

(1970) 06 GUJ CK 0010
In the Gujarat High Court

In Re: Motilal Hirabhai Spinning, Weaving and Manufacturing Co. Ltd.

Date of Decision : 23-06-1970

Acts Referred:

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

Citation : (1970) 06 GUJ CK 0010

Hon'ble Judges : D.A. Desai, J

Bench : Single Bench

Advocate : B.S. Shah, for the landlord and Registrar of Companies in person,
C.C. Gandhi, for the Appellant;

Judgement

D.A. Desai, J.—This is a petition u/s 17(1) of the Companies Act, 1956, praying for confirmation of the proposed alteration in the memorandum of association of the company adopted as per the special resolution passed at the general meeting of the company held on 16th June, 1969. The Motilal Hirabhai Spinning, Weaving and Manufacturing Company Ltd. (hereinafter referred to as "the company") was incorporated in 1889, under the Companies Act then in force. From the commencement of the business till 1941, the company carried on the business of manufacturing cotton yarn and cotton cloth and selling the same. In the year 1941, in view of the then prevalent financial circumstances of the company, the members of the company adopted a special resolution at the extraordinary general meeting held on May 15, 1941, to close the business of manufacturing cotton yarn and cotton cloth and also resolved to sell and dispose of the textile machinery of the company and authorised the board of directors to carry out this resolution. Pursuant to this resolution, the textile machinery was sold and since then the company is not doing business of manufacturing of cotton yarn and cotton cloth or any business incidental to the manufacture of cotton yarn and cotton cloth. There is some controversy as to whether the company is doing any business since 1941, and if so, what, to which aspect I would presently advert. It may, however, be stated that from 1941 till the filing of the present petition, the only thing the company appears to be doing is to lease out land in its possession and from the income derived therefrom, dividend at the rate of 10 per cent. is being distributed to its members. The issued and subscribed capital of the

company is Rs. 9,90,000 divided into 9,900 shares each of Rs. 100 fully paid. Though the company was primarily formed for manufacturing cotton yarn and cotton cloth which was its main object, its memorandum of association provides for a number of other objects. But it appears that between 1889 and 1941 when the company closed down its mills, the company did not carry on any other activity except that of manufacturing cotton yarn and cotton cloth and selling the same.

2. At the annual general meeting of the company held on 16th June, 1969, a special resolution was unanimously adopted proposing certain alterations in the objects clause of the memorandum of association of the company. The proposed alterations are to be found in paragraphs 13-a to 13-d at pages 86 to 90 of the record. In short, it may be stated that by the proposed alteration in the objects clause of the memorandum of association, the company wants to provide as its objects every conceivable activity in the world of commerce and industry entirely unconnected with each other commencing from manufacturing of textiles to photographic materials, pharmaceuticals, setting up of hotels, restaurants cafe tavern preparing refreshments and consumable articles and also to start theatres and other places of public entertainments, to set up cold storage and refrigeration plants. The company also wants to adopt as its objects the business of stationers, printers, lithographers and it as well wants to enter into the field of transport activity. The minutes of the meeting shows that this resolution was unanimously adopted by 17 members of the company attending the annual general meeting. Thereafter the company filed the present petition praying for an order confirming the proposed alteration.

3. On the petition being admitted, the court directed that the petition be advertised in a Gujarati daily, Sandesh, and an English daily, Times of India, and the Gujarat Government Gazette, and accordingly, various advertisements were issued. A notice was also issued to the Registrar of Companies as provided by section 17. In response to the notice, the Registrar of Companies appeared and filed an affidavit at page 153 of the record and contested the petition. One Mohammed Kayamuddin Gulamnabi Uraizee, claiming to be mutwalli of a public trust known as "Abdul Razak Saheb Roza and Masjid", also appeared and filed his affidavit at page 163 of the record and contested the petition. A question has been raised whether Mohamed Kayamuddin Gulamnabi Uraizee can be permitted to contest the petition.

