

(1964) 05 CAL CK 0009

In the Calcutta High Court

Case No : Company Petition No. 21 of 1964

In Re: Standard General Assurance Co. Ltd.

Date of Decision : 15-05-1964

Acts Referred:

Companies Act, 1956 — Section 17, 397, 433

Citation : AIR 1965 Cal 16

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Advocate : Sankar Ghosh, for the Appellant; Samaren C. Sen, for the Respondent

Judgement

B.C. Mitra, J.—This is an application u/s 17 of the Companies Act 1956, for confirmation of the alterations of the memorandum of association of the applicant company in terms of the special resolution passed at an extraordinary general meeting of the company on July 12, 1963.

2. The company was incorporated in 1943 under the Indian Companies Act, 1913. The objects of the company, inter alia, were as follows:

To carry on all kinds of insurance, guarantee and indemnity business. The insurance business was to include Life Assurance, Fire Insurance, Marine and Aerial Insurance, Transit Insurance, Accident Insurance and other varieties of Insurance business, set out under paragraph 3 of the petition. Among the other objects were the purchase of and dealing in and lending on life, reversionary and other interest in property of all kinds, to act as agent for the Issue of bills, bonds, debentures stock and to guarantee the subscription of any such shares or securities and act as trustees, executors or administrators. One among the other objects of the company of which mention should be made is to carry on business as capitalist, financiers, concessionaries and merchants and to undertake and carry on and execute all Kinds of financial, trading and other operations. Notice should be taken of another object clause whereby the objects specified in each paragraph of the memorandum of association was to be in nowise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the company, except where otherwise expressed in such a

paragraph. This provision in the memorandum makes each object an independent object and not a subsidiary of any other object.

3. On July 12, 1963, a special resolution was passed at an extraordinary general meeting of the company whereby subject to confirmation by this court, it was resolved to alter the memorandum of association of the company as set out under paragraph 6 of the petition. The net effect of the resolution is that the company seeks to abandon insurance business of all kinds and to acquire the following new objects;

(1) to carry on business as manufacturers of and dealers in chemicals, petrochemicals, drugs, essences, acids etc.,

(2) to carry on business of engineers, metallurgists, iron, steel and brass founders, metal makers, moulders etc.,

(3) to execute contracts for supply or use of any machinery and to carry out ancillary or other works comprised in such contracts,

(4) to carry, on business of Importers, exporters, merchants, ship owners and charterers of ships and transport and haulage contractors etc.,

(5) to render pecuniary or other assistance for helping settlement of industrial or labour problems or the promotion of industry or trade and to oppose legislation which may seem disadvantageous to the company,

(6) to subscribe for any purpose which has a political object.

4. In the petition it is alleged that in the opinion of the directors and shareholders of the company, the general insurance business of the company declined for various reasons including uncertain conditions of insurance market, and due to such shrinkage in such business the share-holder would not get a sufficient return. The company therefore ceased to carry on any insurance business from May 1, 1963, and reinsurance business from May 31, 1963. The company, it is claimed, is developing its investment, financing and other businesses which the company is authorised to carry on.

5. It is alleged in the petition that the memorandum of association of the company is not adequate for the business needs of the company and it is necessary and desirable that the company should acquire new objects to carry on the business which may be conveniently or advantageously combined with the existing business of the company. An abstract of the financial position of the company has been set out under paragraph 12 of the petition and from this abstract it appears that there is an excess of assets over liabilities to the extent of Rs. 23,71,013.66. There has been a reduction in the company's investment to the extent of Rs. 2,53,956/- and this was due to payment of Rs. 2,69,532/- to the retrenched staff as gratuity and retrenchment compensation. Besides this payment a sum of Rs. 1,27,293/- is alleged to have been paid on account of claims, since the last balance sheet was prepared.

6. The financial position of the company as on November 30, 1953, has been set out in annexure "A" to the petition. It appears that there has been a reduction in the book value of investment between January 1, 1963, and November 30, 1963, to the extent of Rs. 2,53,956/-. In the director's report dated May 17, 1963, which has been published with the accounts upto December 31, 1962, it is stated that the market value of quoted investment was Rs. 29,60,630.51 nP. In the balance sheet as on December 31, 1962, the amount invested in Government Securities, Municipal Debentures, Company Debentures, Preference and Ordinary Shares of company as shown at Rs. 24,47,989.55.

7. The profit, and loss account upto December 31, 1962, shows that the gross amount earned from interest and dividend was Rs. 1,43,255/-.

8. Mr. Sankar Ghose, appearing for the petitioner, contended that having regard to the facts as stated in the petition this court should make an order confirming the alterations. He argued that one branch of the company's business, namely, insurance business was lost to the company. But the other branch, namely, the investment branch of its business was being carried on with profit, as would be evident from the last balance sheet of the company. He argued that so far as insurance business was concerned, it was no fault of the company, that it had lost that business. Life business was lost by operation of law as it was taken over by the Life Insurance Corporation of India. In general Insurance business also the company was meeting formidable opposition from the Life Insurance Corporation of India and secondly the scope for business in the private sector, in this field was also fast shrinking. He argued that the loss of insurance, business however, did not put an end to the company's business altogether. The company was and still is successfully carrying on investment business and the financial position of the company, as shown in the last balance sheet for the year ended in. December 31, 1962, can leave hardly any room, for doubt that the company's financial position is undoubtedly very sound.

9. Mr. Ghose next contended that the directors and share-holders of the company have decided upon the alterations in the company's objects to acquire fresh objects regarding business which can be advantageously combined with the existing Investment business of the company. Mr. Ghose further argued that indeed the company had the power to carry on some of the business covered by the proposed alterations. For this purpose he referred to the object which authorises the company to carry on business as capitalists, financiers, concessionaries and merchants and to undertake and carry on all kinds of financial and trading operations. He contended that the objects mentioned in this clause were very wide. He further argued that there were other general objects which authorised the company to undertake any other business which might seem to the company capable of being conveniently carried on profitably. But he argued that specific powers were now sought for in order to avoid the possibility of any challenge to the company's activities on the ground that they were ultra vires of the objects of the company.

