

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

IN THE MATTER OF COMPANIES ACT AND IN THE MATTER
OF THE ROHTAK KRISHNA TRADING COMPANY LTD., ROHTAK.
MAHABIR PRASAD, ETC.,—Petitioners.

versus

THE ROHTAK KRISHNA TRADING COMPANY LTD., ETC.—Respondents.

Liquidation Miscellaneous No. 135 of 1971.

November 8, 1971.

Companies Act (I of 1956)—Section 87(1)(b)—Forward Contracts (Regulation) Act (LXXI of 1952)—Sections 6, 9A(1)(d) and (2)—Articles of Association of a Company providing for every share-holder to have one vote irrespective of the share held by him in the Company—Whether ultra vires section 87(1)(b), Companies Act—Such article framed before the recognition of the Company as “recognised association” under section 6, Forward Contracts (Regulation) Act—Section 9A(2) of this Act—Whether applies thereto—Approval not given by the Central Government nor the article published in official gazette—Section 9A(1)(d)—Whether protects it—Requirement of section 9A(2)—Whether mandatory.

Held, that section 87(1)(b) of the Companies Act, 1956 confers on every member of the Company the voting right in proportion to his share of the paid up equity capital of the company in case of a poll. If an article of the Articles of Association of a Company provides for a share-holder to have one vote irrespective of the share held by him, such an article is *ultra vires* section 87(1)(b). (Para 4)

Held, that section 9A(2) of the Forward Contracts (Regulation) Act, 1952 does not only apply to such rules as are made or amended under section 9(A)(1) of the Act after recognition is granted to an association under section 6. The provision also applies to the rules which might have been framed by an association prior to the grant of such recognition to it. Sub-section (1) of Section 9A relates to rules made originally as well as rules amended subsequently. No line is drawn anywhere in the provision between rules framed prior to or subsequent to the recognition granted to an association by the Central Government. Sub-section (2) of Section 9A is directly related to all rules framed under sub-section (1) of that section. (Para 7)

Mahabir Prashad etc. v. The Rohtak Krishna Trading
Company Ltd. etc. (Narula, J.)

Held, that section 9A(2) of the Forward Contracts (Regulation) Act, 1952 makes it abundantly clear that a rule made under section 9A(1) which contravenes any provision of the Companies Act will not be valid until the rule is published in the official gazette after the grant of approval of the Central Government. The requirement of section 9A(2) of the Regulation Act is not directory but is mandatory. Section 9A is a special provision and has to be given effect within the restricted field which is created by it. Sub-section (1) of this section has been made subject to the fulfilment of sub-section (2). Hence where an article of the Articles Association of a Company providing that every share-holder will have one vote irrespective of the share held in the company, is not approved by the Central Government and is not published in the official gazette under section 9(A) (2) after the recognition of the Company as a "recognised association" under section 6 of the Act, the Article will not be valid till such approval and publication.

(Paras 6 and 7)

Application under section 403 of the Companies Act read with section 151 of the Code of Civil Procedure praying that the respondent Company be directed not to hold a meeting on the 8th November, 1971.

Bhagirath Dass, Advocate and S. K. Hiraji, Advocate, for the Petitioner.

Anand Swaroop, Senior Advocate (I. S. Balhra, Advocate with him),
for the Respondents.

JUDGMENT

Narula, J.—(1) This is an application of six members of the Rohtak Krishna Trading Company Ltd. (hereinafter called the Company) for directing the Company not to hold its annual general meeting on November 8, 1971 (today). This application has been made in the course of the trial of C.O. No. 89 of 1971, which has been filed by the same petitioners against the Company and its six office bearers under sections 397, 398 and 399 of the Companies Act, 1956 (hereinafter called the Act) for setting aside the allotment of certain shares, for staying the holding of the annual general meeting of the Company and to direct an amendment in Article 79 of the Articles of Association of the Company, and for other ancillary reliefs. The annual general meeting of the Company was fixed for September 30,

