

(1974) 04 PAT CK 0001

In the Patna High Court

Case No : Company Petition No. 6 of 1973

In Re: Parikh Engineering and Body Building Co. Ltd.

Date of Decision : 26-04-1974

Acts Referred:

Companies Act, 1956 — Section 17, 170, 171, 171(1), 189

Citation : (1975) 45 CompCas 157

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Advocate : Ashwini Kumar Sinha, for Registrar Companies, K.D. Chatterjee and Vijay Bhagat, for the Appellant;

Judgement

Madan Mohan Prasad, J.—This is an application u/s 17 of the Companies Act, 1956, for confirmation of a special resolution passed by the petitioner-company changing its registered office from the State of Bihar to the State of West Bengal and a consequent alteration in the memorandum of association.

2. The petitioner (hereinafter called "the company") was registered under the provisions of the Companies Act, 1956, on the 22nd day of November, 1971. The registered office of this company is situate at Adityapur-Kandra Road, Adityapur, Jamshedpur, in the district of Singhbhum. The total capital of the company is rupees one crore divided into seven lakhs fifty thousand equity shares of rupees ten each, nineteen thousand preference shares of rupees hundred each and six thousand cumulative preference shares of rupees hundred each. Of the aforesaid, one lakh ninety thousand equity shares of rupees ten each and six thousand cumulative preference shares of rupees hundred each have been issued and fully paid up in cash. The object of the company is mainly to carry on the business of building automobile bodies and manufacturing its spare parts. The board of directors experienced difficulties in the efficient management of the company because in respect of all legal matters they had to consult with the company's chartered accountants, solicitors, etc., at Calcutta, the concern from which the company got orders for building bodies are situated in Calcutta, that the only activity of the company at Adityapur is that of body building which is at

present done by M/s. Utkal Automobiles Private Ltd., the company having leased out its factory to the said concern and most of the commercial transactions of the company are with concerns located in the city of Calcutta. The board of directors, therefore, thought that it was in the interest of economy and administrative convenience that the company's registered office should be situated in the city of Calcutta. An extraordinary meeting of the company was, therefore, convened to be held on the 8th of May, 1973, and notice thereof was issued on the 20th of April, 1973. At the meeting aforesaid the following special resolutions were unanimously passed:

" (a) That the registered office of the company be shifted from the State of Bihar to the State of West Bengal and for that purpose Article 2 of the memorandum of association be suitably amended.

(b) That the words " State of Bihar" appearing under Article 2 of the memorandum of association should be deleted and substituted by the words " State of West Bengal." "

3. The present application has been filed for the confirmation of these resolutions.

4. The Registrar of Companies filed an application objecting to the confirmation aforesaid on the ground that twenty-one days" notice as required by Section 171(1) of the Companies Act, 1956 (hereinafter " the Act "), had not been given to the shareholders and further because the company had not filed the consent of the members to show that the resolutions could be passed with a shorter notice. The resolutions were, therefore, said to be invalid and on that ground it was said that they could not be confirmed.

5. Thereafter the company filed a supplementary affidavit to the effect that it had issued to all the equity shareholders a notice requesting them to waive the necessity of twenty-one days" notice and give their consent to shorter notice and ratify the special resolutions passed at the meeting on the 8th of May, 1973. It is said that the company has 277 equity shareholders having voting power and 226 out of them have waived twenty-one days" notice and accepted and ratified the aforesaid resolutions. It is further said that the aforesaid consenting shareholders hold one lakh eighty-two thousand two hundred and fifty equity shares representing more than ninety-five per cent. of the total, viz., one lakh and ninety thousand equity shares. A further supplementary affidavit was filed wherein it has been stated that the company had not received any single objection from any of the shareholders to whom the aforesaid notice had been sent.

6. The questions thus arise, (1) whether the post-consent given by members of the company alleged to be holding not less than ninety-five per cent. of the paid up share capital could validate the resolutions passed without the required notice of twenty-one days, and (2) whether this court should confirm the resolutions.

7. In respect of the first point, the relevant provisions which need be noticed are

the following. Sub-section (1) of Section 17 of the Act provides 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"

8. Sub-section (2) thereof provides that :

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

9. Sub-section (2) of Section 189 of the Act provides as follows :

" (2) A resolution shall be a special resolution when-

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution ;

(b) the notice required under this Act has been duly given of the general meeting ; and

(c) the votes cast in favour of the resolution whether on a show of hands, or on a poll, as the case may be, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, are not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting."