10. Mr. Ghose relied upon a decision of this court in *In the Matter of In Re: Fort Gloster Jute Manufacturing Co. Ltd.*, in which G.K. Mitter, J. held that it was for the directors, share-holders and creditors of the company to decide whether the company should enlarge the scope of its existing business or embark upon a new venture different from one which it is carrying on. If members and creditors have no objection and if the new business is not speculative in nature and is not otherwise objectionable, the court should not refuse to confirm alterations in the object clauses of the memorandum of association of the company whereby the objects to carry on new business are sought by the company.

11. Mr. Ghose; next referred to another decision of this court in *In the Matter of Gonesh Bari Tea Co. Private Ltd.* 68 Cal WN 490. In this case the company sought new objects by alterations of its object clauses to contribute or sub-scribe to any charitable or other funds not related to the business of the company or the welfare of its employees and also to acquire shares, stocks, debentures stocks or securities of any company or municipal body. The alterations sought for were confirmed by S.P. Mitra, J. subject to certain terms and conditions following the observations and reasons given by P.B. Mukharji J. in *In the matter of Bhutoria Brothers (Private) Ltd.* 61 Cal WN 897 and also in *In Re: Indian Iron and Steel Co. Ltd.*, .

12. Mr. Ghose contended that this application came u/s 17(1)(d) of the Companies Act, 1956. He argued that the existing circumstances made it impossible for the applicant to carry on its insurance business, but the company was carrying on profitably the other portion of its business, namely investment business and the new objects now sought for, could be conveniently and advantageously combined with the existing business of the company. Mr. Ghose argued that the law imposed only two conditions to this new business being added to the existing business of the company, namely (1) the new business should be such as can be conveniently or advantageously combined with the business which the company was carrying on and (2) this combination is possible under existing circumstances.

13. Mr. Ghose argued that both these conditions were fulfilled and that being so, this court should not refuse to confirm the alterations.

14. Mr. Ghose next referred to Palmer's Company Law, 20th Ed., page 92 and argued that the modern practice was to allow alteration which constituted a completely new set of objects in the modern form for the old and concise objects. He argued that u/s 17 a company is permitted to "alter" its objects and not merely to "extend" or "add to" them. In so far as the company has the power to alter the objects, it can introduce entirely new objects, if its financial position is sound and if the other requirements of law have been complied with.

15. Mr. Ghose next contended that the respondent East India Development Company (Private) Ltd. had no *Jocus standi* to object to the alterations. This company is not a creditor of the applicant. A vague claim to be a creditor for Rs.

15,000/- has been made In paragraph 3 of the affidavit affirmed by Shiwratan Chaudhri on March 13, 1964. But no particulars have been given of such alleged claim, Mr. Ghose contended that the real reason for the objection by the respondent is that the applicant is a monthly tenant of the respondent company in respect of a portion of premises No. 9 Brabourne Road: at a rent of Rs. 2587.37 nP per "month. The respondent company has instituted a suit against the applicant for ejectment from the said premises on the ground of unlawful sub-letting of the same. The object of the respondent company in opposing the proposed alteration is to put pressure on the applicant to compromise the said suit. Such grounds for opposition to the present application, it was argued, were entirely mala fide. The claim to be a creditor for Rs. 15,000/- is false and realising that it cannot sustain its objection on any ground other than that of a creditor, the respondent has made the false claim to be a creditor of the applicant.

16. Mr. S. Sen who appeared for the respondent company contended that his client was the landlord of the applicant and it had the right to oppose the alterations of the object clauses of the company. He argued that the relationship between the landlord and tenant was a contractual relationship and if the landlord had accepted the tenant knowing that it was carrying on one type of business, the landlord had a right to come to court and object to any alteration in the nature of the tenant's business. Secondly, Mr. Sen contended by referring to Section 17(3)(a) and Section 17(6) of the Act that his client had the statutory right to oppose the application inasmuch as being the landlord it was prospective creditor of the company. In support of this proposition Mr. Sen referred to the decision of the Orissa High Court in *Orient Paper Mills Ltd. and Another Vs. The State*, . This was an application for change of registered office and one of the contentions which was accepted by the court was that the State of Orissa was going to lose revenue from sales tax levied on the company and also the credit for Income Tax and also sales tax (if and when the same became a central subject) realised from the company. The State of Orissa was a prospective creditor and one of the reasons for which the court refused to confirm the alterations was the possibility of the loss of revenue to State of Orissa. Mr. Sen argued that his client was in a similar position. It was a prospective creditor in so far as the rent was concerned and it could therefore come and oppose the proposed alterations.

17. Mr. Sen also referred to another decision of the Orissa High Court in *In the matter of In Re: Orissa Chemicals and Distilleries Private Ltd.*, . This was also a case of change of registered office of the company and Barman, J. following the earlier decision of the same High Court held that the State of Orissa came within the scope of Section 17 (3)(a) as a party whose Interest would be affected by the proposed alterations.

18. If the company has existing liability to the State in respect of sales tax or excise duty, no doubt the State becomes a creditor of the company and would

therefore be entitled to oppose the alterations, if its Interest as a creditor was likely to be affected by the proposed alterations. But as I see It, the statute does not confer upon the State as a prospective creditor, in respect of future liabilities of the company, the right to oppose the proposed alterations of the objects of the company.

