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[MANU/MH/0006/1974](#)

Equivalent Citation: [1975]45CompCas1(Bom)

IN THE HIGH COURT OF BOMBAY

Company Petition No. 235 of 1973

Decided On: 19.01.1974

Appellants: **Minerva Mills Ltd.**

Vs.

Respondent: **Govt. of Maharashtra**

Hon'ble Judges:

J.R. Vimadalal, J.

Counsels:

For Appellant/Petitioner/Plaintiff: P.R. Mridul, Adv.

For Respondents/Defendant: K.S. Cooper, Adv.

Subject: Company

Catch Words

Mentioned IN

Acts/Rules/Orders:

Industries (Development and Regulation) Act, 1951 - Sections 3, 13(1), 17(1), 18A, 18B, 18B(1), 18E and 18E(1); Companies Act, 1956 - Sections 3(4), 17, 17(1), 17(2), 17(3), 17(4), 17(5), 18, 18(3), 19, 180, 189 and 293(1)

Cases Referred:

Rank Film Distributors v. Registrar of Companies, [1968] 38 Comp Cas 487 (Cal); Orient Paper Mills Ltd. v. State, [1958] 28 Comp Cas 487, AIR 1957 Ori 232; In Re: Orissa Chemicals & Distilleries Private Ltd., [1962] 32 Comp Cas 497, AIR 1961 Ori 62

Case Note:

Company – change in registered office – Sections 3, 13 (1), 17 (1), 18A, 18B and 18E of Industrial (Development and Regulation) Act, 1951 and Sections 3 (4), 17 (1), 17 (2), 17 (3), 17(4), 18, 19, 180, 189 and 293 (1) of Companies Act, 1956 – petition filed before Court for its confirmation of proposed change in location of registered office of company – change opposed by Government of Maharashtra – under Sections 17 (3) and 17 (3) person entitled to receive notice (creditors and Registrar of company) of proposed change and can also oppose on ground of adverse affect on interests of those person – Government of Maharashtra to be regarded as creditors with respect of amount of tax due to it – company asked to furnish bank guarantee with respect to tax – company failed to furnish the same – confirmation of change of registered office not made.

JUDGMENT

Vimadalal, J.

1. This is a petition under section [17](#) of the Companies Act, 1956, for alteration of the memorandum so as to change the place of the registered office of the petitioner-company from the State of Maharashtra to the State of Mysore (now Karnataka). The registered office of the company is at present situate in Bombay, but the company's mills have always been situate at Bangalore in the State of Karnataka. By a special resolution of the company duly passed in accordance with section [189](#) of the Companies Act on the 29th of July, 1969, at its annual general meeting, it was, inter alia, resolved that, subject to confirmation by the court, clause II of the memorandum of the company be amended so as to provide that the registered office of the company would be situate in the State of Mysore.

2. In paragraph 7 of the petition, it is stated that the Mysore State Financial Corporation Ltd., Bangalore, had advanced to the company a loan of Rs. 20 lakhs, and one of the conditions for the grant of the said loan was that the company would take steps to shift its registered office from the State of Maharashtra to the State of Mysore in which its mills were situated. It was further stated in the said paragraph that it was desirable to have the company's mills as well as its registered office at one and the same place, viz., Bangalore, in the State of Mysore, as the same would be helpful in carrying on its activities more economically and efficiently, and that the National Industrial Development Corporation Ltd. who were one of the secured creditors of the company had informed it that they had no objection to the transfer of the registered office from Bombay to Bangalore.

3. By an order dated 19th October, 1971, issued by the Government of India in exercise of the powers conferred upon it by section 18A of the Industries (Development and Regulation) Act, 1951, the Central Government authorised the National Textile Corporation Ltd. take over the management of the whole of the undertaking of the petitioner-company as the authorised controller of the said undertaking for a period of five years from the date of the publication of the said order in the Official Gazette. Pursuant to the said notified order, the management of the entire undertaking of the petitioner-company was taken over by the said corporation as the authorised controller thereof, and the petitioner-company has since been under the management of the said authorised controller appointed by the Central Government.

