
AIR 1969 Ori 91

Orissa High Court

Case No: Company Act Case No. 6 of 1967

Straw Products Ltd.

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision: Oct. 30, 1968

Acts Referred:

- Companies Act, 1956 - Section 17, 17(1), 293(1)

Citation: AIR 1969 Ori 91

Hon'ble Judges: B.K. Patra, J

Bench: Single Bench

Advocate: B.K. Mohanty, for the Appellant; R.K. Ghosh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.K. Patra, J.

This is a petition u/s 17 of the Indian Companies Act (Act I of 1956) filed on behalf of M/s. Straw Products Limited (hereinafter called the Company) having its registered office at Jayhaypur, Rayagada in the district of Koraput for confirmation of the alterations in the Memorandum of Association of the Company.

2. The petitioner-Company was registered on the 6th August, 1938 under the provisions of the Companies Act, 1913 as a Company Limited by shares. It is engaged in the manufacture of writing and printing paper and straw board etc. The authorised capital of the Company is Rs. 5,00,00,000 divided into 2,00,000 7% Cumulative Redeemable Preference Shares of Rs. 100 each and 30,00,000 ordinary shares of Rs. 10 each. The objects for which the Company was formed are set out in Clause 3 of its Memorandum of Association annexed to the petition as Annexure "A". The principal objects in brief are as under :--

(1) To erect, purchase or take on lease or otherwise acquire any mills, works, machinery and other moveable and im-moveable properties appertaining to goodwill of and any interests in, the business of manufacturing or dealing in straw board, card boards, mill board and/or paste board, vegetable oil, vegetable ghee, sugar, matches, cement, lime and artificial leather of all descriptions, and to acquire, purchase or hire forest or lands to grow and cultivate for the purpose of pulps and to acquire, establish and maintain other centres for production of pulp and other incidental raw materials and fibrous substances.

(2) To purchase or otherwise acquire at Bhopal or other parts of India or elsewhere land or to accept lease thereof, and on such lands to erect buildings for the works and purpose of the Company.

(3) To carry on all or any of the business following namely, to manufacture pulps from straw of all description, wood, bamboo, rags, waste material of all description, and raw material of all other description, straw boards, card boards, paste boards mill boards and boxes from them such as cigarette packets, hosiery boxes, toilet boxes, shoe boxes, packing boxes, cloth boxes, fancy boxes and all other kinds of boxes, and to manufacture artificial leather and to manufacture crom in suit cases, hand bags, attache cases, hat boxes, holdalls dressing boxes, fancy boxes and all kinds of cases and boxes to manufacture, sugar, matches, cement, lime, vegetable oil, vegetable ghee, to bleach and dye, and make vitriol, bleaching and dying materials and to do designing and printing of all kinds and description by one or all methods of printing by printing machines or otherwise to carry on or be interested in the business of flour mill proprietors, pressing and ginning mill proprietors, sugar mill proprietors, match factory proprietors, cement factory proprietors, lime factory proprietors, vegetable oil factory proprietors, vegetable ghee factory proprietors and oil mill proprietors, paper mill and/or board mill pro-grietors and ice manufacturers in all their ranches.

(4) To carry on the business of cultivating, growing, buying, selling or otherwise and generally dealing in Kapas cotton (including ginning, pressing and baling), pulps and chemicals required into processes, and seeds and other country produce of all lands and also all other merchandise of every description.

(5) To carry of the business of cultivators, growers, buyers, manufacturers, dealers in sugarcane, sugar or sugar products and other vegetable products or other products of the soil whatsoever manufacturers and dealers in vegetable oils, oil seeds and oil cakes, refiners, fruit growers and preservers in all the branches of such business and to purchase, sell, dispose of, deal in and act as merchants and agents for or in connection with all or any such products or produce or the products and produce of such business, or any of them.

(6) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts, and conveniences calculated to benefit employees or ex-employees of the Company (or its predecessors in business) or tie dependents or

connections of such persons and to grant pensions and allowances, and to make payments towards insurance, and to give such aid generally as the Company shall think fit. To subscribe to or otherwise aid benevolent, charitable, national and other institution or objects of a public character, or which may have any moral or other claims to support or aid by the Company by reasons of the locality of its operations or otherwise.

