

(1966) 11 CAL CK 0003
In the Calcutta High Court

In Re: Mackinnon Mackenzie and Co. Pvt. Ltd.

Date of Decision : 30-11-1966

Acts Referred:

Companies Act, 1956 — Section 189

Citation : (1967) 37 CompCas 516 : 71 CWN 340

Hon'ble Judges : A.N. Ray, J

Bench : Single Bench

Advocate : Sankar Ghose and S.B. Mukherjee, for the Appellant; S.C. Sen for the State of West Bengal and P.K. Sen for the Registrar, for the Respondent

Final Decision : Allowed

Judgement

A.N. Ray, J.—This is an application for an order that the alteration of the Memorandum of Association of the company, to wit Mackinnon Mackenzie & Co. Private Ltd., sought to be effected by the special resolution set out in paragraph 6 of the petition and passed at the General Meeting of the company held on 2nd November, 1965 be confirmed.

2. The Petitioner Mackinnon Mackenzie & Co. Private Ltd. was incorporated on 30 March, 1951 under the provisions of the Indian Companies Act, 1913 as a public limited company. The company became a private limited company on and from 27 March 1956 and the name of the company was changed to Mackinnon Mackenzie and Company Private Limited as from 16 June, 1961. The registered office of the company is situate at 16 Strand Road, Calcutta.

3. The capital of the company was Rs. 4 crores divided into one Land Acquisition Collector 6 per cent cumulative taxable preference shares of Rs. 100 each and three lacs ordinary shares of Rs. 100 each. The issued and subscribed capital of the company is Rs. 1,00,00,000.

The objects for which the company was formed are various as have been set out in paragraph 4 of the petition.

4. By a special resolution of the company duly passed in accordance with Section 189 of the Companies Act, 1956 at a General Meeting held on 2 November, 1965

at the registered office of the company after due notices as provided in the Act, it was unanimously resolved as follows: "That the Memorandum of Association of the Company be altered by the deletion of Clause 2 therefrom and by the substitution of the following clause in place thereof:

The registered office of the company will be situate in the State of Maharashtra.

5. It is alleged in the petition that the directors and shareholders of the company considered that it was necessary and desirable that having regard to the business activities of the company the registered office of the company should be transferred from Calcutta to Bombay and that such alteration would enable the company in carry on its business more efficiently and more economically. At the time of incorporation of the company, the company was a managing agent of British India Steam Navigation Limited and major part of the business of the company used to be carried on at Calcutta. The company has a branch office at Bombay. It is alleged that the major part of the business of the company is now carried on at Bombay and not at Calcutta. The further allegations in the petition are that formerly the number of services from or through Calcutta were considerably larger and that in Bombay the company acts as operators of various services of British India Steam Navigation Company Limited and those services are Bombay Gulf Passenger Service, India/Africa Cargo and India/Africa Passenger Service, Africa/India Cargo Service, India/Straits passenger Cargo Service. The Cal. office of the company, it is alleged, is responsible for the operation of four services, namely, Bay of Bengal/Far East and India/Australia, Gulf/Australia and India/New Zealand Services. The Bombay office of the company is alleged to be the senior representative of the Peninsular and Oriental Steam Navigation Company Limited who do not have any cargo vessels calling at Indian ports but have large passenger vessels calling at Bombay only. The Bombay office is also alleged to be responsible for the documentation and embarkation of all passengers traveling by the Peninsular and Oriental Steam Navigation Company Limited from India irrespective of their place of booking.

6. The other allegations in the petition are that the transfer of the registered office from Calcutta to Bombay would bring about economy in the management of the affairs of the company and that it would be administratively more convenient, that the secretarial work involved would be undertaken by the Bombay office particularly as the Chairman of the Board of Directors and the Secretary of the Company are residents of Bombay. It is alleged in the petition that since the last Great War the company lost Indian coastal trade and further lost the Calcutta/Burma, Calcutta/Malaya Passenger trades because of immigration restrictions in Burma and Malaya. On the contrary, it is alleged that Bombay did not lose as many of its Bombay coastal trades with the result that Bombay became a more important port than Calcutta and most of the company's senior staff were posted at Bombay.

7. It is also alleged in the petition that with the termination of the company's managing agency of the British India Company, the company lost a great deal of

its work in London and work was transferred from Calcutta to Bombay because the senior staff who had to handle such work had already been posted at Bombay. Apart from one Director and one Shipping Manager being at Calcutta, the rest are all at Bombay, namely, the Managing Director, the Chairman, the Branch Manager, the Chief Accountant and Secretary, the Staff Manager, the three Shipping Managers and a Passenger Manager. Further, the head office of the company was transferred from Calcutta to Bombay in the month of August, 1964. It is alleged that most of the business of the company are now being carried out at Bombay and most of the vessels that the company operates pass through Bombay. It is also alleged that the British India Company's technical staff who are responsible for the maintenance of the ships and for rendering services to the company's vessels in the East are posted at Bombay.

8. It is also alleged that the major asset of the company is the office building of the company at Ballard Estate in Bombay and that the said building is four storeyed and covers a large area in the central place and the market value of the building is approximately Rs. 50 lacs. The company has a leasehold interest at 16 Strand Road, Calcutta where the Calcutta office is situate and the lease in favour of the company will expire in three years' time. The company has sublet portions of the building and thereby earns a gross income of about Rs. 19 lacs per annum, but it is alleged that the rent will cease with the termination of the company's leasehold interest. It is alleged that it is desirable that the head office and the registered office should be situate at Bombay where the company has its major assets.