4. The company has filed the present petition for the confirmation of the court that is required under sub-section (2) of section [17](#) of the Companies Act, 1956, to the alternation of the memorandum relating to the shifting of its registered office from the State of Maharashtra to the State of Mysore. Nain J., by his order dated 29th June, 1973, admitted the petition, directed the same to be advertised in two newspapers, and ordered that notice of the petition should be given to the Registrar of Companies as required by sub-section (4) of section [17](#) of the Companies Act. He directed that notice of the petition should also be given to the State Government of Maharashtra. In response to the notice served upon him, the Registrar of Companies, Maharashtra, has by his letter dated 8th August, 1973, stated that he did not propose to support or to oppose the petition, but submitted to the orders of the court. The State of Maharashtra has, however, in response to the notice served upon it, filed a lengthy affidavit and appeared through counsel at the hearing before me and strenuously opposed the granting of the relief sought in this petition. It is indeed strange that it should have done so, when neither the Central Government which has taken over the management of the company, nor the shareholders of the company for whose interests the State of Maharashtra professed solicitude, have appeared to oppose the petition in response to the advertisement duly given in two leading newspapers in accordance with the directions of Nain J. in his order date 29th June, 1973, referred to above. I cannot help feeling that, at a time when national integration is of such vital importance to the country, it is not proper for a State to oppose an application for the shifting of the registered office of a company to another State on narrow

parochial considerations.

5. The first question to which I must address myself is, on what grounds is a State entitled to oppose the shifting of the registered office of a company from its territory to the territory of another State within the country. The answer to that question would depend on the further question as to in what cases notice should be given to the State from which the registered office is sought to be transferred to another State. In that connection, I must first refer to the relevant provisions of the Companies act, 1956, as well as the Industries (Development and Regulation) Act, 1951. Sub-section (1) of section 17, inter alia, provides that 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. Sub-section (2) of that section, however, lays down that such alteration is not to take effect until, and except in so far as, it is confirmed by the court on petition. Sub-sections (3) and (4) of the said section which are material for the purpose of the question I am now considering, are in the following terms :

"(3) Before confirming the alteration, the court must be satisfied -

(a) that sufficient notice has been given to every holder of the debentures of the company, and to every other persons or class of persons whose interest will, in the opinion of the court, be affected by the alternation; and

(b) that, with respect to every creditor who, in the opinion of the court, is entitled to object to the alteration, and who signifies his objection in the manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been claim has been discharged or has discharged or has determined, or has been secured to the satisfaction of the court :

Provided that the court may in the case of any person or class of persons for special reasons, dispense with the notice required by clause (a).

(4) The court shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity to appear before the court and state his objections and suggestions, if any, with respect to the confirmation of the alteration." Sub-section (5) of section 17 enacts that the court can make an order confirming the alteration either wholly or in part, and on such terms and conditions, if any, as it thinks fit, and sub-section (6) lays down that, in exercising its powers under the said section, the court must have regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors of the company and of every class of them. Sub-section (3) of section 18 of the Companies Act provides for the filing of the court's order with the Registrars of Companies of the two States concerned who would register the same in their records, and section 19 enacts that the alteration of the memorandum in question is not to take effect until it has been so registered.

Section 18A of the Industries (Development and Regulation) Act, 1951, empowers the Central Government to authorise any person or body of persons to take over the management of an industrial undertaking, inter alia, on the ground that it was being managed in a manner highly detrimental to public interest, that being the ground on which the management of the company in the present case was taken over by the Central Government by a notified order issued under the said section. Section 18B of the said Act provides that on the issue of such a notified order, all persons in charge of the management, including persons holding office as managers or directors, are to be deemed to have vacated their office, and any subsisting contract of management between the industrial undertaking and any managing agent or any director is to be deemed to

have been terminated. Section 18C empowers the authorised person who has taken over the management of such an industrial undertaking to apply to the court for cancellation of any subsisting contract or agreement. Then comes section 18E with which I am concerned in the present case. It is in the following terms :