10. Sub-section (1) of Section 170 provides as follows :

" (1) The provisions of Sections 171 to 186-

(i) shall, notwithstanding anything to the contrary in the articles of the company, apply with respect to general meetings of a public company, and of a private company which is a subsidiary of a public company ; and

(ii) shall, unless otherwise specified therein or unless the articles of the company otherwise provide, apply with respect to general meetings of a private company which is not a subsidiary of a public company."

11. Section 171 provides as follows :

" (1) A general meeting of a company may be called by giving not less than twenty-one days" notice in writing.

(2) A general meeting may be called after giving shorter notice than that specified in Sub-section (1), if consent is accorded thereto-

(i) in the case of an annual general meeting, by all the members entitled to vote thereat ; and

(ii) in the case of any other meeting, by members of the company (a) holding, if the company has a share capital, not less than 95 per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting, or

(b) having, if the company has no share capital, not less than 95 per cent. of the total voting power exercisable at that meeting :

Provided that where any members of a company are entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter."

12. It will appear from a reading of these sections that a special resolution for amendment of the memorandum of association in respect of its registered office can be passed validly only when the requirements of the aforesaid provisions are complied with.

13. In the present case admittedly the notice for an extraordinary meeting was given on the 20th of April, 1973, and the meeting itself had been convened on the 8th of May, 1973. Obviously, therefore, there was not twenty-one days' clear notice. It is also admitted that prior to the meeting the members of the company representing not less than 95 per cent. of such part of the paid up share capital as gave them a right to vote had not consented to the aforesaid meeting being convened on a shorter notice. It appears, however, that subsequent to the meeting, 226 shareholders holding 1,82,250 equity shares out of the total number of 277 shareholders holding equity shares worth Rs. 1,90,000 have consented to waive the requirement of due notice and accepted and ratified the resolutions aforesaid.

14. Mr. Ashwini Kumar Sinha, appearing for the Registrar of Companies, has, however, urged that it appears that notices were not given to the holders of six thousand cumulative preference shares. It has been urged that in view of Section 87 the preference shareholders also had a right to vote at the meeting aforesaid and in view of Section 171(2)(ii) the general meeting could be called on a shorter notice if consent had been accorded by members of the company holding "not less than 95 per cent. of such paid up share capital of the company as gives a right to vote at the meeting....." The question thus arises whether the preference shareholders had any right to vote at the meeting for the alteration of the memorandum of association in respect of the registered office. It will be relevant to refer to a few provisions of the Act in this connection. Section 86 provides that there shall be two kinds of share capital (a) equity share capital, and (b) preference share capital. Section 87 provides for voting right to such shareholders. It may usefully be reproduced :

" 87. (1) Subject to the provisions of section 89 and Sub-section (2) of Section 92-

(a) every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company ; and

(b) his voting right on a poll shall be in proportion to his share of the paid up

equity capital of the company.

(2) (a) Subject as aforesaid and save as provided in Clause (b) of this sub-section, every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares.

Explanation.--Any resolution for winding up the company or for the repayment or reduction of its share capital shall be deemed directly to affect the rights attached to preference shares within the meaning of this clause.

(b) Subject as aforesaid, every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, be entitled to vote on every resolution placed before the company at any meeting, if the dividend due on such capital or any part of such dividend has remained unpaid-

(i) in the case of cumulative preference shares, in respect of an aggregate period of not less than two years preceding the date of commencement of the meeting ; and

(ii) in the case of non-cumulative preference shares, either in respect of a period of not less than two years ending with the expiry of the financial year immediately preceding the commencement of the meeting or in respect of an aggregate period of not less than three years comprised in the six years ending with the expiry of the financial year aforesaid.

Explanation.--For the purposes of this clause, dividend shall be deemed to be due on preference shares in respect of any period, whether a dividend has been declared by the company on such shares for such period or not,--

(a) on the last day specified for the payment of such dividend for such period, in the articles or other instrument executed by the company in that behalf ; or

(b) incase no day is so specified, on the day immediately following such period.

