

(1984) 09 CAL CK 0025

Calcutta High Court

Case No: Criminal Revision No. 2179 of 1981

Bijoy Kumar Karnani and
Another

APPELLANT

Vs

Assistant Registrar of
Companies, Wet Bengal and
Another

RESPONDENT

Date of Decision: Sept. 13, 1984

Acts Referred:

- COMPANIES ACT, 1956 - Section 166, 168, 210

Citation: 88 CWN 1073

Hon'ble Judges: Sankar Bhattacharyya, J; Monoj Kumar Mukherjee, J

Bench: Division Bench

Judgement

S. Bhattacharyya, J.

On a complaint filed before the learned Chief Judicial Magistrate, 24-Parganas, by opposite party No. 1, in this rule, the Assistant Registrar of Companies, the two petitioners before us, the directors of M/s. Sukhlal Chandanmull P. Ltd. (hereinafter referred to as "the company") with its registered office at No. 23/21, Gariahat Road, Calcutta-29, have been summoned to face trial u/s 210(5) of the Companies Act, 1956 (hereinafter referred to as the Act").

2. The allegations made in the above complaint is that though the petitions were under a statutory obligation under the Act to lay before the company at its annual general meeting which should have been held in pursuance of section 166 of the Act by September 30, 1977 at the latest, its balance-sheet and profit and loss account for the financial year ending on March 31, 1977, they failed and neglected to do so in compliance with the provisions of section 210(1) & (3), of the Act in spite of references made by them by the complainant and thereby committed an offence punishable u/s 210(5) of the Act.

3. Being aggrieved by the launching of the above prosecution, the petitioners moved this court in revision with a prayer for quashing the proceedings against them and obtained this rule.
4. Mr. Dutt, appearing in support of the rule, contends before us that the annual general meeting of the company for the financial year in question was duly held on September 27, 1977, that is, within the statutory period, but as the audit could not be completed by them due to illness of the accountant of the company, the shareholders of the company adopted an unanimous resolution to adjourn the meeting till the annual audit was completed. The adjourned meeting was finally held on March 31, 1978, and at the said meeting, the audited balance sheet and the profit and loss account of the company for the financial year ending on March 31, 1977, were duly laid, adopted and passed unanimously by the shareholders.
5. Relying upon the Division Bench decision of this court in the case of (1) M.D. Mundhra v. Assistant Registrar of Companies, (1980) 50 Comp. Case 346 (Cal), Mr. Dutt argues that the adjourned annual general meeting of the company held on March 31, 1978, was nothing but a continuation of its earlier meeting. That being so, argues Mr. Dutt, it cannot be said that the petitioners committed an offence u/s 210(5) of the Act.
6. In this context, our attention has also been drawn by Mr. Dutt to another Division Bench decision of this court in the case of (2) Sudhir Kumar Seal v. Assistant Registrar of Companies, West Bengal, (1979) 49 Comp. Case 462 (Cal), wherein, in view of a circular bearing No. 35/9/72-CL. III, dated February 2, 1974, issued by the Company Law Board, Ministry of Law, Justice and Company Affairs, the Bench held that in a case where the annual accounts were not ready for laying at the annual general meeting of the company, it would be open to the directors of the company to get the annual general meeting adjourned to a subsequent date by an appropriate resolution and the accounts and the balance-sheet could be laid at the adjourned annual general meeting.
7. On the other hand, Mr. Sen Gupta, appearing for the complainant, has raised a point of law of some importance which does not appear to have come up for consideration before the Division Bench in either of the two cases referred to above.
8. The point canvassed by Mr. Sen Gupta is that though an annual general meeting of a company may be adjourned to a subsequent date by an appropriate resolution and the adjourned meeting as to be deemed to be a continuation of the earlier meeting, the whole affair must be finished within the statutory period prescribed by section 166 of the Act, that is to say, within a period of fifteen months from the date of the previous annual general meeting.
9. After heard both sides at length and given our careful thought to their respective contentions, we are inclined to hold that the point raised by Mr. Sen Gupta is quite sound and should be accepted for the reasons which follow.

10. Section 166(1) of the Act lays down in clear and unambiguous terms that the time gap between one annual general meeting of a company and the next shall, in no case, exceed fifteen months. The power to extend the above period has been given to the Registrar of Companies by the second proviso to the said section if there be special reason for such extension but the, even the Registrar's power of extension has been restricted to a period not exceeding three months. That being the mandate of the Legislature, the question naturally arises whether the holding of the annual general meeting of a company can be postponed, though resolutions taken in the meeting, beyond the statutory period by virtue of the circular issued by the Company Law Board referred to above.

11. The position can be best appreciated through an example. Suppose the annual general meeting of a company is called on the last day of the fifteen-month from the date of its earlier meeting and is adjourned by an appropriate resolution to a future date. If the circular is to be literally construed divorced of the provisions of section 166 of the Act, such adjournments may go on adinfinitum and in such contingency, not only the provisions of section 166 but also the provisions of section 168 and 210 of the Act would be rendered nugatory, leading to chaos and confusion in the matter of enforcement of the relevant provisions of the Act by the Registrar of Companies. Also the second proviso to section 166 empowering the Registrar to extend the statutory period fixed by section 166 would become wholly superfluous.

12. If the above position is to be accepted, the annual general meeting of a company may be deferred with impunity at the pleasure of the shareholders for years together and so also the laying of the balance-sheet and the profit and loss account rendering the statutory provisions of the Act meaningless and ineffective. In our considered opinion, the circular could never be intended to be used as an instrument for circumvention or subversion of the provisions of section 166 of the Act.

13. Mr. Dutt also argues that section 166(1) of the Act merely says that the annual general meeting is to be held within the period prescribed by it, but nowhere enjoins that the meeting is to be completed within the said period. We find no substance in the above argument because, if a statute enjoins that a meeting is to be held within a specified period, it follows by necessary implication that it must be completed within the said period. On a careful consideration of what has been discussed above, we hold that notwithstanding adjournments of an annual general meeting of a company by appropriate resolutions, the meeting must be completed within the statutory period of fifteen months from July 29, 1976, the date of the annual general meeting for the previous year and it was at the adjourned meeting that the audited balance-sheet and the profit and loss account of the company for the financial year in question were laid, adopted and passed by the shareholders.

In view of the principles laid down by the Supreme Court in the case of (3) *State of Bombay v. Bandhan Ram Bhandani*, (1961) 31 Comp. Case 1(SC), we find that, in the

circumstances of the instant case, the petitioner could be prosecuted both u/s 166 as well as u/s 210(5) of the Act. In our opinion, there has not been any illegality or impropriety on the part of the learned Chief Judicial Magistrate in taking cognizance of the offence u/s 210(5) of the Act and issuing processes against the petitioners. There is, therefore, no ground for quashing the impugned proceedings. In the result, the rule stands discharged.

Mukherjee, J.

14. I agree.

Later: The oral prayer of the petitioner for a certificate of fitness for appeal to the Supreme Court is refused as no substantial question of law requiring determination by the Supreme Court is involved in this case.