
(1960) 05 CAL CK 0024
In the Calcutta High Court
Case No : C.P. No. 34 of 1960

Lawang Tahang

APPELLANT

Vs

Goenka Commercial Bank Ltd.

RESPONDENT

Date of Decision : 17-05-1960

Acts Referred:

Companies Act, 1956 — Section 398, 433, 443(2)

Citation : AIR 1961 Cal 144 : (1961) 31 CompCas 45 : 64 CWN 828

Hon'ble Judges : G.K. Mitter, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.K. Mitter, J.—This is a petition to wind up a company which was registered under the Indian Companies Act, 1913, in the year 1945 under the name and style of Goenka Commercial Bank Ltd. The grounds of the application are that the substratum of the company is gone and in the events which have taken place and the situation in which the company is placed it is just and equitable to wind up the company. A further ground) is taken that the company had suspended business for more than a year before the presentation of the petition. Strictly speaking, the first ground is treated in text books as one of the various branches of the "just and equitable" clause but there have been instances in which Courts have resorted to the "just and equitable" ground apart from that of failure of the substratum of the company.

2. The Memorandum of Association of the company shows that its name was the Goenka Commercial Bank Ltd. Clause 3 of the Memorandum enumerates the various objects of the company. The clause is divided under 29 heads. Sub-clauses (1), (2) and (3) of Clause 3 are as follows:

(1) establishing and carrying on the business of a bank, whereof the head office or place of business shall be Darjeeling, with such branches or agencies within India or elsewhere as may from time to time be determined;

(2) accepting deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order or otherwise;

(3) carrying on the business of banking in all its branches and departments, including the borrowing, raising or taking up money, the lending or advancing money either upon or without security, the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities, whether transferable or negotiable or not, the granting and issuing letters of credit, travellers' cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes, the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, sharas, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise, the collecting and transmitting of money and securities,

3. Sub-clauses (4) to (28) really enumerate the powers of the company. Sub-clause (29) reads as follows:

"the objects specified in each sub-clause of this clause shall, except where otherwise expressed in such sub-clause, be independent main objects and shall be in nowise limited or restricted by reference to or inference from the terms of any other sub-clause or the name of the company".

4. The authorised capital of the company is Rs. 20,00,000/- divided into 2,00,000 ordinary shares of Rs. 10/- each; the issued capital is Rs. 10,00,000/-; the subscribed and paid up capitals are Rs. 8,52,000/- and Rs. 5,85,200/-. The petitioner claims to be a registered shareholder of the company holding no less than 20,000 ordinary shares of Rs. 10/- each, out of which Rs. 6/- per share has been paid up. One Nagarchand Goenka of Darjeeling was the person mainly responsible for the promotion of the company and it is not disputed that the majority of the shares of the company are held by persons belonging to his family and/or by his friends and/or relations and/or nominees referred to in the petition as the "Goenka Group of shareholders". Nagarchand Goenka died in the year 1950. According to the petition prior to his death the business of the company was being carried on very efficiently. After his death his widow, Sm, Rama-sundari Debi, as administratrix of the estate of the said deceased, executed a power of attorney in favour of her son-in-law, Dhanoomal Chirimar and one Gyaniram Chirimar, conferring extensive powers on them including the power to manage the company. Nagarchand Goenka was also carrying on business under the name and style of "Goenka and Co.," which in its turn was acting as the managing agent of several companies such as the Pandum Tea Co, Ltd., Bloomfield Tea Co., Ltd., Kurseong Hydro Electric Supply Co., Ltd., and Atal

Tea Co., (1943) Ltd., Dhanoomal Chirimar was the Chairman of the Board of Directors of the Bank from the year 1951 to 1955. The present Directors of the company are: (i) Mr. S. K. Datta, (ii) Mr. N. J. Chatterjee, (iii) Mr. J. N. Mogra, (iv) Mr. Prithvi Nath Chaturvedi, (v) Mr. Onkar Shankar Gupta, The petitioner states that J. N. Mogra is an employee of Goenka and Co., and is a nominee of the Goenka group of shareholders. Onkar Shankar Gupta is also described as a director of other Goenka concerns and a nominee of the said Goenka group. In fact the petitioner claims that all the directors of the company belong to and/or are nominees of the said group.

