

(2006) 05 CAL CK 0031

In the Calcutta High Court

Case No : T. No. 152 of 2006, C.A. No. 60 of 2006 and C.P. No. 14 of 2006

Tata Steel Ltd.

APPELLANT

Vs

Indira Singh and Sons P. Ltd.

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Companies Act, 1956 — Section 10(3), 17, 17(1), 17(2), 17(5)

Citation : (2008) 141 CompCas 224

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : P.C. Sen and S.N. Mukherjee, for the Appellant; Ravi Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Indira Banerjee, J.—This application has been filed by the petitioning creditor for recalling the order dated March 29, 2006, whereby this Court dismissed the winding up application filed by the petitioning creditor being C.P. No. 14 of 2006 on the ground that the registered office of the company had been shifted from 7A, Rameswar Shaw Road, Kolkata-700014, to the Union Territory of Chandigarh.

The winding up application was filed on January 7, 2006. Diverse directions were issued in the said application from time to time. The petitioning creditor also moved an interim application being C.A. No. 60 of 2006 praying for appointment of provisional liquidator over the assets and properties of the company and also an order of injunction restraining the company from dealing with its assets and properties including premises No. 17, Tuglak Road, New Delhi.

2. By an order interim dated January 19, 2006, this Court restrained the company from dealing with any of its assets or properties including premises No. 17, Tuglak Road, New Delhi. The application was made returnable on February 1, 2006.

3. On February 2, 2006, leave was granted to the petitioning creditor to effect

substituted service of notice of the application as also the gist of the order dated February 19, 2006, passed by this Court by insertion in one English newspaper and one vernacular newspaper with wide circulation in Kolkata and one English and one Hindi newspaper with wide circulation in Delhi.

4. The matter was made returnable on March 1, 2006. The winding up application appeared in the list on March 2, 2006, but was adjourned for two weeks on the prayer made on behalf of the company. On March 22, 2006, the matter was adjourned on the prayer of the applicant.

5. On March 29, 2006, when the matter was called on, Mr. Ravi Kapoor appearing on behalf of the company submitted that the registered office of the company had been shifted to the Union Territory of Chandigarh pursuant to a special resolution taken at an extraordinary general meeting of the shareholders of the company held on January 25, 2005. A xerox copy of an order dated October 5, 2005, of the Company Law Board confirming the alteration of the memorandum of the company relating to the change of place of its registered office to Chandigarh and a xerox copy of a certificate of the Registrar of Companies, Punjab and Himachal Pradesh and Chandigarh dated November 3, 2005, were handed over in court. This court, accordingly, dismissed the winding up application.

6. Section 10(3) of the Companies Act, 1956, provides as follows:

For the purpose of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

7. Some of the relevant provisions of the Companies Act with regard to the change of the place of the registered office of a company from one State to another are extracted hereinbelow:

17. Special resolution and confirmation by Company Law Board required for alteration of memorandum.--(1) ...

(2) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Company Law Board on petition.

(3) Before confirming the alteration, the Company Law Board must be satisfied-

(a) that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the Company Law Board be affected by the alteration ; and

(b) that, with respect to every creditor who, in the opinion of the Company Law Board is entitled to object to the alteration, and who signifies his objection in the manner directed by the Company Law Board either his consent to the alteration has been obtained or his debt or claim has been discharged or has been

determined, or has been secured to the satisfaction of the Company Law Board:

Provided that the Company Law Board may, in the case of any person or class of persons, for special reasons, dispense with the notice required by Clause (a).

(4) The Company Law Board shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity to appear before the Company Law Board and state his objections and suggestions, if any, with respect to the confirmation of the alteration.

(5) The Company Law Board may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.

18. Alteration to be registered within three months.--(1) A company shall file with the Registrar-

(a) a special resolution passed by a company in relation to Clauses (a) to (g) of Sub-section (1) of Section 17, within one month from the date of such resolution ; or

(b) a certified copy of the order of the Company Law Board made under Sub-section (5) of that Section confirming the alteration, within three months from the date of order,

as the case may be, together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such documents.

(2) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

(3) Where the alteration involves a transfer of the registered office from one State to another, a certified copy of the order confirming the alteration shall be filed by the company with the Registrar of each of the States, and the Registrar of each such State shall register the same, and shall certify under his hand the registration thereof; and the Registrar of the State from which such office is transferred shall send to the Registrar of the other State all documents relating to the company registered, recorded or filed in his office.