(c) Where the holder of any preference share has a right to vote on any resolution in accordance with the provisions of this sub-section, his voting right on a poll, as the holder of such share, shall, subject to the provisions of Section 89 and Sub-section (2) of Section 92, be in the same proportion as the capital paid up in respect of the preference share bears to the total paid up equity capital of the company. "

15. Section 89 deals with the termination of disproportionately excessive voting rights in existing companies. It provides that if at the commencement of the Act any shares of any existing company limited by shares carry voting rights in excess of the voting rights attaching under subsection (1) of Section 87 to equity shares in respect of which the same amount of capital has been paid up, the company shall, within a period of one year from the commencement of the Act,

reduce the voting rights in respect of the shares first mentioned so as to bring them into conformity with the voting rights attached to such equity shares under Sub-section (1) of Section 87. Then it makes other provisions in this behalf which are not relevant to the present discussion. Section 92 deals with the power of the company to accept from any member unpaid share capital although not called up and Sub-section (2) thereof provides that the member shall not be entitled to any voting rights in respect of the money so paid by him until the same would become presently payable.

16. From a reading of Sub-section (2) of Section 87, it is obvious that the holders of preference share capital have a right to vote only on resolutions which directly affect the rights attached to their preference shares. The Explanation makes it clear that a resolution for winding up or for repayment or reduction of the share capital is deemed directly to affect his rights. Clause (b) of Sub-section (2), however, gives the preference shareholder a right to vote on every resolution in case the dividend due on such capital has remained unpaid, in the case of cumulative preference shares in respect of a total period of not less than two years.

17. In the present case the six thousand shares are cumulative preference shares. This company, as stated earlier, was registered only in November of the year 1971 and a meeting at which the special resolution was passed was held in April, 1973. In the circumstances of the present case, therefore, there could not have been any dividend unpaid for two years or more before the date of the meeting. Thus, the preference shareholders in the present case had no right to vote at the aforesaid meeting. There is nothing on record to show that the aforesaid resolution directly affects the rights attached to the preference shares. In fact this point was not raised in the petition filed by the Registrar and thus no facts have been stated to show that the resolution did directly affect their rights. There is thus no substance in the contentions put forward.

18. It appears that in the present case out of 277 members holding 1,90,000 equity shares, 226 members holding 1,82,250 shares have given post-consent to the resolution aforesaid and waived the requirement of notice. It is obvious that the consenting members represent more than 99 per cent. of the total of equity shares. If such members had accorded their consent and waived the requirement of twenty-one days' notice prior to the meeting, the meeting could have been convened in view of Sub-section (2) of Section 171 of the Act and the resolution could have been valid and legal. The question, however, arises whether a waiver made after the meeting and its consent given subsequently could validate the resolution passed at the meeting.

19. In this connection Mr. K. D. Chatterji appearing for the company has placed reliance on a few decisions of the English courts and one decision of the Madras High Court in support of the proposition that post consent given by members to a resolution passed at a meeting without proper notice would validate the same. In *In re Pearce Duff & Co. Ltd* [1960] 1 WLR 1014 ., the question came up for

decision. In that case the company had issued a notice of a special resolution to be passed at an extraordinary general meeting for the reduction of capital but the statutory period of twenty-one days" notice had not been observed. The directors later wished to propose a second resolution for the payment of premium to the holders of preference shares and appreciating that they could not give the statutory period of notice for the second resolution, requested the shareholders at the meeting to sign a consent to the second resolution being passed. The consent was signed by shareholders being a majority altogether holding more than 95 per cent. in nominal value of the shares. Subsequently, the company obtained the written consent of every shareholder to both resolutions being treated as valid special resolutions. On the footing of this written consent of every shareholder to treat the resolutions as valid, the company filed a petition for confirmation. Section 141(2) of the Companies Act, 1948 (11 & 12 Geo. 6 c. 38) which was the subject-matter of interpretation is as follows :

" A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days" notice, specifying the intention to propose the resolution as a special resolution, has been duly given :

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days" notice has been given."

20. Buckley J., on the facts of the case, held that the shareholders who signed the consent did not have it in their mind at all that the initial notice was defective and so their consent did not cure the matter. The learned judge, however, relied on the subsequent consent obtained to those resolutions and held them to be valid. His Lordship referred to the decisions in *In re Oxted Motor Co. Ltd.* [1921] 3 KB 32 and *Parker and Cooper Ltd. v. Reading* [1926] Ch 975. and distinguished them and said :

" Those cases, I think, relate to a rather different subject-matter from that which I have to consider, because, as I see it, I have to consider not whether these resolutions bound the company as special resolutions but whether any shareholder could now say that the resolutions were not properly passed as valid special resolutions. Having regard to the 100 per cent. consent which has been obtained to the resolutions being treated as valid and to the fact that the petition has been presented upon that footing, I do not think that this court ought to hear any of the shareholders to say that those resolutions were not validly passed."