"18E. (1) Where the management of an industrial undertaking, being a company as defined in the Indian Companies Act, 1913, is taken over by the Central Government, then, notwithstanding anything contained in the said Act or in the Memorandum or articles of association of such undertaking, -

(a) it shall not be lawful for the shareholders of such undertaking or any other person to nominate or appoint any person to be a director of the undertaking;

(b) no resolution passed at any meeting of the shareholders of such undertaking shall be given effect to unless approved by the Central Government;

(c) no proceeding for the winding up of such undertaking or for the appointment of a receiver in respect thereof shall lie in any court except with the consent of the Central Government.

(2) Subject to the provisions contained in sub-section (1), and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Indian Companies Act, 1913, shall continue to apply to such undertaking in the same manner as it applied thereto before the issue of the notified order under section 18A."

There is one other provision of the Act to which I must refer, though it was not pointed out to me by the learned counsel on either side in the course of their arguments before me, and that is the provision to be found in section 13(1)(e) that no owner of an industrial undertaking, other than the Central Government, can change the location of the whole or any part of an "industrial undertaking" which has been registered under the said Act, it being not disputed that the present company was so registered. Reference may be made to the definition of the expression "industrial undertaking" in section 3(d) of the Act. The said expression has been defined as meaning any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government. These are all the statutory provisions to which I need refer for the purpose of this judgment.

6. A perusal of the above statutory provisions shows that there is no express provision of the companies Act which requires that notice of a petition to shift the registered office of a company from one State to another must be given to the former State. The only persons to whom such a notice must, by reason of the provisions of sub-sections (3) and (4) of section 17 of the Companies Act, be given are :

(a) debenture-holders and every other person or class of persons whose interests would be affected by the proposed alternation, and

(b) the Registrar of Companies.

7. Even so, the court has undoubtedly the power to direct notice of petition to be given to any other person. No exception can, therefore, be taken, and indeed none was taken to the direction given by Nain J. to serve a notice of this petition of the State of Maharashtra. Moreover, on the

facts of the present case, the State of Maharashtra being a creditor of the company to the tune of Rs. 73,882.45 in respect of arrears of sales tax, as mentioned in paragraphs 18 of the affidavit in reply of D. V. Konker, dated 1st September, 1973, the State of Maharashtra was entitled to that notice under clause (a) of sub-section (3) of section 17 of the Companies Act as being a person whose interest would be affected by the alteration, and was also entitled, as such creditor, to have its claim discharged or secured to the satisfaction of the court under clause (b) of sub-section (3) of the same Section. The object of my referring to sub-section (3) and (4) of section 17, however, is that the terms of those sub-section give a clear indication of the grounds on which the persons on whom it is obligatory to serve such notices are entitled to oppose the petition to shift the registered office of a company. A state from which the registered office is sought to be transferred and which is served with a notice under clause (a) of sub-section (3) of section 17 can oppose the petition only on the ground on which it is entitled to be served with that notice, viz., on the ground of its adverse effect on some specific pecuniary or proprietary interest of that particular State, and not on regional considerations, or on the vague ground of the effect of the shifting of the registered office on the general economy of the State which must necessarily be involved in every case. The ground on which the State of Maharashtra is entitled to oppose the present petitions is, therefore, confined to any specific prejudice caused to its interest, and the only interest of that State which, it has been shown, might be adversely affected is its interest in the matter of the recovery of its large dues of sales tax in respect of which it is a creditor of the company. Sub-section (3) of section 17 requires that the court must in exercising its powers under that section, have regard to the rights and interests of the shareholders as well as the creditors of the company. That does not, however, mean that a creditor is entitled to oppose such an application on the ground of its adverse effect on the shareholders or vice versa. The State of Maharashtra which, on the facts of the present case, is merely in the position of a creditor, is not entitled to assume the role of the protect or of the interests of the shareholders of the company, or its workmen, or the public at large, as it sought to do in the present case.

