
(1971) 01 MAD CK 0025

In the Madras High Court

Case No : Company Petition No. 63 of 1970

In Re: Self Help Private Industrial Estate Private Ltd.

Date of Decision : 05-01-1971

Acts Referred:

Companies Act, 1956 — Section 171

Citation : (1972) 42 CompCas 605 : (1972) 85 LW 909 : (1972) 85 LW 809

Hon'ble Judges : Palaniswamy, J

Bench : Single Bench

Advocate : C. Harikrishnan, for the Appellant; V. Suresham, for the Registrar of Companies, for the Respondent

Judgement

Palaniswamy, J.—This petition is filed u/s 101 of the Companies Act, 1956, praying for the confirmation of the reduction of the share capital of the petitioner-company, Self Help Private Industrial Estate Private Ltd. One of the main objects of the company is to acquire lands either by purchase or gift or take them on lease and develop them and divide them into plots and deal with them. The capital of the company is Rs. 4,99,000. It is alleged in the petition that the shareholders felt that in future owning and managing private industrial estate is not an economical proposition and therefore a resolution was passed on 20th March, 1970, to reduce the authorised share capital of the company from Rs. 4,99,000 divided into 4,990 equity shares of Rs. 100 each to Rs. 4,990 divided into 4,990 equity shares of Re. 1 each. It is to confirm this reduction that this petition has been filed. The Registrar of Companies has taken objection to confirmation on the ground that, as required u/s 171 of the Act, there was no notice of 21 days before the resolution was considered. In answer to this objection, the petitioner-company has filed a reply stating that though the notice did not give 21 clear days before the meeting was held, the company obtained consent letters from its shareholders subsequently agreeing for a shorter notice and filed the same with the Registrar of Companies and that, therefore, the resolution passed by the company should be deemed to have been validly passed.

Section 171 reads:

"171. (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 the 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. "

2. In the instant case, admittedly, the notice issued for the meeting that was held on March 20, 1970, did not give 21 clear days. The notice was dated February 26, 1970, and when it was served on the shareholders, the requisite interval of 21 days was not there for the meeting that was held on March 20, 1970. Subsequently, all but one shareholder gave consent letters agreeing for the resolution that was passed on March 20, 1970, with shorter notice. The question is whether this consent is sufficient to satisfy the requirement of Section 171. Mr. Suresham, appearing for the Registrar of Companies, contended that a valid notice giving 21 days is a pre-requisite for a valid meeting and that having regard to the language employed in Section 171, post consent by the shareholders would not validate the meeting if it had been held without giving 21 days" notice. He cited some authorities in support of this contention. In *Homi Cawasji Bharucha and Others Vs. Arjun Prasad and Another*, arising under the Companies Act, 1913, the question considered was regarding the validity of a resolution reducing the share capital. Relying upon the decision of the Privy Council in *Garden & Gully United Quartz Mining Co. v. Hugh McLister*, [1875] 1 App. Cas. 39(P.C.) the Patna High Court held that since there was violation with regard to the period of notice, the meeting that was held for considering the modification of the scheme should be held to be null and void. In *Nagappa Chettiar v. Madras Race Club*, [1949] 19 Comp. Cas. 175 ; ILR 1949 Mad. 808 the question considered was regarding the validity of a notice issued u/s 81 of the Companies Act, 1913, which also required 21 days and which also provided consent for shorter duration. The meeting was held to be invalid, as it was not established that all the members waived the notice. As a matter of fact, that case arose out of an action instituted by some members questioning the validity of the resolution passed at a meeting held without complying with the requirement of 21 days" notice. In these two cases, on which Mr. Suresham relied, the question

was not considered whether it was open to the shareholders to give their consent subsequent to the resolution agreeing for the validity of the resolution.