5. It is not denied that there were runs on the bank once in the year 1951 and twice in the year 1952, namely in the months February and August 1952. The petitioner states that the Central Government, acting upon a report of the Reserve Bank of India, prohibited the company from receiving fresh deposits and since then the company has ceased to carry on banking business. This is supported by the minutes of the Extraordinary General Meeting of the company, held on October 23, 1952. Some of the resolutions passed at that meeting were :

- (1) that the company do as from October 28, 1952, cease to carry on the business as a banking company as defined in the Banking Companies Act, 1949;
- (2) that necessary alterations be made in the Memorandum of Association of the company for the purpose of carrying into effect the aforesaid resolution;
- (3) that upon the said alterations being confirmed by Court the company do carry on business as a non-banking company in accordance with the object clauses contained in the Memorandum;
- (4) that the company do take steps to effect change of name of the company from "Geonka Commercial Bank Ltd." to "Goenka Commercial Co., Ltd."

6. Whatever be the reasons, the above resolutions were not confirmed by this court until 17-1-1957. Even after the lapse of nearly three years since then the Central Government has not thought fit to sanction the said change in the name of the company. In the premises the petitioner states in paragraph 25 of the petition that the company cannot function any further as it cannot carry on any banking business which was the main object of the company, and there is no reasonable prospect of the said business being started again. In paragraph 20 of the petition it is stated that the directors of the company have been advancing loans to themselves and/or to companies and/or firms managed by them or in which they are interested. The amounts advanced year by year from 1952 to 1958 have been given in the said paragraph. At the end of the year 1958 the total of the advances made by the company amounted to Rs. 6,12,725/-; out of this Rs. 3,43,644/- was to Pandum Tea Co. Ltd. and a sum of Rs. 1,56,623/- to Bloomfield Tea Co. Ltd. Goenka and Co. is the Managing Agent of the said two Tea Companies and the registered offices of the said two companies are situate at the same place as that of Goenka and Co. Dhanoomal Chirimar is a director of the said two companies. The petitioner states that some of these loans have

been very improvident as a result whereof bad debts of the company have mounted up from Rs. 50,307/- in the year 1954 to Rs. 1,97,528/- in the year 1958. The repayments made by the debtor companies have been negligible. Various acts of misconduct have been alleged against the directors but I do not think these are sufficient grounds for the presentation of a winding up application. The petitioner complains that there is a justifiable lack of confidence of the shareholders of the company in its management and that the company is not carrying on any business whatsoever.

7. The affidavit-in-opposition herein is affirmed by J. N. Mogra. The deponent admits that the company was originally incorporated as a banking company with the object stated in paragraph 4 of the petition and adds that since then there has been a change of objects by special resolution passed on 28-3-1956. The change appears to be inconsequential as there has been deletion only of some of the original objects or powers. The deponent stresses the history of the litigation between the petitioner's mother Mrs. N. Y. Samdup and the widow of Nagarchand Goenka for moneys advanced by the creditor to Nagarchand Goenka during his lifetime and also after his death as a result whereof it is stated that 20,000 shares in the company came to be purchased for a very paltry sum by the petitioner. The deponent admits that the majority of the shares of the company are held by persons belonging to the family of Nagarchand Goenka or by his friends or relatives. The stoppage of the banking business is also admitted. In paragraph 27 of the affidavit the runs on the bank in 1951 and 1952 are admitted. The deponent states that the liability of the bank to the depositors has been reduced progressively from 1952 and at the end of 1958 such liabilities amounted to only Rs. 23,000/-. In paragraph 33 of the affidavit the deponent states that inasmuch as the company by special resolution converted itself to a non-banking company and made alterations to that effect in its Memorandum of Association, which were confirmed by the Court by the order made on 17-1-1957, the company could not any further retain the word "Bank" as part of its name. It is further admitted that the Central Government has not accorded sanction to the change of the name. In paragraph 36 of the affidavit it is stated that out of the assets realised by the company it granted a loan of Rs. 50,000/- to Atal Tea Co. (1943) Ltd. and the said sum was repaid with interest on 31-12-1959. The affidavit shows that in 1947 the bank started advancing moneys to Bloom-field Tea Co. Ltd., floated by N. C. Goenka in the same year. The liability of the said company to the bank which stood at Rs. 1,72,976/- at the end of the year 1952 was reduced to Rs. 1,56,623/- at the end of the year 1958; similarly with regard to Pandum Tea Co. Ltd. also floated by N. C. Goenka in 1947, the liability which was Rs. 3,20,000/- in the year 1952, rose to Rs. 3,43,000/- in the year 1958. Another company by the name of North Bengal Investors Ltd. floated by N. C. Goenka in 1946 started borrowing moneys from the company. The liability of this company was Rs. 62,298/- in 1952 and Rs. 49,031/- in 1958. Referring to the indebtedness of the 2 tea companies the deponent states that "if the tea market brightens up a little the said two tea

companies will be able to pay all their dues to the bank in a short time". It is denied that the substratum of the company is gone or that any facts have been brought to light which will justify the winding up of the company.