8. This view which I have taken on a plain reading of the relevant statutory provisions is borne out by the decision of a Division Bench of the Calcutta High Court in the case of Rank Film Distributors v. Registrar of Companies with which an in complete agreement. The facts of that case were that the company carried on the business of film distributors and its registered office was situate at Calcutta. The company passed special resolutions for the transfer to its registered office from the State of West Bengal to the State of Maharashtra on the grounds that its head office had already been transferred to Bombay as far back as the year 1962, that the registered offices of most of foreign film companies were situated in Bombay, that there was better scope in Bombay for expansion of the company's business, and that it was in the interest of the shareholders that the registered office of the company should be moved to Bombay. This application was opposed, as in the present case, only by the State. It was opposed in that case on the ground that sufficient cause had not been shown for the transfer of the registered office to Maharashtra. It was stated in the judgment of the Division Bench that the test to be applied was whether at the time when the resolutions were passed, the shareholders had, by domestic deliberation, for any of the reasons specified in section 17, decided in favour of the transfer of the registered office. Following an English decision, the Division Bench took the view that the principles laid down for the guidance of the court in dealing with the applications for confirmation of reduction of capital applied to application for confirmation of alteration of the memorandum of a company. Dealing with the question of notice to the State, the Division Bench observed that though sub-section (4) specifically required that notice of the petition had to be given to the Registrar, no specific provision had been made for notice to the State, and that if it was the intention of the legislature to serve a notice on the state, it was difficult to see why no specific provision was made in that behalf. It was, however, stated in the said judgment that it could hardly be disputed that the language of section 17(3)(a) was sufficiently wide to enable the court to direct notice to be served on the State if the court was of opinion that the interests of the State would be affected by the order to be made on the application. The view taken by the Division Bench of the Calcutta High Court in the said case fully supports the view which I have taken on this point on a plain reading of section 17 of the Companies Act. Turning next to the question as to whether the State could object to the transfer of the registered office on the ground that the reasons which prompted the shareholders to pass the

resolution were not valid or had not been substantiated, it was laid down by the Division Bench in the said case that it was for the members of the company and not for the State to decide whether the registered office of the company should be transferred from one State to another in the interests of the company for the reasons specified in section 17, that the shareholders had expressed their decision by special resolution in favour of the transfer, and that to permit the State to contend that the proposed transfer would not enable the company to carry on its business more efficiently or economically, contrary to the opinion of the shareholders expressed in the special resolutions, would be to enable the State to have a voice in aspect of the management of affairs of the company which was not warranted by statute. The Division Bench of the Calcutta High Court then proceeded to deal with the contention that was advanced before it on behalf of the State of West Bengal that the economy of the State would be adversely affected if the registered office was shifted elsewhere, by reason of the lessening of opportunities of employment which the company afforded. After observing that the registered office of a company employed a comparatively small number of people and that the bulk of a company's employees were engaged in industrial undertakings, in trade or in general administration, the Division Bench recorded a sentiment which I have myself expressed earlier in this judgment, that "a broader perspective" must be taken by the court in so far as the loss of employment in one State would be balanced by employment in another and, after all, "the country was one and indivisible". The same sentiment was expressed by the Division Bench in the said case in regard to the contention that the revenue of the State was likely to suffer in the matter of income-tax and sales tax if the registered office of the company was transferred to another State. It was observed that the loss of revenue in one state would be accompanied by increase in revenue in the other, and that in the administration of justice, the interests of a particular State ought not to be thought of in a sectional manner, but what had to be considered was "the interests of the country as a whole". It was further pointed out that having regard to the scheme of the State and the Central Sales Tax Act, as well as article 270 of the Constitution read with the Constitution (Distribution of Revenue) Orders by which a fixed percentage of income-tax was allotted to each State which did not vary with the tax collected in each State, it could not be held that the transfer of the registered office of a company would adversely affect the share of a State in the proceeds of those taxes. It was, therefore, held in the said case that the prospect of loss of revenue was not a relevant factor to be taken into consideration on the facts of the said case, and that if the interest of the public had to be taken into consideration in an application under section 17, the interest contemplated were not revenue interest or interests of the general economy of the State, but the interests of those members of the public who might, in future, be inducted to take shares in the company in question. The Division Bench, therefore, allowed the appeal, set aside the order of the single judge and confirmed the special resolution for the transfer of the registered office of the company in the said case from the State of West Bengal to the State of Maharashtra. I am in full agreement with the views expressed by the Division Bench of the Calcutta High Court in the Rank film Distributors' case on every one of the points referred to above.