3. Shortly after its incorporation the Company commenced business and has been carrying on its business all over the country. By a special resolution of the Company (Annexure-"B") duly passed in accordance with Sub-section (2) of Section 189 of the Companies Act, 1956 at the 27th Annual General Meeting of the members held on the 21st July 1966 at its registered office after due notice dated 18th June, 1966 (Annexure "C") sent to the members of the Company as provided under the Act, it was resolved unanimously to amend Clause 3 (10) (VIII) of the Company's Memorandum of Association by incorporating there in the words and terms "political" and "national and political". The resolution provided for substitution of the following in place of Clause 3 (10) (VIII) :--

"3 (10) (VIII) To establish and support or aid in the establishment and support of Association, institutions, funds, trusis and conveniences calculated to benefit employees or ex-employees of the Company (or its predecessors in business) or the dependents or connections of such persons and to grant pensions and allowances and to make payments" towards insurance and to give such aid generally as the Company shall think fit; to subscribe to or otherwise aid, benevolent, charitable, political, national and other institutions or objects of a public, national and political character or which May have any moral or other claims to support or aid by the Company by reason of the locality of its operations or otherwise."

4. Subsequently by another resolution of the Company (Annexure "D") duly passed in accordance with Sub-section (2) or Section 189 of the Act at an extraordinary general meeting of the members held on the 6th December 1967 at the registered office of the Company, after due notice dated 2nd November, 1967 (Annexure "E") sent to the members of the Company as provided in the Act. It was resolved unanimously to alter Clause 3 of the Company's Memorandum of Association in the manner indicated below :--

The existing Sub-clause (10) of Clause 3 shall be renumbered as Sub-clause (18) and 8 more Sub-clauses (10) to (17) were to be inserted after Sub-clause (9). These are indicated in para. 10 of the petition. The proposed Sub-clauses cover several items of activities which the Company proposed to take up.

Mr. R. K. Ghosh appearing for the Registrar of Companies vehemently opposed the incorporation of several items in the objects of the Company on grounds to be hereinafter referred to. The relevancy need and Justification for each of the proposed items was therefore thoroughly discussed at the time of hearing of this application. As a result

thereof Mr. B. K. Mohanty, the learned Advocate appearing for the Company filed on 12-9-68 a memo to recast para 10 of the petition in the manner indicated in the memo. What has been done is that he abandoned some of the proposed additions to the objects of the Company. Consequently, the resolution as it would stand after this alteration would be as under :

"Resolved that subject to the confirmation by the High Court, Clause III of the Memorandum of Association of the Company be altered as follows :--

(i) That the existing Sub-clause (10) be renumbered as Sub-clause (18).

(ii) That the following Sub-clauses (10) to (17) be inserted after Sub-clause (9).

10 (a) To carry on the business of processors, producers, importers, exporters, buyers, suppliers, stockists, agents, merchants, distributors and concessionaries of and dealers in general merchandise goods.

(10) (b) To carry on the business of manufacturers, fabricators, processors, producers, growers, makers, importers, export-ers, buyers, sellers, suppliers, stockists, agents, merchants, distributors and concessionaries of and dealers in commodities of all or any of the following :

(i) Office equipments of all descriptions, machinery parts, computers, articles, parts, components, apparatus, instruments, gadgets, devices, contraptions, tools, stores, spare parts, utensils, things, appliances of all description and materials pertaining to the aforesaid.

(ii) Synthetic yarn, clothes and materials; rubber and elastomers, synthetic resins, carbon block, rubber latex, plastics, laterexs, and formulations, thereof including reclaimed rubber and other kinds of resins, rubber and plastic products, starch and other sizing materials, textile intermediates and compounds.

(iii) All types of chemical caustic soda, disinfectants and of electrical, photographi-cal apparatus and materials of paper, board plastic rubber and elastomer base.

(iv) Oils, colours, paints, varnishes, lacquers, pigments, enamels, dyestuffs, fertilizers, pesticides, insecticides, surface active agents and glycerine.

(v) Carbons, inks, paper and stationery goods.

(vi) Petrochemicals and other synthetics, chemical and other substances of all kinds, basic intermediate or otherwise.

(vii) Nitrogen, oxygen and other industrial and domestic gases."

