

(1951) 01 CAL CK 0019
In the Calcutta High Court
Case No : A.F.O.O. No. 132 of 1950

The Indian Spinning Mills Ltd. and Others	APPELLANT
Vs	
His Excellency Lt. General Madan Shamsher Jang Bahadur Rana and Others	RESPONDENT

Date of Decision : 30-01-1951

Acts Referred:

Companies Act, 1913 — Section 79(3)

Citation : AIR 1953 Cal 355 : (1952) 22 CompCas 162 : 56 CWN 398

Hon'ble Judges : Harries, C.J.; Banerjee, J

Bench : Division Bench

Advocate : S.K. Basu and B.C. Dutt, for the Appellant; Ranadev Chaudhuri and Sudhamay Bose, for the Respondent

Final Decision : Dismissed

Judgement

Harries, C.J.—This is an appeal from an Order of Mookerjee J. dated 22-9-1950, directing that an extraordinary general meeting of the Company should be held.

2. The application was made to Mookerjee J. u/s 79(3), Companies Act. It was alleged that owing to disputes which had arisen between the share-holders and the directors of the company in question it was impracticable to hold an extraordinary general meeting and therefore application was made to the Court for the convening of such a meeting under the directions of the Court. The learned Judge having considered the whole of the matter came to the conclusion that it was impracticable to call a meeting of the company in any manner in which the meetings of that Company might be called in accordance with the Articles of the Companies Act.

3. The paid up capital of this Company is Rs. 4,59,420/- of which the contesting respondents hold Rs. 3,66,000/-.

4. The last annual general meeting of the Company was held on 23-12-1949 and thereafter the Board of Directors consisted of Gopal Chandra Saha Monoj Mohan

Ray, S.K. Mukherjee, N.N. Bose and A.C. Roy Chowdhury; the latter was the nominee of the contesting respondents who are referred to by the learned Judge as the Nepal group. This Nepal group holds roughly 3/4ths of the paid up share capital.

5. Mr. Roy Chowdhury had been elected Chairman of the Board of Directors. But disputes arose and eventually the other Directors challenged his position on the Board. Mr. Roy Chowdhury originally only held one share and the qualification of a director was the holding of 250 shares. The contesting respondents arranged to transfer the necessary number of shares to Mr. Roy Chowdhury to qualify him for the post of a director. But it is said on behalf of the appellants that the transfer was bad. On 12-7-1950 the Board noted in their proceedings that the transfer of 250 shares in the name of Mr. Roy Chowdhury on the strength of which he had been acting as a director was defective. The following resolution was accordingly passed:

"It is therefore resolved that in view of irregular transfer which does not confer on Mr. Roy Chowdhury title to the shares he be requested to vacate from the Board of Directors of the Company till the transfer is regularised when he will be co-opted."

6. Mr. Roy Chowdhury thereafter was excluded from the Board. Another shareholder was co-opted in his stead and a new chairman appointed.

7. The contesting respondents contend that the whole of these proceedings of the Board of Directors were illegal and of no effect. According to them Mr. Roy Chowdhury held the necessary qualification and therefore was a director and could not be excluded by his co-directors and no one could be appointed in his stead.

8. The position of Mr. Roy Chowdhury has now become the subject-matter of two suits. Certain members of the Nepal group and Mr. Roy Chowdhury filed on 30-8-1950 Suit No. 3559 of 1950 on the Original Side of this Court in which they claimed a declaration that Mr. Roy Chowdhury had at all material times been and was still a director of the company and was entitled to act as such. They further claimed that the resolution of the Board dated 12th July was illegal and "ultra vires" and they asked for an injunction restraining the other directors from excluding Mr. Roy Chowdhury from the meetings of the directors. They further asked for a declaration that all the resolutions passed by the directors during the time when Mr. Roy Chowdhury was excluded were invalid and inoperative.

9. Another suit was filed by one Jatish Chandra Pal along with another shareholder and in that suit a prayer was made for a declaration that an extraordinary general meeting which had been called for 9-9-1950, was improperly convened, and further that any directors appointed at that meeting should be declared to have been invalidly appointed.

10. The cause of this latter suit was the requisitioning of an extraordinary

general meeting by the respondents.

11. It is suggested that the respondents had been endeavouring to have an extraordinary general meeting called from June 1950. Requisitions, it is said, had been sent to the directors, but nothing had been done. According to the respondents a requisition for an extraordinary general meeting was sent to the Company on 12-7-1950. The Company admit receiving this requisition, but state that they received it on 2nd August. Be that as it may, no meeting was called within twenty-one days of 2nd August, and it is quite clear that the directors did not wish to have a meeting. Mr. I.P. Mukherjee, who appeared for the directors before the Court below, stated quite frankly that the directors did not propose to call a meeting as the general meeting of the Company would be held in December of 1950.

12. As the directors did not call a meeting, the respondents who were entitled to requisition such a meeting gave notice to all the shareholders for an extraordinary general meeting to be held at the registered office of the Company on 9th September. It was this meeting that the suit of Jatish Chandra Pal was intended to defeat. It may be added that the respondents claim that a large number of share-holders came to the registered office to attend this meeting, but they found the office locked. The case for the directors is that no one came to the office to attend the meeting, though the place was kept open for half an hour after the scheduled time of the meeting. However, it is clear that no meeting was held & an application was made to the Court to summon an extraordinary general meeting under the provisions of Section 79 (3), Companies Act.