21. In the case of Parker and Cooper Ltd. the question was whether certain resolutions passed irregularly in respect of debentures and appointment of directors and a receiver could be treated as valid in view of subsequent ratification thereof by all the shareholders. Astbury J. held I

".....where the transaction is intra vires and honest, and especially if it is for the benefit of the company, it cannot be upset if the assent of all the corporators is given to it."

22. In *In re Oxted Motor Co.* the only two shareholders of the company had passed a resolution to wind up the company voluntarily and to appoint a liquidator. No notice of intention to propose this resolution as required by Section 69 of the Companies (Consolidation) Act, 1908, had been previously given to the shareholders. The question turned round the validity of this resolution. It was held that it was competent for the shareholders to waive the formalities in respect of notice and since all the shareholders had passed the resolution it was valid as an extraordinary resolution. The learned judge placed reliance on the decision in the case of *In re Express Engineering Works Ltd.* [1920] 1 Ch 466 as "an authority in support of the view that the statutory requirements as to notice can be waived". In the last mentioned case there were five shareholders of the company. At a meeting these five shareholders appointed themselves directors and thereafter they resolved to issue debentures. This meeting was, however, described as a meeting of the board of directors. The question was whether the resolution was valid. The Court of Appeal held that if the resolution was in a matter intra vires the members of the company and there was no fraud the shareholders were able to waive all formalities as regards notice and that the resolution was valid. Lord Warrington, Lord Justice said :

" It was competent to them to waive all formalities as regards notice of meetings, etc., and to resolve themselves into a meeting of shareholders and unanimously pass the resolution in question."

23. Lord Sterndale M. R. said :

".....the case came within the meaning of what was said by Lord Davey in *Salomon v. Salomon & Co.* [1897] AC 22 " I think it an inevitable inference from the circumstances of the case that every member of the company assented to the purchase, and the company is bound in a matter intra vires by the unanimous agreement of its members". "

24. Younger L. J. also rested his conclusion upon what was said by Lord Davey.

25. The only case from Indian reports which has been cited before me is *Self Help Private Industrial Estate Private Ltd.*, *In re* [1972] 42 Comp Cas 605 in which case a special resolution sanctioning the reduction of share capital was passed without giving twenty-one days notice as required by Section 171 of the Companies Act, 1956. Subsequently, the company had obtained consent letters from all the shareholders, except one whose whereabouts were not known,

agreeing to a shorter notice. A petition was filed for confirmation of the resolution and an objection was raised by the Registrar of Companies regarding the resolution being invalid on account of shorter notice. The learned judge relying upon the cases referred to above held that the post-consent given by all the shareholders except one validated the resolution.

26. Learned counsel for the Registrar of Companies has, however, urged that the provision of Section 171(2) of the Act being mandatory the resolution cannot be treated as valid by subsequent consent obtained. In support of his argument he has placed reliance on decisions in the cases of *Homi Cawasji Bharucha v. Arjun Prasad* [1957] 27 Comp Cas 6 and *N. V. R. Nagappa Chettiar v. Madras Race Club* [1949] 19 Comp Cas 175. In the case of *Homi Cawasji Bharucha* the resolution passed was with respect to reduction of share capital but notice of twenty-one days as required by Section 81(2) of the Companies Act of 1913 had not been given. The learned judges held that the meeting was illegal because of the failure to comply with the statutory provision of notice as required u/s 81. In the case of *N. V. R. Nagappa Chettiar* a suit had been brought for a declaration, inter alia, that the meeting of the general body of the members held on a particular date was invalid, and that the amendments of the articles of association were not duly passed. It was alleged that twenty-one days' notice as required by Section 81(2) of the Companies Act of 1913 had not been given. In respect of the last point the learned judges formulated the question "whether in view of the imperative provisions regarding the notice in Section 81(2) it is open to the plaintiffs to waive their right to object to an illegality..." and referred to Section 117(2) of the English Act of 1929 and the decision in *Oxsted Motor Co* [1921] 3 KB 32 (KB) and said as follows :