3. Section 171 of the Companies Act corresponds to Section 133 of the English Act, in which the provision regarding notice is almost similar. Under the English Act, cases have arisen in which the question has been considered whether or not consent given subsequent to the meeting would be valid. In *Express Engineering Works Ltd., In re*, [1920] 1 Ch.D. 466 (C.A.). the company consisted of 5 persons who were the sole shareholders. The meeting was convened as a directors' meeting. It was attended by all the five shareholders. A resolution for the sale and issue of debentures was carried out at the meeting of the five who appointed themselves as directors. The Articles of association of the company provided that no director should vote in respect of any contract or arrangement in which he might be interested. The liquidator in asking for winding-up prayed for a declaration that the issue of debentures was invalid and should be set aside. It was held that there being no suggestion of fraud, the company was bound in a matter *intra vires* by the unanimous agreement by its members, that although the meeting was styled as a directors' meeting, all the five shareholders were present and that they might well have turned it into a general meeting and transacted the same business. In that view, it was held that the issue of debentures was not invalid. The principle laid down is that the statutory requirement as to notice can be waived. Following this decision it was held in *Oxted Motor Company, In re*, [1921] 3 K.B. 32. that it was competent for the shareholders acting together to waive the formalities as to notice of intention to propose a resolution as an extraordinary resolution and that if all the shareholders met and passed a resolution to wind up the company, it would be valid. In *Parker and Cooper Ltd. v. Reading*, [1926] Ch. 975. the question of validity of a resolution passed at a meeting, which was not convened as required under law, arose for consideration. In that case, the subject of the resolution was subsequently ratified by all the shareholders. In dealing with the question whether the transaction was valid or not, Astbury J. observed at page 982 :

"where a transaction is *intra vires* the company and honest the sanction of all the members of the company, however expressed, is sufficient to validate it, especially if it is a transaction entered into for the benefit of the company itself. "

At page 984, the learned judge again said 1

" Now the view I take of both those decisions is that 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. I do not think it matters in the least whether that assent is given at different times or simultaneously.

The plaintiffs contend that the two directors acted throughout as if they were partners, and cannot now turn round and shelter themselves behind the company law. I do not take this view. If the company law enables the entirety of

the corporators to ratify an irregular intra vires transaction why should this not protect an honest bona fide intra vires transaction entered into for the benefit of the company ?"

4. In *In re Pearce Duff & Co. Ltd.*, [1960] 1 W.L.R. 1014; [1961] 31 Comp. Cas. 251(Ch.D). by a defective resolution, as in the instant case, the capital of the company was reduced. The defect was that the notice did not satisfy the requirement of 21 days. As in the instant case, subsequent to the meeting, all the shareholders consented to the resolution being treated as a valid resolution. Buckley J., after referring to *In re Oxted Motor Co. Ltd.*, [1921] 3 K.B. 32. and *Parker and Cooper Ltd. v. Reading*, [1926] Ch. 975 observed at page 1017 :

" 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. "

5. After referring to the aforesaid cases, it is observed in *Palmer's Company Law*, 21st edition, at page 492 :

" If a majority in number of the members having the right to attend and vote and holding together not less than 95 per cent, of the shares carrying votes agrees, the requirement of twenty-one clear days" notice may be dispensed with or reduced in time..... The consenting members, must, however, appreciate that the resolution is being passed without due notice, though such consent may be given at a later date. "

6. It would thus be seen that the foregoing decisions are directly in point having considered a similar provision in the English Act which deals with the length of notice for calling for meetings. The principle underlying these decisions is that it is open to the shareholders to give their consent subsequent to the meeting. The object underlying the requirement of giving a particular period of notice is to enable the shareholders to consider the proposal, to discuss among themselves and to canvass for proxies if they so desire. It is open to them to waive the notice, if, in their opinion, the resolution, though it was passed without satisfying the length of notice, is for the benefit of the company. The only requirement is that the shareholders should give their consent with full knowledge of the implications of the resolution. In the instant case, consent letters have been given by all the shareholders except one, whose whereabouts are said to be not known. I am satisfied that the said consent is sufficient to validate the resolution. In this view, I confirm the reduction of the share capital. Advertise this in one issue of the Mail, the Swadesamitran and the Fort St. George Gazette.