4. Mr. C.C. Gandhi, learned advocate appearing for the petitioner- company, urged that the alterations proposed by the company as per special resolution would fall under clauses (a) and (d) of section 17(1) of the Companies Act. It is, therefore, necessary to consider whether the proposed alteration would fall under clauses (a) and (d) of section 17(1) of the Companies Act. They are as under :

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

5. The scheme of section 17 indicates that a company may alter the objects clause of its memorandum of association but the proposed alteration must be such as would fall within one or the other clauses of sub-section (1) of section 17. There is no unfettered or uncontrolled power conferred on a company to alter the objects clause of the memorandum of association. The power to alter is circumscribed by various clauses of sub-section (1) of section 17. Therefore, when the court is called upon to confirm the proposed alteration in the objects clause notwithstanding the fact that the same has been approved by a special resolution which indicates that it was secured statutory majority as envisaged by section 189 and further notwithstanding the fact that no member or creditor has appeared to contest the petition, the court should examine the petition to find out whether it is open to the company to alter the objects clause and if so whether the proposed alteration falls within one or the other clauses of sub-section (1) of section 17.

6. At the outset Mr. C.C. Gandhi for the company unequivocally stated that the proposed alteration would fairly and squarely fall within subclasses (a) and (d) of sub-section (1) of section 17. Clauses (a) and (d) have been set out by me. The language of clauses (a) and (d) unmistakably indicate that before any alteration in the objects clause is sanctioned, which enables the company to start or undertake a new business activity, the company must invariably be doing some business at the relevant date. If on the date when a special resolution is adopted proposing alteration in the objects clause or on the date when the court is called upon to accord sanction to the proposed alteration, the company is not shown to be doing any business, in other words, if the company is virtually a defunct company, the court will have no jurisdiction to sanction the proposed alteration in the objects clause. This is implicit in the language used in clauses (a) and (d). Under clause (a) a proposed alteration can be sanctioned if by the new activity the company can undertake that it can carry on its business more economically or efficiently. It postulates some existing business which can be carried on more economically or efficiently by an activity that can be undertaken under the altered objects clause. In order to enable the company to carry on its present or existing business more economically or efficiently, the court would sanction an alteration in the objects clause which would empower the company to undertake a new business activity. If the company is not shown to be carrying on the any business at all, no question arises of carrying on such non-existent business more economically or efficiently by empowering the company to undertake a new activity. I would presently point out that, since 1941 till to- day, the company is not carrying on any business and, therefore, the proposed alteration would not

fall within clause (a).

7. The next question is whether the proposed alteration would be covered by clause (d). It would be open to the company to alter the objects clause of its memorandum of association in order to carry on some business which under the existing circumstances may conveniently or advantageously be combined with the business of the company. Such a case would be covered by clause (d). In order to attract the application of clause (d), the company must be presently doing some business and its proposed new business could be conveniently and advantageously combined with the existing business. Before clause (a) or (d) could be invoked, it pre-supposes that there must be an existing business of the company which the company must be carrying on and with this existing business the new business, which is proposed to be started, after alteration in the objects clause, could be conveniently and advantageously combined. It would, therefore, appear that if the company is presently carrying on no business, certainly there is no question of altering the objects clause by which the new business can be started which can be conveniently or advantageously combined with the existing business. Carrying on some business falling within the objects clause of the memorandum of association in force of a company is a condition precedent to the court exercising jurisdiction u/s 17 by confirming the proposed alteration in the memorandum of association by which is of such a nature that it can conveniently or advantageously be combined with the existing business. If, therefore, in the facts and circumstances of this case, it can be shown that the company is not presently carrying on any business in the ordinary sense of the term, the case would not fall under clause (d). In this connection, I would refer to *In re Eastern Woollen Mills Ltd.* In that case, the company closed its business of manufacturing woollen textiles some time before the company adopted a resolution for altering its memorandum of association. After adopting the special resolution, the company moved the court for confirming the alteration. The company sought to bring its case under clause (d) of section 17(1). Rejecting the application for confirmation, Shelat J. (as he then was) observed as under :

"The relevant words occurring in clause (d) are "may conveniently or advantageously be combined with the business of the company". It is somewhat obvious that these words in clause (d) would mean that the proposed alteration in the memorandum of association would be in respect of a new business which can conveniently or advantageously be combined with a business existing at the date of the proposed alteration and which business is being carried on at such relevant date by the company. That condition is not fulfilled by the petitioners".

