

(1957) 12 BOM CK 0012
In the Bombay High Court
Case No : O.C.J.I.C. No. 219 of 1957
In re: The Eastern Wollen Mills Ltd.

Date of Decision : 13-12-1957

Acts Referred:

COMPANIES ACT, 1956 — Section 17

Citation : (1958) 60 BOMLR 1121

Hon'ble Judges : Shelat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shlat, J.—This is an application for confirmation of a proposed alteration in Clause 8 of the memorandum of association of the petitioner-company.

2. The company was incorporated in Lahore on April 6, 1944. On April 30, 1948, the company obtained an order whereby permission was given to it to shift its registered office from Lahore to Bombay. In 1946-47 the capital of the company was allowed to be reduced by 30 per cent. by an order obtained by the company from the High Court at Lahore. After the company had shifted its registered office to Bombay, the company made another application to this Court and on March 20, 1953, an order was passed allowing the company to still reduce its capital by 10 per cent. The result, therefore, was that on and after March 20, 1953, the total paid-up capital of the company was reduced to 60 per cent, of the original paid up capital and that paid up capital then came to about eight lacs of rupees. There was, however, the power with the company to call 40 per cent. of the capital which had remained uncalled.

3. Mr. Shah for the company informs me that the company suffered losses and as from December 1, 1955, the company by reason of those losses stopped its business which till then it was carrying on, viz. the business of manufacturing woollen fabrics. From and after December 1, 1955, the company did not conduct its business, of manufacturing woollen fabrics and the machinery lying with the company for manufacturing woollen fabrics lay idle as from that day.

4. Before I proceed further, it is necessary to see the objects of the company as set out in the memorandum of association. These objects are to be found in Clause III of the memorandum of association. Sub-clause (1) of Clause III of the memorandum states that the objects of the company are:

To carry on all or any of the businesses following, namely, wool merchants, wool combers, worsted spinners, woollen spinners, worsted and woollen-stuff manufacturers, cotton spinners and doublers, flax, hemp and jute merchants, bleachers and dyers and makers of vitriol bleaching and dyeing materials and to purchase comb, prepare, spin, dye, and deal in flax, hemp, jute, wool, cotton, silk and other fibrous substances, and to weave or otherwise manufacture, buy and sell and deal in linen cloth and other goods and fabrics, whether textile, felted, netted or looped, and to supply power.

Sub-clause (2) of Clause III sets out further objects viz.

to buy, sell, import, export...woollen and cotton goods of all description, all kinds of cloth and fabrics, and in merchandise, commodities, and articles of all kinds and generally to carry on business as traders, merchants, importers and exporters.

Sub-clause (3) then provides that the company is to have the power

to carry on commission agency business of any description in any line whatsoever.

Sub-clause (4) empowers the company

to undertake the office of trustee, receiver, and liquidator, whether official or otherwise, executor, administrator, committee, manager, managing agents, attorney...treasurer and any other office or situation of trust or confidence and to perform and discharge the duties and functions incident thereto and generally to transact all kinds of trust and agency business, either gratuitously or otherwise.

Sub-clause (5) provides that the company would have the power to enter

into partnership or into any arrangement for sharing profits, union of interests, cooperation etc. with any person or company carrying on or engaged in, or about to carry on or engage in, any business or transaction which this company is authorised to carry on or engage in, or any business or transaction capable of being conducted so as to directly or indirectly benefit this company.

Sub-clause (8), which the company now proposes to alter, reads as follows:

Generally to purchase, take on lease or in exchange, hire or otherwise acquire, any real and personal property, and any rights or privileges which the Company may think necessary or convenient for the purposes of its business and in particular any land, buildings, easements, machinery, plant, and stock-in-trade.

It is quite obvious from Clause III of the memorandum of association that the objects therein set out do not include by any stretch of imagination the business

of conducting a printing press, although the terms of the sub-clauses above referred to are couched in wide and general terms.

5. Mr. Shah for the company attempted to contend that Sub-clause (5) would include a power of the company to carry on the business as printers. It is not possible to accept that construction suggested by Mr. Shah, for what Sub-clause (5) contemplates is a power of the company to enter with another company or person, either into partnership or arrangement for sharing profits in any business or transaction which the company is authorised to carry on or any business which is capable of being conducted beneficially to the company. Since there is no question of the company having engaged itself into any such arrangement or partnership with any other existing concern, no question of Sub-clause (5) being applicable can possibly arise.

5. On January 5, 1957, an extraordinary general meeting of the shareholders was held at which a resolution was passed giving authority to the company to take on lease a printing press at Delhi known as Mufid-e-aam at a monthly rent of Rs. 3,000. Mr. Shah tells me that out of the total, number of 400 shareholders, 7 share-holders attended that meeting. On January 19, 1957, presumably in pursuance of this resolution, the Directors of the company entered into an agreement of lease with the aforesaid press for a period of one year in the first instance with option to the company to renew, Mr. Shah states that in the first week of February 1957 the company commenced the business as printers at the press taken on lease by them at Delhi and the company since then has been continuing to carry on the business as printers.

