In Re: Ruttonjee and Co. Ltd.

In Re: Ruttonjee and Co. Ltd.

SooperKanoon Citation : sooperkanoon.com/862837

Court : Kolkata

Decided On : Jul-25-1967

Reported in : AIR1969Cal550

Judge : Sankar Prasad Mitra, J.

Acts : Companies Act, 1956 - Sections 186 and 284

Appeal No. : Company Petn. No. 218 of 1965

Appellant : In Re: Ruttonjee and Co. Ltd.

Advocate for Pet/Ap. : Basu, Adv.

Disposition : Application dismissed

Judgement :
ORDER

Sankar Prasad Mitra, J.

1. This is an application of the United Breweries Ltd., under Section 186 of the Companies Act, 1956, inter alia, for a direction for calling an extraordinary general meeting of Ruttoniee & Co. Ltd. The petitioner holds 352800 Equity Shares (out of 40,00.000 Equity Shares) of Ruttonjee & Co. Ltd. Section 186 of the Act runs thus :--

'186. Power of Court to order meeting to be called. -- (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the Court may. either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting,--

(a) order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit; and

(b) give such ancillary or consequential directions as the Court thinks expedient, including directions modifying or supplementing in relation to the calling, holding, and conducting of the meeting, the operation of the provisions of this Act and of the Company's articles.

Explanation -- The directions that may be given under this sub section may include a direrlion that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with anv such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.'

2. It is to he observed at the outset that under Section 186 the Court in the exercise of its discretion calls a meeting of the Company. Secondly, the Courtmust be satisfied that it is for any reason 'impracticable' to call a meeting in any manner in which meetings of the company may be called. Thirdly, the Court has no power to call an annual general meeting. Bearing these principles hi mind we have first to consider the facts of this case. On the 12th March, 1958, the Government of West Bengal gave permission to a partnership firm called Ruttonjee & Co. to start a brewery in West Bengal. About a year later on January 5, 1959, the Commissioner of Excise wrote to the Director of Industries regarding grant of permission to the said firm to establish a brewery. On the 17th January, 1959, the Government of India wrote to the firm enclosing the terms and conditions which were usually

attached to a licence granted under the Industries (Development Regulation) Act, 1931, and asking if the firm was agreeablp to the terms. Thereafter the West Bengal Government granted to the firm a piece of land at Kalyani.

3. On the 4th July, 1959, there was a tentative agreement between the firm and Phipson & Co. (Private) Ltd. The relevant terms of the agreement were: (a) a Company called Ruttoniee & Co. (Private) Ltd., would be formed as a subsidiary of Phipson & Co. (Private) Ltd., (b) the articles of association of Ruttonjce & Co. (Private) Ltd. would provide that H. Bhesania and F. R. Bhesania of Ruttoniee & Co., would be permanent directors out of the total of six directors of Ruttonice & Co. Private Ltd.; (c) the firm will have the right to appoint one more director of Ruttonjee & Co. (Private) Ltd.; and (d) the firm and its nominees would purchase 2,0(10 shares in Phipson & Co. (Private) Ltd., at the rate of Rs. 150.00 per share and another 1,000 shares would be kept reserved for them till the 31st August, 1949.

4. In January, 1960, the Government of India issued a manufacturing licence to this firm. On the 22nd February. 1963, H. R. Bhesania and F. R. Bhesania formed and incorporated Ruttoniee & Co. (Private) Ltd. They became permanent directors. On the 1st March, 1960, the Certificate of Incorporation was issued to the company. Thereafter the Government of West Bengal made actual allotment of the land at Kalyani to the firm.

5. Sometime after incorporation one B. K. Roy also became a director of Ruttoniee & Co. (Private) Ltd. On the 23rd November, 1960, one lac shares of the company were allotted. A further allotment of three lac shares was made on the 16th November, 1961. On September 20, 1961. Vittal Mallya became a director of the company. In the same year Phipson & Co. (Private) Ltd., as well as Ruttonjee & Co. (Private) Ltd. became Public Companies and the shares ofRuttonjee & Co. (Private) Ltd., due to be taken by Phipson & Co. (Private) Ltd.,were allotted to the present petitioner, the United Breweries Ltd.

6. In 1962, with the consent of the said partnership firm, (which was the allottee of the land at Kalyani) Ruttonjee & Co. Ltd. became the lessee thereof. Between 1961 and 1964 the Company's factory was constructed and its machinery was

installed. In 1962, there was cash credit arrangement between the Bank of India and Ruttonjee & Co. Ltd., for Rs. 21,00,000. The guarantors were the United Breweries Ltd., H. R. Bhesania and F. R. Bhesania. The facility for the entire sum of Rs. 21,00,000 was taken by the company. That is why in 1963 another arrangement was entered into between the bank and the company for a cash credit facility of Rs. 5,00,000/- with F. Bhesania, H. Bhesania and Vittal Mallya as Guarantors. (In this second account a sum of Rs. 4,76,809,92 was due by the company to the Bank on the 20th October 1965).

7. On the 23rd August, 1963, Dali Ratanii a director of R. D. & Sons (Private) Ltd., holding 7,000 shares in Ruttoniee & Co. Ltd. was appointed a director of Ruttonjee & Co. Ltd. In 1964, F. M. Bhesania and Sookamal Kanti Ghose became directors of the company, on the 10th August, 1964, Vittal Mallya ceased to be a director.