9. As against the said decision of the Calcutta High Court, reliance was sought to be placed by Mr. Cooper on two decisions of single judges of the Orissa High Court in the cases of Orient Paper Mills Ltd. v. State and In re Orissa Chemicals and Distilleries Private Ltd. Both those decisions of the Orissa High Court have been considered and in effect dissented from by the Division Bench of the Calcutta High Court in its judgment in the case of Rank Film Distributors already discussed above. In those decisions, the Orissa High Court has taken the view that where by a change of registered office of a company, the State from which the office was sought to be transferred would suffer a substantial reduction of revenue from income-tax and sales tax, the court should take that fact into consideration and refuse to confirm such a resolution. For the reasons already stated by me earlier in the judgment, I do not agree with that view. I prefer the view taken by the Calcutta High Court on that point in the Rank Film Distributors' case discussed above. Moreover, the Orissa High Court has, in both the cases cited above, refused to confirm the proposed change of the registered office on the ground that it was not bona fide, having regard to the facts of those cases. In view of the fact that, in the present case, the shifting of the registered office is proposed in order to implement an assurance given to the Mysore State Financial Corporation, it cannot possibly be said that the application is not bona fide. On the contrary, since that Corporation advanced a loan of as a large

an amount as Rs. 20 lakhs, rightly or wrongly on the faith of the assurance, it would have been dishonest on the part of the company not to have made the present application. Reference was also made by Mr. Cooper to the decision of a Division Bench of this court in the case of D. P. Kelkar v. Ambadas Keshav in which, after considering the scheme of the Industries (Development and Regulation) Act, 1951, it was stated that, although the Companies Act continued to apply to an undertaking the management of which was taken over under the former Act, the conditions and limitations with which the operation of the Companies Act was circumscribed were so numerous and drastic as to make the provisions of sub-section (2) of section 18E that the Companies Act would continue to apply "more or less chimerical", that what was left with the company after it was notified under the Industries (Development and Regulation) Act, 1951, was "the mere outward shell of incorporation", and that every vestige of power to manage and control was taken away from the directors and shareholders. The actual question which arose before this court in Kelkar's case was quite different and I do not see how those general observations can be of any assistance to me for the purpose of deciding an application under section 17(1) of the companies Act for the confirmation of a special resolution for the transfer of the registered office from this State to another State.

10. Having construed the relevant statutory provisions and considered the authorities, I must now proceed to deal with the specific contentions that were advanced before me by Mr. Cooper on behalf of the State of Maharashtra for opposing the application for the transfer of the registered office from this State to the State of Mysore. Those contentions were as follows :

(1) The special resolution for the transfer of the registered office from this State was a state resolution passed as far back as the 29th of July, 1969, and I should refuse to sanction the same, as the shareholders who passed that resolution as well as the circumstance then prevailing had changed.

(2) It is not in the interest of the company, or of the State of Maharashtra, to sanction the said special resolution.

(3) In view of the provisions of section 18E (1) (b) of the Industries (Development and Regulation) Act, 1951, the special resolution of the shareholders in the present case which has not yet been given effect to has become inoperative, since it has not been approved by the Central Government.

(4) The sanctioning of the said special resolution would affect adversely the general economy of the State of Maharashtra.

In addition to the above four contention advanced by Mr. Cooper, I pointed out to the learned counsel on both sides the contained in section 13(1)(e) of the said Act, viz., The Industries (Development and Regulation) Act, 1951, which barred the owner of an industrial undertaking from changing the location of the whole or any part of an "industrial undertaking" which had been registered under the said Act, as the company in the present case undoubtedly is.