8. Mr. Gandhi sought to distinguish this case saying that the company by the proposed alteration wants to start business as printers and the company had commenced that business prior to the alteration in the objects clause but that could not be said to be existing business of the company, because the company was not empowered by its memorandum of association as it then stood to undertake such a business and that activity of the company was ultra vires the

company. That of course is true. The question however is whether the company can seek to alter its memorandum so as to enable it to start new business at a time when the company is not carrying on any business. If the company is carrying on some business in a proper grammatical sense of those words, obviously, it would be open to the company to alter its memorandum of association so as to enable it to start a new business which must of necessity be of such a character that it can be conveniently or advantageously combined with its existing business. But the language of clause (d) leaves no room for doubt that the company must be carrying on some existing business before it can take recourse to the provision contained on some existing business before it can take recourse to the provision contained in clause (d) to enable it to alter its memorandum of association which would empower it to start a new business. In the afore-mentioned decision reference is also made to *In re Drages Ltd*. In that case, the principal object of the company was to carry on business of house-furnishers. The company met with indifferent success and at the relevant time the company had ceased to undertake new work in the said business and was concerned only with the collection of the outstanding installments due on its hire-purchase agreements. The company desired to recommence trading after cessation of the hostilities but proposed to use its available capital in carrying on a trust investment business. The company applied to the court to confirm an alteration in its memorandum of association urging that a trust investment business could be advantageously combined with its present business within the meaning of section 5(1)(d) of the Companies Act, 1929. The court, construing section 5(1)(d) of the English Companies Act, which incidentally is couched in the same language as section 17(1)(d) of our Companies Act, observed that since the company was not carrying on any business at the time when the application was made, there was no existing business with which the proposed business could be combined either conveniently or advantageously as the section requires. It, therefore, appears crystal clear that before a company can seek to alter its memorandum of association so as to enable it to start a new business which can be conveniently or advantageously combined with the existing business, it must be shown to the satisfaction of the court that on the date of the proposed alteration, the company was carrying on business and ordinarily it must be a business for which the company was formed.

9. The question is whether the petitioner-company is carrying on or doing any business at the relevant date so that by the proposed alteration the company may start a new business activity which would help in carrying on existing business more economically or more efficiently be combined with the existing business or the new business activity could be conveniently or advantageously combined with the existing business. This company, since the commencement of its business in the year 1889, was carrying on business of manufacturing cotton yarn and cotton cloth and sell the same. The only activity of the company till the year 1941 was running of a textile mill by the company in Ahmedabad City and manufacturing cotton textiles and selling the same. Admittedly, that business has

been closed since 1941, and all the machinery has been disposed of. But Mr. Gandhi very strenuously urged that since 1941, when the company closed down its textile mill and disposed of the machinery, the company has been regularly doing business of leasing out the land as well as tenements and structures standing on the land and it is earning a decent profit out of it and that it has been able to declare every year a dividend of 10 per cent on its ordinary shares. It is not in dispute that the company has been leasing out the land or the superstructures standing thereon and must be earning rent. Mr. Gandhi showed to me the balance-sheets of the company for the last 10 years and he was right when he stated that the company has been declaring a dividend of 10 per cent on its ordinary shares. The question is whether the company is carrying on any business since 1941. In other words, the question is whether this company which was primarily set up with the main object of starting and running a textile mill can be said to be doing business strictly sense if since the closing down of the mill and disposing of the machinery it does the only thing which it could do, namely, to lease land and the superstructures and earn rent therefrom. To put it slightly differently, whether this company can be said to be carrying on any business? The only activity it has undertaken since the last 30 years is to lease land and to earn rent therefrom.

10. Mr. Gandhi in this connection pointed out that each clause in the memorandum of association is an independent clause not connected with any other clause nor even in any way clouded by the name of the company. It was very strenuously urged that the theory of main object and subsidiary object does not hold the field any more and that each clause in the objects clause of memorandum of association is an independent clause empowering the company to carry on or to pursue the activity that can be legally undertaken under one or other clauses. In this connection Mr. Gandhi referred to Polymer's Company Law, 20th edition, page 81, wherein it is observed that the present practice is to add to the catalogue of possible or conceivable objects invariably a clause which provides that each of the objects specified in the clause shall be regarded as independent objects and shall not be limited or restricted (except where otherwise expressed) by reference to any other paragraph of the objects clause. It was also urged that there is such a clause in clause 3 of the memorandum of association of this company. A specific reference was made to clauses 1, 12 and 13 set out in the model or specimen of memorandum of association in Polymer's Company Precedents. In fact, particular reference was made to clauses 12 and 13. Clause 12 empowers the company to sell, improve, manage, develop exchange, lease, mortgage, dispose of turn to account, or otherwise deal with all or any part of the property and rights of the company. By clause 13, a declaration is made that the objects specified in the various sub-clauses of the objects clause shall be regarded as independent objects and shall be construed independently of the other sub-clauses of it and that none of the objects mentioned in any sub-clauses shall be deemed to be merely subsidiary to the objects in any other sub-clause (except where otherwise expressed in such sub-