8. The following facts therefore emerge from the documents disclosed --

The company was originally started as a banking company, as the first three sub-clauses of clause 3 of Memorandum show. No doubt Clause 3 contains numerous provisions which are described as objects and Sub-clause (29) thereof shows that each sub-clause was to be treated as an independent main object. But there can be no denying the fact that banking was the primary object of the company although it had taken powers to engage in other activities,

8a. Again it is undisputed that the majority of the shares of the company are held by members of the family of Nagarchand Goenka and/or his friends and nominees. The directors of the company are the nominees of the said majority group of shareholders. All the funds of the company are invested in concerns in which the Goenka group of shareholders has a very large interest. The payments made by the debtors of the company from the year 1952 to 1958 have been negligible. The unrealisable debts of the company have been mounting up. The company has done little or no business for sometime. Nor is there any possibility of engaging in any fresh business unless the debtor concerns pay up. No steps appear to have been taken against any of the debtor companies between the years 1952 and 1958. The necessary consequence is that the minority group of shareholders including the petitioner is getting no return on their Investments and is not likely to get anything unless the Goenka group of shareholders take pity upon them.

9. In my view, it is proper that in a situation like this the company should be wound up. Both on the grounds that substratum of the company is gone as well as on the broader ground that it is just and equitable the company should not be allowed to continue.

10. The learned Advocate General contended that if the different sub-clauses of Clause 3 of the Memorandum of Association were independent main objects which the company could pursue the court ought not to take the view that the substratum of the company is gone because the business of banking though undoubtedly the most important function of the company at a prior stage can no longer be pursued. In my view, the authorities do not support that proposition. In *Re: Suburban Hotel Co.*, (1867) 2 Ch 737, Lord Cairns suggested that if the substratum of a company were gone, that might render it just and equitable to make a compulsory winding up order. The objects of the company in that case were very general, namely, to buy lands within 20 miles of the General Post Office, to erect and work hotels etc. The company had bought land at Hampstead and erected a hotel; it did not pay, but the majority of the shareholders wished to go on, and Lord Cairns held that the Court could not interfere. But he observed that

"a case might occur where the court would be willing to give under the Act to a minority of share holders the species of relief that sometimes is given in cases of ordinary partnership when it becomes impossible to carry on the business any longer. If it were shown to the Court that the whole substratum of the partnership, the whole of the business which the company was incorporated to carry on, had become impossible, I apprehend that the Court might either under the Act of Parliament or on general principles order the company to be wound up."

In *re: German Date Coffee Co.*, (1882) 20 Ch D 169, the primary object of the company was to acquire and work certain specified inventions for which a patent had been granted by the Empire of Germany. There were other objects, including the acquisition of inventions for cognate purposes. The primary object had failed, for a German patent was refused. It was held that on the true construction of the memorandum all the other objects were merely ancillary provisions and therefore the substratum was gone.

11. The learned advocate general referred me to a passage in *Palmer's Company Precedents*, Vol. II, p. 38, where after referring to the earlier cases the learned commentators add

"this narrow rule of construction was, however, not followed in *Pedlar v. Road Block Gold Mines*, 1905 2Ch D 427 and may be taken to have been overruled in *Cotman v. Brougham*, 1918 1.C. 514. That case related to the question whether a certain act was ultra vires, and did not directly deal with the application of the "primary object clause" rule to the question of whether the substratum has gone. It has, however, since been held in *In Re. Kitson and Co., Ltd.*, 1946 All ER 435 and in *Re. Taldua Rubber Co. Ltd.*, 1946 All. E.R. 763, that the same rule applies also in such cases."