(11) To carry on business as timber merchants, saw mill proprietors and timber growers and to buy, sell, grow, prepare for market, manipulate, import, export and deal in timber and wood of all kinds and to manufacture and deal in veneers, veneer products, veneer for tea-chests, packing cases and commercial boards, decorative veneers, lamin boards, block boards, composite boards, compressed boards, pressed boards, hard boards, ship boards, bent wood, mould. ed wood and articles of all kinds in the manufacture of which timber or wood is used.

(12) To cultivate, press, prepare, process, buy, sell, distribute, trade, stock, barter, exchange, pledge, make advances upon, speculate, enter into forward transactions or otherwise deal in seeds, rubber, foodgrains, forests, agricultural and natural produce of all kinds; and to manufacture and deal in oils and other products obtained from such produce and to develop farms and plantations for any of the above items and commodities or any other commodity or products.

(13) To carry on (either in connection with the aforesaid business or as distinct or separate business) the business of transporters, engineers, chemists, printers, car. riers, mechanics, researchers, technicians, designers, planners, advisors, consultants, purchasers, sellers, erectors, managers, superintendents, managers and to develop, acquire, supply plans, drawings, estimates, project reports and know-how for industries, business, companies and public bodies and Governments.

(14) To work or promote or acquire electrical and other undertakings for generating electricity or other energy for running the Company"s mills, factories etc., or otherwise and to supply it to others and to work or establish as electrical contractors, engineers, etc. and to take and execute contracts for the erection and distribution of transmission lines and sub-stations.

(15) To act as stockists, commission agents, manufacturers" representatives or agents, selling and purchasing agents, dealers, suppliers, distributors, brokers, trustees, attorneys and to transact all kinds of agency business.

(16) To guarantee the payment of money unsecured or secured by or payable under or in respect of bonds, debentures, debenture stock, contracts, mortgages, charges, obligations and other securities of any Company or of any authority. Central, State, Municipal, Local or otherwise, or of any person whomsoever, whether incorporated or not and generally to transact all kinds of guarantee business to guarantee the issue of or the payment of interest on the shares, debentures and debenture-stock or other security or obligations of any company or association and to pay or provide for brokerage, commission and underwriting in respect of any. such issue, and to further transact all kinds of trust and agency business.

(17) To issue on commission, subscribe for, purchase or otherwise acquire and sell, dispose of, exchange, hold and deal in shares, stocks, bonds, debentures, debenture

stock, public securities or other securities issued by. any authority, Central, State, Municipal or local.

(iii) That the existing Sub-clause (10) (v) herein renumbered as Sub-clause (18) (v) be substituted by the following sub-clause :--

(18) (v) To amalgamate, enter into partnership or into any arrangement for sharing profits, union of interests, co-operation, joint venture or reciprocal concession, or for limiting competition with any person, firm or body corporate whether in India or outside carrying on or engaged in, or about to carry on or engage in any business or transaction which the Company is authorised to carry on or engage in or which can be carried on in conjunction therewith or which is capable of being conducted so as directly or indirectly to benefit the Company and further to enter into any arrangement or contract with any person, association or body corporate whether in India or outside for technical collaboration, technical know-how or for such other purpose that may seem calculated (sic.) beneficial and conducive to the objects of the Company.

(iv) That the existing Sub-clause (10) (xvii) herein renumbered as Sub-clause (18) (xvii) be substituted by the following sub-clause :

(18) (xvii) To lease, let out on hire, mortgage, pledge, hypothecate, sell or otherwise dispose of the whole or any part or parts of the undertaking of the Company or any land, business, property, rights or assets of any kind of the company or any share or interest therein respectively in such manner and for such consideration as the company may think fit, and in particular for shares, debentures or securities of any other body corporate having objects altogether or in part similar to those of the Company.

5. It may also be stated that by the memo referred to above it was also propo-sed to delete from the proposed Clause 3 (10) (VIII) the word "political" as it occurs for the first time.

6. It is averred in the petition that the Company is in a good financial position and has sufficient working capital, that its assets amount to Rs. 7,91,84,224 and deducting therefrom the liabilities amounting to Rs. 2,84,37,163 the net assets come to Rs. 5,07,47,061. It is reflected in the annual report for the year 1966 of the Company (Annexure "F").