clauses). After referring to these clauses 12 and 13, Mr. Gandhi pointed out that sub-clause (32) of clause 3 of the memorandum of association of the petitioner-company is in pari materia with clause 12 set out in Palmer's Company Precedents and the declaration made in subclass (38) of clause 3 of the memorandum of association is in pari materia with clause 13 as set out in Palmer's Company Precedents. Having pointed out that clauses 12 and 13 as set out in Palmer's Company Precedents are to be found in the memorandum of association of the company which has the effect of treating each clause as the main object and as providing independent objects of the company, it was urged that the same effect should be given to the various sub-clauses to clause 3 of the memorandum of association of this company. Having said this it was attempted to be urged that the activity of the company of leasing out the land since the closure of the mills is an independent activity carried on under an independent clause and would be at least a business carried on by the company and that would be the existing business of the company.

11. Sub-clause (23)(1) of the memorandum of association of the company authorise the company to construct, maintain and later any building or works necessary, convenient or beneficial for the purposes of the company and to lay out land for building purposes and to build on improve let building on lease, and otherwise develop the same in such manner as may seem expedient to the management for the advancement of the company's interest. Sub-clause (32) empowers the company to sell improve manage develop exchange lease mortgage enfranchise, dispose of turn to account or otherwise deal with all or any part of the property and rights of the company. Referring to these two clauses read with the declaration made at the foot of sub-clause (38) it was urged that the company by the objects clause of its memorandum of association was empowered to carry on independently the business of leasing land or superstructures and to obtain [profit therefrom and that if such activity is carried on uninterruptedly for a period of 30 years, it would certainly be a business of the company. It is indisputable that the company was incorporated for achieving the main object of starting a textile mill and the main object of the company was to undertake the activity of manufacturing cotton textiles including cotton yarn. Apart from the first three sub-clauses of clause 3 of the memorandum of association, the name of the company by itself indicates that the company was primarily incorporated for the purpose of manufacturing and selling cotton textiles. As usual, inflated objects clause in the memorandum of association permitted the company to carry on other activities. But, in my opinion these activities would be ancillary and incidental to the main activity. It may be that near and around the textile mill the company may have open piece of land and may not need it for its purpose and may lease the same. But for giving the land on lease, the company would require the authority : otherwise the act of the company may be termed ultra vires. For availing some such eventuality the company usually provides as very inflated objects clause in its memorandum of association. But from such inflated objects clause in the

memorandum of association., It cannot be said that the company was set up for starting each activity as an independent activity and for which the company was incorporated. In fact it cannot be disputed that each company has its own main activity and provides in its objects clause for its incidental and ancillary activities. To say that this company was formed for carrying on business of leasing land is something very difficult to accept. If the company was incorporated for starting a textile mill and in fact it did start a textile mill and even carried on the business of manufacturing cotton textiles and selling the same for over 52 years and then because of its financial difficulty closed down the textile mill and as a necessary consequence leased out the unused superstructures and land, it cannot be said that the company is carrying on business. I am not prepared to accept that this company is carrying on business of leasing land or superstructures. As the company was not wound up the land and superstructures were lying idle. The directors considered it proper to lease the land and earn rent out of it. But such an activity cannot be said as carrying on business of the company. If the company is not shown to be carrying on any business, then the question of altering the memorandum so as to enable the company to start a new business which may conveniently or advantageously be combined with the existing business, does not arise.

12. Mr. Gandhi however, took me through various decisions indicating as to what should be the approach of the court to an application of this nature. I would briefly refer to some of these decisions. First case referred to by Mr. Gandhi was *In re Hearts of Oak Life and General Assurance Co. Ltd.* In that case a petition for alteration of the memorandum of association including the name of the company was sought to be contested by a company bearing almost an identical name urging that if the proposed alteration is confirmed, it would give an opportunity to the company to pass off the goods. The question considered was whether the petition for alteration of memorandum of association could be contested by the other company was overruled. The question considered is entirely different, namely, who are the persons who should be permitted or would be entitled to contest a petition filed u/s 17. I would refer to this aspect when I consider the affidavit filed by Mohammed Kayamuddin Gulamnabi Uraizee. But the decision in no way assists in disposing of the point herein raised. The next case referred to was *Motilal Padampat Sugar Mills Co.(P). Ltd., In re.* The company in that case was carrying on business of manufacturing and selling sugar. A special resolution was adopted by which the company wanted to empower itself to carry on the trade and business of steel makers, re-rollers, foundrymen, etc. The petition was contested by the Registrar of Companies, inter alia, on the ground that the business of manufacture and sale of sugar cannot be conveniently or advantageously combined with the business of steelmakers, re-rollers, etc. The question posed before the court was whether additional business is one which may conveniently or advantageously be combined with the existing business of the company. Indisputably that would be the question but that is not the point for consideration at this stage. Therefore, it is not necessary to

