notice those judgments-In re Ambala Electric Supply Company Ltd. (1963) 33 Comp. Cas. 585; In re: Modi Spinning and Weaving Mills Company Ltd. (1963) 33 Comp. Cas. 901; In re: Motilal Padampat Sugar Mills Company (Private) Ltd. (1864) 34 Comp. Cas. 86; In re: Dalmia Cement (Bharat) Ltd. (1964) 34 Comp. Cas. 729; In the matter of In Re: Standard General Assurance Co. Ltd., , Juggilal Kamlapat Jute Mills Company Ltd. v. Registrar of Companies (1967) 37 Comp. Cas. 20; In re: New Asiatic Insurance

Company Ltd. (1067) 37 Comp. Cas. 331; and Straw Products Ltd. v. Registrar of Companies (1969) 39 Comp. Cas. 974.

9. On the facts and circumstances of this case, to which reference has already been made," I am satisfied that the financial position of the company is more than sound, that the rights and interests of the members of the company and the rights and interests of the creditors of the company are not likely to be prejudicially affected by the alteration in question and that the proposed new business under the existing circumstances, can be conveniently and advantageously combined with the previously authorised: businesses of the company. I am unable to find any legal impediment in the confirmation of the special resolution. I, accordingly, allow this application and confirm the special resolution, passed in the 14th Annual General meeting of the company, dated April 30, 1971 (Annexure "C" to the petition). The Registrar, who appears to have contested this application without any just cause, shall pay. the costs of the company. Formal order shall be drawn in accordance with law.