7. The Registrar of Companies, Orissa objects to the proposed alterations in the objects of the Company on several grounds. Regarding the proposed alterations to Clause 3 (10) (VIII) of the memo it is corn-tended that this step is in conflict with the proposed legislation in Parliament banning contributions to political parties by Companies. Regarding the proposed alterations covered by the resolution dated 2nd November, 1967 it is contended that tine proposed alterations are neither necessary nor re. quired to enable the Company"s business to be carried on more economically or mere efficiently and that they are inconsistantm. with the existing business of the Compaay and if allowed, they would

not leave the existing business substantially as it was before. The proposed alterations do not come within the concept of "some business which under existing circumstances, may conveniently or advantageously be combined with the business of the Company. It is true that although the main business of the Company is the manufacture of straw boards and paper, it has certain subsidiary and ancillary powers, but they are in essence associated objects and related par-poses. The name of the Company as "Straw Products Limited" would be illogical and misleading to the world dealing with the petitioner company if they are permitted to carry on business in the proposed items which cannot by any means be called busi-ness which under the existing circumstances may conveniently or advantageously be combined with the business of the Company. Although apparently the Company is in a good financial position the excess of assets over liabilities being above 5,00,00,000.00, a scrutiny of the balance sheet Annexiire "F" shows that major portion of the capital of the petitioner-company is locked up in fixed assets and there is no proper scope and finance for the additional business, which the petitioner-company proposes to under-take. The Registrar has also annexed to the affidavit a copy of the letter received from one Sri B. A. Ojha of Hyderabad, a shareholder of the Company addressed to the Company Law Board objecting to the additional new business on the ground that there would be no advantage from it to the shareholders as the profits of the Company would be ploughed back into the business thereby depriving the share-holders of their dividends. The Registrar finally prays that in the best interest of all concerned and for the protection of the interests of the shareholders against directors embarking on spurious and doubtful business and squandering company"s trading funds under the cover of vague and ambiguous object clause in the memorandum, the Court should not confirm its resolutions.

8. Section 17 oi the Companies Act deals with the special resolution for alteration of the memorandum of a Company and its confirmation by the Court. Sub-sections (1) and (2) of that Section read as under :

"(1) A Company may, by special resolution alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the objects of the Company so far as may be required to enable it--

(a) to carry on its business more economically or more efficiently;

(b) to attain its main purpose by new or improved means;

(c) to enlarge or change the local area of its operations;

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;

(e) to restrict or abandon any of the objects specified in the memorandum;

(f) to sell or dispose of the whole, or any part, of the undertaking, or of any of the undertaking, of the company; or

(g) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed by the Court on petition."

9. Mr. B. K. Mohanty for the petitioner states that the proposed alterations fall with, in the purview of the Clauses (a) and (d) of Sub-section (1). I would first take up the special resolution passed unanimously at the annual general meeting of the share holders of the Company held on the 21st July, 1966 and which essentially relates to contributions to be made by the Company to funds of political parties. In this connection a reference may be made to Section 293(1)(e) of the Indian Companies Act which runs as follows : --

"(1) The Board of Directors of a public company, or of a private company which is a subsidiary of a public company, shall not, except with the consent of such public company or subsidiary in general meeting--

X

X

X

X

X

(e) contribute, after the commencement of this Act, to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which will, in any financial year, exceed twenty-five thousand rupees, or five per cent of its average net profits as determined in accordance with the provisions of Sections 349 and 350 during the three financial years immediately preceding, whichever is greater."

The expression "other funds" in Section 293(1)(e) is wide enough to enable contributions of the kinds specified in the special resolution to be made by the Company. It cannot therefore be stated that the proposal is contrary to law. Indeed what an individual can lawfully do, can be done by a Company and there being nothing to prevent any individual from making any contributions to the political funds of a party, a Company cannot in law be prevented from doing so. Apart from the implied sanction afforded by Section 293(1)(e) of the Companies Act, the proposed step can also be justified on the basis of Section 17(1)(a) which is of very wide import and it can be said that the Company by contributing to the funds to political parties would be carrying on business more efficiently. True it is that the Court has a discretion to confirm or not to confirm an alteration even if the conditions laid down in Section 17 are satisfied. But it has to be borne in mind that it is primarily for the Company to decide whether it is for its good that it should make such contributions and it is not for the Court to tell the Company as to how it is to carry on its business. If therefore the share holders of the Company after considering their own interests have agreed that the funds of the Company may be utilised for contribution to the funds of a political party, it is not for the Court to take a view different from the view of the share-holders when that view is not only not opposed to law, but falls within the

provisions of the Companies Act itself.

