

(1962) 03 BOM CK 0024

In the Bombay High Court

Case No : O.C.J. Company Petition No. 111 of 1961

In Re: of Gagalbhai Jute Mills Pvt. Ltd.

Date of Decision : 22-03-1962

Acts Referred:

COMPANIES ACT, 1956 — Section 17

Citation : (1965) 67 BOMLR 723

Hon'ble Judges : Kantawala, J

Bench : Single Bench

Judgement

Kantawala, J.—[His Lordship after setting out the facts, proceeded.] In the course of the hearing of this petition, Mr. Amin, who appeared on behalf of the company, did not press for confirmation of alterations of the objects set out in sub-paras (b), (c) and (d) of Clause 2A set out above. I am, therefore, not called upon to consider whether the proposed alterations in respect of the objects mentioned in the said paras, (b), (c) and (d) of Clause 2A should be confirmed by this Court.

2. The notice of this petition was served upon the Registrar of the Joint Stock Companies and the Registrar has opposed this application. He has mainly objected to additional objects contained in sub-paras, (a) to (e) in Clause 2A of the Object clause.

3. Section 17 of the Indian Companies Act, 1956, makes inter alia the following provision in respect of alteration of objects.

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;

(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.

4. Mr. Amin, who appeared on behalf of the company, has urged before me that the new business, which is proposed to be carried on by the company under the proposed alterations of the object clause can under the existing circumstances be combined conveniently and advantageously with the business of the company; that it is primarily for the company to decide what is for its good and that the Court must presume that the company knows its business and that it is not for the Court to tell the company how it should carry on its business.

5. On the other hand, it is urged by Mr. Nariman on behalf of the Registrar of Joint Stock Companies that the proposed alteration in the objects clause would enable the company to embark upon several businesses foreign to its main existing business; if the proposed alterations in the object clause are confirmed, it would enable the company to carry on an entirely new class of business having no sort of relation to the existing business of the company; that the provisions of Section 17 of the Companies Act, 1956, do not authorise the carrying on of the business of any nature whatsoever, it must be a cognate one and not one which bears no relation to the existing business of the company; that the proposed new businesses being entirely foreign, are not such businesses as may be conveniently and advantageously combined with the Company's existing business.

6. It is also contended by Mr. Nariman that in view of the fact that distinct businesses are proposed by the alterations suggested, the Court should not sanction them except upon the evidence that there was really a present desire on the part of the company to extend its business in the directions indicated. I propose to consider hereafter the rival contentions raised by both the parties. Mr. Amin does not dispute that the businesses proposed to be carried on by the Company are wholly different from and bear no relation to the existing business of the Company. But he says that inspite of that, the company can carry on the same, under the existing circumstances conveniently and advantageously in combination with the present business of the company. Mr. Amin relied upon the principles laid down in the case of *Parent Tyre Co., In re* [1923] 2 Ch.D. 222. In that case, the business that was sought to be introduced was one of bankers and financiers in the existing business of the company, which consisted in the holding

and management of large investments in two other companies. In construing Section 9(1)(d) of the Companies (Consolidation) Act, 1908, (section similar to Section 17 of the Companies Act, 1956) Lawrence J. observed (p. 228):

Dealing now with the main part of the resolution, I have come to the conclusion that, although the businesses there described are, in my opinion, a new departure, in the sense that they do not fall within the memorandum as at present drawn and are businesses which have no definite relation to the present business of the company, yet, in my judgment, this fact is not fatal to the introduction of the additional objects enumerated in the special resolution. The question whether any given additional business is one which may conveniently or advantageously be combined with the business of the company carried on at the time when the special resolution is passed must, in my judgment, be determined by the persons engaged in the business of the company. 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. I think it would be placing altogether a too narrow construction upon Section 9, to hold that, because the additional business involves a new departure which was not contemplated by the original memorandum, therefore it does not fall within the purview of the section.

7. Thus the additional business proposed to be carried on by the company may involve a new departure from its existing business. It may be that the additional business may be one which is different from the original business, but that by itself is not a sufficient ground to refuse confirmation. "What the Court has to consider is whether the additional business is destructive of or inconsistent with the existing business. If the additional business is not destructive of or inconsistent with the existing business, then it may well be capable of being conveniently and advantageously combined with the existing businesses of the company.

8. Mr. Amin on behalf of the company also relied upon the observations in Palmer's Company Law, 20th edn., pp. 291-292. The said observations are to the following effect:

the Statutory authority to alter the objects is not limited to business ejusdem generis but the alteration may extend to quite different business if it can be conveniently or advantageously combined with the existing business of the company.

9. Mr. Amin on behalf of the company accepted the position that in considering the application for confirmation of alteration in the object clause, the Court lies

got discretion. But he contended that that discretion has to be exercised on judicial principles. The judicial principles which guide the Court in exercising the discretion are clearly laid down in the decision of this Court in the case of Jayantilal Ranchhoddas Koticha and Others Vs. Tata Iron and Steel Co. Ltd., . At page 755 of the Report, in construing the provisions of Section 17 of the Companies Act, Chagla C.J. observes as follows:-

...But in exercising the discretion u/s 17 the Court must always bear in mind what is almost axiomatic in the company matters. It is primarily for the company to decide what is for its good. The Court must presume that the company knows its business and it is not for the Court to tell the company how it should carry on its business. It is not for the Court to impose upon the company its own political or moral views. However much we may disagree with the company in the action that it seeks to take, it is not for us to tell the company how it should carry on its business if its shareholders think that the business should be carried on in a particular way.