11. I shall now proceed to deal with each of these contentions in the light of the legal position discussed above.

12. As far as the first contention of Mr. Cooper is concerned, the fact that the special resolution is four years old is not a proper consideration on which sanction would be refused in the present case, having regard to the ground on which the shareholders had, at the annual general meeting held on the 29th of July, 1969, resolved to shift the registered office from Bombay to Bangalore. That ground, as appearing in the minutes of the said meeting, a copy of which has been annexed to the affidavit in support of the petition and marked "B", was that a loan of as large an amount as Rs. 20 lakhs had been obtained by the company from the Mysore State Financial Corporation on

condition that the registered office would be shifted from the State of Maharashtra to that State. Whether the imposition of such a condition was proper or not is immaterial. The company having taken the benefit of the said loan in order to survive, it would not be fair or proper that the present application for sanctioning the necessary confirmation of the memorandum of the company for shifting the registered office in order to comply with that condition should be rejected merely on the ground that the company had not moved earlier, as it should really have done in this matter. The fact that the mills of the company have at all times been situate in Bangalore is also an important ground for shifting the registered office to that town. These are paramount considerations that have not changed by the mere lapse of a period of four years. The mere fact that some of the shareholders may be different from the shareholders who passed the special resolution cannot be a ground for refusing the sanctioning of the special resolution in a case like the present one, in which very strong grounds exist for sanctioning the shifting of the registered office from Bombay to Bangalore. Having regard to the express condition on which the said loan was obtained, the fact that a majority in number of the shareholders of the company are from Bombay is also not a ground on which this application should be refused. In this connection, it may be pointed out that nothing on the record has been pointed out to me which would show that the Bombay shareholders hold the majority in value of the shares of the company.

13. As far as the second contention of Mr. Cooper is concerned, as observed by me earlier in this judgment and by the Calcutta High Court in the Rank Film Distributors case, the shareholders are the best judged of what is good for the company and the State cannot assume to itself the role of a guardian of their interest, or interfere in the management of the business of the company which is a matter entirely for the company itself. As far as the interests of the State of Maharashtra are concerned, every one of the considerations which weighed with the Calcutta High Court in its judgment in the Rank Film Distributors' case is applicable to the present case also. It may be convenient at this stage to dispose of the fourth contention of Mr. Cooper, viz., that the transfer of the registered office from Bombay to Bangalore would affect adversely the general economy of the State of Maharashtra. As observed by me earlier in this judgment and by the Calcutta High Court in the Rank Film Distributors case, discussed above, vague considerations of the impact of the transfer on the general economy of the State, which could be urged in the case of every such application, are no ground for rejecting the same. No material whatsoever has been placed before me to show that the transfer of the registered office from Bombay to Bangalore would have any adverse effect on any specific pecuniary or proprietary interest of the State of Maharashtra, except its interest as a creditor which should be safeguarded. Moreover, in view of the provisions of the State and the Central Sales tax Acts, and article 270 of the constitution read with the constitution (Distribution of Revenue) Order by which a fixed percentage of income-tax is allotted to each State, there would, in fact, be no adverse effect on the economy of this State of Maharashtra in general as Mr. Cooper sought to contend, and, indeed, he has been unable to point out any such effect to me in the course of his arguments.

14. That brings me to the third contention of Mr. Cooper which is base on the provisions of section 18E(1) (b) of the Industries (Development and Regulation) Act, 1951. Strictly speaking, it is the Central Government that is concerned with the contention which Mr. Cooper based on that statutory provision, and not the State of Maharashtra, since it is not something which specifically affects the pecuniary or proprietary interest of that particular State. Since, however, it is a pure point of law and, once my attention is drawn to the same, I am bound to take notice of it, I allowed Mr. Cooper to argue the same with a view to assist the court. In this connection, it is important to bear in mind that the special resolution for the transfer of the registered office in the present case was passed long before the notification under section 18-A of the Industries (Development and Regulation) Act, 1951, was passed in respect of the company on the 19th of October, 1971. Therefore, the first question that arises is, whether clause (b) of section 18E(1) can be given retroactive operation so as to make inoperative a resolution passed even before the management of the industrial undertaking was taken over by the Central Government, unless the consent of the Central Government was obtained. In this connection, it is too well-settled a principle of law and authority that no statute shall be construed to have a retrospective operation unless such