9. The company is a wholly owned subsidiary of the British India Steam Navigation Company Limited which is the beneficial owner of the entire share capital. It holds 99,999 shares in its own name and one share in the name of its nominee the Asiatic Steam Navigation Company Limited. Both the said companies considered that the transfer of the registered office from Calcutta to Bombay would be advantageous to the company. In paragraph 11 of the petition it is alleged that the volume of business transacted through the Bombay office of the company is in excess of that effected through the Calcutta office. In the year 1962/63 the Calcutta turnover was Rs. 57,17,815 and the Bombay turnover was Rs. 57,10,559. The Calcutta turnover of the two subsequent years was Rs. 48,94,997 in 1963/64 and Rs. 50,92,870 in 1964/65. The turnover of the Bombay office in 1963/64 was said to be Rs. 71,14,028 and in 1964/65 Rs. 73,53,189.

10. The paid-up capital is Rs. 1,00,00,000 and the assets of the company are Rs. 1,83,83,878. The liabilities of the company are Rs. 93,90,127. The excess of assets over liabilities is Rs. 89,93,751.

11. The application was contested by the State of West Bengal and by the Registrar of Companies. On behalf of the State of West Bengal there is an affidavit of Chittaranjan Gautam affirmed on 27 June, 1966. There is another affidavit affirmed by Chittarajan Gautam on 9 September 1966. The September

affidavit of Chittaranjan Gautam was in answer to the application of the company for amendment of the petition. The company made an application for amendment of the petition and as a result thereof para. 9A consisting of sub-paragraphs (a) to (j) were introduced in the petition. The September affidavit of Chittaranjan Gautam was used in answer to that application for amendment and at the hearing of the present application the September affidavit of Chittaranjan Gautam was used as the affidavit in answer to the paragraphs introduced in the petition for amendment. In the June affidavit of Chittaranjan Gautam it is alleged in paragraph 9 that the company took advantage of the benefits offered by the State of West Bengal and built up its fortune and it is denied that the registered office of the company should be changed. In paragraph 11 of the petition it is alleged that the company started gradually shifting volume of work done by Calcutta office to other establishments like Bombay. In paragraph 12 of the affidavit in opposition it is alleged that the retrenchment of staff would increase unemployment in West Bengal. It is also alleged in the affidavit that the assessment of tax depends on the situation of the registered office and if the registered office is transferred the allocation of the amount by the Central Government to the State of West Bengal will be reduced and there would be loss of revenue. The further allegations in the affidavit are that in 1958 the company retired 150 employees and though the condition of retirement was 30 years of service or 55 years of age whichever was later the company restricted to the term of 30 years of service irrespective of the attainment of 55 years of age. In 1960 another group of 100 employees was retrenched on the ground that they were redundant to requirement. In 1963 the company prematurely retired 365 employees. In the month of May 1966 it is alleged that the representatives of the company met the Deputy Labour Commissioner, West Bengal and reliance is placed on the letter dated 14 June 1966 written by the Deputy Labour Commissioner to the Assistant Secretary to the Government of West Bengal. In that letter it is stated that there is apprehension of the employees about their security and steps should be taken to safeguard their interest.

12. u/s 17 of the Companies Act 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. In the present case there is a resolution. The positive grounds in support of the proposed change can be broadly stated to be, first, that the head office is at Bombay since about the year 1964, secondly, the control of the Company is at Bombay, thirdly, it would be advantageous to have the registered office at Bombay, fourthly, the volume of business is larger at Bombay because of coastal restrictions and difficulties of trade with Burma and Malaya, fifthly, the number of calls of ships is larger at Bombay, sixthly, the number of employees is larger at Bombay, seventhly, the senior staff is at Bombay, and eighthly, there is the estate of the company at Bombay and the market value thereof is Rs. 50,00,000/- whereas the Calcutta leasehold interest of the company will expire in 3 years" time.

13. The main contentions on behalf of the State of West Bengal and the Registrar

of Companies are that there will be loss of revenue to the State of West Bengal, secondly, that the petition does not show that any economy will be made by the proposed transfer of registered office to Bombay and thirdly, the resolutions are not validly passed and the notice in respect of the resolution suffers from the vice of lack of material particulars.

14. One of the questions canvassed in the present application is whether the State has any locus standi. In Section 17 of the Companies Act it is stated that 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 and in the various Sub-sections thereof it is stated that alteration shall not take effect until, and except in so far as, it is confirmed by the Court on petition, and before confirming the alteration, the Court must be satisfied 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 interest will in the opinion of the Court, be affected by the alteration. The contention on behalf of the Petitioner is that the State is not a person contemplated in Section 17 of the Companies Act. It should be stated here that Sub-section (4) of Section 17 of the Companies Act specifically mentions notice of the petition on the Registrar. The State is not mentioned separately and it is contended on behalf of the Petitioner that the State is not a class of persons contemplated in Section 17.

