

(1965) 04 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.O. No. 2D of 1965
In Re: New Asiatic Insurance Co. Ltd.

Date of Decision : 21-04-1965

Acts Referred:

Companies Act, 1956 — Section 17(1)

Citation : (1967) 37 CompCas 331

Hon'ble Judges : H.R. Khanna, J

Bench : Single Bench

Advocate : Ved Vyas and S.C. Dhandha, for the Appellant; R.R. Kini, for the Respondent

Final Decision : Allowed

Judgement

1. This petition u/s 17 of the Companies Act (1 of 1956) has been filed on behalf of the New Asiatic Insurance Company Limited (hereinafter called the "company") for confirmation of the alterations of the memorandum of association of the company.

2. The petitioner-company was registered on 21st November, 1933, under the Indian Companies Act, 1913. Its registered office is in Connaught Circus, New Delhi, and its authorised capital is rupees seventy-five lakhs divided into 7,50,000 shares of Rs. 10 each. The paid up capital is Rs. 38,46,790, divided into 4,00,000 shares of Rs. 10 each, with rupees 1,53,210 being calls-in-arrears on 31st December, 1963. The objects for which the company was formed are set out in Clause 3 of the memorandum of association and, inter alia, are to carry on the business of life assurance sickness assurance, accident assurance and any other kind of assurance in general. Another object mentioned was to purchase or otherwise "acquire the business and property of any other person, company or firm, and to carry on or stop that business. Some of the other objects included were :

"to place on deposit with local banks or lend to persons, firms or other companies, money on securities or otherwise for any period, the monies not required for the immediate purpose of the company or to invest the same in any

of the securities, or in properties, estates, buildings, or shares of any joint stock company or companies; to carry on business as bankers capitalists, financiers, concessioners and merchants and to undertake and carry on and execute all kinds of commercial trading and other operations to carry on all kinds of promotion business and in particular to form, constitute, float and lend money to assist and control any companies, associations or undertakings whatsoever."

3. On 18th November, 1964, a special resolution was passed unanimously at an extraordinary general meeting of the company after notice and it was resolved to alter the objects of the company as under ;

" (1) To carry on all or any of the business of engineers, metallurgists, iron, steel and brass founders, metal makers, moulders, millwrights, wheelwrights, joiners, galvanisers, machinists, japanners, annealers, welders, enamellers, electro and chromium platers, ironmongers, pattern makers, turners, smiths, fuel technologists, gas makers and gas works, engineers, wood workers, printers, painters, carriers and merchants and to buy, sell, manufacture, repair, convert, alter, let on hire and deal in machinery, implements including agricultural implements and hardware of all kinds and to carry on any other business (manufacturing or otherwise) which may seem to the company capable of being conveniently carried on in connection with the above or otherwise calculated directly or indirectly to enhance the value of any of the property and rights of the company for the time being.

(2) To carry on all or any of the business of cotton spinners and doublers, flax, hemp and jute spinners, linen manufacturers, flax, hemp, jute and wood merchants, wool-combers, worsted spinners, woollen spinners, yarn merchants, worsted stuff manufacturing bleachers and dyers, makers of vitroil, bleaching and dyeing materials and to purchase, comb, prepare, spin, dye and deal in flax, hemp, jute, wool, cotton, silk and other fibrous substances, and to weave or otherwise manufacture, buy and sell and deal in linen, cloth and other goods and fabrics, whether textile felted, netted or lopped, and to supply power.

(3) To carry on all or any of the business of manufacturers of and dealers in chemicals, petro-chemicals, drugs, essences, acids, alkalis, pharmaceutical, medicinal, industrial and other preparations including fats, fertilisers, manures, dips, sprays, vermifuges, fungicides, medicines and remedies of all kinds, for agriculture, fruitgrowing or other purposes or as remedies for men or animals and whether produced from vegetable or animal matter or by any chemical process, oils, paints, pigments and varnishes, and property articles of all kinds and of electricals, chemical, photographic, surgical and scientific apparatus and materials.

(4) To undertake and execute any contracts for work involving the supply or use of any machinery and to carry out any ancillary or other works comprised in such contracts.