".....The Indian Companies (Amending) Act of 1936 introduced a similar proviso in Section 81(2). Under this proviso it would be seen that the requirement as to 21 days' notice may be dispensed with by an agreement of all the members "entitled to attend and vote" and not merely of all the members "entitled to vote and present in person or proxy at the meeting". It requires, therefore, an agreement of all the members of the club in order to dispense with the requirement of 21 days' notice. The proviso in other words indicates the intention on the part of the legislature that the provision in Sub-section (2) is mandatory and that it can be dispensed with only by the agreement of all the members. It is not enough that the members present at the meeting indicated either expressly or impliedly that they consented to or acquiesced in shortening the period of notice. An express consent of all the members to waive the notice has not been established in this case. Even if the members present agreed to waive the defect in the notice the meeting would not be a valid meeting. The plaintiffs, therefore, are not precluded from raising the contention that the notice contravened the provisions of Sub-section (2) of Section 81."

27. It will be useful to quote the provisions of Sub-sections (1) and (2) of Section 81 of the Companies Act of 1913 and refer to the relevant corresponding

provisions of the present Act of 1956 for the purpose of comparison. Sub-sections (1) and (2) of Section 81 of the Act of 1913 areas follows :

"(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy where proxies are allowed at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days" notice specifying the intention to propose the resolution as special resolution has been duly given :

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days" notice has been given."

28. Sub-section (2) of Section 189 of the present Act quoted earlier provides that a resolution shall be a special resolution when the notice required under this Act has been duly given of the general meeting ; and the provision regarding notice of meeting is to be found in Section 171 of the present Act which has been quoted earlier and which provides that a general meeting of a company may be called by giving not less than twenty-one days" notice in writing ; and that it may be called after giving shorter notice, if consent is accorded thereto--in the case of an annual general meeting, by all the members entitled to vote thereat ; and in the case of any other meeting, by members of the company (a) holding, if the company has a share capital, not less than 95 per cent. of such part of the paid up share capital of the company as gives a right to vote at the meeting, or (b) having, if the company has no share capital, not less than 95 per cent. of the total voting power exercisable at that meeting.

29. It is thus apparent that in view of the proviso to Sub-section (2) of Section 81 of the Act of 1913 a special resolution could be passed at a meeting held on shorter notice only " if all the members entitled to attend and vote at any such meeting " so agreed. It was in this view of the law as it stood then that the case of N. V. R. Nagappa Chettiar [1949] 19 Comp Cas 175 was decided. In that case all the shareholders had not consented to the resolution being treated as valid. It will also be noticed that the corresponding provision in section 117(2) of the English Companies Act of 1929 was in the same terms as Section 81(2) of the Indian Companies Act of 1913 as it stood after an amendment in the year 1936. The aforesaid Section 117(2) was as follows :

" A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days" notice specifying the intention to propose the resolution as a special resolution, has been duly given :

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days" notice has been given."

30. This is the reason why in the English cases the learned judges have considered as to whether consent in respect of resolution passed on shorter notice had been given by all the shareholders entitled to attend and vote.

31. It appears that in the Companies Act of 1948 (11 & 12 Geo. 6 c. 38) there is another provision in respect of length of notice for calling meetings, namely, Section 133, which is as follows :

" 133. (1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company other than an adjourned meeting by a shorter notice than-

(a) in the case of the annual general meeting, twenty-one days" notice in writing ; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days" notice in writing in the case of a company other than an unlimited company and seven days" notice in writing in the case of an unlimited company.

(2) Save in so far as the articles of a company make other provisions in that behalf (not being a provision avoided by the foregoing sub-section) a meeting of the company (other than an adjourned meeting) may be called-

(a) in the case of the annual general meeting, by twenty-one days" notice in writing ; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days" notice in writing in the case of a company other than an unlimited company and by seven days" notice in writing in the case of an unlimited company.

(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in the last foregoing sub-section or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed-

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat ; and

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members."

32. It will thus appear that, according to Sub-section (2) of Section 133, twenty-one days" notice is required for an annual general meeting and in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution fourteen days" notice is required. Sub-section (3) thereof provides that notwithstanding that the meeting is called by a shorter notice it will be deemed to be duly called if it is so agreed, in the case of an annual general meeting, by all the members entitled to attend and vote thereat, and in the case of any other meeting by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent. in nominal value of the shares giving a right to attend and vote at the meeting. It will be noticed that the provision of Sub-section (3) is similar to the provision of Sub-section (2) of Section 171 of the present Indian Act which also requires consent of all the members entitled to vote thereat in the case of an annual general meeting and the consent, in the case of any other meeting, of members of the company holding not less than 95 per cent. of such part of the paid up share capital as gives a right to vote.