13. Section 79(3) in so far as it is material is in these terms:

"If for any reason it is impracticable to call a meeting of a Company in any manner in which meeting of that Company may be called or to conduct the meeting of the Company in manner prescribed by the Articles or this Act, the Court may, either of its own motion or on the application of any director of the Company or of any member of the Company who would be entitled to vote at the meeting, order a meeting of the Company to be called, held and conducted in such manner as the Court thinks fit....."

14. The case for the respondents was that having regard to the disputes that had arisen between the directors and the share-holders it was impracticable to hold a meeting of the Company and accordingly an application was made to the Court.

15. Mr. Bankim Dutt on behalf of the appellants has urged that it was quite impracticable to hold a meeting. He pointed out that if the directors refused to convene a meeting, then by reason of Section 78 the share-holder could convene an extraordinary general meeting. According to him there was nothing to prevent the respondents, who, as I have said, held practically 3/4ths of the paid up share capital, calling a meeting, and it could not be said that the calling of such a meeting was impracticable.

16. Mr. Chowdhury, on the other hand, has pointed out that it could well be argued that by reason of Section 78(3), Companies Act, no meeting could be called by the share-holders. That sub-section deals with the right of share-holders to requisition an extraordinary general meeting and the sub-section is in these terras:

"If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so-called shall be held within three months from the date of the deposit of the requisition."

17. This sub-section gives the share-holders a right to call a meeting if the directors do not proceed within twenty-one days of receiving a requisition to call such a meeting. Mr. Chowdhury has pointed out that one of the serious disputes in this ease is whether at the time an application was made to the Court there existed a Board of Directors. If Mr. Roy Chowdhury, as suggested by the respondents, had been illegally excluded from the Board, then there was no valid Board of Directors, Therefore there was no valid Board of Directors who could order an extraordinary general meeting if one was requisitioned. Therefore Mr. Chowdhury contends that if there was no valid Board of Directors, there could be no question of directors not proceeding within twenty-one days to call a meeting and it is only when directors do not proceed to call a meeting that the requisitionists may call such a meeting. In short, Mr. Chowdhury has contended that the right of the requisitionists to call a meeting only arises if the directors refuse or neglect to call such a meeting. Where there are no competent directors there can be no question of the refusal or neglect and therefore he contends that the right to call a meeting u/s 78(3) would not arise.

18. The learned Judge rightly refused to decide the matters which are in issue in the suit and I do not think it will be right for us to express any opinion upon these matters. However, it is clear that there is a serious dispute between the parties as to whether Mr. Roy Chowdhury was qualified to act as a director and whether or not he was wrongly excluded from the Board. If it transpired in the suit that he was wrongly excluded from the Board difficulties might arise concerning any meeting which the requisitionists might call u/s 78(3). In fact it seems fairly clear that if such a meeting was called it would be the cause of considerable litigation.

19. If the meeting was called difficulties would undoubtedly arise as to the conduct of the meeting. In an extraordinary general meeting the parties might elect their own Chairman, but the probabilities are that objection would at once be taken to Mr. Roy Chowdhury either acting as chairman or even voting or being concurred in the proceedings at all. It seems to me that if the requisitionists were allowed to conduct this meeting endless difficulties would arise and therefore, I think the learned Judge was right in holding that it was impracticable to hold such a meeting.

20. The meaning of the word "impracticable" as used in this section has been considered by my learned brother in the case of -- "In re Malhati Tea Syndicate Ltd.", (Suit No. 202 of 1950). He following some observations in a decision of the Privy Council, held that the term implies that it is impracticable from a reasonable point of view. The Court must take a common sense view of the matter and must act as a prudent person of business.

21. Where the calling of a meeting by requisitionists would lead to endless litigation and where matters might arise for debate, and decision which were already the subject-matter of suits, it appears to me that the holding of a meeting would be impracticable. It would be most unlikely to lead to any result and would inevitably cause more litigation and confusion and further embitter the feelings between the parties. That being so the learned Judge, I think, was right in coming to the conclusion that the Court should order such a meeting.

22. The directors did summon a general meeting of this Company in December of 1950. But it appears that before that meeting was held, the meeting ordered by the Court was held when an entirely new set of directors were appointed. Mr. Bankim Chandra Dutt contended that the meeting ordered by the Court should not have been held by reason of a stay order issued by this Bench. It is true that this Bench did issue an order staying the order of Mookerjee J., but it was thought that the meeting which had been ordered to be held had not been held. It now transpires that the meeting ordered by Mookerjee J. had been held and therefore the stay order which this Bench issued was wholly infructuous. The stay order issued by this Bench was ultimately vacated, and in any event it never was effective. What effect the meeting ordered by the Court will have upon the subsequent meeting in December is a matter on which we express no opinion.

23. A point was taken as a preliminary point that no appeal lay in this case. I do not think it is necessary to discuss that matter, but I wish to make it clear that we do not hold that an appeal does lie. However as there are no merits in the appeal it is unnecessary to consider that preliminary point, because even if an appeal lay it would fail.

24. In the result, therefore, this appeal must be dismissed with costs. Certified for one counsel.

Banerjee, J.

25. I agree.