10. The special resolution is passed unanimously by the shareholders and no reason is suggested by the Registrar why the Court should take a view contrary to the one taken by the shareholders themselves.

11. Mr. Nariman on behalf of the Registrar has, however, emphasized the fact that the proposed alterations in the object clause are introduced without there being sufficient evidence that the company has a present desire to extend its business in the directions indicated. He contends that the Court should grant the applications only if the application is limited to those objects which the directors desire to carry out in near future. He relied upon the decision in *Re John Brown & Co.: Re Tredegar Iron & Coal Com. Ltd.* (1915) 112 L.T. 232. There, the new clauses as proposed were numerous and lengthy and included almost every kind of business, and some of the clauses only amplified the existing objects. An interpretation clause was introduced among the clauses by reason of which the objects stated in any clause could be treated as an independent business, unless otherwise so stated in the clause. It was held that the alterations in that case could be sanctioned only when the clauses were reduced in number and simplified, and the interpretation clause had been deleted and that a further clause was inserted disabling the directors from treating any of the new objects as principal objects without the consent of a special resolution of the company. Neville J. at page 234 of the report observed:

I have been thinking this matter over a great deal. The Legislature may pass a law which will prevent companies trading except within the limits of their memorandum; but, if you have got a memorandum which is co-extensive with the business of the whole world, you get behind the ambit of the legislation. I think this would meet the case where it is desired (I think unwisely) to have these enormously extended memorandums.... The point is that the directors could abandon the main business and take up an entirely new business without consulting the shareholders. I should stand in the way of the company taking up

distinct businesses. Where distinct businesses were proposed by the alterations suggested I would not sanction them except upon evidence that there was a really present desire on the part of the company to extend its business in the directions indicated.

12. The learned Judge's subsequent observations on the same page of the Report are equally cogent and relevant on the point under consideration:

That is one of the anomalies of the company law.

What I really feel is that if the court takes up the line of least resistance, some day the court may wake up and find that shareholders have lost their money through directors embarking on speculative business.

I am rather inclined to think that it would be better if the application were limited (even as to ancillary powers) to those the directors desire to carry out, not immediately, but in the near future, rather than to put in ancillary powers which you thought might at some future time be desired to be carried out. I don't want you to come once for all and ask for an extended memorandum covering every conceivable alteration in the business of the company.

13. In fact, Neville J. had observed earlier at the same page of the report:

... If the circumstances of the company change, they can always come and ask reasonably to enlarge their memorandum.

14. It is thus clear that unless there is a present desire on the part of the company to carry on the new business in the near future, the Court should not grant the application. There is, therefore, considerable force in this contention of Mr. Nariman. During the course of the hearing, however, Mr. Amin on behalf of the company, abandoned the objects which are mentioned in sub-paras. (b), (c) and (d) of the Object Clause 2A. As these objects are abandoned by the company and as the company's main desire is to carry on the businesses which are mentioned in sub-para, (a) of Clause 2A of the Object Clause, there is evidence on record that the company intends to start the businesses in chemicals in the near future. Under these circumstances, I find it difficult to accept this contention of Mr. Nariman.

15. Mr. Nariman also relied upon the case in *In the matter of In Re: Bhutoria Brothers (Private) Ltd.*, In this case, the principles laid down in the case *Parent Tyre Co. In re.*, and in *Re, John Brown & Co.: Re. Tredegar Iron & Coal Co. Ltd.*, are followed. After referring to these cases at p. 595 of the report, Mukharji J. observed (p. 596) :

I arrive at a similar conclusion from a construction and interpretation of the language of Section 17(1)(d) of the Companies Act, 1956. 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. 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.

16. In the present case, the company is a private limited company and has only two shareholders. Both the shareholders have unanimously approved of the proposed alteration in the object clause. None of the creditors of the company has come forward to oppose this application for confirmation of the alteration in the object clause. The only opposition to this petition is from the Registrar of the Joint Stock Companies. The company has ample capital with which it can carry on its existing business and also the proposed additional businesses. Simply because the businesses proposed to be carried on are wholly different from and bear no relation to the existing business of the company, it cannot be said that it cannot be conveniently and advantageously combined with the existing business. The proposed businesses, in my opinion, are not destructive of or inconsistent with the business which the company is now carrying on. In exercise of my jurisdiction, I should not overlook the fact that it is for the shareholders to decide what business could be carried on by the company and it is not for the Court to tell the company what business it should carry on and how it should be carried. In view of the facts stated in the petition and the affidavit in rejoinder, I am satisfied that the businesses proposed to be carried on by the company under the proposed alteration of the object clause (save and except those which are abandoned) can conveniently and advantageously be combined with the business of the company under its existing circumstances.

17. I, therefore, allow the alteration proposed by the object Clause 2A set out in para. 6 of the petition on condition that Clauses (b), (c) and (d) thereof are deleted therefrom. The objects in Clauses (b), (c) and (d) of the Object Clause 2A are in fact abandoned during the course of the hearing. The Company will pay the costs of the Registrar of the Joint Stock Companies and will bear its own costs.