The learned Advocate for the Registrar has not brought to my notice any decision in which a contrary view has been taken. Although in the case of [In Re: Indian Iron and Steel Co. Ltd.](#), P. B. Mukharji, J. of the Calcutta High Court while recognising that the wide powers of the amendment given by Section 17(1)(a) to amend the objects in order to enable a company to carry on its business more economically or more efficiently are large enough to permit a company to contribute to the political funds of political parties as a measure of efficient business management, thought it fit to impose certain conditions mainly aimed at giving full publicity to the quantum of contribution to be made to the funds of political parties and directed that the sanction would remain effective initially for a period of six years, to be extended on further application.

Ramaswami, J. of the Madras High Court in Natesar Spinning and Weaving Mills (P) Ltd. AIR 1960 Mad 257 referring to the aforesaid decision of the Calcutta High Court was of the view that the Court's power to impose terms and conditions u/s 17(5) is limited only to such terms and conditions as may be called for in the interests of the share holders or creditors or other persons who might be affected by the alteration, and where no such prejudice is involved, the Court has no power to impose terms and conditions. Admittedly, in the present case there has been no objection from any share holders or creditors of the Company in respect of this resolution. There is no serious challenge that the financial position of the Company is sound. Indeed, the only objection advanced on behalf of the Registrar in para 8 of his affidavit is that the alteration suggested is in conflict with the proposed legislation in Parliament banning contributions to political parties by Companies. Apart from the fact that no such bill has been placed before me, it is not certain whether Parliament would ultimately enact such a measure. In case Parliament does so in future it would certainly supersede the memorandum of the Company. It therefore appears to me to be idle to speculate on future legislative measures and on that ground reject the resolution which at the present moment does not suffer from any infirmity. The special resolution dated 21-7-66 would therefore be confirmed.

10. The main target of attack in this proceeding is the special resolution dated 6-12-67 by which substantial additions are proposed to be made to the objects of the Company and these additions are sought to be justified under either Clause (a) or Clause (d) of Section 17(1). In support of their respective contentions regarding the scope and ambit of Clauses (a) and (d), the learned Advocates on both sides have relied on several decisions and it is necessary to briefly notice them here. I may state at the outset that so far as the expression "some business" occurring in Section 17(1)(d) is concerned, all the High Courts agree that this expression must include business other than business which is already being carried on under the existing memorandum, the only requirement of the statute law being that the business must be one which can (1) conveniently and advantageously be combined with the existing business of the Company and (2) that this must be so under the existing circumstances and not under any hypothetical circumstances. So long as these limits are observed, the share-holders and the

management of the company should be left free to add to or reduce their business by suitable alterations in their memorandum.

In the matter of [In Re: Bhutoria Brothers \(Private\) Ltd.](#), the main object of the Company was to purchase, store, sell, manufacture and otherwise deal in the agricultural, mineral and animal products and live-stock, and in the bye-products and the waste products of their manufacture including jute. Extensive alterations were proposed in the objects by a special resolution which tried to include the business in optical, photographic, chemical and surgical goods on the one hand and watches, clocks and musical instruments on the other, as also other kinds of machinery. Mukherjee, J. held that so far as the alterations of the objects in respect of business in jute, cotton and woollen mills are concerned, they can be permitted u/s 17(1) (a) and (d) on the ground that the new business can be economically and efficiently carried on and under the existing circumstances and they can conveniently and advantageously be combined with the existing business of the Company because jute and cotton will certainly come under agricultural products forming one of the main objects in the existing memorandum. But in respect of items relating to clocks and musical instruments and surgical goods, the learned Judge thought that they would be a very strange new-comer into a business in agricultural, mineral and animal products and live-stock and hence disallowed those items.