construction appears very clearly in the terms of the Act of arises by necessary and distinct implication (Maxwell on the Interpretation of Statutes, twelfth edition, page 215). There is nothing in the express words of the said clause to indicate that it should operate retrospectively, nor is there anything there in from which retrospective operation could follow as a matter of necessary implication. That, in my opinion, is by itself sufficient to negative the contention of the bar of section 18E(1) (b) which I am now Considering. The matter, however, does not rest there. There are, on the contrary, sufficient indications to show that the said clause was intended to operate only prospectively and not retrospectively. First and foremost, as Mr. Mridul has rightly pointed out, the words "such undertaking" occurring in clause (b) of section 18E(1) take colour from the opening part of section 18E(1) which refers clearly to an industrial undertaking the management of which has already been taken over by the Central Government. Secondly, again as Mr. Mridul has rightly contended, clause (a) of section 18E(1) being prospective in terms, clause (b) which occurs in the society of that clause must be construed as prospective. Thirdly, section 18B(1) (b) as well as section 180 show that when the legislature intended to give the retrospective operation to a provision of the said Act, it has said so in clear terms, and in the absence of an express provision for retrospective operation in regard to clause (b) of section 18E(1), the same should not be given such a construction. Fourthly, it is a well accepted canon of construction that the court should not place upon a statute a construction which leads to unreasonable results. To hold clause (b) of section 18E(1) to be retrospective in operation would mean that resolutions which might have been passed over a hundred years ago in the case of a company like the present one which is an ancient company would become inoperative overnight, unless they were approved by the Central Government. Such a construction would be unreasonable and should not be placed upon clause (b) of section 18E(1). For all these reasons, I must reject this contention also.

15. That leaves for my consideration only the point in regard to the bar of section 13(1) (e) which was pointed out by me to the learned counsel on each side in the course of the argument of this petition. What section 13(1) (e) prohibits is, however, the change of the location of the whole or any part of an "industrial undertaking", an expression which has been defined in section 3(4) of the Act itself. According to that definition the said expression means any undertaking pertaining to a scheduled industry carried on in one or more factories. The word "undertaking" simpliciter occurs in section 293(1)(a) of the Companies Act but it is significant to note that the expression used in the Industries (Development and Regulation) Act, 1951 is "industrial undertaking" which would, in my opinion, emphasise that the bar of the said section applies only to the part of the undertaking in which the industry itself is carried on, which in the present case would mean the factory of the company which is already located at Bangalore is shifted. Whether the registered office, or the head office, or one or more of the branch company is also shifted or not, unless the industrial unit of the company is also shifted, the bar of section 13(1) (e) would not be attracted. This ground, therefore, also fails.

16. It is an admitted position that the State of Maharashtra is, however, in the position of a creditor in respect of its sales tax dues, though the precise amount claimed by it is not admitted by the company. Under those circumstances, there is no reason why the State's claim in respect of those dues should not be secured in the manner contemplated by clause (b) of sub-section (3) of the section 17 of the companies Act. Mr. Mridul has, after taking instructions from his clients, stated that they are prepared to give a bank guarantee in respect of the same. Under those circumstances, I order that on the petitioner-company furnishing to the state of Maharashtra a bank guarantee in the sum of Rs. 73,882.45 claimed by it by way of arrears of sales tax (both Bombay sales tax as well as Central sales Tax), as stated in paragraph 18 of the affidavit in reply of D. V. Konker dated 1st September, 1973, on or before 16th February, 1974, the petition to be absolute in terms of prayer (a), with no order in regard to the costs thereof. In the event, however, of the petitioner-company failing to furnish a bank guarantee for the said amount on or before the said date, this petition to stand dismissed with costs.

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