

(1967) 04 MAD CK 0016

In the Madras High Court

Case No : Company Petition No. 45 of 1966

In Re: Rajendra Industries (Private) Limited

Date of Decision : 07-04-1967

Acts Referred:

Companies Act, 1956 — Section 17

Citation : (1967) 37 CompCas 563

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : C.U. Neelakantan, for the Appellant; V. Suresham, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—The petitioner, Rajendra Industries (Private) Limited, is seeking for confirmation of the alteration of the

memorandum of association as accepted by the company at its meeting held on the 24th of December, 1966.

2. When the application came up before me, I casually perused the various objects which are sought to be introduced into the memorandum of

association by reason of a resolution of the company and confirmation of which is now sought for. I directed notice to the Registrar of Companies

and wanted a report to be submitted by him whether the objects now sought to be introduced into the memorandum are substantially and totally

different from the original objects of the company and whether they are in any way ancillary or incidental to them. The Registrar in his report dated

20th of March, 1967, states that in his opinion there appears to be substantial changes in the main clauses of the company and that the company is

to diversify its activities and which, according to him, were unrelated to the existing objects of the company. Inter alia, he invited my attention to

objects clauses 5, 6, 7, 9, 10 and 12 and states that these objects appear to change the very phase and substratum of the company.

3. The company, no doubt, was originally incorporated for the purpose of carrying on the business of manufacture, purchase and sale of all metals

and also to carry on the business of manufacture of hardware materials of all kinds of metals. There are of course various other objects to indicate

that the primary intent of the company when it incorporated itself was for the purchase and sale of articles made out of tin, aluminium, etc. It is now

stated that, on account of the present industrial advancement and technological development in all kinds of business including that undertaken by

the company, it is neither conducive to the interest of the company nor its general body of shareholders to keep the status quo without being alive

to the vast industrial development around it. Originally cms were manufactured out of tin sheets. Such tin sheets have become very difficult of

procurement and therefore the company intends to import certain articles and raw materials in order to develop their original business.

Contemporaneous with this object, the company also wishes to manufacture and deal in lathes, planing machines, etc., to manufacture, import,

export and deal in electric motors, etc., to carry on all or any of the business of air-conditioning, agricultural, automobile, aviation, etc. On a first

reading of these objects which are now sought to be introduced by virtue of the resolution of the company, they appear to be far away from the

accredited objects on which the company rested at the time of its incorporation. But it has to be remembered that while sanctioning a

memorandum of a company, if the business is substantially remaining the same and if the changes, additions or alterations asked for by the

company are only steps in aid to improve its efficiency, this court should not refrain from sanctioning such an application. One other principle also

which occurs to me is that the interest of the shareholders is the primary criteria which has to be weighed and considered before the objects of a

company can be amended. No doubt, a unanimous resolution of the shareholders or a majority resolution thereof would not furnish a sufficient

indicia for alteration being granted straightaway. But if the alteration is not intended to oppress any section of the shareholders or deprive them of

their legitimate rights and expectations, then any request for such alteration ought not to be lightly brushed aside.

4. In this case, though, no doubt, the company is seeking for an alteration of its memorandum so as to add, inter alia, objects 5, 6 and 7, etc.,

thereof, yet it does not appear that such addition to the objects would in any way be prejudicial or destructive to or inconsistent with the main

business of the company. What was originally manufacture of tin cans is now sought to be substituted by the manufacture of machinery or parts of

machinery. This additional business, in my opinion, is not destructive or inconsistent with the main business operations contemplated by the

company. The company has stated that it has excess of assets over liabilities to the tune of Rs. 1,65,793. It, therefore, follows that they have no

creditors as such and by expanding their activities with the consent of the shareholders it would not in any way prejudice the interests of the body

of creditors as well.

5. Mr. Nilakantan, learned counsel for the petitioner, referred to me a decision in *In re New Asiatic Insurance Co. Ltd.*, [1965] 2 Comp. L.J. 24

wherein the question arose whether under similar circumstances the memorandum of association can be altered. In fact, in that case, the company

was carrying on life insurance business. After the life insurance was taken over by the Central Government, the company could not profitably carry

on its business and stopped the same. Therefore the company resolved to alter the objects of the company so as to include businesses in

engineering works, cotton and importing and exporting. Khanna J., on an application to the court u/s 17 of the Act for confirmation of the

alterations of the memorandum of association which was opposed, as in this case only by the Registrar of Companies, held that the application has

to be allowed. As observed by the learned judge, the only requirement of the statute law in India while sanctioning an alteration of a memorandum

appears to be that the proposed 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.

6. I am, therefore, satisfied that this application is maintainable and accordingly order prayer 1 therein. The certified copy of this order as and when

secured by the applicant from this court shall be produced before the Registrar within three months thereafter.