11. A recent decision of the Calcutta High Court in the matter of [In Re: Standard General Assurance Co. Ltd.](#), dealt with the case of a Company whose original object was to carry on all kinds of insurance, guarantee and indemnity business. One of the other objects was to carry on business as capitalists, financiers, concessionaries and merchants and to undertake and carry on and execute all kinds of financial, trading and other operations. In July 12, 1963, a special resolution was passed to alter the Memorandum of Association of the Company, the net effect of which was that the Company sought to abandon insurance business of all kinds and to acquire new objects namely, to carry on business as manufacturers of and dealers in chemicals, petro-chemicals, drugs, essences, acids etc. to carry on business of engineers, metallurgists, iron, steel and brass founders, metal makers, moulders etc., to execute contracts for supply or use of any machinery and to carry on ancillary or other works comprised in such contracts, to carry on business of importers, exporters, merchants, ship-owners and charterers of ships and transport and haulage contractors etc. to render pecuniary or other assistance for helping settlement of industrial or labour problems or the promotion of industry or trade.

While allowing the application for confirming the alterations or the Memorandum of Association of the Company in terms of the special resolution, Mitra, J. observed that if the directors and members of a company propose to alter its objects, and if there is no objection from the creditors or if their position is not prejudiced by the proposed alterations the court should not stand in the way of the company's seeking new objects to enable it to embark on a new venture, subject to the limitations that the new business must not be destructive of or inconsistent with the existing business, and there must be some existing business which the company should be carrying on at the time when it

passes the resolution for altering its objects and such business must be carried on under its existing object clauses and lastly that the company's financial position must be sound to enable it to carry on the new business. In the matter of Dalmia Cement (Bharat) Ltd. AIR 1965 Mad 76 the Madras High Court has taken the view that the Directors of the Company alone are best fitted by reason of their experience in the particular business to decide whether the business can be carried on more economically or more efficiently by adding fresh objects and if the directors consider that under the existing circumstances, it will be convenient and advantageous to combine the new objects with the existing objects, and if it appears that that conclusion may be fairly arrived at, the Court would not go behind it and hold an enquiry as to whether the opinion of the directors is well founded or is justified. That was a case where the existing objects of the Company included import, export in cement, alumine cement, lime and lime-stone, kanker and bye-products thereof and building materials generally. The new objects sought to be added were to enable the Company to do export business in all varieties of goods. The Court allowed that application.

The Allahabad High Court in [Juggi Lal Kamlapat Jute Mills Co. Ltd. Vs. The Registrar of Companies](#), held that the Court cannot refuse to confirm the alteration to the Memorandum of Association simply because the change is desired to carry on a new business not connected with, nor having any relation to the existing business or businesses of the Company, provided the new business desired to be undertaken is one which can be combined with the existing business of the Company, and it is not destructive of or inconsistent with the existing business. Practically the same view was taken by the Punjab High Court in the case reported in (1963) 33 Com Cas 585 (P&H).

In another case of the same High Court reported in (1963) 33 Com Cas 811(P&H) the Memorandum of Association of a limited company stated that the object of the company was to purchase, acquire, and to carry on the business carried on by an existing distillery company. The company pass-ed a special resolution to alter the Memorandum of Association by adding a new object, viz. to acquire or take over on hire, picture houses, cinemas, theatres etc. and applied to the Court for confirmation of the resolution. The application was rejected on the ground that there is no suggestion whatsoever that the new business which is sought to be carried on has anything to do even remotely with its existing business and it cannot be said that the new business will be conducive to the economical or efficient doing of the existing business. Even the element of convenience or advantage in combining the two businesses is absent. On the facts therefore this case is clearly distinguishable.

In a later decision of the same High Court however reported in 37 Com Cas 331 = AIR 1967 P&H 15 Khanna, J. allow-ed the application of a Company whoso original object was to carry on business of insurance and investment business and passed a special resolution to alter its objects to enable it to carry on business of engineers, metallurgists, iron, steel and brass founders, metal makers, moulders, millwrights, wheel-wrights, joiners, galvanisers etc. and to carry on business of cotton spinners and doubters,

flax-hemp and jute spinners etc., to carry on business in chemicals, petro-chemicals, drugs etc. and to undertake and execute any contracts for work involving the supply or use of any machinery and to carry out any ancillary or other works comprised in such contracts and to carry on business of importers, exporters, merchants, ship-owners, charterers of ships and transport. The learned Judge allowed the application on the grounds that the share-holders were of the view that better returns are likely to be given to the shareholders if some industrial or commercial activity is undertaken by the company, that the new business suggested is not inconsistent with or destructive of the previous business, that the special resolution was passed unanimously and none of the share-holders, who are the persons directly concerned, has appeared to oppose the petition.

