

(1972) 11 BOM CK 0002
In the Bombay High Court

Zuri Agro Chemicals Ltd.

APPELLANT

Vs

F.S. Wadia and Others

RESPONDENT

Date of Decision : 09-11-1972

Acts Referred:

Companies Act, 1956 — Section 106, 17, 17(3), 17(6), 173

Citation : (1974) 76 BOMLR 15 : (1974) 44 CompCas 465 : (1974) MhLj 365

Hon'ble Judges : J.N. Nain, J

Bench : Single Bench

Advocate : A.B. Divan, for the Appellant; J.I. Mehta, for the Respondent

Judgement

Nain, J.—This is a petition for confirmation of a special resolution dated June 29, 1972, passed by Zuri Agro Chemicals Ltd. (hereinafter referred to as "the company"), altering its memorandum of association by transferring the registered office of the company from the State of Maharashtra to the Union Territory of Goa, Daman and Diu. The petitioner is opposed by one F. S. Wadia and five other shareholders of the company owning in all 4,525 shares of the value of Rs. 10 each.

2. The company was incorporated on May 12, 1967, with its registered office in Bombay. Its authorised capital is Rs. 17 crores. The share capital of the company is divided between the equity shares and redeemable cumulative preference shares. The principal business of the company is the manufacture and sale of agricultural chemicals and fertilisers. After its incorporation the company issued a prospectus at a time when the deregistered office of the company was in Bombay. The company received a certificate of commencement of business on March 20, 1968.

3. On March 29, 1972, the company gave notice to its shareholders that the fifth annual general meeting of the company would be held in Bombay. The eighth item on the agenda was to consider and if thought fit to pass with or without modification as a special resolution the resolution that subject to confirmation of

the High Court of Bombay the registered office of the company be shifted to the Union Territory of Goa, Daman and Diu. In the explanatory statement u/s 173 of the Companies Act, 1956, it was mentioned with regard to item No. 8 that the works and sales offices of the company were located in Goa and that the management, finance and other departments had been moved from Bombay to Goa as it had become increasingly apparent over the preceding few months that for the smooth and successful functioning of the company all its activities should be centralised at Goa where its factory is situated and which was also in close proximity of its main marketing area and that it was, therefore, considered advisable jto shift the registered office of the company from Bombay to Goa.

4. At the annual general meeting held in Bombay on June 28, 1972, 369 shareholders were present in person and fifteen shareholders attended by proxy. Some of the shareholders opposed the resolution for shifting the registered office from Bombay to Goa. The chairman of the meeting stated that the decision to shift the registered office was taken in consultation with the lending institutions and it was considered to be in the best interests of the company. He agreed that the company will arrange informal meetings of the shareholders every year in BOMBAY for the next three years and that once in every six months information regarding the working of the company would be given through press releases. When the resolution was put to vote fifty-nine persons voted in favour of the resolution and ninety-one persons against it. Thereupon, the chairman demanded a poll. It appears that with the consent of the shareholders then present, the meeting was adjourned to July 12, 1972, for the purpose of taking the poll. The adjourned meeting was held on July 12, 1972, when twenty-three shareholders attended in person and eight by proxy. The resolution was carried by 91,77,625 votes in favour of the resolution and 9,305 votes against it.

5. THEREAFTER, the company has filed the present petition for confirmation of the resolution dated July 12, 1972. Mr. F. S. Wadia has made an affidavit dated October 23, 1972, in reply to the petition in which he has contended that the resolution was not in the interests of the company. he states that the number of shareholders in Greater Bombay was 12,725 and that there were 847 shareholders more in the rest of Maharashtra as against there being 418 shareholders in Goa. He contended that it was desirable that the shareholders should have an opportunity of attending the annual general meetings and thereby participating in the management of the company to the extent permissible to the shareholders as such. He has stated that if the registered office is shifted to Goa, most of the shareholders in Bombay will not take the trouble and incur the expense to attend the general meetings. He contends that the fact that the factory of the company is situated at Goa is not a ground for shifting its registered office.

6. It is not in dispute that about 68 percent of the shares in the company are held by the persons resident abroad and about 32 percent of the shares are held by the persons resident in India. The company has filed a statement of the

creditors of the company of whom amounts exceeding Rs. 10,000 each were owed on May 31, 1972. It appears from the said statement that such liabilities owed to bigger creditors are about Rs. 29 crores. Out of these about Rs. 27 crores are owed to banks, insurance companies and corporations in U. S. A. and the remaining about Rs. 2 crores to companies, firms, or persons in India. The contention of Wadia and other opposing shareholders is that it makes no difference to the shareholders and creditors in U.S.A. as to where in India the registered office of the company is situated, but it does make a difference to the shareholders in India who are mostly from Bombay and who after the prospectus was issued showing the registered office in Bombay subscribed to the capital of the company on the basis that its registered office was in Bombay. The suggestion is that the shareholders are usually shy of investing in companies away from the place of their residence.