8. It appears from the above factsthat the Bhesanias through their partnership firm were trying originally to set up a brewery in West Bengal. They succeeded in obtaining the necessary permissions both from the Government of India and the Government of West Bengal. They even secured a plot of land. Apparently they did not have the requisite financial resources and they had to approach Phipson & Co. (Private) Ltd. for raising the necessary funds. Ultimately the Company with which we are concerned in this application, came into existence but the Bhesanias made it a condition that two of them shall be permanent directors of the Company. The financial interest of the Bhesanias in the Company was not large; but the parties agreed that they would have substantial control over the management of the company, presumably because they were instrumental in securing governmental sanction for starting a brewery and making preliminary arrangements therefor. Upto August 1964 all the projects undertaken by the two groups, namely, the Bhesania group and the other group principally represented by Vittal Mallya were going on smoothly. In December 1964 Vittal Mallya sent to Dali Ratanjee and F. R. Bhesania a draft agreement between Ruttonjee & Co. Ltd. and R. D. & Sons (Private) Ltd.I do not intend to discuss the terms of the agreement. It is enough to observe for our purposes that the draft was rejected.

9. Then, on the 27th March, 1965, Vittal Mallya wrote to Dali Ratanjee suggesting inter alia, payment of royalty by Rutlonjee & Co. Ltd. to the United Breweries Ltd., in respect of the labels of the latter which the former would be using on bottles of beer that would be marketed by Ruttonjee & Co, Ltd. The differences of opinion between the two groups started with this suggestion.

10. In April 1965 the Commissioner of Excise, West Bengal, allowed the company's brewery to start manufacturing beer under an ad hoc permission granted in favour of the firm of Ruttonjee & Co. in whose name the original Government permission to start the brewery stood. Pursuant to this ad hoc permission the manufacture of beer commenced.

11. On the 24th June, 1965, Vittal Mallya on behalf of the United Breweries Ltd., wrote to F. R. Bhcsania suggesting certain terms for manufacture of beer. It was suggested for instance that Ruttonjee & Co. Ltd. will be given one-third of the production up to 24,000 dozen per month and one-fourth of the production in excess of 24,000 dozen per month and supplies would be made under the 'Blue Label Export Lager' and 'Beer Brand Lager Labels'. The price structures of different varieties of beer or Lager was also suggested.

12. On the 5th July, 1965, F. R. Bhesania replies to Vittal Mallya's letter of the 24th June accepting some of Mallya's terms and suggesting modifications of certain other terms said to be in the common interest of all concerned.

13. The next important date is the 24th July, 1965. when the Government of West Bengal gave its approval to the grant of a brewery licence at Kalyanl jointly in favour of 'the partnership known as M/s. Ruttoniee & Co. and the Public Limited company known as M/s. Ruttoniee & Co. Ltd.' On the 29th July, 1965, H. Bhcsania as Director of Ruttonjee & Co. Ltd. circulates a proposed resolution amongst the other directors suggesting, inter alia, approval of the draft application to the Additional District Magistrate, Nadia, for grant of the joint licence. The resolution was eventually signed by H. Bhesania, F. R. Bbcsania, F. M. Bhesania, B. K. Roy, Sookamal Kanri Ghose and Dali Ratanjee who were admittedly the directors of the company on that date. This resolution also suggested that B. K. Roy and F. M Bhesania two of the directors of the company shall apply for the licence along with

the said partnership firm and they would represent the company before theExcise Authorities in all matters connected with the licence.

14. The application for the joint licence was made on the 29th July, 1965. H. Bhesania and F. M. Bhesania signed this application as partners of Ruttonjee & Co. and F. R. Bhesania and B. K. Roy signed as directors of the company. The Government granted the joint licence on the 3rd August, 1965 and three days later beer was released.

15. On the 20th August, 1965 the United Breweries Ltd., gave a notice under Section 257 of the Companies Act, 1956, that they intended to propose the appointment of A. K. Thakur as a director of the company at the next annual general meeting which was to be held on or before September 30, 1965, for the year ended March 31, 1965.

16. On the 30th August, 1965, notice was given for the 5th annual general meeting of the company to be held at its registered office at P-19, Ganesh Chandra Avenue, Calcutta-13, at 4-30 p.m. on the 28th September 1965.

17. On the 28th September, 1965, the annual general meeting, according to the Bhesanias, could not be held due to lack of quorum: the required minimum of five share-holders in person were not present. It is common case that the attendance on this date was as follows :--

Share-holders present:

1. H. R. Bhesania

2. United Breweries Ltd. by their Representative H. P. Bhagat.

3. R. D. & Sons Pvt. Ltd. by their Representative D. Ruttonji. Present by proxy:

1. Vittal Mallya'-- By his Proxy A. K. Thakur

2. Jagannath Muchhal -- By his proxy P. Y. Navalkar Directors present:

1. B. K. Roy.

2. Sookamal Kanti Ghose.

18. Now, under Section 174(4) of the Companies Act, 1956, if in an annual general meeting within half an hour from the time appointed for holding the meeting, a quorum is not present, the meeting shall be adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board may determine. The Bhesanias say (vide paragraph 5 (P) of the affidavit-in-opposition of Dali Ruttoniee affirmed on the 10th December 1965) that since the annual general meeting could not be held on the 28th September 1965, for lack of quorum, it was decided that the adjourned meeting would be held at such time, date and place as the directors might determine.