With all respect to the learned authors of *Palmer's Precedents* 16th Edn. Vol. II it appears to me that the comment is not very happily worded. Neither *Pedlar's* case, 1905 2 Ch D 427 nor *Cotman's* case, 1918 AC 514 was one of winding up a company although the failure of substratum of the company was canvassed at bar. In *Pedlar's* case, 1905 2 Ch D 427 an application was made by a group of shareholders for restraining the company from entering into an agreement for purchasing certain mining property in the Bombay Presidency. The object for which the company was formed was to acquire and take over as a going concern the undertaking of the Road Block Gold Mining Co, of India as also to acquire gold mines etc., in Mysore and elsewhere and to work and develop the same. Warrington, J. rejected the application holding that the company was formed for the purpose of gold mining, not only in Mysore, but elsewhere where the company might think it right to acquire a goldmine.

12. In *Cotman's* case, 1918 AC 514 the Memorandum of Association of the *Essequibo Rubber and Tobacco Estates Ltd.*, contained the following clauses :

"The objects set forth in any sub-clause of this clause shall not, except when the

context expressly so requires, be in any wise limited or restricted by reference to or inference from the terms of any other sub-clause, or by the name of the company. None of such sub-clauses or the objects therein specified or the powers thereby conferred shall be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause of this clause, but the company shall have full power to exercise all or any of the powers conferred by any part of this clause in any part of the world, and notwithstanding that the business, undertaking, property or acts proposed to be transacted, acquired, dealt with or performed do not fall within the objects of the first sub-clause of this clause."

13. The Essequibo company underwrote and had allotted to it shares in the A. company, and these shares were transferred to the L. company. All three companies being in liquidation, the liquidator of the A. company settled the L. company on A list of contributories and the E. company on the B. list in respect of these shares. On an application by the liquidator of the E. company to vary the B. list by striking out that company's name, on the ground that underwriting was ultra vires the company it was held that the memorandum must be construed according to its literal meaning, and that the underwriting was intra vires. The judgment of Lord Parker shows that one of the arguments advanced was that, in considering whether a particular transaction was or was not ultra vires a company, regard ought to be had to the question whether at the date of the transaction the company could have been wound up on the ground that its substratum had failed. The learned Judge did not accept the suggestion and observed that:

"The question whether or not a transaction is ultra vires is a question of law between the company and a third party. The truth is that the statement of a company's objects in its memorandum is intended to serve a double purpose. In the first place it gives protection to subscribers, who learn from it the purposes to which their money can be applied. In the second place it gives protection to persons who deal with the company, and who can infer from it the extent of the company's powers. The narrower the objects expressed in the memorandum the less is the subscribers' risk, but the wider such objects the greater is the security of those who transact business with the company. Moreover, experience soon showed that persons who transact business with companies do not like having to depend on inference when the validity of a proposed transaction is in question. Even a power to borrow money could not always be safely inferred, much less such a power as that of underwriting shares in another company. Thus arose the practice of specifying powers as objects, a practice rendered possible by the fact that there is no statutory limit on the number of objects which may be specified. But even thus, a person proposing to deal with a company could not be absolutely safe, for powers specified as objects might be read as ancillary to and exercisable only for the purpose of attaining what might be held to be the company's main or paramount object, and on this construction no one could be quite certain whether the Court would not hold any proposed transaction to be ultra vires. At any rate, all the surrounding circumstances would require

investigation. Fresh clauses were framed to meet this difficulty, and the result is the modern memorandum of association with its multifarious list of objects and powers specified as objects and its clauses designed to prevent any specified object being read as ancillary to some other object. For the purpose of determining whether a company's substratum be gone, it may be necessary to distinguish between power and object and to determine what is the main or paramount object of the company, but I do not think this is necessary where a transaction is impeached as ultra vires. A person who deals with a company is entitled to assume that a company can do everything which it is expressly authorised to do by its memorandum of association, and need not investigate the equities between the company and its shareholders."

In the same case Lord Wrenbury strongly deprecated the practice of registering memoranda of association which, under the clause relating to objects, contained numerous paragraphs not specifying or delimiting the proposed trade or purpose, but confusing power with purpose and indicating every class of act which the corporation was to have power to do. He suggested that it was desirable to amend the law relating to joint stock companies so that the Registrar, before registering a memorandum of association, ought to consider whether the requirements of the Act had been complied with and to refuse registration if he conceived that they had not. All the learned Judges agreed that the memorandum of association being in the form it was, the transaction of underwriting could not be said to be ultra vires the company. They were not immediately concerned with the question as to whether there had been a failure of the substratum of the company so as to render it liable to be wound up.