15. In the present case notice was given to the State. The State appeared pursuant to the notice. Counsel on behalf of the State contended first, that inasmuch as notice was given to the State and secondly, the Court directed such notice and there has been no appeal preferred from that order, the State is entitled to appear and finally since the State appeared the State could be heard as an *amicus curiae*. Counsel on behalf of the State also contended that Sub-section (3) of Section 17 of the Companies Act enacted that before confirming the alteration the Court must be satisfied 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 interest will in the opinion of the Court be affected by the alteration and therefore the Court had power to give notice to the State because the State represents the interest of the public. In aid of that contention Counsel for the State relied on the observations of Eve, J., in the case of (1) Jewish Colonial Trust Limited, reported in 1908 2 Ch. 287. In the Jewish Colonial Trust case (*supra*), the Court dealt with an application for confirmation of alteration in the Memorandum of Association of a company involving the abandonment of objects of fundamental character limiting the operations of the Company from a world-wide area to a comparatively small prescribed region. It was said that the principles laid down for the guidance of the Court in dealing with the applications for confirmation of reduction of capital u/s 11 of the English Companies Act, 1867 applied to the case of applications for confirmation of an alternation of the Memorandum of Association u/s 1 of the Companies (Memorandum of Association) Act, 1890 and accordingly all that the Court had to decide whether the alteration was fair and equitable as between the members of the company

and the Court was not concerned to consider the wisdom or desirability of the proposed alteration.

16. In the Jewish Colonial Trust case (*supra*), reliance was placed on the decisions in (2) *British and American Trustee and Finance Corporation v. Couper*, reported in 1894 AC 399. In the *British and American Trustee and Finance Corporation* case (*supra*), a scheme of reduction was put forward for confirmation by the Court under which the shares of one class of shareholders were to be cancelled, the shareholders withdrawing from the Company and receiving in exchange for their shares certain of the assets of the Company. The creditors of the Company either were paid or assented to the arrangement and when the petition for confirmation came on to be heard the interest of the shareholders had to be considered. The petition being opposed was dismissed by the trial Court and the Court of appeal and both the decision were reversed in the House of Lords, Lord Herschell said that there was no danger in the conclusion that the Court had the power of confirm such a scheme and that it was the policy of the legislature to entrust the prescribed majority of the shareholders with the decision whether there should be a reduction of capital and if so how it should be carried into effect. Lord Herschell also said that the interests of the dissenting majority of the shareholders were safeguarded by the consideration that the decision of the majority could only prevail if it were confirmed by the Court. Lord Macnaghten in (3) *Poole v. National Bank of China Limited*, reported in 1907 AC 229 said that a company limited by shares may by special resolution modify the conditions contained in the memorandum and reduce its capital and the exercise of the power was fenced round by safeguards which were calculated to protect the interest of creditors, the interest of shareholders and the interest of the public. Counsel for the State relied on the observations of Lord Macnaghten that the exercise of the power was fenced round by safeguards which were calculated to protect the interest of the public and that the public were therefore entitled to be represented and the State was entitled to be heard in the interest of the public.

17. The other decision on which Counsel for the State is relied (4) *Ex parte Wesburn Sugar Refineries Limited*, reported in 1951 Act 625: (1951) 1 AE LR 881. Counsel for the State contended that the decision in *Wesburn Sugar Refineries Limited*, (*supra*) was also an authority for the proposition that the Court before confirming a resolution safeguarded the interest of the public and interest of the public predicated that the State would be heard of expound such interest and protect such interest. *Wesburn Sugar Refineries Limited* case (*supra*), case also related to an application for reduction of share capital. Counsel for the State relied on the observations of Lord Reid which are as follows:

When then is the duty of the Court in considering a matter of this kind? In the first place, the interests of creditors must be safeguarded, but here that has been done. Secondly the interest of shareholders may have to be considered, but in this case there has been no opposition by any shareholders at any time and it

is difficult to see how there could be any prejudice to any single shareholder. Thirdly there is the public interest to consider. That this is a relevant consideration was clearly recognised by Lord Macnaghten in *Poole v. National Bank of China Limited*, (supra). I would not be disposed by attempting to define the public interest to narrow in any way the discretion of the Court in any future case, but in a case like the present I think it is right to scrutinize the facts somewhat closely, having in mind the position of those who may, in future form connections with the Company as creditors or shareholders.

18. Extracting these observations from the decisions in the *Wesburn Sugar Refineries Limited* case (supra), the *Jewish Colonial Trust Limited* case (supra), and the observations of Lord Herschell in *British and American Trustee and Finance Corporation v. Couper*, (supra), and of Lord Macnaghten in *Poole v. National Bank of China Limited*, (supra), Counsel for the State contended that the State represented the interest of the public. The decisions on which Counsel for the State relied do not to my mind support the contention of the State. The interests of the public in those cases were confined to the case of creditors, shareholders, who would in future be brought in contact with the Company. While the interests of the public were referred to in the decisions which related to the case of reduction of capital the Court considered not merely the interest of the shareholders and creditors as were present at the time of the application but also of the public who in future would come to have dealings and transactions with the Company in that character. Counsel for the State contended that the right of the State to appear in the present case arose because of the public interest that the State had in relation to revenue interest and interest in the employment problem of the State.

19. The observations of Lord Radcliffe in *Wesburn Sugar Refineries Limited*, (supra), indicate as to what the interest of the public means:

What is in question is a reduction of capital by repaying some paid-up share capital. If the transaction is itself competent, the Court should only fuse its confirmation if what is proposed to be done is somehow unfair or inequitable, and the consideration of what is unfair and equitable cannot well extended beyond consideration of the interests of creditors, shareholders and the general public, by which term is, I think, meant persons who may in the future have dealings with the company or may be minded to invest in its securities.

These observations show beyond any doubt that the interest of the public in regard to reduction of capital referred to such persons as in future would have dealings with the company or the shareholders. Those are not the rights that the State appears for in the present case.