19. On the 29th September, 1965, a notice was issued for a meeting of the Board of Directors on the 30th Septem-ber, 1965. Sookamal Kanti Ghose one of the admitted directors, wrote to H. Bhesania on the 6th October, 1965, complaining that this notice of the Board's meeting was not in accordance with Article 101 of the Company's articles which requires ten days' notice. He says 'I had hardly any time left to attend the meeting'.

20. According to the Bhesanias this meeting of the Board of Directors was held on the 30th September. 1965, and it was decided that as Tuesday, the 5th October, 1965 (which was the date on which the adiourned annual general meeting should have been held under Section 174(4) unless the directors determined otherwise) was the Vijaya Dasami day, that is, a public holiday the adjourned annual general metting would be held on Saturday, the 6th November, 1965, at 12-30 p.m. at the company's registered office at P-19 (26). Ganesh Chandra Avenue; and notices dated the 30th September, 1965, were accordingly issued to the share-holders on or about the 1st October. 1965: Vide paragraph 5 (P) of the said affidavit-in-opposition.

21. According to the Mallya group the adjourned 5th annual general meeting was held at the Company's registered office in accordance with the provisions of Section 174(4) on October 5, 1965 and was adjourned till the next day at the residence of Sookamal Kanti Ghose. The Mallya group says that on the 6th October, 1965. at the residence of Mr. Ghose, B. K. Roy retired from directorship

and A. K. Thakur was elected a director in his place and the other usual business of an annual general meeting was transacted. On behalf of the Bhesania group a contention is raised that, assuming that the meetings of the 5th and 6th October were validly held. A. K. Thakur could not have been elected a director at the residence of Sookamal Kanti Ghose: the election should have taken place at the registered office of the company where the meeting which failed for want of quorum was called.

22. On the 12th October, 1965. H. Bhesania replies to Sookamal Kanti Ghose's letter of the 6th October. 1965. In this reply Bhesania explains why the Board's meeting was called on short notice on the 30th September, 1965. and adds: 'In view of the objection stated in your letter regarding such short notice, a meeting of the Board of Directors would be held on Tuesday, the 26th October, at 5-30 p.m. at the registered office of the Company ..... A copy nf the noticedated the 12th October, 1965. is being forwarded to you separately.'

23. On the basis of this letter it is contended before me on behalf of the petitioner that admittedly there was noproper meeting of the Board of Directors on the 30th September. 1965. The annual general meeting called for the 6th November, 1965, was not therefore, validly convened.

24. The Mallya group asserts that the Board of Directors was duly reconstituted at the annual general meeting held on the 5th and 6th October, 1965, as aforesaid. And at a meeting of the Board on the 18th October, 1965. Sukumar Roy was co-opted as a director pursuant to Article 95 of Company's articles read with Section 260 of the Companies Act, 1956.

25. On the 19th October, 1965, Sookamal Kanti Ghose replied to H. Bhesania's letter of the 12th October, 1965. In this letter Ghose upholds the validity of the annual general meeting and the proceedings thereof held on the 5th and the 6th October, 1965. He contends that no directors' meeting could be held on the 30th September. 1965 pursuant to the notice of the 29th September, 1965, and if any such meeting was held, the same was bad in law and any proceedings thereat were void and inoperative. His further contention is that H. Bhesania, F. R. Bhesania, F. M. Bhesania and Dali Ratanjee have all ceased to be directors of the

company with effect from the 17th June, 1965, for contravention of Section 295 of the Companies Act, 1956. We shall examine this last contention of Sookmal Kanti Ghose in details later in this judgment.

26. On the same date namely the 19th October, 1965, Vittal Mallya as a director of the United Breweries Ltd., addressed a letter to the manager of the Bank of India Ltd. In this letter he informs the Bank that the Bhesanias (incidentally, Dali Rataniee is also a Bhesania) have vacated their respective offices as directors with effect from the 17th June. 1965, owine to contravention of Section 295 of the Companies Act, 1956. Mallya states that on the date of this letter there were three directors of this company, namely, Sookamal Kanti Ghose, A. K. Thakur and Sukumar Roy. He states further that the registered office of the company has been shifted to premises No. 6, Old Court House Street. The Bank of India on the 20th October, 1965, forwarded to Rutton-jee & Co. Ltd. at its Ganesh Chandra Avenue address a copy of Mallya's letter of the 19th October.

27. On the 23rd October, 1965, H. Bhesania, F. R. Bhesania and B. K. Roy describing themselves as directors of Ruttonjee & Co. Ltd. wrote to the manager of the Bank of India Ltd. disputing all the statements in Mallya's said letter of the 19th October and stating that the annual general meeting of the 5th and 6th October was illegal and void.