19. On this question I should refer to another case referred to by Mr. Sen, which in my opinion, correctly interpret the rights of outsiders to oppose the proposed alterations of the memorandum; In re. Hearts of Oak Life and General Assurance Co. Ltd. and Reduced (1920) 1 Ch 544. This was an application for confirmation of alterations of the object clauses In the memorandum of association of the company. At the hearing of the petition the Hearts of Oak Benefit Society, a registered society, appeared and opposed the application on the ground that the interests of the society would be affected, if the company, bearing the same name, were to have its objects extended to enable it to carry on a competing business. Section 9(3) of the Companies (Consolidation) Act, 1908, provided that before confirming alterations of the objects of a company, the court must be satisfied that sufficient notice had been given to persons whose interests would be affected by the alterations. In dealing with this question Lawrence, J. held that the sub-section applied only to creditors and members of the company whose interest in the company itself would be affected by the alterations. In hearing such applications the court would hear a person having interest within the company and would refuse to hear a person who had Interest outside the company. It was also held that the notice contemplated by Section 9 (3) of the Act was a notice to person whose interest "in the company" might be affected. It was argued in that case that if the alterations were confirmed by the court, they would lead to deception and confusion and that if the company was allowed to, carry on its new business under the altered object clauses, such new business would enable the company to pass off its business as the business of the society. These contentions, however, were rejected by the court and the alterations were confirmed. Relying upon this case Mr. Sen argued that in the above case the argument was that if the alterations were sanctioned, that would lead to deception and it was for that reason that the objections of the society were overruled. But, Mr. Sen argued, that in this case his client was not merely a member of the public, but it was the landlord and therefore it stood on a different footing. It seems to me however that, if anything, the facts in the above case stood on a much stronger footing. The name of the society was similar to that of the company, the business sought to be carried on was similar in nature to that of the society and above all there was a possibility of deception of the public, and confusion In its mind. Vet the court declined to entertain and sustain objections raised on behalf of the society. The new business was allied to the business of the society. The society had a genuine grievance as its business was going to be affected. Yet the learned Judge thought that the society could not be heard as it had no interest in the company.

20. The next case referred by Mr. Sen is Ashbury Rly. Carriage and Iron Co., Ltd.

v. Riche (1875) 33 LT 450. In this case the company was incorporated with the object of making, selling or lending for hire all kinds of railway plants, to carry on the business of mechanical engineers and general contractors. The directors entered into a contract with the respondent to employ him through another association which they were to form in Belgium to construct a railway there. The company later repudiated the contract as being ultra vires of the objects of the company. This was not a case of confirmation of alteration of the objects of a company, but it was relied upon by Mr. Sen in support of his proposition that the objects for which a company was incorporated must be known to all the members of the public who might deal with the company in its business. Mr. Sen relied upon the observations of Lord Hatherley at p. 454 of the report as follows: "Accordingly your Lordships will find throughout the whole of the Act a plain and marked distinction drawn between the Interest of the share-holders inter se, and the interest which the public have in seeing that the terms of the Act are construed in such a manner as to protect them in dealing with companies of this description. The mode of protection, adopted seems to have been this:

"The legislature said you may meet altogether, and form yourselves into a company, but in doing that you must tell all who may be disposed to deal with you the object for which you have been associated. They will trust to the memorandum of association, and they will see that you have the power of carrying on business in such a manner as it specifies to be limited, however, by the extent of the shares, that is to say, the money you may contribute for the purpose of carrying that business."

21. A similar observation was made by Lord O'Hagen at p. 456 of the report:

"The memorandum when put upon record was to be for contractors, for creditors, and for all the world, a trustworthy indication of the exact character, purposes, and powers of the company described in it."

22. But it must be noted at once that the observations quoted above were made in the context of the powers of the company to carry on a business which under its object clauses, it had no power to carry on. The memorandum of association of a company is no doubt a notice to the public at large of the objects of the company. But such, notice does not vest in the members of the public, a right to come and raise objections when the company proposes to alter its object clauses. This decision to my mind has no application to the issues involved in the present application,

23. Relying on the decisions discussed above, Mr. Sen argued that his client was entitled to object to the alterations. He however did not press or urge the ground that his client was a creditor for Rs. 15,000/-. But he contended that as a landlord his client was entitled to appear and urge that the alterations should not be confirmed. He submitted that the landlord had a say in the matter when the tenant was altering its business. His client had agreed to take the company as a tenant, as it was carrying on insurance business. He submitted that a company

carrying on insurance business is subject to various types of control of the Controller of Insurance. If therefore, the company wanted to change its business by abandoning the insurance business altogether, in order to take up other business the checks and controls under the Insurance Act would no more be operative, and therefore Mr. Sen submitted, his client would be seriously prejudiced.

24. Before dealing with the rights of a landlord I should discuss the rights of members of the public to oppose the proposed alterations in the object clauses of the company's memorandum. For that purpose it is necessary to refer to Section 17(3)(a) and Section 17(6) of the Companies Act, 1956. Section 17(3)(a) requires notice to holders of debentures and to every other person or class of persons whose interest will in the court's opinion be affected by the alterations. Section 17(6) requires that the court in exercising its powers shall have regard to the rights and interest of the members as well as of the creditor. Mr. Sen's client cannot be regarded as a creditor u/s 17(6) because nothing is due to it, and the rent due from month to month, is being deposited by the applicant to the credit of the suit which is now pending. To allow the landlord as a member of the public to intervene and object, on the grounds urged by Mr. Sen, would inevitably result in an unwarranted enlargement of the scope of Section 17. If a landlord is to be allowed to oppose the alterations, several other classes of persons should be given the same right. The municipality providing conservancy services and water, supplier of electrical energy to the premises, and any and every other person who has some chance of doing business with the company in future, in any of its several objects, should be allowed to appear and object to the alterations proposed. But that in my view is not the intention of the legislature. To hold that the landlord or any other member of the public who claims that there is a chance of his becoming creditor of the company in future, has the right to oppose the alterations, could open the door to serious mischief. A rival in the trade may very well come forward, claim that it may become a creditor in future and therefore its objections should be heard and upheld. But such a claim was rejected in the *Hearts of Oak* case 1920-1 Ch 544 discussed above, and claims based on such a ground, in my opinion cannot be upheld.