20. In view of the fact that there is notice to the State in the present case the State is indisputably bound to be heard. That right cannot be denied. The question as to what extent the State will be entitled to prefer its objections is quite a different aspect. In so far as the provisions of Section 17 of the

Companies Act are concerned with regard to notice being 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 alteration, it was contended by Counsel for the State that every other person whose interest would in the opinion of the Court be affected would include the State. It would not be proper to lay down any hard and fast rule as to when and under what circumstances it will be in the opinion of the Court desirable to give notice to any particular person including the State. I am told by Counsel for the parties that in an application for change of office from one State to another it is the practice of the Court to issue notice to the State to find out as to whether any revenues are due and owing to the State. That is understandable as to whether the State is being deprived of its legitimate dues and if so the Court will protect the interest of such creditors. I am unable to accept any abstract and inflexible proposition that the State has a right of its own to be heard. It is only because the State has been given notice that the State is being heard in the present application. Section 17 does not speak that the State as an entity is entitled to notice or to be heard. Counsel for the Petitioner did not also contend that the State could not be heard in the present application and that was because notice had already been directed by the Court to the State.

21. The next question is that if the State is entitled to be heard in the present application in view of notice having been directed to the State to what extent will the State be entitled to object and what would be the character of objections. In other words will there be any restriction on the matters that the State can agitate? This question became important because the State put in the forefront the contention that any change of office from Calcutta to Bombay would mean loss of revenue to the State. It was said by Counsel for the State that the company paid taxes in Calcutta and therefore if the registered office of the company were changed to Bombay the State would lose revenue. Counsel for the State submitted that it had all along been the view of the State of West Bengal that the State was entitled to a large share of income tax revenue because of collections of large revenues from the State. The allocation of income tax revenues to different States has from time to time been advocated either on the principle of collection or on the principle of population. Reference was made by Counsel for the State to the Report of the Finance Commission, 1965, where it is stated at page 19 of the report that it has been decided that the number of distribution to individual States to their share in the divisible pool of income tax proceeds should be the same as recommended by the First Finance Commission and by the Third Finance Commission, that is to say, 80 per cent on the basis of population and 20 per cent on the basis of collection. It is said on behalf of the State that the change of registered office of the company would deprive the State of its revenues. Counsel for the Petitioner on the other hand contended first that no particulars were given by the State as to what would be the amount of loss and secondly, that question of loss of revenue would be irrelevant and thirdly, that the Union of India was to be considered as an entirety and it would

be unfair and parochial to speak of loss of revenue to any particular state because in the ultimate analysis what might be loss to one State would be gain to another State and the loss would be neutralized by gain and there would never be loss to the totality as a whole.

22. Reference was made by Counsel for the State to the decisions in (5) Orient Paper Mills Ltd. and Another Vs. The State, and the decision (6) In Re: Orissa Chemicals and Distilleries Private Ltd., in support of the contention that the loss of revenue was a matter which should be considered by the Court. In the case of Orient Paper Mills Limited (*supra*), the registered office of the company was originally situated in West Bengal and then it was changed to Orissa and thereafter an application was made for change of the office from Orissa to West Bengal. In that application it was contended on behalf of the State of Orissa that the State would be deprived of a large portion of the revenue if that registered office were transferred. It was said that if the income tax was levied at the place where the registered office of the company was situate the State of Orissa would lose a considerable portion of the contribution and the income would therefore be affected by change of registered office. Counsel for the State relied on the observation at page 237 of the report (AIR 1957 Orissa) that the Indian Constitution is of a federal type and each unit of the federation has exclusive fields of State activity and is entitled to develop its State in its own way and the interests of the State are to be taken into account and are of considerable importance in confirming special resolutions of the companies if they have adverse effect on the interests of the State concerned. In the other decision in the Matter of Orissa Chemicals and distilleries Private Ltd., (*supra*), it was held that the State of Orissa was a person whose interests would be affected by the alteration and was therefore entitled to be heard. I have already indicated that it will depend on the facts and circumstances of each case as to whether the State comes within the clause of Section 17(3) to be entitled to notice. In the Orissa Chemicals and Distilleries Limited case there was sales tax aspect and this naturally brought the State within the class of creditors who were entitled to notice.

23. The contention on behalf of the Petitioner that the State has not given particulars of loss of revenue must be upheld in the facts and circumstances of this case because there is no suggestion as to what loss in revenue will be. As far as the concept of India as a federation is concerned it will be parochial to consider any State as having predominant or overwhelming interest in relation to Income Tax revenue which is a central subject and field. The economy of a State depends on various factors and it is said by Counsel for the State that the economy should be nourished and should not be allowed to famish by any loss of revenue. If in the administration of justice it is said that the revenue of Bengal will have to be thought of when any company wishes to transfer its office from Bengal, it will be equally pertinent to consider that there will be gain of revenue to another State and if interest of a State is at all relevant then interest of both States should have to be considered by a Court of law.

24. In the case of (5) *Orient Paper Mills Ltd. and Another Vs. The State*, , the objections on behalf of the State of Orissa were inter alia that the change of office would affect the revenue of the State with reference to income tax and sales-tax. The contention was examined with reference to the amount of income tax paid by Orient Paper Mills Limited and an observation was made that the State of Orissa would lose a considerable portion of the contribution of the Central Government from out of the income tax realised through the State. It was also held that the proposed alteration of memorandum in the Orissa case affected the revenue of the State of Orissa to a considerable extent. In the other case of (6) *In Re: Orissa Chemicals and Distilleries Private Ltd.*, , the State of Orissa contended that considerations of income tax, sales-tax, were open to be canvassed by the State in opposing an application for change of registered office. It was also held in the case of *Orissa Chemicals and Distilleries (P) Ltd.*, (supra) that the question of loss of revenue of income tax was a relevant consideration. It is significant that when the registered office of Orient Paper Mills was changed from Bengal to Orissa there was no objection to loss of revenue.