28. The next interesting event occur-ed on the 3rd November, 1965: a suit wasInstituted in the name of the Company against H. R. Bhesania, F. R. Bhesania, F. M. Bhesania and Dali Ratanjee. inter alia, for a declaration that these defendants have ceased to be directors of the Company from June 17. 1965 or in any event from July 31, 1965: the plaint in the suit was verified by A. K. Thakur.

29. On the same day the Interlocutory Court was moved and an interim order was obtained in the said suit prohibiting the holding of any general meeting or meeting of directors of the company till the disposal of the application.

30. On the 6th November, 1965, the Commissioner of Excise, West Bengal, addressed a letter to Ruttonjee & Co. Ltd. of 26 Ganesh Chandra Avenue. In this letter the Commissioner says that one P. Y. Navalkar describing himself as a

Constituted attorney of the company had written to him, inter alia, that the name of Messrs. Ruttoniee & Co. (i.e. the partnership firm) should be deleted from the aforesaid joint licence granted to the firm and the company. The Commissioner wanted to see the documents of authorisation to Navalkar. On the 11th November, 1965. a reply was sent to the Commissioner that Navatkar's Power of Attorney stood revoked and he was never the holder of any office mentioned in the Excise Rules.

31. On the 9th November, 1965. F. R. Bhesania and Dali Rataniee made an application in the said suit for certain orders and the Interlocutory Court directed on that application that the Company's minute books would be kept with the Registrar for safe custody.

32. On the 15th November, 1965, the Court reopened after the long vacation and the present application was moved on the following day. Certain interim orders were obtained on the application on the 17th November, 1965 which were not material for our purposes at present. On the 8th December. 1965, the Learned Interlocutory Judge vacated the interim injunction in the suit and directed that Board Meetings of the company might be held; but no effect was to be given to the Board's resolutions until the disposal of the present application. The company has been functioning since then under interim arrangements made by orders of this Court obtained from time to time.

33. It is clear from the facts set out above that the company was initially started at the initiative of the Bheaanias with the financial backing of the Mallya group. For some time the company was functioning smoothly as the two groups were working in cohesion. From August/ September, 1965, disputes and differences between the two groups started arising on various matters including payment of royalties to the United Breweries Ltd.

These disputes and differences were not settled through dialogues or negotiations and the breach gradually appeared to be final. The annual general meeting that was to be held on the 28th September, 1965. failed, due to want of quorum. It is not alleged, however, that any one deliberately kept himself away from the meeting with a view to create any difficulties. Thereafter the two groups wanted to

have their annual general meetings in their own ways and the present position is that the Mallya group is contending that the Bhesanias have ceased to be directors and the Bhesania group says that A. K. Thakur and Sukumar Roy are not duly elected directors. Sookamal Kanti Ghose has, it is alleged, in paragraph 17 of the petition, tendered his resignation on the 9th November, 1965.

34. It is against this background that the petitioner invites this Court to exercise its powers under Section 186 of the Companies Act and to call a general meet-Ing with the following agenda-

1. Removing all existing directors and/or persons claiming to be directors namely,

(a) Mr. H. R. Bhesania;

(b) Mr. F. R. Bhesania;

(c) Mr. F. M. Bhesania;

(d) Mr. Dali Ruttonii;

(e) Mr. A. K. Thakur;

(f) Mr. Sukumar Roy;

2. Accepting the resignation tendered by Sookmal Kanti Ghose by his letter dated November 9, 1965.

3. Electing and appointing new directors.

4. To consider the situation arising out of the litigation between rival claimants for the office of the directors of the company and to pass necessary resolution for the proper management of the business of the company.

5. To consider and decide where the registered office of the company should be maintained or located. Obviously, the Court before it exercises its discretion has to enquire into the petitioner's motive. The Court also has to examine the respective contentions aforesaid of the two groups as to who the present directors of the company are with a view to ascertain whether it is, in fact, 'impracticable' to call a

meeting of the company. It was conceded by learned counsel for both the parties that if the Court came to the conclusion that any of the rival contentions aforesaid is unacceptable or there are some persons who are still directors of the company, the power under Section 186 should not be exercised.

35. We have seen above that the very first agenda which is suggested for the general meeting this Court has been invited to call under Section 186 is:

'Removing all existing directors and/or persons claiming to be directors .....'.

Learned counsel for the petitioner has urged that under Article 87 of the Company's articles read with Section 284 of the Companies Act, 1956 a resolution for removal of all the directors would be a perfectly valid resolution. Learned counsel argues further that in view of the disputes between the Mallya group and the Bhesania group the only course open for a proper functioning of this Company is to remove all its directors and elect a new set of directors and the Court should accede to this request to solve the deadlock which exists.

36. Now, Article 87 of the Company's articles provides: 'The number of directors shall not be less than two or more than six. The first directors shall be the promoters of the company, namely :--

1. Mr. F. Bhesania.

2. Mr. H. Bhesania.

'These directors are permanent directors and not liable to removal unless they are otherwise disqualified from continuing as directors under the provisions of the Law.'

37. Mr. Basu, learned counsel for thecompany, says that there is no difficulty in removing these permanent directors. He relies on Section 284 of the Act. Under this section a company may, by ordinary resolution remove a director before the expiry of his period of office.