6. It is quite obvious that the memorandum of association, as it stands, does not authorise the company to carry on business as printers, and since the clauses as to the objects in the memorandum of association were not altered so as to include the power to carry on business as printers, the Directors were not right nor bad they the authority to carry on the business as printers, nor had they the authority inspite of the resolution passed by the share-holders to enter into an agreement of lease with the aforesaid Press. Realising this difficulty in their way, the Directors gave a notice dated July 9, 1957, for an extraordinary meeting to be held on July 31, 1957. The extraordinary general meeting quite naturally was convened at Bombay where the registered office is situate. It would seem that since most of the share-holders of the company are residing at Delhi, when the meeting was held on July 31, no quorum could be secured and in fact less than five share-holders attended that meeting. The meeting, therefore, had to be adjourned to August 7. When the adjourned meeting was held on August 7, only three members attended. These three members were the Manager, the Secretary of the company and one independent share-holder. The Manager and the Secretary are obviously the servants of the company. None of the Directors of the Company attended either the meeting of July 31 or the adjourned meeting of August 7, 1957. At the adjourned meeting held on August 7, the three members, who were present, unanimously passed the following resolution viz.

Resolved that the following words be inserted between the words "business" and "and" occurring in the fourth line of Clause 8 of the Memorandum of Association of the Company "including that of printers and publishers".

7. Mr. Shah for the company urges that since the special resolution has been passed unanimously and without any dissent from any share-holder and especially as none of the shareholders of the company has come forward with any objection to the alteration in the memorandum clause, the Court should have no hesitation in giving its confirmation as required by Section 17 of the Companies Act. In pursuance of a notice, however, being served upon the Registrar of Companies, Mr. Mody has appeared on behalf of the Registrar and has pointed out to me certain difficulties in the way of my giving confirmation to the special resolution. Mr. Mody points out to me that on the statements appearing in the petition itself, this Court cannot grant the requisite confirmation as the petition would not fall within the scope of Sub-clause (d) of Clause (1) of Section 17. Section 17(1)(d) 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, or with respect to the objects of the company so far as may be required to enable it

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company.

The relevant words occurring in Sub-clause (d) are "may conveniently or advantageously be combined with the business of the company". It is somewhat obvious that these words in Sub-clause (d) would mean that the proposed alteration in the memorandum of association would be in respect of a new business which can conveniently or advantageously be "combined" with a business existing at the date of the proposed alteration and which business is being carried on at such relevant date by the company. That condition is not fulfilled by the petitioners.

8. In para. 6 of the petition the petitioners say that in the year 1954 there was keen competition between the dealers and the manufacturers of woollen cloth and because the company could not secure Government orders it had to suffer heavy losses and ultimately "it discontinued the business of manufacturing woollen articles since December 1, 1956." In para. 7 of the petition it is then stated that after the closure of the said business of manufacturing woollen articles, the company thought of doing business in other lines and ultimately the Directors of the company took a decision to take on lease the printing press viz. Mufid-e-aam situate at New Delhi on a rent of Rs. 3.000 per month. It was in these circumstances that the resolution, which I have already referred to, dated January 5, 1957, giving sanction to the Directors of the company to take on lease the said Press, was passed. Since at the date of the special resolution for the alteration of the memorandum of association viz. August 7, 1957, there was in fact no existing business, in other words, since the company was not on that date carrying on its original business of manufacturing woollen fabrics, which

business admittedly was the only business which the company carried on throughout its career, there would be no business as contemplated by Section 17(1)(d) with which the new proposed business could be conveniently or advantageously combined and carried on. It is, therefore, clear that the present petition does not fall within the scope of Section 17(1)(d). I am fortified in the construction that I put upon Section 17(1)(d) by a decision in *Re Drages, Ltd* [1942] 1 All E.R. 194. The facts there were somewhat similar to the facts before me. In that case the memorandum of association of the company set out as its principal object the carrying on of the business of house-furnishers. It carried on this business under the hire-purchase system, and owing to the indifferent success of this system of trading, the company had ceased to enter upon any new business and was concerned only with the collection of the outstanding installments due under its hire-purchase agreements. The company desired to recommence trading after the cessation of the hostilities, but proposed to use its available capital in carrying on a trust investment business. The company applied to the Court to confirm an alteration in its memorandum of association urging that a trust investment business could be advantageously combined with its present business within the meaning of Section 5(1)(d) of the Companies Act, 1929. Mr. Justice Bennett, who heard that petition, construed Section 5(1)(d) of the English Companies Act, which incidentally is couched in the same language as Section 17(1)(d) of our Companies Act and gave the same construction to that section which I am giving. Referring to para. 13 of the petition before him in which there was a statement that the company had ceased to carry on its original business and proposed to start the new business of a trust investment, the learned Judge observed that there was no business which was being carried on by the company with which the proposed business of a trust investment company could either conveniently or advantageously be combined. Since the company was not carrying on any business at all at the time when the application was made, there was no existing business with which the proposed business could be combined either advantageously or conveniently as the section required.

9. For these reasons I have come to the conclusion that the petition must fail as the company has not brought itself within the scope of Section 17(1)(d) and, therefore, the petition must be dismissed. The company will pay costs to the Registrar of Companies.