25. As to whether the loss of revenue of a State is a relevant consideration in an application u/s 17 of the Companies Act, Counsel for the Petitioner relied on the observation of the House of Lords in the case of *Wesburn Sugar Refineries Limited*, reported in 1951 AC 625 : (1951) All ER, 881. *Wesburn Sugar Refineries Limited* case was with regard to reduction of capital. The provisions regarding reduction of capital in the English Companies Act, 1948 are to be found in Section 68. It is stated there that the Court if satisfied with reference to every creditor of the company who is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit. It is also enacted in the English Companies Act that where the Court makes an order of reduction of capital, the Court may make an order directing that the Company shall add to its name the words "and reduced" and make an order requiring the company to publish the reasons for reduction. In the *Wesburn Sugar Refineries* case one of the contentions was that the company was threatened with nationalization and the Court should not aid the company threatened with nationalization to "eviscerate" itself by parting with valuable assets. In dealing with the contention Lord Radcliffe said that the contingency of nationalization did not have any relevance to the public policy which the Courts of justice should support and if the reduction was objectionable on other grounds it would not become the more acceptable because it might have been proposed in view of a pending measure of nationalization and conversely the threat of nationalization could not render improper what was otherwise unobjectionable. Counsel for the Petitioner extracted the observations of Lord Radcliffe in the *Wesburn Sugar Refineries* case and contended that if the case of nationalisation was not of relevance in an application for reduction of capital any loss of revenue to one State would not be of any relevance because in the totality of revenue for the

Republic of India there was no loss and sectional interest and parochial considerations should not enter the arena of administration of justice.

26. The other contention of Counsel for the Petitioner was that the jurisdiction of the Court was attracted whenever a company passed a resolution to the effect that the company sought to change its office and the jurisdiction of the Court was not dependent upon any condition that there might be possibility of loss of revenue of income tax. Reliance was placed on the decision of the House of Lords in *Poole v. National Bank of China Limited*, (supra), in support of that contention in *Poole's* case the company presented a petition for sanction of the Court to a reduction of capital. The petition was opposed by holders of certain quantities of founders' shares. The Court made an order confirming the special resolution of the company for reduction of capital and that order was affirmed by the Court of Appeal. Lord Macnaghten observed that the public, the shareholders and every class of shareholders individually and collectively were protected by the publicity of the proceedings and by the discretion entrusted to the Court. the creditors are similarly protected by the express provision of the statute, namely, that their claim must be satisfied. In *Poole's* case it was contended before the House of Lords that the Court has no jurisdiction to entertain a petition for reduction of capital unless it was proved that the capital which the company proposed to cancel was lost or unrepresented by available assets. Lord Macnaghten repelled that condition by holding that the condition that gives jurisdiction to Court is not proof of loss of capital or proof that capital is unrepresented by available assets or that capital is in excess of the wants of the company but that jurisdiction arises whenever the company seeking reduction passed a special resolution to that effect. In essence the contention of Counsel for the Petitioner is that if there is a compliance with the statutory provisions the jurisdiction of the Court is attracted and the Court will exercise its discretion.

27. It is necessary at this stage to refer to the provisions of Section 17 of the Companies Act and examine the rival contentions as to whether Clauses (a) to (g) of Sub-section (1) of Section 17 of the Companies Act are applicable or referable to the case of a company changing the place of its registered office from one State to another. In Sub-section (1) of Section 17 it is stated that 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 out business more economically or efficiently, (b) to attain its main purpose by new or important means, (c) to enlarge or change the local area of its operation, (d) to carry on some business which under the 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 in 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, 1st, it appears that the case of change of registered office and the case of alteration of objects are dealt with

separately as two different limbs of Sub-section (1) of Section 17 of the Companies Act. Secondly, it appears that Clauses (f) and (g) in Sub-section (1) of Section 17 which refer to sale or disposition of the undertaking or amalgamation with any other company cannot apply to a case of change of registered office from one State to another. Again, what appears under Clause (c) namely, enlarging or changing the local area of its operation, it is against the scope and content of Section 17 of the Act that a company can change the place and registered office from one State to another to enlarge the local area of its operation. Further, what appears in Clause (e) namely, to restrict or abandon any of the objects specified in the memorandum cannot apply to the case of change of registered office. Counsel for the State and Counsel for the Registrar didn't contend that Clauses (a) to (g) or Sub-section (1) of Section 17 really could have application to change of registered office from one State to another but they both contended that the principles embodied under Clauses (a) to (g) as far as possible should be applied to test the cases of change of registered office, Counsel for the State referred to the unreported decision dated 19 July 1965 in Company Petition No. 225 of 1962 in the Matter of Indian Aluminium Company Limited, where the Court did not allow the change of office from West Bengal to the State of Maharashtra. It was held that the applicant in that case did not make out sufficient grounds for change of office and it was also held in the case that Clauses (a) to (j) of Sub-section (1) of Section 17 of the Companies Act were unrelated to the change of registered office from one State to another.