25. The next question is can the landlord be regarded either as a member of the public, or as landlord, as a person whose interest will, in the opinion of this court be affected as contemplated by Section 17(3)(a)? As a landlord Mr. Sen's client is nothing more than a prospective creditor, but its position is better than that of an ordinary creditor because of the protection afforded to the landlords regarding claim for rent under the provisions of the West Bengal Premises Tenancy Act, 1956. As a member of the public the landlord cannot claim any right to appear and oppose the application. The publication of the advertisement in the newspapers is not an invitation to the public at large to appear and oppose the application for alteration of the objects of the company.

26 An incorporated company is a creature of statute. Its rights, privileges,

obligations and liabilities have been defined and are controlled by the statute. The statute has prescribed the persons or classes of persons whose interest requires the court's protection, when an order confirming the alterations of the objects of the company is going to be made. To say that the members of the public have the right to come and oppose the proposed alterations, would be to introduce an additional restriction on the company's right to have its object clauses altered, which is not warranted by law. The question is can this court in exercise of its discretion u/s 17, introduce this new bar, not prescribed by the legislature ? Is it right that the court should in exercise of such discretionary power, give to the members of the public something to which they are not entitled ? Is it right again, that this court in, exercise of this discretionary power should impose upon the company's rights to alter its object clauses, a fetter not prescribed by the legislature ? I think not. No doubt the court has the power to impose conditions while making an order confirming the alterations in the object clauses. But in my view the court should not in dealing with an application for confirming alterations in the object clauses, hold that the interest of the public at large should be protected and it should be allowed to come and raise objections to the proposed alterations. To say that the public should be heard and that it has a right to object would necessarily involve a wide and unwarranted departure from the requirement of the statute.

27. It is next to be considered if the law relating to landlord and tenant confers upon Mr. Sen's client a right to oppose the alterations in the object clauses of the company. On this question Mr. Ghose contended that the landlord had no right to oppose the application I on the ground stated by Mr. Sen or on any other grounds except those which are recognised by the law relating to landlord and tenant. He argued that the law did not recognise or confer on the landlord, a right to dictate the business the tenant should carry on, or a right to object to a change of business of the tenant. Mr. Ghose further argued that unless there was a statutory prohibition or unless there were restrictive covenants, a tenant had the right to use the demised premises for whatever purposes he liked, provided they were not illegal, Immoral, and did not create a nuisance. Further Mr. Ghose submitted that in a contract for lease of property to be used for business purposes, the tenant was entitled to a lease under which he could carry on any business, subject only to the restrictions imposed by the general law of the land. In support of this contention, Mr. Ghose referred to Hill and Redman's Law of Landlord and Tenant, 10th Ed. page 202. In my opinion, the contentions of Mr. Ghose are sound. It has not been alleged by Mr. Sen's client that there was anything in the contract of tenancy, from which he derived the right to come and object and the alterations now sought for by the applicant are not prohibited by any law in this country. And that being so, the landlord qua landlord has no right to object to the alterations proposed by the applicant. If the rent was in arrears and the landlord was a creditor for such arrears of rent, different considerations would apply. But that is not so. There is a suit pending for ejectment by the landlord against the tenant and in that suit the tenant had been and still is

depositing the rent month by month. In that view of the matter I accept Mr. Ghose's contention that Mr. Sen's client has no locus standi to oppose this application.

28. Turning now to the merits of the objection, Mr. Sen's main argument was that the company had no existing business, that the company had no independent investment business and the only investments that the company had made, were in connection with its insurance business. Such investments were made in compliance with, and by reason of the requirement of, the Insurance Act. That being so, Mr. Sen contended that the new business proposed by the alterations could not be combined with any existing business.

29. In my opinion, if the company has no existing business with which the new business proposed by the altered objects can be combined, the court ought not to make an order confirming the alterations in the objects of the company. But Mr. Ghose pointed out that the company's investment business as shown in the balance sheet has nothing whatsoever to do with the general insurance business of the company. The investment business which the company is carrying on at present, is an independent business and is not a business which to being carried on by the company, pursuant to the requirement of the Insurance Act. Mr. Ghose submitted that the Insurance Act required investment of funds arising out of the life insurance business only. That Act does not in any way control funds which have come to the hands of the company out of a general insurance business. The company has ceased to carry on life insurance business several years ago and the funds now in the hands of the company have nothing to do with the life Insurance business.

30. In support of this argument Mr. Ghose referred to Section 27 of the Insurance Act. Under that section the assets of the insurer are required to be invested in Government securities or other approved securities in specified proportions mentioned in the section. But the assets which are so required to be invested, are assets which would be required to cover the liabilities to holders of life insurance policies only. The restrictions imposed by Section 27 do not relate to funds arising from or liabilities to holders of general insurance policies. Mr. Ghose next referred to Section 27A of the Insurance Act and submitted that the insurer is required to invest his controlled fund in the securities specified by that section. "Controlled Fund" has been defined by the explanation to Sub-section 14 of Section 27-A of the Insurance Act Under the Explanation "controlled fund" means the fund which exclusively arises from life insurance business. It does not include any fund arising from any other class of insurance business. Mr. Ghose next referred to Section 2(10-A) of the Insurance Act which defines an "investment company as a company whose principal Business is the acquisition of shares, stocks, debentures or other securities. Mr. Ghose contended that his client who had been carrying on a general insurance business to an investment company under the Act and the investments made by it are independent business.