14. In the case of 1946 1 All ER 435, there was an application for winding up of a company on the ground that it was just and equitable to do so. The company was incorporated in the year 1899: The objects for which the company was established were inter alia :

"(1) to acquire and take over as a going concern the business, carried on at Airedale Foundry, Ifunsale, in the city of Leeds, under the style or firm of "Kitson and Co.", and all or any of the assets and liabilities and to enter into an agreement for the purpose. Clause 3 (2) began with the words "to carry on the business of locomotive engine manufacturers, iron founders, mechanical engineers and manufacturers of agricultural implements and other machinery, tool makers, brass founders, metal workers, boiler makers, etc.", and Clause 3(3) enabled the company "to carry on any business relating to the winning and working minerals, the production and working of metals, and the production, manufacture and preparation of any other materials which may be usefully, or conveniently combined with the engineering or manufacturing business of the company, or any contracts undertaken by the company."

Delivering judgment Lord Greene, M. R. observed,

"We have no real information as to what the business of Kitson and Co. was in

1899, save what appears in paragraph 4 of one of the directors' affidavit in which it is said the business of the company is and has been since its incorporation that of engineers and manufacturers of engineering products. Until 1938 the company was chiefly engaged in manufacturing locomotives but it has also from time to time manufactured such things as machine tools, winders and mining machinery. In 1945 the company entered into an agreement to procure the carrying out of a sale and purchase of the business of Kitson and Co., its goodwill and all its assets, with one or two exceptions. It was argued that this destroyed the substratum of the company because the purchase of Kitson's business in the year, 1899 was the first in sequence of the company's objects and all other powers and objects specified in the memorandum were ancillary to that."

Lord Greene said:

"the main and paramount object of the company was to carry on an engineering business of the general kind, *** and I cannot bring myself to construe this memorandum as limiting the paramount object and restricting the contemplated adventure of the shareholders to the carrying on what could be called the business of Kitson and Co. The impossibility of applying such a construction seems to me to be manifest when one remembers that a business is a thing which changes. It grows or it contracts. it changes; it disposes of the whole of its plant; it moves its factory; it entirely changes its range of products and so forth. It must be remembered in these substratum cases that there is every difference between a company which on the true construction of its memorandum is formed for the paramount purpose of dealing with some specific subject matter and a company which is formed with wider and more comprehensive objects. I will explain what I mean. With regard to a company which is formed to acquire and exploit a mine, when you come to construe its memorandum of association you must construe the language used in reference to the subject matter, namely, a mine, and accordingly, if the mine cannot be acquired or if the mine turns out to be no mine at all, the object of the company is frustrated, because the subject matter which the company was formed to exploit has ceased to exist. It is exactly the same way with a patent, as, in the Well known German Date Coffee case. A patent is a defined subject matter, and, if the main object of a company is to acquire and work a patent and it fails to acquire that patent, to compel the shareholders to remain bound together in order to work some other patent or make some unpatented article is to force them into a different adventure to that which they contracted to engage together; but, when you come to a subject matter of a totally different kind like the carrying on a type of business, then, so long as the company can carry on that type of business, it seems to me that prima facie at any rate it is impossible to say that its substratum has gone."

Lord Greene was of opinion that the substratum of the company had not disappeared because it had a subsidiary carrying on a similar type of business, which however had for the moment had its factory and premises requisitioned by

the Admiralty and if the company could carry on the business of the subsidiary it would be doing business of the same nature as that which Kitson and Co. had carried on.

15. The learned Advocate General relied on the case of 1948 2 All ER 763, where an application for winding up of the company was dismissed by Wynn-Parry, J. relying on the decision in Kitson and Co's case. In this case the objects for which the company was established were : (a) to purchase or otherwise acquire any real and personal property, buildings, machinery etc., ** to obtain and acquire any grant, concession, lease and rights in the Island of Ceylon, the Straits Settlements, and elsewhere, and to enter into and carry into effect the agreement, draft of which is referred to in Article 3 of the Articles of Association of the company, with such modifications as may be agreed upon.

16.-17. Under the same clause power was taken by paragraph (b) to purchase, take on lease or hire or otherwise acquire any other lands in any part of the world, and any machinery etc. including concessions or easements or rights of any kind, and by paragraph (c) the company was to have the power to plant, grow and produce a large number of things and by paragraph (d) to enter into any arrangements with any governments etc. and to obtain from such governments etc. any rights, privileges, licences and concessions which the company may think it desirable to obtain.