28. The cases of alteration of objects of the company have usually been decided with regard to two broad principles. First it is a matter which primarily concerns its members and creditors and if these classes of people including the debenture-holders do not object, alteration of objects is permissible. Secondly if it is not shown to the Court that there is any objection to the case of alteration of objects, it is also permissible to alter the objects. In the case of (7) Parent Tyre Company Limited, reported in (1923) 2 Ch. 222, an alteration of objects was sought for to carry on the business. It was held that it was essentially a business proposition whether an additional business could or could not be conveniently or advantageously carried on under existing circumstances with the existing business of the company. The limitation that could be put upon such an additional business was that it should not be destructive of or inconsistent with the existing business. The decision in Parent Tyre Company case illustrates what is known as the business wisdom of the shareholders and members of the company and the Court usually does not disturb such business propositions of the company unless there are other objections. Counsel for the Petitioner relied on the decision in Parent Tyre Company case to advance his contention that it was for the companies to state as to whether change of office would be beneficial or not and the State had no locus standi to object on the question of loss of revenue and the State could only resist as an ordinary person and not in advancement of revenue interest.

29. The right of a State as such to appear in application u/s 17 of the Companies

Act does not flow from the provisions of the section. I am of opinion that there is no statutory right of the State as a State to intervene in application u/s 17 of the Companies Act with regard to change of registered office. If notice has been directed by the Court to the State, the State appears pursuant to the notice. If notice is given to secure whether revenues have been paid or not the Court in exercising the discretion sees that a company before removing its office from one State to another does not leave liabilities to the State undischarged. The Court in making an order can impose terms to secure discharge of such liabilities. It is true that the decisions of the Orissa High Court have considered the contentions advanced by the State as to the possibility of loss of revenue and have held such matters to be relevant in consideration of change of office. In my opinion no hard and fast rule can be laid down that under no circumstance it is open to the State to contend that there may be loss of revenue. Suppose a large number of companies desire to change their registered office from one State to another it may be open to the State to contend the possibility of disturbance in the economy of the State. In the ultimate analysis the question of revenue if it fails for consideration is to be considered on the basis of the integrity of the Republic of India and not in sectional and parochial manner. To hold that the possibility of loss of revenue is not only relevant but of persuasive force in regard to change of office from one State to another is to rob Section 17 of the Companies Act of the statutory power conferred on a company to change its registered office and also to impose upon the statute a limitation with regard to change of office. In the administration of justice no interest of State can be thought of in a sectional manner. Allocation of revenue, allocation of funds out of income tax to the States is a matter for the Centre and in interpreting Section 17 of the Companies Act the Court is to see whether all the formalities of the statute have been complied with and if the safeguards and protection envisaged in the section have been complied with. First, the Court will look to the interests of absent shareholders. Secondly, the Court will look to the interest of the creditors and thirdly, the Court will look into the objection that the Registrar may have. Objections of the Registrar may be that the Annual Returns have not been filed. There may be other objections advanced on behalf of the Registrar, namely, that the company has not complied with the statutory requirements.

30. In the present case as far as the shareholders are concerned, they are only two in number and they have signified their consent and their interests are protected. With regard to the contention on behalf of the State as to the possibility of loss of revenue, I am of opinion that the facts and circumstances of the present case do not indicate any materials on which it can be said that there is any loss of revenue, secondly, if there is any possibility of loss of revenue to one State there is the corresponding likelihood of gain of revenue to another State, thirdly, justice demands that in considering applications u/s 17 for change of registered office from one State to another, the matter should be looked at from the point of view of the Republic of India as a whole and for advancement of local or sectional interest. Fourthly, the question of income tax raises the

discussion as to whether the income tax is being assessed. On behalf of the company it is said that if the head and control of the company is at Bombay, the company will be assessed there and not where the office is situate. Reliance is placed on the observations in Buckley on the Companies Act, 13th Ed. at page 249 that for the purpose of income tax Acts the place of registration of the company is not, any more than the birth place of an individual, conclusive as to its residence. The provisions contained in Section 6(3) of the income tax Act indicate that a company is said to be resident if during that year the control and management of its affairs is situated wholly in India. The head and seat and directing were of a company's affairs indicate the direction, management and control of a company and it is said that a company would be resident if the meetings of the directors who manage and control the business are held in this country. In the present case there are no materials placed by the State to indicate as to where the company is assessed and how loss of revenue will arise. Counsel on behalf of the State relied on the affidavit of Nazir Latif affirmed on 6 August 1966 and annexure thereto in support of the contention that income tax was being assessed upto 1966 at Calcutta. At page 19 of the annexure to the affidavit of Nazir Latif affirmed on 6 August 1966 it will appear that there are items mentioned as income tax account. But as I have already indicated, there is nothing to show that assessment is made at Calcutta or that any loss will arise. Assuming loss were to arise it would be a matter for greater details as to what would be the proportionate loss. If the Court on such materials found that the dominant factors in favour of the change of office were the resolution of the company and the interests of the creditors and shareholders then the question of possibility of loss of revenue for one State would have to be considered in the total conspectus of revenue for the Republic of India and it would not be desirable to pout the consideration of revenue of one State as the determinant to turn the scale in regard to the change of office from one State to another.

31. With regard to the grounds for change of registered office, it was contended on behalf of the State of West Bengal that the Chairman and the Chief Accountant were at Bombay and the head office was also at Bombay, and therefore the story of economy was illusory. In particular, it was said that if the Calcutta office had to be maintained no establishment charges could be saved and though business might be large at Bombay that did not justify change of registered office. Secondly, it was said that the shareholders of the company were foreigners and it was not material or relevant whether the registered office was at Calcutta or at Bombay because they would have to meet the expenses wherever the meeting would be held. Thirdly, it was said that the Bombay administration indicated that it was economical to transfer senior staff to Bombay, but one Shipping Manager was to remain at Calcutta and therefore there was no question of economy. Fourthly, it was said that the fixed assets at Calcutta were of higher valuation than the assets at Bombay. The Bombay property belongs to the company. The Calcutta property is leasehold interest of the company and the lease is to expire within 3 years. It therefore follows that

the Bombay property is of much greater value.