31. The provisions of the Insurance Act mentioned above make it quite clear that the applicant's investments business is not part of the insurance business. Admittedly the applicant had ceased to carry on life insurance business and therefore the restrictions relating to investment imposed by the Insurance Act do not apply to the investments made by the applicant and it is not required to invest its funds arising from general insurance business in any particular manner. The applicant is free to utilise the funds available to it from its general insurance business in any manner it pleases. It has chosen to invest such funds in the securities mentioned in the balance sheet annexed to the petition. The value of such investment as shown in the balance sheet is Rs. 27,47,989.55, The wisdom of such investment has not been questioned by Mr. Sen. The only point urged by him against this investment was that the investments were made pursuant to the requirement of Insurance Act.

32. 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.

33. The next point urged by Mr. Sen was that the financial position of the company was not sound and therefore it should not be allowed to carry on any business by altering the objects clause. He argued that the applicant's risk liability was in the ratio of Re. 1/- of premium receipt for every Rs., 100/- of risk covered and the sum of Rs. 5,82,744.88 was wholly insufficient to meet the prospective risk liabilities of the applicant, which according to Mr. Sen would amount to nearly Rupees two crores. That being so, Mr. Sen argued that the surplus of excess over assets shown at Rs. 23,71,013.66 is entirely illusory.

34. It seems to me however that this argument suffers from an inherent fallacy. General Insurance business is carried on on the basis of actuarial calculations. And when an insurer enters into a general insurance contract, he proceeds on the basis of being called upon to meet a certain percentage of risks which would mature into a claim. No general insurer is required to keep sufficient funds in its hands to meet every claim in respect of which a contract of insurance has been entered into.

35. So far as the applicant is concerned it has ceased to carry on any insurance business from May 1, 1963, and reinsurance business from May 31, 1963. Upto November 30, 1963, it had cleared all its claims amounting to Rs. 1,27,293.29 nP. Since the applicant discontinued general business it has refunded premium in the sum of Rs. 352303.63. The total estimated liability in respect of claims upto December 31, 1962, was Rs. 1,36,778.34. Out of this estimated liability the

applicant has paid upto November 30, 1963, Rs. 1,27,293.29 it seems to me that on this basis the claim arising out of subsisting policies should be much less than the sum of Rs. 1,27,293.29, but cannot in any event exceed that amount. In that view of the matter it cannot be said that the company having surplus assets to the extent of Rs. 23,71,013.66 would be unable to meet Its future liabilities or that the company's financial position Is not sound enough to Justify the confirmation of the alterations.

36. Turning now to the law, on the subject. The authorities cited in course of argument can be broadly classified into two groups, namely, those in which applications were made for an order for winding up on the just and equitable ground, as the company's substratum was gone or the company had ceased to carry on its main business and those cases where applications were made for alterations in the objects of the company as it was found convenient to combine some new business with the existing business.

37. The first case referred to by Mr. Sen was *In re Jewish Colonial Trust Ltd.* (1908) 2 Ch 287. This was an application for confirmation of alterations of the objects of the company which involved abandonment of certain fundamental objects and also curtailment of the area of operation of the company from a world-wide, area to a small territory Eve, J., confirmed the alterations proposed, and in doing so observed, that the principle which applied to applications for confirming reduction of share capital also applied to applications for confirming alterations of the object clauses in the memorandum of association. Certain other observations of the learned Judge are noteworthy, namely, that the court is not concerned with the wisdom of the proposed alterations and all that the court has to consider is whether the proposed alterations are unfair to any of the members. The necessity or wisdom of the alterations was a matter for the directors and members of the company to consider. The learned Judge also dealt with, the question of objects of the company which were fundamental and others which were not and observed as follows at p. 301 of the report:

"I certainly do not feel at liberty, as I was invited by one of the respondents to do, to differentiate between the relative importance of the company's objects and to hold that the statutory power to modify does not extend to objects which in the course of the arguments were spoken of as of a fundamental character."

This case was relied upon by Mr. Sen, as Eve, J. quoted with approval the observations of Lord Macnaghten in *British and American Trustee and Finance Corporation v. Couper* 1894 AC 399. That was a case of reduction of share capital and it was held that the public, the shareholders, and every class of shareholders individually and collectively, are protected by the publicity of the proceedings and by the discretion entrusted to the court. But these observations do not, in my view, give the public a right to appear and object to the alterations proposed in the object clauses of the company's memorandum.

38. The next case referred to by Mr. Sen is *Lawang Tahang Vs. Goenka*

Commercial Bank Ltd., . This was an application to wind up a company on the ground that it was just and equitable to make the order, as the substratum of the company was gone. In this case it was held that the company had a paramount object, namely, to carry on a banking business. It was contended on behalf of the company that its objects were not only to carry on banking business but any other business which it had the power to take up. This argument however was rejected and an order for winding up of the company was made, and it was held that the company, had ceased to carry on its main business, namely, banking. It is to be noticed that the question of paramount or main object was taken into consideration by the court as the application was one for winding up of the company on the just and equitable ground.

39. The next case referred to by Mr. Sen is *In Re: Hindusthan Co-operative Insurance Society Ltd.*, . This was an application under Sections 397, 399 and 402 of the Companies Act 1956. In this case also the company's business was Insurance and its main object was to carry on all forms of insurance, guarantee and indemnity business. It was argued that insurance, guarantee and indemnity were to be treated as separate business authorised under the object clauses. Law, J, rejected this contention on behalf of the company and held that the principal object of the company was insurance and all other objects were ancillary to the main object. It is again to be noticed that the question of paramount or main object of the company was taken into consideration by the court as an order u/s 397 of the Act cannot be made unless the court is satisfied that in the facts of the case a; winding up order ought to be made.

40. The next case referred to by Mr. Sen is in *In re, Haven Gold Mining Co.* (1882) 20 Ch D 151. This was also an application to wind up the company on the ground that the business for which the company was formed had substantially ceased to exist. The gold mine which the company was to work in Newzealand was a property to which the company had no title and there was no prospect of its obtaining possession. The order for winding up was made although there were other objects in the memorandum, enabling the company to purchase and work other mines in Newzealand and a large majority of share-holders wished to continue the company, Lindley, L.J. held that the company and its officers did not get possession of the alleged mine and there was no possibility of their getting possession and it was purely a matter of speculation if possession could be obtained at all. It was in substance a. claim by the minority of the share-holders for winding up on the ground that the substratum of the company was gone and the court accepted that contention.