(5) To carry on all or any of the business of importers, exporters, merchants,

ship-owners, charterers of ships and transport, cartage and haulage contractors, garage proprietors, owners and charterers of road vehicles, aircraft, tugs, barges and boats of every description, lightermen and carriers of goods and passengers by road, rail, water or air, carmen, cartage contractors and agents, forwarding, transport and commission agents, customs agents, stevedores, wharfingers, cargo superintendents, packers, haulers, warehousemen, storekeepers, electricians and job masters.

(6) To carry on business as proprietors of flats, and to let on lease or otherwise apartments therein, and to provide for the tenants and occupiers thereof all or any of the conveniences commonly provided to flats, suites and residential and business quarters.

(B) Sub-clause (p) be deleted and in its place, the following sub-clauses be incorporated :--To carry on any other business, industry or trade whether manufacturing, commercial or otherwise that may seem to the company capable of being conveniently carried on in connection with the above objects or calculated, directly or indirectly, to enhance the value of or render profitable any of the company's properties or rights or which it may be advisable to undertake with a view to improving, rendering valuable, or turning to account any property, real or personal, belonging to the company or in which the company may be interested,

To do all or any of the above things either as principals, agents, trustees, contractors or otherwise and either by or through agents, sub-contractors, trustees or otherwise, and either alone or in conjunction with others and to do all such things as are incidental or conducive to the attainment of the above objects.

(C) Consequent to such alterations as aforesaid, the sub-clauses of Clause 3 be re-numbered suitably."

4. The background for passing the above resolution, as given by the petitioner, is that in the year 1956 the life insurance business of the company was taken over by the Central Government under the provisions of the Life Insurance (Emergency Provisions) Act, 1956, and thereafter the company carried on general insurance, investment, financing and other business. Due to various reasons, the earnings from the general insurance business did not provide a satisfactory return. The company ceased to accept any fresh insurance business with effect from 1st January, 1961, and, consequently, the company's registration under the Insurance Act, 1938, was cancelled with effect from 1st December, 1961. The company, however, continued to carry on its investment business, and its income for the years 1961, 1962 and 1963 consisted mainly of dividends, interest and profits on the sale of investments. The directors and shareholders of the company felt that better returns could be given to the shareholders if some industrial or commercial activity is undertaken, and therefore resolved to extend the business of the company as per resolutions passed. It is stated that taking up industrial activity will be profitable to the

company and can be advantageously and conveniently combined with the investment business and this would lead to a more economic and efficient carrying on of the business of the company. The deposits of the company with the Reserve Bank of India under the Insurance Act have been refunded. As regards the estimated liability of the company in respect of net outstanding claims, which amount to Rs. 5,27,347, indemnity has been given by the Ruby General Insurance Company and the same has been accepted by the District Judge, Delhi. The audited statement of assets shows an excess of Rs. 39,67,491 over the liabilities. Prayer has, accordingly, been made for confirmation of the alterations in terms of the special resolution.

5. Notice of the petition was given to the creditors, shareholders and other persons interested in the company by publication in the Delhi Gazette, Hindustan Times and Nav Bharat Times. Notice was also given to the Registrar of Companies. No one apart from the Registrar of Companies has opposed the petition. According to the Registrar, the company has been doing no business after 1st December, 1961, except in investment of funds, which was only ancillary to its main object and its income since 1961 consisted mainly of dividends, interest and profits on the sale of investments. The Registrar has further stated that the proposed object can neither be carried on more economically or efficiently nor can the new objects be conveniently and advantageously combined with the existing investment business. The substratum of the company, it is stated, has gone and it is liable to be wound up. Reference has also been made by the Registrar to a complaint dated 17th November, 1964, from R.L. Rajoo, a shareholder of the company, protesting against the proposed extension of the business.

6. At the hearing of the petition Mr. Ved Vyas on behalf of the petitioner has stated that, though seven new objects were mentioned in the special resolution reproduced above, the petitioner does not press for the 7th object, which is mentioned in Clause (b) of paragraph 6 of the petition, and the petition should be deemed to relate only to the first 6 clauses of that paragraph. An affidavit has also been filed that R.L. Rajoo, shareholder, who made the complaint to the Secretary, Company Law Board, has sold his shares by transfer deed dated 7th December, 1964. Registration thereof was sanctioned by the directors and as such Rajoo ceased to have any interest in the company since then.