12. On examination of Section 17(1) of the Companies Act and law bearing on the subject, the following principles can be laid down :--

(i) The language of Section 17(1)(d) of the Companies Act permits the alterations in the Memorandum of Association of a company to enable it to carry on a business which is entirely a new departure from the business already carried on provided (a) that such business is one which can be conveniently or advantageously be combined with the existing business of the company and (b) that this must be so under the existing circumstances and not under hypothetical circumstances. The additional business need not be even akin to the existing business but it must not be destructive of or inconsistent with and detrimental to the existing business. It must leave the existing business substantially what it was before.

(ii) The question whether any additional business is one which may be conveniently or advantageously combined with the business of the Company carried on at the time when the special resolution is passed, is essentially a business proposition and must be determined by the persons engaged in the business of the Company.

(iii) The Court can confirm the alteration either wholly or in part subject to such terms and conditions as it may deem fit on being satisfied that the alterations sought to be confirmed, are not beyond the scope of Section 17(1) and do not adversely affect the rights and interests of the members of the Company and/or of its creditors. No hard and fast rule can be laid down as to the quantum of evidence necessary for the satisfaction of the Court. The fact that the Company is in a sound financial position and that the share-holders unanimously or by majority decision seek alterations of the memorandum is a factum in favour of confirmation thereof.

13. It is not contended before me that any one of the items of additional business proposed to be started would be destructive of the existing business. What is vehemently contended by Mr. Ghosh is that there are certain additional items of business which have no relation to the existing business and cannot be conveniently or advantageously combined with it. In fact consequent on his objection and as a result of discussion at the

time of hearing, the petitioner has, as already stated, deleted several items of proposed new business from the original resolution and we are now therefore concerned only with the resolution as it stands altered. Even in respect of some of the items of the altered list particularly the items relating to manufacture of type writers and computers Mr. Ghosh presses his objections. It is therefore, necessary for me to briefly notice the submissions made on behalf of the petitioner in support of his contention that the proposed new items of business can be economically or more efficiently combined with the existing business.

14. Regarding its proposed business in general merchandise goods it is submitted by the Company that it runs two factories one at Bhopal and the other at Jaykaypur for developing townships and to cope with modern times and to supply amenities and comforts for its employees and workers, it has been found expedient to deal in general merchandise goods.

(i) Regarding the activities mentioned in the proposed Clause 3 (10) it is submitted that in course of working of the factories for the last several years it has been found expedient to deal in plant and machinery and office equipments to meet its own requirements and since new industrial complexes are coming up in nearabout places where the Company is having its existing factory, it is necessary that the Company should be free to take up this and other lines of business and once they take up business relating to plant, machinery and office equipments, the Company would also be able to provide the servicing and maintenance on account of its having experienced and qualified Engineers under the employment of the Company.

(ii) Regarding manufacture of computers it is submitted that the Company is doing business in paper industry and has got an equipped workshop and trained personnel. They can be able to assemble, manufacture, repair, maintain computers and other business machines considered to be efficient and economic and this can be advantageously combined with their existing business. The same argument is also advanced in respect of type writers and it is submitted that the Company has already taken certain steps in collaboration with other Companies for the manufacture of type writers.

(iii) Regarding furnitures it is stated that for the purpose of running the paper mills they take forest leases and for this purpose they have got a trained staff and necessary machinery. At the present moment they operate and exploit bamboos in the forest. It would be economical to take up the business of exploiting timber and manufacturing furniture therefrom not only for its own use in the factory and its own township but also for sale to others.

(iv) Regarding the proposal in para 10(b) relating to synthetic yarn, clothes and materials rubber, latex, plastics and formations etc. and plastic products, it is submitted that with the technological development, paper has been advantageously used with cloth, synthetic yarn and is also being used in rubber, latex and plastics. It would therefore be convenient

and advantageous to combine this business with the existing one.

