

(1968) 05 RAJ CK 0002

In the Rajasthan High Court

Case No : Criminal Revision No. 254 of 1967

The Mahalaxmi Mills Co. Ltd., Beawar and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 09-05-1968

Acts Referred:

Companies (Central Government) General Rules and Forms, 1956 — Rule 3
Companies Act, 1956 — Section 94(1), 97, 97(1), 97(2), 97(3)

Citation : AIR 1968 Raj 331 : (1969) 39 CompCas 347

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

Bench : Single Bench

Advocate : Kistoormal Singhvi, for the Appellant; G.M. Mehta, for the Respondent

Judgement

C.B. Bhargava, J.—This is an application in revision by Mahalaxmi Mills Company Limited. Beawar, its four Directors viz., Pannalal Kothari, Navratanmal Kothari, Kastur Chand Mehta, Amarchand Kothari and Deo Dutt Takiar. Secretary against the order of the City Magistrate, Jaipur dated 27th August, 1966, by which they with the exception of Amarchand, were sentenced to a fine of Rs. 200 each for their default in giving notice of increase in share capital to the Registrar as required u/s 97(1) and (2) of the Companies Act (hereinafter called the Act) and which is punishable under Clause (3) of the said section.

2. The Company was registered under the Indian Companies Act VII of 1913 with the authorised capital of Rs. 25,00,000 divided into 25,000 shares of 100 each. According to the Articles of Association of the Company, its capital could be increased in accordance with the regulations of the Company and the Legislative provisions for the time being in force in this behalf and the increased capital must be divided into shares of Rupees hundred or less or more as the Board of Directors, may deem fit. On 31st October. 1960, the Company passed t Special Resolution making new Memo randum and Articles of Association applicable to the Company and the said Memorandum and Articles of Association contained

the following clause :--

"The capital of the Company is Rs. 1,00,00,000 (one Crore), to be divided into 1,00,000 (one lac) shares of Rs. 100/-each,"

In pursuance of this special resolution, it is alleged by the Registrar of the Companies that the share capital was increased from Rs. 25,00,000 to Rs. 1,00,00,000/- and it was the statutory obligation of the Company and its officers to file with the Registrar a notice of increase of capital in Form No. 6 prescribed under rule 3 of the Companies (Central Government) General Rules & Form, 1956, with filing fee of Rs. 5625 calculated in accordance with Clause (3) Schedule X to the Companies Act. 1956. latest by 15-11-1960, i. e. within 15 days from the date of passing the resolution authorising the increase in the share capital of the Company. It was also alleged in the complaint that the petitioners had not filed the return in spite of service of notices upon them in that behalf. The counsel for the petitioners who was appearing on their behalf before the trial court, admitted in his statement that the share capital was increased from 25.00,000 tu Rs. 1.00,00,000 and was divided into one lac shares of Rs. 100 each. He also admitted that no notice as provided in Section 97 of the Act was given to the Registrar. It was further stated that after passing of the resolution actual capital was not increased and he had also intimated to the Registrar about the said resolution although it had not been done in the prescribed form along with the prescribed fee. On the basis of the above admission the trial court found the petitioners sultv and sentenced them as stated above The petitioners preferred an appeal against their conviction in the court of the Sessions Judge, Jaipur City, but did not put in appearance at the time of hearing and so the learned Sessions Judge after considering the grounds taken in the memo of appeal, rejected it.

3. In this Court learned counsel for the petitioners has contended that the share capital of the Company could only be increased in the manner provided in Section 94 and unless this i.s so done it cannot amount to an increase of share capital. In other words the argument is that unless the new shares are issued as provided in Section 94(1)(a), there is no increase in the share capital within the meaning of Section 97 of the Act and as such if the petitioners failed to give notice of increase of share capital to the Registrar they did not commit any offence. It is pointed out that the new shares are issued in the manner provided in Section 81 of the Act. It is urged that so far the Company has not done anything towards the issuing of shares beyond passing the said resolution on 31st October, 1960.

4. Before discussing the above contention it is necessary to refer to the provisions of Sections 94 and 97 of the Act which are as follows :--

Section 94. Power of limited company to alter its share capital--

(1) A limited company having a share capital, may, if so authorised by its articles, alter the conditions of its memorandum as follows, that is to say, it may--

(a) increase its share capital by such amount as it thinks expedient by issuing new shares;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its fully paid up shares into stock, and reconvert that stock into fully paid up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section shall be exercised by the company in general meeting and shall not require to be confirmed by the Court.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be reduction of share capital within the meaning of this Act.

S. 97. Notice of increase of share capital or of members.--

(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the authorised capital, and where, a company, not being a company limited by shares, has increased the number of its members beyond the registered number, it shall file with the Registrar, notice of the increase of capital or of members within fifteen days after the passing of the resolution authorising the increase; and the Registrar shall record the increase and also make any alterations which may be necessary in the company's memorandum or articles or both.