7. Section 17 of the Companies Act deals with the special resolution for alteration of the memorandum of a company and its confirmation by the court. Sub-sections (1) and (2) of that section read as under :

"(1) A company may, by special resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the objects of the company so far as may be required to enable it-

(a) to carry on its business more economically or more efficiently ;

- (b) to attain its main purpose by new or improved means;
- (c) to enlarge or change the local area of its operations ;
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ;
- (e) to restrict or abandon any of the objects specified in the memorandum ;
- (f) to sell or dispose of the whole, or any part, of the undertaking, or of any of the undertakings, of the company; or
- (g) to amalgamate with any other company or body of persons.

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

8. Mr. Ved Vyas on behalf of the petitioner has stated that the proposed alterations fall within the purview of Clauses (a) and (d) of Sub-section (1). Before these clauses can be invoked, it has to be shown that the company is carrying on an existing business. So far as this matter is concerned, the averments made in the petition, which are supported by the affidavit of K.S. Dhaddha, secretary of the company, show that the company has continued to carry on its investment business, and its income for the years 1961, 1962 and 1963 consisted mainly of dividends, interest and profits on sale of investments. The Registrar too admits that the company has been carrying on the business of investment of funds, though, according to him, this business was only ancillary to its main objects and the income of the company since 1961 consisted mainly of dividends, profits and interest on sale of investments. According to the statement of assets and liabilities of the company as on 31st December, 1963, the investment and cash deposits amounted to Rs. 27,85,994 while loans on mortgage of properties and shares amounted to Rs. 8,89,600. The report and accounts for the year 1963 have also been produced at the hearing of the petition and they contain more details of investment. The profit and loss of the company for the year 1963 shows that gross interest and dividends amount to Rs. 2,17,152.

9. Mr. Ved Vyas has urged that the investment business carried on by the company was an independent business and not an ancillary business. He has in this connection referred to *In Re: Standard General Assurance Co. Ltd.*, where on similar facts the investment business of the company was held to be independent business and not something ancillary to the insurance business. It was observed :

"In my opinion the applicant's investment cannot be regarded as investments made pursuant to the provisions of the Insurance Act. There can be no doubt that the investment business now carried on by the company is an independent investment business and is in no way connected with the general insurance business carried on by the applicant. The applicant was free to utilise the funds available to it in any manner it pleased and it had chosen to invest the funds in

the securities mentioned in the said balance-sheet. Such investment, in my opinion, must be treated as an independent investment business. The applicant therefore is at present carrying on a substantial investment business."

The above authority supports the petitioners, and looking to the nature and extent of investments, I am of the view that the contention of Mr. Ved Vyas that the investment business of the company was independent and not ancillary to its main objects should be accepted.

10. In deciding as to whether a company should be allowed to start additional business, I am of the view that an application made in this behalf is not to be disallowed merely because the new business is wholly different from and bears no relation to the existing business of the company. All that is essential is that it should be capable of being conveniently and advantageously combined with the existing business and is not destructive of or inconsistent with the existing business and this must be so under the existing circumstances and not under hypothetical circumstances. In *Ambala Electric Supply Co. Ltd., In re* [1963] 33 Comp. Cas. 585 591-92 the company was registered in 1931 and had as its main object the generation, accumulation and supply of electricity. In 1956, it obtained bulk power from Bhakra Nangal Hydro Electric Grid, and, as a consequence, its motors and power house ceased to be of any utility. The company thereafter started a cold storage plant. When the licence of the company for generation of power expired in July, 1962, the company passed a special resolution in October, 1962, to establish cold storage and certain allied businesses. The application was resisted by the Registrar who contended that with the expiry of the licence of the company it had no existing business. It was held that the company carried on cold storage business since January, 1956, and so it was not correct to say that the company had no existing business. The additional business proposed by the company was held to be not destructive of or inconsistent with the business already carried on and as such the objection raised by the Registrar was repelled. Dealing with the scope of Section 17(1)(d), Capoor J. quoted with approval the following observations made in *Bhutoria Brothers (Private) Ltd., In re*, [1958] 28 Comp. Cas. 122:

"That provision says that the memorandum may be altered with respect to the objects of the company to enable it to carry on "some business". The words "some business" in that clause apparently must include business other than the business which is already being carried on under the existing memorandum.