(4) The Company Law Board may, at any time, by order, extend the time for the filing of documents or for the registration of the alteration under this Section by such period as it thinks proper.

19. Effect of failure to register.--(1) No such alteration as is referred to in Section 17 shall have any effect until it has been duly registered in accordance with the provisions of Section 18.

(2) If the documents required to be filed with the Registrar u/s 18 are not filed

within the time allowed under that section, such alteration and the order of the Company Law Board made under Sub-section (5) of Section 17 and all proceedings connected therewith, shall, at the expiry of such period, become void and inoperative:

Provided that the Company Law Board may, on sufficient cause shown, revive the order on application made within a further period of one month.

8. Mr. P.C. Sen appearing for the petitioning creditor with Mr. S.N. Mukherjee referred to a search report dated November 8, 2005, and submitted that the applicants had searched the records maintained by the Registrar of Companies, Kolkata, and ascertained that the registered office of the company was at 7A, Rameswar Shaw Road, Kolkata-700014.

9. Mr. Sen, submitted that the registered office was in Kolkata at least till November 3, 2005, that is, for the longer period during the six months prior to January 7, 2006, being the date of filing of the winding up application. The winding up application had, therefore, rightly been filed in this court.

10. Referring to the documents submitted by Mr. Kapur it was argued that there could be no alteration of memorandum involving transfer of registered office without compliance of the mandatory requisites of Section 18(3) of the Companies Act, 1956. In the absence of a certificate of the Registrar of Companies, West Bengal, u/s 18(3) there could be no transfer of registered office.

11. Mr. Sen submitted that the company had not been able to produce the certificate of the Registrar of Companies of the State of West Bengal certifying the registration of a certified copy of the order confirming the alteration of the memorandum involving transfer of the registered office of the company.

Mr. Sen argued that there could be no transfer of registered office unless such a certificate was issued by the Registrar of the State from which the office was transferred and all documents relating to the company registered, recorded or filed in his office were sent to the office of the Registrar of the State to which the registered office of the company was sought to be transferred.

12. In spite of several adjournments, the company could not produce the said certificate. However, pursuant to an order of this Court the Registrar of Companies, West Bengal, appeared in court with the requisite records. The records reveal that a certificate was issued by the Registrar of Companies, West Bengal, on October 28, 2005, certifying that the order of the Company Law Board confirming the alteration had duly been filed and registered.

13. The records and/or documents produced in court leave no iota of doubt that the registered office of the company has been shifted from Kolkata to the Union Territory of Chandigarh.

14. The question before this Court is whether during the six months preceding January 7, 2006, being the date of filing of the winding up application, the

registered office was situate for longer period of time at Kolkata or at Chandigarh.

15. It is not in dispute that the special resolution for alteration of the memorandum of association of the company was adopted on January 25, 2005, at an extraordinary general meeting. The Company Law Board by its order dated October 5, 2005, confirmed the alteration.

16. On November 26, 2005, the Registrar of Companies, West Bengal, issued a certificate u/s 18(3) certifying the registration of the order of the Company Law Board confirming the alteration of the memorandum of the company insofar as the same involved the transfer of the registered office of the company from the State of West Bengal to the Union Territory of Chandigarh. The Registrar of Companies for, inter alia, the Union Territory of Chandigarh issued a similar certificate u/s 18(3) of the Companies Act 1956, on November 3, 2006.

17. The main issue in this application is, whether the transfer of the registered office of a company takes effect on the date on which the special resolution for alteration of the memorandum of association is confirmed by the Company Law Board the date on which certificate u/s 18(3) is issued by the Registrar of Companies of the State from which the registered office is transferred or the date on which certificate u/s 18(3) is issued by the Registrar of Companies of the State and/or the Union Territory to which the registered office is transferred.

18. Section 17(2) clearly provides that the alteration of the provisions of the memorandum of a company relating to the change of place of its registered office from one State to another shall not take effect unless it is confirmed by the Company Law Board on petition. Such alteration, therefore, takes effect once it is confirmed by the Company Law Board.