(2) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions, if any subject to which the new shares have been or are to be issued.

(3). If default is made in complying with this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

It would also be relevant to refer to Form No 6 for giving a notice of increase in the share capital in Appendix (A), pursuant to Section 97 which is as under: No. of Company.

The Companies Act, 1956

Notice of Increase in Share Capital

Pursuant to section 97

Name of Company

Limited/Private Limited

To the Registrar of Companies Limited/Private Limited/?????.hereby gives you notice pursuant to section 97 of the Companies Act, 1956, that by

(a) resolution of the company dated the day of ???.. 19 ??.. the share capital of the Company has been increased by the addition thereto of the sum of Rs. ???.. beyond the present authorised capital of Rs. ???.. Dated the ??.. day of ??.. 19? The additional capital is divided as follows:

Number of shares

Class of shares

Nominal amount of each share.

Signature

Designation (h)

Dated ??????..... day of ?????? 19 ??.....

5. It would appear from Sub-clause (1) of Section 97 that a notice of the increase of the share capital is to be given to the Registrar within 15 days after the passing of the resolution authorising the increase. Sub-clause (2) of Section 97 also says that the notice shall include particulars of the classes of shares affected and the conditions, if any, subject to which the new shares have been or are to be issued Form No. 6 also requires the conditions (e.g. voting rights, dividend rights, winding up rights etc.) subject to which the new shares have been or are to be issued, to be mentioned in the notice. From Clause (2) of Section 97 and Form No. 6 it would be obvious that at the time of giving notice it is not necessary that the new shares should have already been issued because Sub-clause (2) as well as Form No. 6 clearly contemplate notice even though the new shares have not been issued Section 94 of the Act corresponds to Section 61 of the English Companies Act (1948) and it is provided in Sub-clause (1) (a) that :

"Section 61(1) A company limited by shares of a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows:

(a) increase its share capital by new shares of such amount as it thinks expedient. "

But under the Act in Sub-clause (a) it is provided that it may increase its share capital by such amount as it thinks expedient by issuing new shares.

6. Now the question is as to when can a company be said to have increased its

share capital. Whether by actual allotment of shares or registration of the names of the shareholders in the books of the company or by merely creation of new shares, whether they have been offered to the shareholders or not. As would appear from Section 81 of the Act that the offer of further shares to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid up on these shares at that date is to be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer which must necessarily precede allotment of shares to the shareholders and the registration of their names in the register of the companies.

If for increase of share capital the whole process of offer, allotment and registration of names of the shareholders in the books of the company had to be gone through, it could not have been provided in Section 97 that a notice of the increase of the share capital is to be given to the Registrar within 15 days after the passing of the resolution authorising the increase. It would then be not possible to give notice of the increase of capital within 15 days after passing of the resolution authorising the increase. As already stated Sub-clause (2) to Section 97 and Form No. 6 show beyond any doubt that a notice is required to be given of the increase of share capital to the Registrar whether the new shares have been or are to be issued. If the interpretation sought to be put by the learned counsel for the petitioners is accepted, it would render the provision of Section 97(1), (2) nugatory.

This is further clear from the fact that u/s 75 of the Act a company is also required to file a return with the Registrar of the allotment of its shares. I am, therefore, of the view that increase of share capital within the meaning of Section 97(1) takes place by creation of new shares simpliciter and it is not necessary that the new shares should have been offered, allotted or the names of the shareholders be registered in the books of the company I also derive support for my view from the following observations of Dass J as he then was. in *Nanlal Zaver and Another Vs. Bombay Life Assurance Co. Ltd. and Others*,

"It. is true that 2/2,4/5 shares remain in hand. At best although issued they have not been offered to anyone."

So even though the shares have not been offered or allotted to anyone they are still "issued" within the meaning of Section 94(1)(a) of the Act when they have been created by special resolution of the Company and consequently its share capital has been increased and default by the petitioners in giving a notice as required by Section 97(1)(2) is punishable under Sub-clause (3) of the said section.

7. But it is clear from the statement of Babulal (P. W. 1) as also the reply dated 25th August, 1965, given by the Company to the Registrar Ex. D1. that they had been showing the increase of share capital in all the returns filed by them since 1960 though they had not given a notice as provided in Form No. 6 and had also

not paid the fees in view of their interpretation of Section 94(1)(a), a punishment of nominal fine would meet the ends of justice.

8. The revision application is partly accepted, conviction of the petitioners is maintained, but the fine imposed upon petitioners NOS. 2 to 5 is reduced from Rs. 200/- to Rs 100/- each and the fine imposed on petitioner No. 6 is reduced from Rs. 100/- to Rs 50/-. The sentence of fine imposed on petitioner No. 1 is maintained, and the petitioners are directed to file the return with necessary filing fee within 30 days time of this order. The order of awarding Rupees 200/- as costs to the complainant is also maintained. One month's time is allowed to the petitioner to deposit the fine.