Therefore, the addition of "some business" may be the addition of a business which is entirely a new departure from the business already carried on. The only requirement of the statute law in India is that such business must be one which can (1) conveniently or advantageously be combined with the business of the company and (2) that this must be so under the existing circumstances and not under hypothetical circumstances. So long as these two limits are observed, I should think that the shareholders and the management of the company should be left free to add to or reduce their business by suitable alterations in their

memorandum."

11. In *Modi Spinning and Weaving Mitts Co. Ltd. In re* [1963] 33 Comp. Cas. 901 decided by Broome J., the relevant headnote reads as under :

"The objects clause of the memorandum of a company permitted the company to manufacture yarn and cloth, but it was actually carrying on the manufacture of artificial silk cloth from yarn purchased in the market. The shareholders unanimously passed a special resolution for adding to the objects clause of the memorandum the production of industrial and power alcohol with the object of producing acetate yarn for the manufacture of silk. It was held that the Registrar had taken a too narrow view of the matter. The company was entitled to pursue the plan for production of acetate yarn itself for the manufacture of silk. Even otherwise, the new business was one which could be conveniently carried on with the existing business, though it was different in nature, and there was no reason for refusing to confirm the resolution for alteration of the memorandum."

12. The following observations of Lawrence J. in *Parent Tyre Co. Limited, In re* [1923] 2 Ch. 222 were quoted with approval:

"It is essentially a business proposition, whether an additional business can or cannot be conveniently or advantageously carried on under existing circumstances with the business of the company. The additional business, of course, must not be destructive of or inconsistent with the existing business : it must leave the existing business substantially what it was before ; but the additional business may be one which is different from the original business and yet may well be capable of being conveniently and advantageously combined with the business which is being carried on."

The above observations were also referred to with approval in the case of *In Re: Standard General Assurance Co. Ltd.*, which is an authority practically on all fours. In the aforesaid case a company, which was previously carrying on insurance business, passed a special resolution to carry on the business as manufacturers of and dealers in chemicals, petro-chemicals, drugs, essences, acids, etc.; to carry on the business of engineers, metallurgists, iron, steel and brass founders ; to execute contracts for the supply of machinery ; to carry on business of importers, exporters ; to render pecuniary or other assistance for helping settlement of industrial or labour problem. The application u/s 17 of the Companies Act, filed on behalf of the company, after an exhaustive review of the case-law, was allowed and the special resolution was confirmed.

13. In the present case I find that the material on the record shows that the assets of the company exceed its liabilities by over Rs. 39 lakhs. Satisfactory arrangements have been made with regard to settlement of all pending liabilities of the company. The company is in good financial position and has sufficient working capital. It would also appear from the material on the record that the shareholders are of the view that better returns are likely to be given to the shareholders if some industrial or commercial activity is undertaken by the

company. The new business suggested is not inconsistent with or destructive of the previous business. It is also significant that the special resolution was passed unanimously and none of the shareholders, who are the persons directly concerned, has appeared to oppose the petition. In the circumstances, I am of the view that the petitioner-company should be permitted to alter its memorandum so that it may extend its business activity.

14. Mr. Ved Vyas on behalf of the petitioner states that the petitioner-company in the near future proposes to carry on the business of engineers, metallurgists, textiles and importers and exporters as mentioned in Clauses (1), (2) and (5) of para. 6 of the petition. The resolution in so far as it relates to the alterations mentioned in Clauses (1), (2) as well as (5) of para. 6 of the petition is confirmed. So far as the business mentioned in the other clauses is concerned, as there is no prospect of its being started in the near future, the question of granting confirmation of the resolution in respect of that business does not arise for the time being. The application in respect of the alterations mentioned in Clauses (3), (4) and (6) is, therefore, not accepted.

15. I may state that the name of the company at present is New Asiatic Insurance Company Limited. As the company has ceased to carry on insurance business, the use of the word "insurance" in its name would appear to be incongruous. Mr. Ved Vyas states that, in view of this incongruity, the petitioner-company has already applied to the Central Government for change of name and has suggested a number of names for approval. I also direct, as was ordered in the case of Standard General Assurance Co. Ltd., In re, that this order confirming the alterations would not take effect until the petitioner's name is changed.

16. The petition is allowed to the extent indicated above. In the circumstances of the case, the parties are left to bear their own costs.