1971. L.M. No. 119 of 1971 dated September 14, 1971, had been originally filed by the petitioners for restraining the respondents from holding the general meeting of the Company which had originally been fixed for September 30, 1971, on various grounds. One of those grounds was that the date fixed for the meeting being a bank holiday under the Negotiable Instruments Act, the meeting could not be permitted to be held on that date. On September 29, 1971, the learned senior counsel appearing for the Company stated that the annual general meeting would not be held on September 30, 1971 (because of its being a bank holiday) and that a fresh date of the general meeting would be fixed by the Directors for which fresh notices would be issued to the members in accordance with law. In view of the situation created by the above-mentioned statement of the learned counsel for the Company, it was considered unnecessary by me to deal with the other points raised by the petitioners on the basis of which it had been argued that the meeting should not be held at all. L.M. No. 119 of 1971 was, therefore, dismissed by me as infructuous, but without any order as to costs, on September 29, 1971.

(2) Notices dated October 12, 1971, were then issued by the Directors for holding the annual general meeting of the Company on November 8, 1971, at 2 P.M. On November 1, 1971, the present application was then filed.

(3) The only ground on which the prayer for staying the holding of the meeting has been pressed is that Article 79 of the Articles of Association of the Company, which reads as follows, is *ultra vires* section 87 (1)(b) of the Act:—

“79. No share-holder other than a trading member, or his or its authorised representative shall be entitled to vote in respect of any matter placed before the Company at any General Meeting in which by reason of their functional interests only the Trading Members are actually interested. *Every share-holder shall have one vote whether on a show of hands or at poll, irrespective of the share held by him except the Chairman who shall have, in addition, a casting vote.*”

**Mahabir Prashad etc. v. The Rohtak Krishna Trading
Company Ltd. etc. (Narula, J.)**

Section 87(1) of the Act provides—

“Voting rights.

- (1) Subject to the provisions of section 89 and sub-section (2) of section 92—
- (a) every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the Company; and
- (b) his voting right on a poll shall be in proportion to his share of the paid up equity capital of the Company.”

The rest of that section is not relevant for our purposes, nor are the provisions of sections 89 and 92 of the Act material for deciding this case.

(4) The argument of Mr. Bhagirath Dass is that whereas section 87(1)(b) of the Act confers on every member of the Company the voting right in proportion to his share of the paid up equity capital of the Company in case of a poll, Article 79 of the Articles of Association of the Company takes away substantial part of that statutory right of the members of the Company by giving every share-holder only one vote irrespective of his holding in the Company. In reply to this argument, Mr. Anand Sarup, learned senior counsel for the Company, has invited my attention to section 9A(1) (d) of the Forward Contracts (Regulation) Act, 1952 (hereinafter called the Regulation Act), which reads as under:—

“9A(1) A recognised association may make rules or amend any rules made by it to provide for all or any of the following matters, namely,—

- (a) * * * *
- (b) * * * *
- (c) * * * *

(d) the regulation of voting rights in respect of any matter placed before the association at any meeting so that

each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the association.

(e) *	*	*	*
(f) *	*	*	*
(g) *	*	*	*

(5) The above-quoted provision of the Regulation Act leaves no doubt in the matter that the Company could initially frame a rule like that contained in Article 79 of the Articles of Association of the Company as well as amend its original Articles so as to make such a provision. Mr. Bhagirath Dass has, however, pointed out that the enabling power conferred on a company (which may be a recognised association within the meaning of section 2(j) of the Regulation Act) is subject to the fulfilment of the conditions precedent laid down in sub-section (2) of section 9A. Sub-section (2) reads:

“9A(2). No rules of a recognised association made or amended in relation to any matter referred to in clauses (a) to (g) of sub-section (1) shall have effect until they have been approved by the Central Government and published by that Government in the Official Gazette and, in approving the rules so made or amended the Central Government may make such modifications therein as it thinks fit, *and on such publication*, the rules as approved by the Central Government shall be deemed to have been validly made, notwithstanding anything to the contrary contained in the Companies Act, 1956.”