consider this decision any further. Mr. Gandhi next referred to Dalmia Cement (Bharat) Ltd. In re. In that case by the proposed alteration the company wanted to add to its objects a clause so as to enable the company to do export business in all varieties of goods and commodities. The petition was contested by the Registrar of Companies. While confirming the proposed alteration, it was observed that the question whether the proposed business can be conveniently or advantageously combined with the existing business of the company will depend a great deal upon the opinion of the directors. If the directors considered that, under the existing circumstances, it will be convenient to combine the new objects with the existing objects and if it appears that conclusion may be fairly arrived at, the court ordinarily would not go behind it and hold an inquiry as to whether the opinion of the directors is well founded or is justified. On the facts of that case, the court reached a conclusion that it is not possible to say that the view of the company that the export business is not fair or reasonable and, therefore, the alteration was confirmed. It is not for a moment suggested in this case by me that due weight should not be given to the commercial judgment of the directors as well as of the shareholders disclosed in the special resolution. The question considered by me is entirely different, namely whether clause (d) at all could be invoked in the circumstances of the present case. Reference was next made to Juggilal Kamlatpat Jute Mills Co. Ltd. v. Registrar of Companies. The effect of the word combined in clause (d) of section 17(1) has been considered in that case. It is observed that the new business should not be detrimental to the existing business of the company nor is the new business meant to replace the existing business which would immediately or in stages, be discontinued. In other, words, the additional business must not be destructive or inconsistent with the existing business. The court has also considered in that case the unanimous or majority decision of the shareholders of the company to alter the memorandum of association is not binding on the court, but is a factor in favour of the confirmation thereof though, in relation to such case, the court has a discretion not to confirm the alteration or to confirm the same in part.

13. It is true that while considering the petition for alteration in the objects clause of the memorandum of association the court should give due weight to the judgment of the directors and shareholders as expressed in the special resolution adopted by the company. It is equally true that the court should consider very broadly what new business can be combined conveniently or advantageously with the existing business and, while so considering, the factor which should be taken into consideration is whether the new business would be such as would not have the effect of destroying or being totally inconsistent with the existing business of the company that it may be stopped or given up by gradual stages. However, the court's jurisdiction while considering the case u/s 17(1)(a) and (d) is limited and it is limited by the language of the clauses. Before the court would proceed to confirm any alteration in the objects clause of the memorandum of association the proposed alteration must be covered by one or more clauses of section 17. According to the petitioner the proposed alteration would be covered

by clauses (a) and (d) of section 17(1). If the case is to be covered by clause (a) it must be shown that by the proposed alteration, the existing business of the company can be economically or efficiently carried on. If the proposed alteration is sought to be covered by clause (d) it must be shown that the new business which may be started, if the alteration is confirmed, would be such which could be conveniently or advantageously combined with the existing business. In either case the company ought to be carrying on some business in present. There must be some existing business of the company which the company is carrying on the date on which the company either adopts a special resolution or moves the court for confirmation of the proposed alteration in the memorandum of association. If such be the limit of jurisdiction of the court in this case, the company is shown not to be carrying on any business, in the sense in which I have understood the words as discussed hereinbefore, and this company cannot alter its memorandum of association. The present position of the company is clearly set out in paragraph 7 of the petition, wherein it is stated that the company is not carrying on the business activity except leasing the properties of the company. In fact, it is a defunct company. The only useful activity, if it can be said to be useful, is of leasing out the land which is not being put to any use for carrying out of the objects, express or implied near or remote direct or indirect. If, in such circumstances, the company merely leases out the land I fail to see how it can be said that the company is carrying on some business and if the company is not shown to be carrying on any business it cannot by the proposed alteration seek power to start a new business which can be conveniently or advantageously combined with the existing business. Viewed from this angle, in my opinion, this petition must be dismissed.