41. The next case relied upon by Mr. Sen is *In re-German Date Coffee Co.* (1882) 20 Ch. D. 169. This again was a case in which a petition was presented for winding up on the ground that the substratum of the company had failed and it was impossible to carry on the objects for which the company was formed. The object for which the company was formed was for working a German patent for manufacturing coffee from dates. This patent was never granted, but the

company purchased a Swedish patent and also established works in Hamburg where they made and sold coffee without a patent. It was in these circumstances that an order for winding up was made on the ground that it was just and equitable to wind up the company. *Jessel, M. R.*, held that the memorandum was simply to buy the German patent and to work it with or without improvements. The grounds for the decision in this case was that the substratum of the company was gone and therefore it should be wound up.

42. In an application for winding up of the company on the just and equitable grounds or in an application u/s 397 of the Companies Act, 1956, when the question of winding up of the company becomes material, it is for the court to determine what is the paramount or the main object of the company. If the court comes to the conclusion that the main or paramount object of the company is lost because the company has ceased to carry on such a business winding up order ought to be made as the substratum of the company is gone. One of the grounds on which courts have relied in such cases is that the share-holders who have risked their funds in the company, while it was carrying on one type of business, should not be compelled to risk their funds in any new venture which was not hitherto carried on, but which the company proposed to carry on under its existing objects. Besides there are other considerations which have to be taken into account in such cases. If the directors have failed to carry on an existing business successfully and have managed the company's affairs in such a manner as to justify an order for winding up, they should not be permitted to embark on new ventures, although the same may be authorised by the object clauses of the memorandum of association. But courts both in England and in this country have uniformly held that where a solvent company applies to court to abandon part of its objects and alter its objects for a new business which can be advantageously combined with the existing business, it is just and proper that such alterations should be confirmed. Such proposed alterations have been treated as a matter for the wisdom of the directors and members of the company and courts have declined, in applications for alterations of the objects of the company, to differentiate between paramount objects and other objects.

43. The next case referred to by Mr. Sen is *In re, Drages Ltd. (1942)* 1 All ER 194. In this case the object set out in the memorandum was to carry on business of house furnishers. This business was carried on under the hire purchase system. As there was not much success in this business the company ceased to enter upon any fresh business and was only collecting the outstanding instalments due under hire purchase agreements. Later on the company desired to start the business once again, and for that purpose, to alter its memorandum of association whereby a trust investment business was sought to be combined with the existing business. Under the existing business the company had the power to invest and deal with its money. But if the company utilised the power of investment as it stood under the existing objects, the company might become liable to Income Tax regarding profits, and the object of the alteration was to avoid the liability for Income Tax by taking powers to carry on the business of a

trust investment company which was not liable to pay Income Tax in respect of capital profits or appreciation of investment. It was found that at the time of the application the company was not carrying on any business at all, it was not trading. The collection of outstanding, it was held, was not a business and it was further held that the alterations in the memorandum were desired solely to escape liability for Income Tax. It was finally held that the company was not carrying on any business with which the trust investment business could be conveniently combined. The application was therefore dismissed. In this case it was found that the company had no existing business and what was contended to be an existing business, namely, collection of outstanding was no business at all. Further the purpose, of alterations proposed was to avoid the tax liabilities. It was in these circumstances that the application was rejected. This case does not help Mr. Sen's client because in the instant case now before me the applicant is successfully carrying an investment business which is an existing business.

44. The next case referred to by Mr. Sen is in re. Cyclists Touring Club (1907) 1 Ch. 269. In this case a club was incorporated as a limited company to promote, assist and protect the use of bicycles, tricycles etc., on the public roads and to give legal assistance to their riders. An application was made to confirm alterations of the object clauses by admitting to its membership all tourists and motorists. It was held that the new objects sought for, are inconsistent with the existing objects inasmuch as if the company wanted to protect bicyclists in their touring, they could do so only by taking measures against another class of its own members, namely, motorists. And it was on the ground of incompatibility of the alterations with the existing objects, that the application was rejected. This case therefore does not help Mr. Sen's client because the new objects sought to be introduced by the alterations were destructive of the existing objects of the company.

45. The next case relied upon by Mr. Sen is In re. Parent Tyre Co. Ltd. (1923) 2 Ch. 222. This was an application for alteration of the object clauses in the memorandum. It was held that the alterations sought for might be a business entirely different from and having no relation to the existing business of the company and yet be capable of being conveniently combined with it, provided that the new business was not destructive of or inconsistent with the existing business. In this case the company's business consisted in holding investments in two other companies. The company proposed to alter its objects in order to combine the business of bankers and financiers with the existing business of the company. Lawrence, J., held at p. 288 of the report:

"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."

It was further held that the question whether an additional business could be combined conveniently with the existing business was essentially a business proposition to be decided by managers and directors of the company, the only test being that the new business should not be destructive of or inconsistent with the existing business, it must leave the existing business substantially what it was before. But subject to that test, the proposed new business may be one which is different from the original business and yet may well be capable of being conveniently combined with the existing business. It was also held that to refuse to confirm alterations because they involved a new departure which was not contemplated by the original memorandum, was to put too narrow a construction on Section 9 of the Companies (Consolidation) Act, 1903.