19. u/s 18, however, the special resolution in relation to, section. 17(1)(a) to (g) is required to be filed with the Registrar within one month from the date of the special resolution and a certified copy of the order of the Company Law Board confirming the special resolution for alteration of the memorandum relating to change of place of the registered office from one State to another is required to be filed with the Registrar of Companies within three months from the date of the order along with a printed copy of the altered memorandum and the Registrar of Companies is required to register the same and certify the registration under his hand within a month from the date of receipt of the documents. The certificate is u/s 18(2) conclusive evidence of compliance of all the requirements of the Act for the alteration and confirmation thereof and thenceforth the memorandum as altered is to be the memorandum of the company.

20. Section 18(3) however, provides that where the alteration of memorandum involves the transfer of the registered office of the company from one State to another, a certified copy of the order confirming the alteration shall be filed by the company with the Registrar of Companies of the respective States, who shall register the same and certify registration thereof.

21. The requirements of Section 18(3) are undoubtedly mandatory. The order of the Company Law Board confirming a special resolution for alteration of the memorandum of a company in relation to the change of the place of its registered office from one State to another is mandatorily required to be registered with the Registrar of Companies of the State from which the registered office is sought to be shifted within three months or within the time as extended by the Company Law Board and the Registrar is within one month thereafter required to register the alteration and certify the same under his hand. The certified copy of the order of the Company Law Board is also mandatorily required to be filed with the Registrar of the State to which the registered office is shifted and the Registrar of each State is required to register the same and certify registration thereof.

22. Section 19(1) of the Companies Act, 1956, provides that no such alteration as is referred to in Section 17 shall have effect until it has been duly registered in accordance with the provisions of Section 18.

Section 19(2) provides that if documents required to be filed with the Registrar u/s 18 are not filed within the time allowed under that Section such alteration and the order of the Company Law Board made u/s 17(5) and the proceedings connected therewith, shall, at the expiry of such period become void and inoperative.

23. The special resolution with regard to the shifting of the registered office of the company from Kolkata to Chandigarh taken on January 25, 2005, was confirmed by the Company Law Board by its order dated October 5, 2005. A certified copy of the order of the Company Law Board along with the requisite documents was filed with the Registrar of Companies well within the time stipulated in Section 18(1). Within two months from the order of the Company Law Board, the Registrar of Companies, West Bengal as well as the Registrar of Companies for, inter alia, the Union Territory of Chandigarh registered the order of the Company Law Board and certified the registration.

24. Section 19 is a general provision which applies to all alterations of the memorandum of association of a company whereas Section 17(2) is a special provision applicable to alteration of memorandum of association pertaining to the change of place of registered office from one State to another.

25. While alterations in the memorandum of a company might be effected by special resolution and filed with the Registrar within a month from the date of the special resolution, alterations with regard to the change of place of the registered office from one State to another are required to be confirmed by an order of the Company Law Board, and it is the order of the Company Law Board, that is, filed with the Registrar. The Registrar registers and certifies the registration of the order of the Company Law Board.

26. From the language used in Section 19(1) it is clear that the Section applies to those cases where the altered memorandum is required to be filed and

registered with the Registrar of Companies and not to alterations in the memorandum involving the change of registered office from one State to another, in which case, the alteration is required to be confirmed by an order of the Company Law Board and that order of the Company Law Board confirming the alteration is required to be registered.

27. Section 17(2) as observed above, provides that the alteration of the memorandum of a company relating to the change of its registered office from one place to another shall not take effect unless confirmed by the Company Law Board.

28. The alteration relating to change of place of the registered office of the company from one State to another, therefore, takes effect once the alteration is confirmed by the Company Law Board. I am unable to accept Mr. Sen's submission that the alteration of the memorandum of the company from one State to another would take effect upon registration and certification of registration of the order of the Company Law Board.

29. If this Court were to accept Mr. Sen's submission that the alteration in the instant case, could only have taken effect after registration and certification by the respective Registrars, this Court would have to read into Section 17(2) the words "and until the order of the Company Law Board is registered with the respective Registrars in accordance with the provisions of Section 18 and the respective Registrars certify registration of the same", which this Court cannot do.

30. In interpreting a statutory provision, this Court should ordinarily give effect to the plain meaning thereof unless the plain meaning gives rise to absurd results. It is not for this Court either to add words to or delete words from a statute.