(6) The submission of the learned counsel for the petitioners is that Article 79 of the Articles of Association of the respondent-Company cannot yet be deemed to have been validly made as (i) it is not shown that it has been approved by the Central Government, and (ii) in any case it has not been shown to have been published in the Official Gazette. Counsel has laid great emphasis on the expression “on such publication” in sub-section (2) of section 9A to canvass the proposition that any rule made under section 9A(1)(d) of the Regulation Act, which comes into conflict with section 87(1) (b) of the Act, cannot be deemed to be valid till it is approved and

Mahabir Prashad etc. v. The Rohtak Krishna Trading
Company Ltd. etc. (Narula, J.)

published in the Official Gazette as mentioned in sub-section (2) of section 9A. It is the common case of both sides that the Company is a "recognised association" within the meaning of section 2(j) of the Regulation Act, Mr. Anand Sarup has submitted that the Company framed its Articles of Association, got them approved from the Forward Markets Commission, Bombay, submitted the same to the Central Government, then had discussions with the Central Government, subsequently received telegram annexure R. 2, whereupon the Articles were further amended in consultation with the Central Government, the amended Articles contained Article 79 as it now stands, these were then unanimously adopted in a general meeting of the Company held on September 7, 1970, the amended Articles were forwarded for approval to the Forward Markets Commission, Bombay, with letter R. 3, the same were actually approved and it was only after all these steps had been taken that the application of the Company under section 5 of the Regulation Act was granted by the Central Government and recognition was accorded to the Company under section 6 of the Regulation Act for carrying on transactions in Gur vide Central Government notification dated December 28, 1970. Counsel contends that the Provisions of section 5 and 6 of the Regulation Act, clearly show that the rules of an association concerned with the regulation and control of forward contracts, like the Company before us, relating in general to the constitution of such an association, are amongst the things which the Central Government must see before granting recognition to the association, and the rules which must be made available to the Central Government must contain particularly rules relating to the constitution and powers of management and relating to the manner in which the business of the Company has to be transacted. Article 79 of the Articles of Association of the Company, according to Mr. Anand Sarup, deals with the manner in which the business of the Company has to be transacted. On that basis, it is argued that the copy of the finally framed Articles of Association, which contained the relevant rules, having been submitted to the Central Government under section 5(2) of the Regulation Act and recognition having been granted to the Company under section 6 of the Regulation Act on December 28, 1970, it should be assumed that the Central Government has at least impliedly approved of the disputed rule. This, according to Mr. Anand Sarup, amounts to substantial compliance with the requirements of sub-section (2) of section 9A of the

Regulation Act. Since this point also arises in the main case, I do not wish to finally pronounce on it at this stage. At the same time, I cannot lose sight of the fact that section 9A(2) of the Regulation Act makes it abundantly clear that no rule made under section 9A(1) which contravenes any provision of the Companies Act can be deemed to be valid until the rule is published in the Official Gazette after the grant of approval by the Central Government. In paragraph 8 of this application, it has been stated that the Articles of Association of the respondent-Company have not been approved by the Central Government under section 9A(2) of the Regulation Act. It is further stated in the same paragraph that the petitioners have made a thorough search for finding out the said approval and have not been able to trace out the same from any copy of the Central Government Gazette. In reply to this allegation, the respondents have not stated that the rules were either expressly approved by the Central Government or that they were ever published in the official Gazette. All that they have stated is that section 9A(2) applies only to rules made or amended after recognition is granted to an association and inasmuch as Article 79 of the Articles of Association of the Company had been framed before such recognition, it is not necessary to comply with section 9A(2) of the Regulation Act in respect thereto. The remaining part of paragraph 8 relates to only implied approval to which I have already referred.