46. The next case referred to by Mr. Sen is *In re-Scientific Poultry Breeders' Association Ltd.* (1933) 1 Ch. 227. In this case a company was incorporated for the purpose of introducing scientific methods in feeding, housing and breeding poultry. The company's business increased and the governing body found that they were not able to give the necessary time to the management of its affairs unless they were paid for their services. Alterations in the objects of the company were proposed to remove the prohibition against payment of remuneration to them. Eve, J. refused to sanction alterations as it involved a fundamental change in the constitution of the company. The Court of appeal however reversed the judgment of Eve, J. and held that the proposed alteration in the objects were with respect to the objects of the company which were desirable for the purpose of more efficiently carrying out the main object of the company, namely, improvement and encouragement of poultry breeding.

47. The next case referred to by Mr. Sen is *Cotman v. Broughman* 1918 AC 514. This was not a case of an application for alterations of the objects of a company, but was a case in which an application was made to vary the list of creditors of a company which had been ordered to be wound up. In this case the memorandum of association of a company had an object clause, with numerous sub-clauses, which entitled the company to carry on every conceivable kind of business. The object clauses of the memorandum contained one clause by which every sub-clause under the object clauses was to be construed as a substantive, independent clause and not limited or restricted by reference to any other sub-clause or by the name of the company and the sub-clauses were not to be treated as subsidiary or auxiliary to the objects mentioned in the first sub-clause. Lord Wrenbury severely criticised the practice of having numerous objects and also of confusing powers with objects. Referring to the growth of this practice it was held at p. 523 of the report:

"it has arrived now at a point at which the fact is that the function of the memorandum is taken, to be not to specify, not to disclose but to bury beneath a mass of words the real object or objects of the company with the intent that every conceivable form of activity shall be found included somewhere within its terms."

The substance of the decision however was that the memorandum of association must be strictly construed according to its literal meaning and if something was done by the company which was not strictly covered by the memorandum, such activity should be treated as ultra vires of the powers of the company. Apart from the comment on a company's having numerous objects and on an independent, object clause in its memorandum of association, this case seems to have little bearing on the points at issue in the instant case now before me.

48. Mr. R. Chowdhury, continuing the argument for the respondent company, referred to *Re. E. K. Cole Ltd.* (1945) 1 All ER 521. This was an application for confirmation of alteration of the memorandum of association of the company. The memorandum in this case also contained the independent object clause whereby each object mentioned in the memorandum was to be treated as an independent object and not merely subsidiary to the objects mentioned in other clauses. The proposed alterations, however, were confirmed as the new business was allied to the company's principal business. Vaisy J. following the observations of Lord Wrenbury in 1918 AC 514 (*supra*) expressed the view that because of the independent object clause in the memorandum of association he might refuse to confirm alterations on some future occasion. In the instant case also there is a clause in the Memorandum of Association whereby the objects set out under Clause 3 of the Memorandum are not to be limited or restricted by reference to the terms of any other paragraph of the Memorandum or to the name of the company. In other words each object is to be treated as an independent object and not subsidiary to anything else provided by the Memorandum of Association.

49. Mr. R. Chowdhury also referred to the decision in *In re: North and England Protecting and Indemnity Association* (1929) 45 TLR 296. This also was a petition by the Association for confirmation of alterations of the object clauses in the Memorandum. The objects of the Association were to protect and indemnify owners of steamships and were mainly mutual insurance, The proposed alterations authorised the association or its members to join or become a member of or co-operate with any other association having for its objective the protection or advancement of the interest of ship owners, It was claimed that the alterations were necessary, to enable the association to carry on its business more efficiently. The court in exercise of its discretion declined to confirm the alterations. No reasons have been mentioned in the order for declining to confirm the alterations, but it seems to me that the proposed alterations would have been destructive of the original objects of the Association itself. This decision therefore does not help Mr. Chowdhury's client.

50. The next case referred to by Mr. Sen is in *In Re. Bolsom Brothers Ltd.* (1935) 1 Ch. 413. In this case an application was made for confirmation of alterations in the objects of the company. The existing objects of the company were to make and sell footwear and clothing and also to carry on the business of a retailer of footwear. The alterations proposed were to authorise the company to carry on

different retail trades including that of furniture dealers, cabinet makers, upholsterers, silk weavers, cotton spinners, cloth manufacturers, furriers, etc. The trial Court declined to confirm the alterations on the ground that the trades that were proposed to be carried on were entirely outside the original objects of the company. On appeal further evidence was given that the company was already carrying on a number of the new trades for which the objects were sought to be altered and profit was earned in these new trades. The court of appeal on the new materials reversed the decision of the trial Court and confirmed the alterations which were however limited to the trades which the company was already carrying on.

51. The next case referred to by Mr. Sen was a decision of Bombay High Court in *In re. Eastern Woollen Mills Ltd.* 60 Bom LR 1121. This was an application for confirmation of certain proposed alterations of the objects of the company. The existing objects of the company were to carry on the business of wool merchants, Wool combers, worsted spinners, etc. and other allied objects. By the proposed alterations the company sought new objects authorising it to carry on printing business. But at the time when the matter came up before the court the company had already started carrying on the printing business which it was not authorised to carry on under its objects. Shelat, J. (as he then was) declined to confirm the alterations on the ground that the company was not carrying on any business at all under its then existing clauses. And there was no existing business with which the proposed new printing business could be combined. In order to allow a new business to be authorised under proposed alterations there must be an existing business which the company was carrying on under its object clauses in the memorandum of association. If there was no such business, the proposed alteration's authorising a new business could not be confirmed. In the instant case I have held that the investment business is an independent business which the company is carrying on and this case is not a case where the company is not carrying on any business at all. In my view the observations of Shelat, J. (as he then was) support the applicant's case for an order for confirmation of the proposed alterations.

52. Mr. P.K. Sen appearing for the Registrar of Companies submitted that if this court was inclined to make an order for confirmation of the alterations, the company should be directed to change its name in order to indicate the new business which it proposed to carry on. In support of his contention he referred to *In re- Indian Mechanical Gold Extracting Co.* (1891) 3 Ch 538 it appears that one of the resolutions passed at the extraordinary general meeting of the company held on July 12, 1963, related to the change of its name and the resolution proposes to change the name of the company to the "Standard General Company Ltd." Mr. P.K. Sen further submitted that the Registrar of Companies has no objection to the alterations proposed, if this court was satisfied that the new business could be conveniently combined with the existing business of the company.