31. Alteration of the memorandum of a company in relation to the change of place of its registered office from one State to another cannot be equated with other alterations of the memorandum of a company which do not require confirmation by the Company Law Board on petition.

32. In case of alteration of the memorandum of a company that does not involve change of place of its registered office from one State to another the alteration would take effect with effect from the date of registration, as per Section 19(1) of the Companies Act, 1956.

In case of alteration of the memorandum in relation to change of place of registered office of the company from one State to another, the special resolution is required to be confirmed by the Company Law Board after giving the Registrar of Companies an opportunity to make his submissions.

33. Once a special resolution is confirmed by the Company Law Board and the order of the Company Law Board is filed with the Registrar along with the requisite documents, the Registrar is bound to register the order of the Company Law Board. The Registrar cannot go behind the order of the Company Law Board.

34. Registration and certification of registration of the order of the Company Law Board is, therefore, a formality of a mandatory nature, non-compliance whereof would render the proceedings connected with the alteration void.

35. Alteration of the memorandum of a company in relation to change of place of its registered office from one State to another takes effect upon confirmation by the Company Law Board of the special resolution with regard to the alteration subject, however, to the condition of compliance with the mandatory requirement of filing the order of the Company Law Board along with requisite documents with the respective Registrars of Companies within the time stipulated in Section 18 of the said Act.

36. Non-compliance of the requirement of filing the order of the Company Law Board with the respective Registrars of Companies along with requisite documents would render all proceedings in relation to the alteration void.

37. In the instant case, the petitioner, as observed above, filed the order of the Company Law Board with the Registrar of Companies, West Bengal and the Registrar of Companies for, inter alia, the Union Territory of Chandigarh within the time stipulated in the Companies Act, 1956. The order of the Company Law Board has been registered and the registration certified by the respective Registrars. There is, therefore, no question of the proceedings relating to the alteration of the memorandum of the company relating to change of place of its registered office from Kolkata to Chandigarh having been rendered void. The alteration thus took effect on October 5, 2005, when the same was confirmed by the Company Law Board.

38. If the alteration of the memorandum of association relating to the change of place of the registered office of the company from Kolkata to Chandigarh took effect on October 5, 2005, it would automatically follow that for the longer period during the six months preceding January 7, 2006, that is, the date of filing the winding up application, the registered office of the company was in the Union Territory of Chandigarh.

39. The relevant records relating to the company might have been sent from the office of the Registrar of Companies, West Bengal, to the office of the Registrar of Companies of, inter alia, Chandigarh after October 26, 2005, that is, after the certificate u/s 18(3) was issued by the Registrar of Companies, West Bengal. Even though the records may have been shifted from the office of one Registrar to the office of the other Registrar at a subsequent date, the alteration of the memorandum of the company, as observed above, took effect on October 5, 2005.

40. Even assuming that the formalities for alteration of the memorandum of the company in relation to change of the place of its registered office had not been completed till November 3, 2005, even then the principle of forum non-convenient would be attracted.

41. Jurisdiction to wind up a company is discretionary. The winding up court is not a debt collecting court. This Court may in its discretion refuse to entertain a winding up application filed in a court within whose jurisdiction the registered office of the company is no longer situate.

42. The petitioning creditor pointed out that there was a reply to the statutory notice u/s 434. There is not a whisper in the said statutory notice regarding shifting of the registered office to Chandigarh. It, however, appears that the reply has been sent from the administrative office at Chandigarh and not from Kolkata.

43. In the absence of any specific averment in the statutory notice with regard to the location of the registered office, the omission to mention the change of place of the registered office in the reply makes no difference. In any case, jurisdiction would depend on actual facts pertaining to the date of shifting of the registered office of the company and not the conduct of the respective parties.

44. Even if the fact that the company had shifted its registered office, had deliberately been suppressed with ulterior intent, that would make no difference if the registered office had actually been shifted to a different State and has longer been outside the jurisdiction of this Court during the six months preceding the date of presentation of the winding up application.

45. The winding up application was dismissed by this Court on the ground of the registered office having been shifted from West Bengal to the Union Territory of Chandigarh. In the facts and circumstances of this case where the special resolution was adopted way back on January 25, 2005, and confirmed by the Company Law Board by its order dated October 5, 2005, this Court is not inclined to recall the order dated March 29, 2006.

The application being T. No. 152 of 2006 is, therefore, dismissed.