38. Assuming that by virtue of Section 284 even permanent directors may bo removed; it is to be observed that the power which is given to a Company under

this Section is not an absolute or an unrestricted power. The legislature has provided for adequate safeguards against arbitrary or unreasonable exercise of this power. Sub-section (2) of the Section 284 provides that special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed. Sub-section (3) of Section 284 says that on receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the Company) shall be entitled to be heard on the resolution at the meeting. Sub-section (4) of Section 284 prescribes that where notice is given of a resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so: (a) in any of the resolution given to members of the company, state the fact of therepresentations having been made; and (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company); and if a copy of the representations is not sent as aforesaid because they are received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting; provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter, and the Court may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

39. I have elaborately set out the above provisions just to show that to remove a director under Section 284 certain essential requirements are to be fulfilled. The director concerned must be given a reasonable opportunity to make representations against the proposal for his removal and the share-holders of the company should also have adequate opportunities of being acquainted with such

representations before they subscribed to a resolution for removal. That is precisely why in Clause (b) of the prayers in the present petition directions have been asked for dispensing with the giving of the special notice and the circulation thereof. The point is whether the Court should go to this extent on the facts of this case.

40. It is manifest that the Mallya group wants to eliminate the Bhesania group from the Board altogether although at the inception it was solemnly agreed that two of the Bhesanias would be permanent directors. It may be that, if the two permanent directors were indulging in activities injurious or prejudicial to the interests of the company, there was no reason why they should be retained on the Board: but before a Court is asked to exercise its powers under Section 186 and to dispense with the special notice provided for in Section 284, the Court should at least be told what the specific charges against these two permanent directors are. I have gone through the petition but have not discovered any such charges against them, apart from the statement that some persons are contending that they have ceased to be directors for contravention of Section 295 of the Companies Act, 1956. We shall consider the charge of contravention later; but theCourt should not, in my opinion, be a party to removal of permanent directors (or of any director) of a company by exercising its discretion under Section 186 and dispensing with the said special notice in the absence of concrete, precise and specific charges against these directors with relevant evidence in support thereof. I have said that the motive of a petitioner is an important factor for the Court's consideration in using the discretion under Section 186. The manner in which the petitioner has asked the Court to remove the permanent directors, does not, in my opinion, reveal a laudable motive. I would have occasion to discuss the petitioner's motive again later in this judgment. Mr. Basu arguing for the petitioner, referred to Re: El Sombrero, Ltd. (1958) 3 All ER 1, in which the Court exercised its powers under Section 135 (1) of the English Act which was similar to Section 186 of pur Act; but it was proved that the directors were neither calling annual general meetings nor were they complying with requisitions for general meetings. The facts, to my mind, were entirely different,

41. The next argument of the petitioner's Counsel, Is based on paragraph 5 (k) of the affidavit-in-opposition of Dali Ruttonjee. Learned counsel contends tbat the averments in this sub-paragraph should convince me that the four Bhesa-nias who are all directors of the company, are anxious for a joint licence in the name of the company and the partnership firm of which admittedly two of the Bhesanias are partners and the two others are tha partners' brothers. These are not persons, according to the petitioner's counsel, who can be said to have a real concern for the company's welfare and an attempt at their removal cannot be stamped with bad motive,

42. It Is embarrassing for me to examine this contention as this point has not been taken in the petition, I find from the facts, however, that the Excise Authorities, presumably upon considering all the facts of this case, had granted a joint licence to the partnership firm and the company. And the Mallya group accepted that position. I have been told by counsel for the respondents (who were not contradicted by the petitioner's counsel) that after the present dispute had started an attempt was made to obtain the licence in the name of the company alone: the then Excise Minister of West Bengal was approached: and the Government passed an order for issue of the licence only to the company. The order was challenged under Article 226 of the Constitution and D. Basu, J. had set it aside. The company thereupon represented by A. K. Thakur preferred an appeal against the judgment of Basu, J. The State Government alsopreferred a separate appeal. I understand that the company's appeal has been withdrawn and the State Government's appeal is pending. In these premises it would not be proper for me to infer that the Bhesanias have a mala fide intention as suggested by the petitioner's counsel especially in the face of a judgment of this Court (which has not yet been reversed on appeal) that a licence only to the company, on the facts of this case, should not have been granted.

43. Learned counsel for the petitioner then argued that the Bhesanias have taken up an obstructive attitude making it impossible for the Company's Board of Directors to function under the articles inasmuch as they do not want to pay any royalty to the United Breweries Ltd. for (a) the use of their (that is, the United Breweries Ltd.) Label and trade mark of Sunagar and King Fisher, and (b) for

surrendering territories for sale of 24,000 bottles per month. It is submitted that these are reasonable demands particularly having regard to the sacrifices tha share-holders o the United Breweries Ltd. have made for Ruttonjee & Co. Ltd, It is stated that the United Breweries Ltd., has purchased 3,52,800 shares out of 4,00,000 equity shares of the company by paying Rs. 600 per each share; it has also agreed that its label and trade mark with respect to the two varieties of beer; mentioned above would be used by Ruttonjee & Co. Ltd.; and unless this royalty is realised the directors of United Breweries Ltd., would not be able to justify their conduct before their own share-holders,