33. It will appear next that Section 141 of the English Companies Act of 1948 deals with extraordinary and special resolutions. Sub-section (2) thereof quoted earlier provides that a resolution shall be a special resolution when it has been passed at a general meeting of which not less than twenty-one days" notice has been duly given. It also contains a proviso that if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving that right, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days" notice has been given. It will appear that the proviso to this sub-section contains a provision similar to that provided in Clause (b) of Sub-section (3) of Section 133 of the English Companies Act of 1948. In the Indian Companies Act, 1956, however, Section 189(2) does not reproduce the provision already contained in Sub-section (2) of Section 171. The reason is that Clause (b) of Sub-section (2) of Section 189 of the present Act provides that the notice required under this Act must have been given and Section 171 provides for the notice of twenty-one days and it provides for shorter notice in Sub-section (2) of Section 171.

34. An analysis of the English decisions aforesaid thus brings out that even though consent of shareholders to shorter notice for the meeting at which a special resolution has been passed is not obtained prior to the meeting, consent obtained thereafter would validate the resolution. In the case of *Hemi Cawasji Bharucka* [1957] 27 Comp Cas 6 the learned judges did not have to consider the question of any consent given subsequent to the meeting. In the case of *N. V. R. Nagappa Chettiar* [1949] 19 Comp Cas 175 (Mad) also it had been found that the consent of all the members had not been given in view of Section 81(2) of the Indian Companies Act of 1913. These two decisions are, therefore, of no assistance for the decision of the point before me. The decision in the only Indian case, *In Re: Self Help Private Industrial Estate Private Ltd.*, is in favour of the

view that a post-consent given validates a special resolution passed without proper notice. In view of a number of English decisions cited earlier I find myself in respectful agreement with the view taken by the learned judge in this case.

35. In the present case majority of the members of the company holding more than 95 per cent. of such part of the paid up share capital as gave them a right to vote at the meeting, have given their consent subsequent -to the meeting to a shorter notice and have ratified and accepted the special resolutions passed at the meeting. As I have held earlier, there were in all 277 members out of which 226 have given their consent. It may be mentioned that letters of request were sent by the company to each and every such member but a number of them do not appear to have answered the letter. It is thus obvious that none of the members of the company thought it fit to raise any objection to the validity of the special resolutions passed. The company has stated on affidavit that not a single objection was received from any of the other members. In these circumstances it will not be unreasonable to assume that no member of the company wanted to object to the special resolutions aforesaid. In view of the law as laid down earlier, a consent given subsequently validates a resolution passed at a meeting on shorter notice. In the circumstances of this case, therefore, I am inclined to take the view that in view of the subsequent consent obtained by the company from its members who form a majority and hold more than 95 per cent. of the paid up share capital which gives them a right to vote, the resolutions must be deemed to be valid.

36. The question which next comes up is whether the court should confirm these resolutions. As stated earlier, the company finds that it will be more economical and convenient that the company's registered office should be situated in the city of Calcutta. Good reasons have been assigned for this decision, which have been stated earlier. It is the company which is the best judge of how to run its business. It is not for this court to substitute its opinion in this respect. No objection has been raised by the Registrar of Companies or for the matter of that by anybody else to show that the resolution is not bona fide and that it is likely to affect adversely any person. It is said that no debentures have been issued by this company. It has, however, been stated in the petition that the company has sundry creditors to whom it owes a debt of roughly two lakhs of rupees. In view of Sub-section (3) of Section 17 of the Act, before confirming the alteration, the court has to be satisfied that with respect to every creditor who is entitled to object to the alteration and who signifies his objection, either his consent to the alteration has been obtained or his debt or claim has been discharged or determined or secured to the satisfaction of the court. It is true that no creditor has appeared but it appears that no notice of this application was issued to the creditors of the company. In that view of the matter I am inclined to make the order conditional.

37. In the result, I would confirm the special resolutions aforesaid subject to the condition precedent that the petitioner-company discharges the debts of all its

creditors or secures them to the satisfaction of this court within a period of two months from today and files in this court an affidavit to that effect.