53. There are two other decisions of this court, however to which reference should be made in this connection. The first case to be referred to is in *In Re: Bhutoria Brothers (Private) Ltd.*, . This was an application for confirmation of the alterations of the objects of the company. The main object of the company was to purchase, store, sell, manufacture and otherwise deal in agricultural, mineral and animal products and live-stocks and in the by-products and waste products of the manufacture including jute. By the proposed alterations the company sought to acquire new objects for carrying on business in optical, photographic, chemical and surgical goods and also in watches, clocks, musical instruments and machinery of various kinds. In this case P.B. Mukharji, J. construed the words "some business" in Section 17(1)(d) of the Act and held that "some business" meant a business which was not already there under the existing memorandum, and such new business could be introduced by alterations provided it could be conveniently and advantageously combined with the business of the company under the existing circumstances. It was further held that in considering whether a new business could be conveniently or advantageously combined with the existing business, foremost regard should be given to the views of the shareholders. As to what "some business" means P.B. Mukharji, J. held at p. 596 of the report as follows :-

"The word "some business" in that clause apparently includes 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 (1) one which can 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 the hypothetical circumstances. So long as these two limits are observed, I shall think that the share-holders and the management of the company should be left free to add to or reduce their business by suitable alterations in their memorandum".

54. The other case to be referred to is *In Re: Indian Iron and Steel Co. Ltd.*, . This was also an application for alterations of the object clauses of the company to enable it to contribute or subscribe to national, charitable, benevolent, political public or other useful funds. The alterations proposed were confirmed by the Court, but on certain terms and it was held that the court had the power to impose terms on the company.

55. In my opinion, when a company seeks to alter its objects with a view to carry on some new business, if the company's position is financially sound, if the alterations are fair to all classes of members of the company and If the rights of creditors are in no way prejudiced, such alterations should be confirmed provided the requirement of the statute is complied with. It is not a matter for the court to determine as to what business the company should carry on. If the directors and members of a company propose to alter its objects, and if there; is no objection

from the creditors or if their position is not prejudiced by the proposed alteration, this court should not stand in the way of the company's seeking new objects to enable it to embark on a new venture. But there are certain obvious limitations which have been dealt with in the several decisions discussed by me above. The new business must not be destructive of or inconsistent with the existing business. There must be some existing business which the company should be carrying on at the time when it passes the resolution for altering its objects and such business must be carried on under its existing object clauses. The company's financial position must be sound, to enable it to carry on the new business. Subject to limitations mentioned, the wisdom of the directors and members of the company in regard to the decision to carry on the new business proposed under the altered object must prevail. This is the view taken by this court so far, and I propose to adhere to and follow the same. In a trading company, whose aim is to earn profits for the benefit of share-holders, the directors and share-holders of the company are the best judges of the trading policy of the company and so long as the requirements of the statute are complied with and the policy pursued by the company through the object clauses in its memorandum is not fraudulent or unfair to any class of its members and does not violate the statutory provisions, the court should not easily or lightly interfere, with the decision of the share-holders and directors of the company and also of creditors, if any. But the decision of the share-holders, creditors and directors, is not final and it is for the court to see if the statutory requirement has been complied with and the alterations sought for are not contrary to or inconsistent with the object clauses in the memorandum as they stand.

56. The doctrine of paramount object or main, object of the company which have received judicial notice in several cases, is a matter, which in my view, is material for consideration in applications for an order for winding up of the company on the just and equitable ground or in other applications, where the question of winding up is material, for instance, in an application u/s 397 of the Act. This is the view which has been taken in all the cases discussed above, in which the question was whether the company should be wound up on the just and equitable ground. If the substratum of the company is gone, that may be a good ground for making an order for winding up of the company on the just and equitable ground. But the loss of substratum of the company is not by itself a ground on which this court should decline to confirm alterations in the memorandum of association of a company, if the conditions mentioned above are fulfilled.

57. Before concluding I should refer to only one other matter which was argued by Mr. Sen, namely that the extraordinary general meeting of the company held on July 12, 1963, for passing the Special Resolution proposing alterations in the memorandum of association, was attended only by 5 share-holders. It was argued further that the minutes do not indicate how many shares were held by the 5 share-holders who attended the meeting. Mr. Sen contended that only a handful of share-holders appeared to have supported the Special Resolution.

58. The resolution was passed unanimously by the share-holders present at the meeting. From the affidavit of Keshab Prosad Goenka affirmed on January 21, 1964, it appears that notices were sent to all the share-holders of the company. In spite of such notices no other share-holders came forward to oppose the Special Resolution. Then again advertisements were issued in two news-papers setting out the date and time of the meeting and also the proposed alterations. No creditors or share-holders have come forward to oppose the proposed alterations. The special Resolution therefore has been passed according to the requirement of the Companies Act, 1956. The non-attendance of a larger number of share-holders at the extraordinary general meeting is no ground for contending that the resolution has not been passed as required by law. In my opinion the Special Resolution passed at the extraordinary general meeting of the company held on July 12, 1963, fulfils the requirement of the Companies Act, 1956.

59. For the reasons mentioned above there should be an order confirming the alterations of the memorandum of association of the company in terms of the Special Resolution passed at the extraordinary general meeting of the company held on July 12, 1963. The applicant should take steps to change its name so as to indicate the new business it will be entitled to carry on under the alterations in the object clauses of its memorandum of association confirmed by this order. The order confirming the alteration in the object clauses of the memorandum of association will not take effect until the applicant's name has been changed. There will be no order for costs except that the applicant should pay the costs of the Registrar of Companies. Certified for counsel.