44. This is a matter concerning the internal management of the company. The court ought not to express any views on it except in so far as it is necessary to do so to determine the impracticability of calling a general meeting. With this end in view I intend to look into the case of the Bhesanias on this question of payment of royalty to the United Breweries Ltd. Dali Ratanjee in his said affidavit-in-opposition says that Vittal Mallya by his letter dated the 21st August, 1965, addressed to F. R. Bhesania (a copy whereof was sent to Dali Ratanjec) again raised the question of royalty: vide paragraph 5 (o). He says further that Vittal Mallya is anxious that the company should pay a royalty to the petitioner: but if such royalty is paid, the total amount would come up to about Rs. 16,00,000,00 a year, on the basis that the brewery works in one shift only. (Mallya in paragraph 7 of his affidavit-in-reply affirmed on the 17th January 1966 states that the royalty would come up to Rs. 13 lacs approxi-mately). According to Dali Ruttonji the result will be that the company will never be able to pay off its debts or to give anydividend to its share-holders. He charges that in order to achieve this object Vittal Mallya is anxious to have a Board of Directors of his own choice and to remove the Bhesamas; vide paragraph 6.

45. In the Board of Directors of a company it is not at all unlikely that there would be differences of opinion on various matters between two individual directors or two sets of directors. These differences may be settled bv mutual discussions or majority of votes. They may by adopting the appropriate procedure, be also brought before the share-holders for a decision; but I do not think that jn this application I can hold that the Mallya group is justified in asking for a royalty or the

Bhesania croup is unreasonably objecting to it. It is possible that the Bhesania group honestly considers that payment of a huge sum as royalty every year to the petitioner, is not in the interest of the company and its future prospects would be seriously affected if such an arrangement be agreed to. The forum for settlement of this dispute is, in mv opinion, not this Court trying an application under Section 186 of the Companies Act, 1956. I do not think that the Court - should either be a party to or instrumental in the removal of all the Bhesanias from the Company's Board of Directors simply because they do not want to pay royalties to petitioner. I am of the view that Section 186 of the Companies Act was not introduced into the Statute Book to help the majority of share-holders achieve objects of this kind.

46. Let us now examine the contention that the Bhesanias have ceased to be Directors under Section 295 of the Companies Act 1956. Section 295, inter alia, provides that no company (hereinafter called the lending Company) without obtaining the previous approval of the Central Government in that behalf shall directly or indirectly, make any loan to. (a) any director of the lending company or any partner or relative of any such director and (b) to any firm in which any such director or relative is a partner. (Then after discussing the facts of the case His Lordship proceeded:)

47-52. On these slender materials I cannot assume that the Bhesanias have ceased to be directors. I wish to make it clear that I am not expressing any views on the merits of the suit now pending before this Court. On proper evidence to be adduced in the suit the Court may come to a different conclusion; but at the moment for the purpose of the present application the materials available to me do not justify the conclusion that there has been in the instant case a contravention of Section 295 of the Companies Act, 1956. It naturally follows therefore, that unless the Court is satisfied that there are no directors who are capable oflunctioning legally or there is reasonable doubt as to who the directors are the Court would find it difficult to hold that it is 'impracticable' to call a generalmeeting of the company.

53. Learned Counsel for the petitionerhas contended before me that if there is a prima facie case for loan the directors concerned, that is, all the Bhesanias, have

vacated the office under Section 295 read with Section 283(h) of the Companies Act. 1956. To my mind even a prima facie case requires better materials to be placed before the Court. How the merits of the dispute would be decided in the suit is not my concern; but prima facie I must be satisfied that the Bhesanias are no longer directors and they are not in a position to call a general meeting.

54. It is true that there are serious disputes between the parties as to whether the adjourned annual general meeting of the company was held on the 5th and 6th October 1965. If this meeting has been held then A. K. Thakur and Sukumar Roy are now directors of the company: and B. K. Roy is no longer a director. If the meeting has not been validly held, B. K. Roy Is still a director and neither A. K. Thakur nor Sukumar Rov can claim to be directors. As regards the resignation of Sookamal Kanti Ghose also, there is a dispute. The Bhesanias group says that Ghose's letter of resignation was addressed to a non-existent Secretary of the company and is of no effect.

55. In the context of these facts we have to consider the 'impracticability' of calling a general meeting to bring the case within the scope of Section 186 of the Companies Act. Learned counsel for the petitioner refers to annexure 'E' to the affidavit-in-reply of Hari Prem Bhagat affirmed on the 14th January. 1966. This is a copy of a letter dated the 12th October, 1965. which H. Bhesania addressed to Sookamal Kanti Ghose 'for Ruttonjee & Co. Ltd.' and as a Director thereof. In this letter, as we have already observed, Bhesania has explained why notice for an emergency meeting of the Board of Directors to be held on the 30th September, 1965, was issued on the 29th September, 1965. Then Bhesania goes on to say that: 'In view of the objection stated in your letter regarding such short notica, a meeting of the Board of Directors would be held on Tuesday, the 26th October, at 5 30 p. m, at the registered office of the company at P-19, Ganesh Chandra Avenue, Calcutta-13. A copy of the notice dated the 12th October, 1965 is being forwarded to you separately.'

56. The petitioner's counsel contends that from this letter of H. Bhesania it is clear that a fresh annual general meeting has to be called by the Board of Directors.