14. One last objection of Mr. Gandhi may be noticed. It was urged that this court should not permit Mohammed Kayamuddin Gulamnabi Uraizee to appear and contest this petition. Mr. Uraizee claims to be the mutwalli or a trustee of a public trust known as "Abdul Razak Saheb Roza and Masjid". Survey Number 210 of Sherkotda Taluka, according to Mr. Uraizee, belongs to the aforementioned trust and though it is admitted that the company is the lessee of the six survey number, I would not give any nomenclature to this lease because the question may be in dispute between the parties. I must, however, state that Mr. Gandhi stated that by a decision in a suit, the lease is held to be a permanent lease in favour of the company. It was urged that in a petition filed by the company seeking confirmation of the proposed alteration in the memorandum of association persons who are entitled to object are at best the members and creditors of the company and none else. It was urged that at any rate, Mr. Uraizee may be styled as a landlord and in that capacity he is not entitled to appear and contest the petition. It is an interesting question as to who is entitled to contest the petition filed by the company seeking confirmation of the alteration in the memorandum of association., Section 17 itself gives a clue as to who would be entitled to appear and contest the petition. Undoubtedly, the members and creditor of the company as also the debenture-holders would be

entitled to appear and contest the petition. In the facts of this case, it is not necessary for me to decide whether a landlord or for that matter anyone interested in the company would be entitled to appear and contest such a petition in view of the language of sub-section (3) of section 17. But, as I do not propose to take into consideration any contention raised in the affidavit of Mr. Uraizee, and as this petition is being disposed of for the reasons hereinbefore mentioned it would not be necessary to take into consideration this interesting question in this petition. I therefore, need not refer to one or two cases on this point cited by Mr. Gandhi.

15. Before parting with this judgment it is necessary to refer to one or two aspects. It is undoubtedly true that this court considering a petition u/s 17 must give due weight to the judgment of the directors and shareholders. But before due weight is given to their judgment it must be shown to the satisfaction of the court that they had applied their mind to all the aspects of the matter, and that their judgment represent the voice of a large majority. The issued and subscribed capital of this company is Rs. 9,90,000 divided into 9,900 ordinarily shares each of Rs. 100 fully paid. I was told that these 9,900 shares are being held by 850 shareholders. The annual general meeting of this company, at which the special resolution proposing the alteration in the memorandum of association was adopted, was attended by 17 out of 850 members. I was rather keen to know their shareholding. But the information could not be gathered on the spur of the moment. At any rate, 17 out of 850 is by itself an eloquent figure. It must be confessed that the decision was unanimous. Three out of 17 were directors including the chairman of the company. Even this aspect would not have weighed with me because if the persons concerned do not attend the meeting after notice they take the consequence. The special resolution runs into four closely typed printed pages having as many as 30 different clauses. Each clause sets out a new object, which if sanctioned would enable the company to start a new activity and it is profitable to examine what diverse activities the directors and shareholders thought of undertaking by amending the memorandum of association. They desired to empower the company to undertake business in pharmaceuticals, photographic materials, transport activity, cinema theatre, hotel and restaurant and many others. This defunct company for over thirty years just sprang to life in 1969 and decided to start all these activities, with a fund too small if not utterly negligible. This itself shows what commercial judgment was brought to bear upon the subject by the directors and shareholders when they adopted this special resolution which can be properly styled as omnibus resolution. In fairness to Mr. Gandhi, it must be said that at the final hearing of this petition, he invited the court to consider, giving up all the clauses of the special resolution only two clauses 13-a and 13-b set out in the further affidavit filed by Mr. N.S. Vidya at pages 157 to 159 of the record. By these two clauses the company wanted to empower itself to establish cold storage plant for preservation of foodstuffs and other edible articles and to carry on the business of constructing and managing theatres recreation places, and halls, hotels

cinematographic shows, etc. From a number of varied and absolutely diverse activities which the company wanted to start after empowering itself by necessary alteration in its memorandum of associations at the end the company confined itself to the aforementioned two alterations only. This shows that the directors had hardly any conception of what they were doing and the shareholders possibly did not know what they were doing. I was told that in the year 1951, the company sought alteration in its memorandum of association by addition to its objects clause which was confirmed by the Bombay High Court. Even though alteration was made in 1951 except of continuing to lease the land as an incidental activity no new activity was undertaken by the company. I think the proposed alteration appears to be an exercise in futility and this court need not confirm the same.

16. In view of the aforesaid the petition is dismissed. The petitioner to pay costs of the Registrar of Companies quantified at Rs. 60. No