(v) Regarding manufacture of pharmaceuticals, medicinals, chemicals, caustic soda, compound products, machine, live wires, disinfectants, oils, colours, paints and varnishes it is submitted that paper industry being mostly and mainly a chemical-based industry, the company has got chemical laboratories and it will be very efficient and economic to combine this business, with the existing one.

(vi) Regarding manufacture of carbons, ink, paper and stationery goods, the argument is that in process of manufacturing paper some chemicals and impurities are burnt resulting in carbons and with the active elements of ink and other ingredients, carbon papers can be manufactured. Since they are dealing in paper they can be efficiently and advantageously combined With the existing business.

(vii) Regarding the business referred to in Sub-clause (11), it is submitted that the Company has taken various forests on leases and is also carrying on forest operations. At the present moment it is only exploiting the bamboo wealth of the forest. It is proposed that with the same machinery and without spending more money it can also deal in timber and timber products, economically and advantageously.

(viii) Regarding the proposals mentioned in sub-para 12 it is stated that the effluent of the paper industry has been experimented to get fertilisers and the Company has got several experimental plots where agricultural operations can be carried on and food stuffs can be produced for its own employees and the township.

(ix) Regarding sub-para (13) the submission is that the Company has taken up erection work of its factories by the engineers who have got vast experience in designing, planning, erection, expansion and maintenance of modern factories. The Company can therefore use this personnel with advantage. At the present moment the Company has to engage transport contractors to carry finished products from them and also to get bamboo etc. from the forest. If the Company can maintain its own vehicles, it can save a huge amount. For maintenance of its existing vehicles it runs an efficient motor garage and workshop and with little addition to it, this can efficiently handle bigger transportation facilities both for itself and for the purpose of business,

(x) Regarding sub-para 14, the submission of the Company is that at present it has to generate its own power and if the proposed expansion is done this will mean a lot of savings and with small alterations and expansion of the generating units and utilisation of its own electrical staff and know-how it can save a huge amount and also can have some profit.

(xi) Regarding sub-para 15 it is stated that it is ancillary to the existing and proposed objects and can be efficiently combined with the existing business.

(xii) Regarding sub-paras 16 and 17 the submission of the Company is that these clauses are found in the Memorandum of Association of all Companies of repute and are necessary for more efficiently carrying on the business either existing or future.

15. I have carefully considered the aforesaid submissions made by the learned Advocate for the petitioner and feel that although in some respects they appear to be ambitious it cannot at all be said that any of the proposed activities is either inconsistent with the existing business or would be destructive of the same. The Directors who are in charge of the day to day administration of the affairs of the Company are of the view that the proposed activities can be efficiently and conveniently combined with the existing business and how this would be so has been explained in the submissions referred to above which *prima facie* appear to be acceptable. The resolutions for the alteration of the provisions in the memorandum had been passed unanimously by the share-holders without a single dissenting voice. Notice of the present petition was given to all concerned by publication in newspapers, but apart from the Registrar of Companies, no share-holder or creditor of the Company has appeared to oppose the application. The Registrar in para 12 of his affidavit has stated that he had received a letter from Shri B. A. Ojha a share-holder of the Company addressed to the Company Law Board objecting to the additional new business on certain grounds. A copy of the letter has been annexed to his affidavit. The original letter is not before me and has not been proved. The objection is Sri Ojha has not appeared before this Court to raise any objection. No notice can therefore be taken on the alleged objection. A further safeguard so far as the share-holders are concerned is afforded by Sub-section (2A) newly added by Sec. 15 of the Companies (Amendment) Act, 1965 to Section 149 of the Companies Act whereby before actually commencing any new business the Company has to get the approval of the general body of share-holders. That would give a further opportunity to the share-holders to say whether the Company should actually take up any new business. This appears to me to be a further safeguard against any speculative action on the part of the Directors of the Company.

16. In the result, I would allow this application and confirm the alterations proposed by the Company in the special resolutions dated 21-7-66 and 6-12-67 subject to the modifications proposed in the memorandum dated 12-9-68 filed on behalf of the Company. As substantial objections had been raised on behalf of the Registrar of Companies who alone has appeared to oppose this application, I would order that the Company should bear the costs of the Registrar. Hearing fee is assessed Rs. 500.