In the alternative, a requisitioned meeuns under Section 169 of the Companies Act has to be called. In that event a requisition has to be addressed to the Board of Directors so that the requisitionists may call such meeting in case of failure to do so on the part of the Board. According to the petitioner's counsel there are no Directors to whom the requisition can be addressed. In any event, there is no certainty as to the persons who constitute the Board as the matter depends on (a) whether the Bhesanias have vacated office and (b) whether the 5th annual general meeting was validly held on the 5th and 6th October, 1965.

57. I have already held that there is no prima facie case that H. R. Bhesania, F. R. Bhesania, F. M. Bhesania and Dali Rataniee have ceased to be directors of the company. I can understand that the positions of B. K. Roy, Sookamal Kanti Ghose, A. K. Thakur and Sukumar Roy are disputed; but with regard to the four Bhesanias, I cannot hold on the averments in the petition and in the affidavits before me that they are no longer directors of . the company. The company's articles provide that the number of directors shall not be less than two or more than six and the quorum for meetings of the Board of Directors shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one) or two directors, whichever is higher Vide Articles 87 and 102. In these circumstances I am not satisfied that a requisition meant for the four Bhesanias (who according to the contesting respondents are admittedly directors of the company) shall be an invalid requisition. Moreover, on the facts of the instant case, the Court cannot also ignore the provisions of Section 167 of the Companies Act, 1956. This section is as follows :--

'167. Power of Central Government to call annual general meeting.

(1) If default is made in holding an annual general meeting in accordance with Section 166, the Central Government may. notwithstanding anything in this Act or in the articles of the company, on the application of any member of the company, call or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Central Government thinks expedient in relation to the calling, holding and conducting of the meeting.

Explanation -- The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A General meeting held in pursuance of Sub-section (1) shall, subject to any directions of the Central Govern-ment, be deemed to be an annual general meeting of the company.'

58. In the present case there is a dispute as to whether the 5th annual general meeting has been validly held and admittedly no annual general meeting has been held thereafter. Under the Companies Act 1956 the Central Government appears to be a competent authority to call an annual general meeting in cases of default. Section 186 gives power to the Court to call a meeting of the Company other than an annual general meeting. I am told no attempt has yet been made by any member of the company to approach the Central Government. If the result of that attempt had been known, it would perhaps have been easier for me to entertain this application under Section 186.

59. Let us again go back to the practicability of requisitioning a meeting. Learned counsel for the petitioner has urged that in this application the Court should not enter into the controversy relating to the Bhesanias' vacating office under Section 295 as, that is, the subiect-malter of the suit. I do not accept this contention. The Court cannot be expected to exercise its discretionary powers under Section 186 without even ascertaining whether there is a prima facie case against the Bhesanias. A mere allegation that certain persons are not directors of a company, does not create a ground for an application under Section 186186. I do not think, that is or can be the object of the section. The Court, to my mind, must test the basis of the allegation before it decides upon calling a meeting under Section 186.

60. The next contention of the petitioner's counsel, is that there appears to be two registered offices of the company; one at the office of the partnership at 26, Ganesh Chandra Avenue and the other at 6, Old Court House Street, Calcutta. Under Section 169 a requisition has to be deposited at the company's registered office; but in view of the contentions of the parties herein, it is not at all certain where the registered office is.

61. From a letter of A. K. Thakur to Messrs. Fowler & Co. dated October 20, 1965 (a copy whereof has been annexed to Mallaya's affidavit-in-reply) it appears that according to the Mallya group or the Thakur group the registered office of the company was transferred from 26 Ganesh Chandra Avenue to 6, Old Court House Street. Calcutta-1 'from October 19, 1965'. The case of the petitioner is that on the 18th October, 1965, a meeting of the company's Board of Directors was held. At this meeting Sukumar Roy was co-opted as a director and it was decided that the company's registered office would be transferred as aforesaid. The Bhesania group in my view, rightly con-tends on the facts placed before me that the decision to transfer the registered office is of no effect inasmuch as no notice of the meeting of the Board was sent to or received by any of the Bhesanias: Article 101 of the Company's articles clearly provides that 10 days' notice of every meeting of the Board of Directors shall be given in writing to every director for the time being in India and at his usual address in India to every other director, provided that a meeting of the Board may be called at less than 10 days' notice with the consent of all the directors.

62. There is no prima facie case that the Bhesanias have ceased to be directors. In the premises a meeting of the Board of Directors could not be convened without notice to the Bhesanias. If a meeting was held without such notice and in that meeting it was resolved that the registered office should be transferred, the resolution, to my mind, on the facts at present available is of no effect. Moreover, admittedly this meeting of the Board was not held at the company's the then registered office at No. 26, Ganesh Chandra Avenue Calcutta. The registered office of the company, therefore, still continues to be at 26, Ganesh Chandra Avenue.

63. Learned Counsel for the petitioner then says that it is also not clear to whom the notice of the requisition is to be given. It is common case that before the disputes started H. R. Bhesania was the Chairman of the company's Board of Directors. The notice of the requisition may be addressed to him at No. 26, Ganesh Chandra Avenue and after getting this notice if the Board fails to convene the requisitioned meeting, the consequences prescribed by Section 169 of the Companies Act would, in my opinion, follow. Learned counsel appearing for all the

contesting respondents, have repeatedly assured me in course of the hearing upon instructions that a notice of requisition addressed as aforesaid to H. R. Bhesania would be duly received.