18. By paragraph (i) power was taken to carry on a large number of businesses without any qualifying words whatsoever and paragraph (z) was practically to the same effect as Sub-clause (29) of Clause (3) of the memorandum of association in the present case,

19. The company entered into the agreement referred to in article 3 of the articles of association by which the vendors were to sell and the purchasers to buy the property in question for ?30,000 to be satisfied by the allotment and issue to the vendors, credited as fully paid up, of 30,000 shares of ?1 each in the capital of the company. The agreement was duly carried into effect, and the company acquired the property and business in question, and carried on, on the property, the business of a rubber estate for upwards of 29 years.

20. During that period it carried on no other business, except that it purchased rubber from other estates in Ceylon and processed that rubber on its own estate. In 1925 the company took steps to convert itself from a private company into a public company. In February, 1946 the directors of the company received an offer to purchase the company's estate and business for a sum of ?20,625, together with a further sum in respect of stock and tools, to be ascertained by valuation. The directors had power to bind the company by accepting that offer, but they thought fit to refer the matter to the shareholders and convened a meeting by a notice accompanied by a circular setting out in clear terms the nature of the offer. At a meeting held on March 7, 1946 a resolution was passed unanimously directing the acceptance of the offer. Pursuant thereto, a contract was entered

into for the sale of the company's property and business. The company received ?20,704 as consideration for the sale. The circular convening the meeting of March 7, 1946, contained an intimation that, if the offer was accepted, the liquidation of the company will be recommended. At a later meeting held on 17-7-1946 a resolution for the voluntary liquidation was not passed. Although no poll was taken it appeared that 14,958 shares were against liquidation and 14,886 in favour of it. In August 1946, the application for winding up of the company was presented to the Court. Two of the Directors were in favour of liquidation and the third against it. Construing the memorandum of association, the learned Judge said,

"it is to be observed that, unlike a number of other cases, the reference to the specific venture in the memorandum of association is not an express reference, nor does such reference as is contained in the memorandum of association appear as the first object of the company in Clause 3, The reference to the particular venture is made by reference to a draft agreement, which, in turn, is said to be referred to in Clause 3 of the articles, and that indirect reference appears at the end of paragraph (a) of Clause 3 of the memorandum of association, which contains provisions of the widest possible import, giving the company power to purchase or otherwise acquire a large variety of things in any part of the world, and to take, obtain and acquire any grant, concession, lease and rights in the Island of Ceylon, the Straits Settlements, and elsewhere in any part of the world. Pausing there, it seems to me that on the language of a clause so construed, it is impossible to say that the words providing that the company should enter into and carry into effect a particular agreement can operate to cut down the earlier and extremely wide provisions."

Referring to the other powers mentioned above his Lordship was of opinion that on the true construction of the memorandum of association, it could not be said that the company had been formed to work the Taldua Estate and for no other purpose. According to his Lordship, the company was formed partly to carry on the business mentioned in the particular agreement, but with the widest powers to carry on a variety of other activities. Referring to the judgment of Lord Greene in 1946 1 All ER 435 his Lordship said,

"the main and paramount object of this company was to carry on the business of conducting rubber estates, and was not limited to the business of carrying on the particular estate."

21. In my view, it would not be right to say of the company in this case that its main and paramount object was not only to carry on a banking business but any other businesses which it had power to take up under the various sub-clauses of Clause 3 of the memorandum of association. Mr. Choudhury relied strongly on the name of the company which described it as a bank and drew my attention to the judgment of North, J. in *Re. Crown Bank*, (1890) 44 Ch. D. 634, where his Lordship held that the name of the company was a very important matter. Counsel did not refer to article 59 of the articles of association of the company

according to which

"the company shall maintain by way of cash reserve or cash balance such amount in any such manner as may be required by the provision of the Act or the Reserve Bank of India Act (II) of 1934 as the case may be or any other law for the time being in force, if any, as may be applicable to the company."