(7) It has next to be decided whether section 9A(2) of the Regulation act applies only to such rules as are made or amended under section 9A(1) of the Regulation Act after recognition is granted to an association under section 6, or whether that provision also applies to the rules which might have been framed by an association prior to the grant of recognition to it by the Central Government. On a careful reading of the opening words of section 9A(1), I am unable to find any such distinction in the provision. The sub-section relates to rules made originally as well as rules amended subsequently. No line is drawn anywhere in the provision between rules framed prior to or subsequent to the recognition granted to an association by the Central Government. Sub-section (2) of section 9A is directly related to all rules framed under sub-section (1) of that section. I am, therefore, unable to agree with Mr. Anand Sarup that section 9A(2) does not apply to rules framed under section 9A(1) prior to the grant of recognition to the Company by the Central Government (on December 28, 1970). In this situation it has to be held that unless

**Mahabir Prashad etc. v. The Rohtak Krishna Trading
Company Ltd. etc. (Narula, J.)**

the respondents can show that the Central Government had published Article 79 in the official Gazette, the said Article has not come into effect so far. That being so, the right of voting in the meetings of the Company, till such approval and publication by the Central Government, will be governed by section 87(1)(b) of the Act. I am unable to agree with Mr. Anand Sarup that the requirements of section 9A(2) of the Regulation Act are merely directory. Section 9A is a special provision. Such special provisions have to be given effect within the restricted field which is created by them. Sub-section (1) of section 9A has been specially made subject to the fulfilment of sub-section (2) of that section. Having found that the necessary conditions precedent for the coming into effect of a provision made under section 9A(2), namely, publication in the official Gazette, has not been satisfied, I hold that mandatory requirement for validating the disputed provision has not yet been satisfied.

(8) Mr. Anand Sarup has next contended that under section 166 of the Act, the annual general meeting of the Company must be held within the prescribed period. He has pointed out from Annexure R. 4, a letter from the Assistant Registrar of Companies, Delhi and Haryana, to the respondent-Company that the time for holding the meeting has, at the request of the Company, been extended for a period of one and a half months, that is, up to November 15, 1971. It is argued that if this meeting is stopped which is scheduled to be held at 2 P.M. today, the Company would be compelled to violate the law as it would not be possible to hold another meeting within the extended time allowed by the Registrar. This argument of the counsel appears to me to be wholly irrelevant. The Company should hold its meeting within time. If due to any circumstances beyond its control, it is unable to do so it is for the Company to approach the Registrar and failing that the Court for being relieved of the liability for not holding the meeting within the time allowed. In any event, I am not stopping the meeting and, therefore, this consideration is wholly irrelevant. In view of these facts and circumstances, I hereby direct in exercise of the powers vested in the Court under section 403 of the Act, that at the annual general meeting to be held today (unless it is already held and concluded because it is now 2.40 P.M. and the meeting was fixed for 2 P.M.), the voting right in case of a poll shall be exercised by every member in proportion to his share of the paid up equity capital of the Company as required by section

87(1)(b) of the Act and not in accordance with Article 79 of the Articles of Association of the Company. If the voting has already been held and a poll has been demanded at the meeting and the right of voting has been exercised contrary to section 87 of the Act, it would be for the petitioner to take appropriate proceedings for getting those proceedings annulled, if it is open to the petitioners to do so. No question of staying the holding of the meeting arises as Mr. Anand Sarup states that nobody has demanded a poll before the argument in the case started today and that even if a poll is demanded nobody had decided till the commencement of arguments in this case whether voting would be in accordance with section 87(1)(b) of the Act or Article 79. I find force in the argument and, therefore, do not stay the holding of the meeting but merely direct that the meeting shall be held (unless already held as stated above) subject to the condition that the right of voting shall be exercised under section 87 of the Act and not under Article 79. The costs of these proceedings shall abide the result of the main petition.

N. K. S.

MISCELLANEOUS CIVIL

Before A. D. Koshal, J.

DILBAGH RAI—*Petitioner.*

versus

BRAHM DATT AND OTHERS—*Respondents.*

Civil Writ No. 522 of 1969.

November 8, 1971.

Punjab Agricultural Produce Markets (Election to Market Committees) Rules, 1961—Rules 3 and 19—Person duly registered as voter in the final electoral roll—Presiding Officer—Whether can debar such voter from casting his vote on the ground of minority.

Held, that the duties of the presiding officer as detailed in rule 19 of the Punjab Agricultural Produce Markets (Election to Market Committees) Rules, 1961 include ascertainment of the identity of an elector and the maintenance of secrecy of the ballot. The Rules do not confer any power