32. Counsel for the Petitioner rightly contended that the economy that was to be achieved would be a matter for the future and it was not possible to give details of the working of the company in the future. In the case of (8) Taldia Rubber Company Limited, reported in (1946) 2 AER 763, the objects of the Rubber Company were in wide terms. The company for several years carried on business of a rubber estate. The company sold the rubber estate. There was an application for winding up of the company on the ground that the substratum had gone. It was held that on a true construction of the memorandum it was possible to conclude that the company had been formed solely to work the rubber estate and therefore the sale of the rubber estate did not result in a destruction of the substratum. Reference was made in the Taldia Rubber Company case (*supra*), to the observations of Lord Greene, M.R. (9) In *re. Kitson and Company Limited*, reported in 9 1946) 1 AER 435, where a question arose as to whether there was a real and bona fide intention to re-embark in the engineering business. Lord Greene said that it might be supposed that at the time of sale of the Kitson business so far as the board was concerned they thought that there was no change and that it was not desirable for the company ever to start again into engineering. Supposing afterwards the directors changed their mind and they saw a profitable opportunity of using the company's money again in the engineering business. Lord Greene said that such intention had nothing to do with the question whether the substratum of the company had gone or not. Relying on those observations Wyn-Parry, J. said in *Taldia Rubber Co.'s case*, (*supra*):

Those observations (meaning thereby the observations of Lord Greene, M.R.) are binding on me, and with respect, I agree with every word of them. They seem to me to apply to this case with full force and effect. Apart from authority, it appears to me that the common sense of the matter demands that the existence or non-existence of a complete scheme at the time the petition comes before the Court should be regarded as a wholly irrelevant matter, otherwise it would be impossible for the Court to draw any safe line in any particular case. Where is the Court to draw the line? What period is to be allowed to elapse? What is to be regarded as satisfactory evidence of the intention of the company to go forward into some new venture? The Court clearly is not called on to adjudge the merits or demerits of any scheme, and this fact appears to me to make the consideration by the Court of the existence or non-existence of a particular scheme all the less fruitful.

33. Again in the case of *Wesburn Sugar Refineries Ltd.* *supra*, to which *ref* has already been made, Lord Radcliffe said in regard to case of reduction of capital that if it had to be considered whether the company's capital were surplus to its requirement and if by that phrase it was meant that the company's assets exceeded what was required for the future conduct of its business, precise information on that aspect would do nothing to aid the task of the Court and

evidence of that kind was considered by Lord Radcliffe not to answer cases for reduction of capital because in truth the real question was answered by the company's own resolution. In other words, it has to be found out as to whether the company and sufficiency that the company proposes to have has received adequate domestic deliberation that the statute enjoins. The statute contemplates a resolution. The statute does not contemplate workings of the future to be demonstrated in a Court of law. Further, with regard to economy and efficiency the shareholders and members by their business wisdom and domestic decision as embodied in the resolution though of change of office. The formalities of the statute are complied with. The shareholders and creditors are all protected.

34. It was considered on behalf of the State that the provisions contained in Sections 53, 143, 144, 163, 209, 223 and 303 of the Companies Act indicated that if there was a registered office returns had to be filed and if there was a branch office books and accounts had also to be maintained and therefore no economy could be ensured. Counsel on behalf of the Registrar contended that Sections 51, 146, 166 and 220 of the Companies Act indicated the registered office was for service of documents of the company and for holding annual General Meeting and there was provision with regard to preparation of balance sheet and reliance was placed on the decision in (10) *In Re: Aryya Insurance Co. Ltd.*, . In that case an application was made that the Registrar of Joint Stock Companies be directed that the registered office be recorded as being in the town of Silchar as provided in the memorandum of the Articles and Association of the company. It was contended that the location of the registered office being mentioned in the memorandum was unalterable and the other contention was that the Court had no jurisdiction to make an order as asked for. It was held that the insertion of the place in the memorandum did not make it unalterable but it was doubtful whether an application to rectify the register could be made. In the present case there is no aspect that the office of the company is unalterable. The provisions of the English Act indicate that a company which has its registered office in England cannot change its registered office to Scotland and if it has to go to Scotland there is to be a fresh registration. Counsel for the State contended that a company did not have this fundamental right to move from one part to the country to another as a citizen would have under the Constitution. In the Orissa case of (5) *Orient Paper Mills Ltd. and Another Vs. The State*, , to which reference had already been made it was said that the situation of the registered office in England fixed the domicile of the company and it was clear from the unalterable nature of the registered office in England that the registered office of the company should not be altered and the alteration should not be confirmed as and when the company passed a special resolution. I am unable to find that the provisions of the Companies Act in India restrict the change of registered office. The provisions of our Companies Act do not impose any restriction on the change of registered office from one State to another nor do the provisions of the Companies Act in India have the effect of making the registered office unalterable.