In my view, notwithstanding the presence of Sub- Clause (29) and all other sub-clauses which gave the company power to carry on businesses which could be indulged in by a non-banking company, the paramount object of the company was certainly to carry on a banking business. Sub-clauses (1), (2) and (3) are really the primary objects for which the company was established. Sub-clauses (4) to (7), (12) and (13) contain powers which Banking companies usually have. Some of the other sub-clauses no doubt give power to the company to carry on business which non-banking companies could transact but that does not take away from the fact that the main and primary object for which the company was established was to carry on a banking business. Article 59 of the articles of association also supports my view. Any business transacted by the company other than those included in Sub-clauses (1), (2) and (3) could not be described as ultra vires the company if it fell within one of the other sub-clauses of Clause (3) but with the disappearance of business mentioned in Sub-clauses (1), (2) and (3) of Clause 3, it must be held that the substratum of the company has disappeared.

22. Apart from this, on the principles laid down by the Judicial Committee in the case of *Loch v. John Blackwood, Ltd.*, 1924 A.C. 783 I must hold that it is just and equitable to wind up the company. In this case the board of directors consisted of one McLaren, his wife and one Yearwood; the business of the company had been energetically managed and amassed considerable profits. The capital of the company was ₹40,000 in 11 (sic) shares; 20,000 of these had been allotted to Mrs. McLaren and of the remaining 10,000 should have gone to Mrs. Loch and 10,000 to Mr. Rodger. Mrs. Loch was allotted 9999; Mr. Rodger, 9998 and the remaining three shares were left to Mr. McLaren and one each to Mr. King and Mr. Yearwood, Mr. Yearwood and Mr. King were nominees of Mrs. McLaren. According to the Judicial Committee, although taking the form of a public company the concern was practically a domestic and family concern. Owing to the informal way in which the books of the company had been kept it appeared that no general meeting of the company had been held and no auditors properly appointed, and it was certain that no balance sheets, profit and loss accounts and reports had been submitted for the years, 1919 and 1920. In the judgment of Lord Shaw,

"elements of that character in the history of the company, together with the fact that a calling of a meeting of share-holders would lead admittedly to failure and be unavailable as a remedy, cannot be excluded from the point of view of the Court in a consideration of the justice and equity of pronouncing an order for winding up. Such a consideration, in their Lordships' view, ought to proceed

upon a sound induction of all the facts of the case, and should exclude but should include circumstances which bear upon the problem of continuing or stopping courses of conduct which substantially impair those rights and protections, to which shareholders, both under statute and contract, are entitled."

Their Lordships agreed with the findings of Greaves C. J. that the directors had laid themselves open to the suspicion that by omitting to hold general meetings, submit accounts and recommend a dividend, their object was to keep the petitioners in ignorance of the truth and acquire their shares at an undervalue. No such motive has been alleged in this case but there can be no doubt that the directors of the company are nominees of the Goenka group of share-holders and are content to allow the Goenka concerns to have the full benefit of the entice share capital and moneys of the company. For years they have taken no steps to realise the loans given by the company to the said concerns and it is reasonable to infer that they are not interested in doing so. It would appear that so long as the directors are allowed to function, they, being all nominees of the Goenka group of share-holders, will only look to their interest while the petitioner and others who are not interested in the Goenka concerns will be passive spectators without receipt of any profits from their investments. In my view, it is right and proper that such a state of affairs should be put an end to and that justice and equity require that the company should be wound up so that its assets may be speedily realised and made available for distribution among the shareholders.

23. On the facts of this case, I am not prepared to hold that there has been suspension of business of the company in terms of Section 433(e) nor am I satisfied that there should be no winding up order because other remedies such as an application u/s 398 of the Indian Companies Act, might be available to the share-holders. u/s 443(2)

"where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order for winding up, if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing any other remedy."

24. Section 225(2) of the English Companies Act 1948 provides

"where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court, if it is of opinion:

(a) that the petitioners are entitled to relief either by winding up the company or by some other means, and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding up order, unless it is also of opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in

seeking to have the company wound up instead of pursuing that other remedy."

25. According to Buckley on The Companies Act 12th Edn. p. 478 the principal effect of this sub-section will be in "deadlock" cases.

26. Substantially the two provisions are the same. It does not appear to me, however, that on the facts of this case, an application u/s 398 of the Indian Companies Act would be of much use to the petitioner. I am not satisfied that the petitioner is acting unreasonably in seeking the winding up order. Continued existence of the company with its present board of directors can only benefit the group of share-holders who are interested in the Goenka concerns. Share-holders, qua share-holders, will derive no benefit therefrom. It is therefore just and equitable that the company should be wound up.

27. There will therefore be the usual winding up order.