7. Mr. J. I. Mehta, on behalf of the opposing shareholders, invited my attention to the provisions of section 17(6) of the Companies Act which states that the court shall in exercising its powers u/s 17 have regard to the rights and interests of the members of the company and of every class of them as well as the rights and interests of the creditors of the company and every class of them. He argued that the court should have regard to the rights of the class of shareholders in Bombay. The argument was that the shareholders who resided in Bombay were a distinct class of shareholders. When I pointed out to him that section 106 of the Companies Act which pertained to alteration of rights of shareholders of special classes of shares, contemplated equity shareholders and persons holding preference shares with varying rights as distinct classes of shareholders and that section 17(6) did not contemplate a classification of shareholders by the places of their residence, he pointed out to section 85 of the Companies Act where the marginal note of the section referred to "kinds" of share capital. He argued that the equity and preference shares were shares of "kinds" and not of different "classes". I am afraid I am unable to accept this argument. In my opinion, when section 17(6) talks of having regard to the rights and interests of members of different classes, it does not contemplate classification of shareholders by places of their residence. It contemplates classification of shares into different classes of shares according to the rights attached to such shares. So far as the rights and interests of members as a whole are concerned, the fact that a special resolution is required to be passed by a majority of at least 3/4ths of the persons present and voting, in my opinion, takes care of their rights and interests.

8. Mr. Mehta drew my attention to a judgment of the Orissa High Court in the case of Orient Paper Mills Ltd. v. State [1958] 28 Com. cas. 523. where the State Government was allowed to oppose an application for confirming a resolution shifting the registered office out of the state on the ground that u/s 12(3) of the Indian Companies Act, 1913, equivalent to section 17(3)(a), it was provided that before confirming the alteration the court must be satisfied that sufficient notice had been given to "every other person or class of persons whose interests will in the opinion of the court be affected by the alteration". The court held that in that

case the State Government was affected by the alteration and if a notice is required to be given to it by law it was entitled to be heard. I have no quarrel with this proposition. In this case, however, the opposition is by shareholders and this case appears to me to have no relevance.

9. On behalf of the company my attention has been drawn to the case, *In re Mackinnon Mackenzie & Co. Private Ltd* [1967] 37Com.cas. 516. The company was seeking to shift its registered office from Calcutta to Bombay. The company was engaged in the business of shipping. The company found that there was more shipping activity in Bombay than in Calcutta. The senior staff who were engaged in attending to shipping had already been posted at Bombay. The entire senior staff was, therefore, located in Bombay. The company found that the larger part of its business lay in Bombay. The petition for confirmation of resolution shifting the registered office from Calcutta to Bombay was opposed on the ground that the transfer was not in the interests of the company. Allowing the petition for confirmation of the resolution of alteration, Mr. Justice A. N. Ray, after referring to some English cases, observed that all that the court has to decide was whether the alteration was fair and equitable as between the members of the company and the court was not concerned to consider the wisdom or desirability of the proposed alteration and that the domestic decision of the shareholders or business wisdom of the shareholders as embodied in the resolution should be confirmed by the court.

10. In my opinion, in considering a petition of reconfirming the resolutions of alteration of memorandum of association of the company shifting the registered office of the company, the court has to see whether all the formalities of the statute have been complied with. These formalities contain certain safeguards and protection for persons affected. If these formalities have been carried out, the court will next look to the interests of absent shareholders and creditors and consider objections, if any, taken by the shareholders, creditors, Registrar of Companies and other persons affected by the shifting of the registered office. In so doing, the court is not concerned to consider the wisdom or desirability of the proposed alteration. It is not the function of the court to substitute its own wisdom or judgment in the place of the collective wisdom or judgment of the company expressed in a special resolution. These matters must be left to the domestic decision of the shareholders.

11. Applying these principles to the present case, I find that a vast majority in value of the shareholders have decided that the registered office of the company be shifted to Goa. It is their money that is at stake. The value of the shares of the opposing shareholders is negligible as compared to the value of the shares of members who supported the shifting of the registered office. Shareholders of the company resident in Bombay do not form a distinct class within the meaning of section 17(6) into which class a shareholder will fall if he migrates to Bombay or from which he will be excluded if he migrates from Bombay. What has to be considered is the interests of shareholders as a whole and of shareholders

holding different classes of shares with varying rights such as equity shares or preference shares. If there are shares of varying rights the shares with similar rights would undoubtedly form a class of shares. The resolution of the company has been properly passed and the majority shareholders have in their business wisdom chosen to pass it. I find no substance in the contentions of the opposing shareholders.

12. It was argued on behalf of the opposing shareholders that in case I decided to grant the petition, I should order that for some time informal meetings of the shareholders should be held in Bombay whereat the shareholders would be appraised of the progress of the company. At the annual general meeting of the company held in Bombay on June 28, 1972, the chairman of the company gave this assurance to the shareholders. I see no reason to impose such condition on the confirmation of the resolution.

13. In the result, I grant the petition in terms of paragraph 13(1). The Registrar of companies has not opposed the petition. He⁴ will, however, be entitled to costs quantified at Rs. 300 from the company. I make no order as to costs with regard to the opposing shareholders.