35. The domestic decision of the shareholders or business wisdom of shareholders as embodied in the resolution is to be confirmed by the Court and Counsel for the State relied on the decisions in (11) Bhutoria Brothers and (12) In Re: Bhutoria Brothers (Private) Ltd., respectively in support of the contention that traders' interest is not the only concern. These decisions do not hold that the traders' interest is the only concern but the Court in exercising discretion will consider the business wisdom of the shareholders. Counsel for the State contended relying on the authority of the decision in (13) Tata's case reported in (1965) 1 SCA 365, that if the company was not entitled to fundamental rights it would not be a normal part of the affairs of the company to move about from one place to another. Counsel for the State referred to the statement of law in Halsbury's Laws of England, Vol. 2, paragraph 481 at page 218 that the Court will order the removal of minor only when the Court was satisfied it was therefore contended that the Court should not allow a company to get out of its jurisdiction. The case of a minor or the case of a person leaving jurisdiction of the Court does not in my opinion apply to the case of change of registered office from one State to another. I have already indicated that a company has the right under the Companies Act to change its registered office and this statutory right need not be subjected to the test of fundamental rights or to any restriction of movement.

36. As far as the movement of a company is concerned the English Act makes it a part of the statute that the company cannot leave its registered office in England. In the present case there is no restriction on a company to change its registered office from one place to another within a state save and except that the Directors are to resolve to that effect and in regard to change of registered office from one State to another there is no obstacle or impediment save what the statute enjoins. In other words, if in England there is, in the words of Counsel for the State, historical immobility attached to a State it can be said in relation to companies in our country that there is statutory provision conferring the right on a company to move from one State to another. Further, the case of a minor being protected by the Court or the case of trust property being protected by the Court are illustrations of the exercise of the chancery jurisdiction that the Court exercises as guardian of the minor or as guardian of the trust property. No such aspect of guardianship can arise in relation to a company as far as the Court is concerned.

37. It was concerned on behalf of the State that there was no valid resolution and there was no valid notice. It was said that under Article 87 two persons present in person being holders of ordinary shares and entitled to vote shall be a quorum for the general meeting and the two persons who represented the shareholders were themselves not shareholders and therefore they did not fulfill his character of holders of ordinary shares to be entitled to vote. The contention on behalf of the State that under Article 87 of the company only shareholder can appear raises the question of construction of the Articles. Section 187 of the Companies Act indicates that a body corporate may, if it is a member of a company, by

resolution of its Board of Directors authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of class of members of the company. Further, Sub-section (2) of Section 187 of the Companies Act enacts that a person authorised by resolution as aforesaid shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company. The corresponding provision in the English Companies Act is Section 139. The section in the English Act is in similar language and the right of a person to vote as a representative of a company under the English Section is said to depend upon whether he had been validly appointed and a representative appointed under the Section is held to be a "member personally present" for the purpose of being counted towards a quorum. The authority for that proposition is the decision in (14) *Re. Kelantan Coconut Estates* reported in 1920 WN 274. Further, Counsel for the Petitioner referred to the provisions contained in Order 33 of the Code. Order 33 of the Code relates to suits by paupers. In the decision in (15) *Perumal Koundan and Others Vs. The Thirumalarayapuram Jananukoola Dhanasekara Sanka Nidhi Ltd.*, the question arose as to whether a company could take recourse to the provisions contained in Order 33 of the Code of Civil Procedure. It was held that the word "person" in Order 33 would have the same meanings as in the General Clauses Act unless there is something repugnant in the subject or context and includes any company or association or body or individuals. Counsel for the Petitioner also relied on the decision reported in AIR 1956 Cal. 1937 in support of the same contention. To my mind it appears that the provisions in the Companies Act indicate that the person authorised by the Board to appear at a meeting of the company is a person entitled to exercise the same rights and powers including the right to vote on behalf of the body corporate.

38. The other contention on behalf of the State was that the notice did not contain all the materials and therefore did not comply with Section 173 of the Companies Act in particular. It was said that allegations contained in the petition by way of amendment are not to be found in the notice and therefore the notice did not contain all material facts. In the case of (16) *Parashuram Detaram Shamdasani v. Tata Industrial Bank Limited*, reported in the Judicial Committee said AIR 1928 180 (Privy Council) that a shareholder who by his conduct shows that he knew the real effect of work to be transacted at the meeting could not complain of the notice on the ground of insufficiency. Counsel for the Petitioner in the present case contended that the shareholders have not complained and on the contrary the shareholders have consented to the course of action. The Judicial Committee in the same case further said: "Elaborate notice in a circular might sometimes be detrimental to the interest of the company." Counsel for the Petitioner also relied on the Bench decision in (17) *East India Commercial Co. Private Ltd. Vs. Raymon Engineering Works Ltd.*, where it was held that material facts were to be given and not particulars. In the present case the material facts

were given and if all the details of particulars were not set out there would be no vice in the notice. The observations in the case of Dorman Long and Company, reported in 1934 Chancery 635 are also apposite in the present case. It was said at page 665 of the report that in a case of great complexity all details would not be stated because a lengthy circulation would sometimes defeat its own object. It is always a question of fact in each case as to whether notice has properly been given and in the present case I am of opinion that all the material facts have been given.

39. It was contended by Counsel for the State that in view of the fact that this was a foreign company and the shareholders were foreigners it would not be the question of convenience or inconvenience of shareholders if the registered office remained at Calcutta and were not shifted to Bombay. As I have already indicated it is a domestic decision and arrangement of their economy. For all these reasons I am of opinion that the Petitioner is entitled to succeed. There will be an order in terms of prayer (1) of the petition. In view of the fact that Counsel for the State and Counsel for Registrar have given assistance I am of opinion that the company will pay costs of the State as well as that of the Registrar. Costs assessed for State is 30 G. Ms. and the costs assessed for the Registrar is 30 G. Ms. Certified for Counsel.