64. The next argument of the petitioner's counsel is that by reason of Section 174 of the Companies Act a requisitioned meeting would fail for want of quorum if the Bhesanias do not attend the meeting. This is a hypothetical problem and the Court cannot be expected to solve it at the moment.

65. On these facts the position appears to be that unless the result of an attempt to convene a requisitioned meeting is known, I do not think it would be proper for the Court in the exercise of its discretion to call a meeting under Section 186. My view is that to reach the conclusion that 'it is impracticable to call a meeting of the company .....in any manner inwhich meetings of the company may becalled' as contemplated by Section 186, it is necessary for the Court to know on the facts of this case, that the shareholders made an attempt to call a requisitioned meeting but that attempt had failed.

66. The petitioner's Counsel has also invited me to take into consideration certain other facts of this case. He says that if the 5th Annual General Meeting of the Company has not been validly held there may be prosecutions. Secondly, another year has ended on the 31st March 1966, which means that the 6th annual general meeting should have been called by the 30th September. 1966. Thirdly, no balance sheet can be prepared unless the auditors are asked to do so by a resolution of the Board: no dividend can be declared or paid; and a young Company which has started production for about a year oniy cannot be killed by the greed of only 12% of the shareholders. Learned Counsel submits that in circumstances such as those the only remedy is to have an annual general meeting under orders of the Court.

67. It is true that the 6th annual general meeting has not been called; but in view of the interim orders of this Court I have already mentioned, I do not think any prosecution ought to succeed. Secondly, if there are serious difficulties in holding the annual general meeting or default is made in holding it, the Central Government may be approached under Section 167 to solve the problem; but up-

till now no such attempt has been made. I am not impressed by the argument that the greed of a minority of share-holders js holding back the normal functioning of this Company. The minority group tells me in rebuttal of this allegation that the trouble has arisen owing to the greed of 88% of the shareholders headed by Vittal Mallya who claims a royalty of Rs. 16,00,000.00 a year according to Dali Ruttonjee [Paragraphs 5 (o) and 6 of the Dali Ruttonjee's affidavit-in-opposition) and about Rs. 13,00,000.00 a year according to Vittal Mallya (Paragraph 7 of Mallya's amdavit-in-reply). I have said, I would not enter into the merits of the dispute and pronounce my opinion as to which group is justified in taking up its attitude; but on the materials at present available to me, I am reluctant to accept the proposition that a meeting should be called by this Court because a minority of share-holders is unreasonably causing obstructions.

68. Learned Counsel for the petitioner argued further that the deadlock has reached such a stage that if Sukumar Roy and A. K. Thakur called a meeting, the Bhesania group would file suits. If, on the other hand, the Bhesania group called a meeting, the Thakur group wouldfile suits. The pending suits, says the petitioner's Counsel, would be taken up on appeal: from the suits that may be filed there would be appeals: and it is exactly to prevent such a situation that the Court assists the share-holders in expressing their wishes at a meeting called by the Court.

69. I am not saying that this point is altogether without substance; but one should also consider that suits and appeals could he filed as a matter of right whether there was any foundation for them or not; but when pending suits or appeals and the possibility of further suits and appeals form the basis of an application under Section 186, the Court, to my mind, has a duty to see if there is a prima facie case. In the present application I can see that there are disputes which are not perhaps frivolous regarding the positions of B. K. Roy, Anil Thakur, Sukumar Roy and Sookamal Kanti Ghose vis-a-vis the Board of Directors of the Company; but I have not found a prirna facie case against H. R, Bhesania, the Chairman of the Board of Directors, F. R. Bhesania, F. M. Bhesania and Dali Ruttonjee that they have ceased to be directors. I do not want to repeat what I have said earlier on this point. This Company requires a minimum of two Directors only to constitute a

Board. And there arc at least 4 Directors against whom, in my opinion, no prima facie case exists at this moment. If I could come to the conclusion on the facts stated before me that there were doubts as to whether the Bhesanias also were still the directors of the Company, I might have been inclined to exercise my powers under Section 186; but no materials have been placed before me to reach that conclusion except that certain persons are contending that they have ceased to be directors Contentions alone would not do if the facts stated by Dali Ruttonjcc in paragraph 5(k) of his affitlavit-in-opposition, go practically unchallenged.

70. In concluding my views on the facts of this case, I intend to reiterate that from the relevant paragraphs in the petition and the various affidavits in these proceedings, it seems to me that the Mallya group is determined to throw out the Bhesania group who took the initiative in bringing this company into existence without any positive complaint against them or without giving them an opportunity to answer the charges, if any, against them by a brute majority of votes in the general meeting. The Court has a discretion under Section 186 and that discretion, in my opinion, should not be used in favour of the petitioner with these facts in the background,

71. Numerous decisions were cited at the Bar. I need not refer to all of them. I would only discuss the cases decided by our Court and an English case in whichthe facts leading to impracticability of calling a general meeting were considered.

72. In re Lothian Jute Mills Co- Ltd., (1951) 55 Cal WN 616 Sinha, J., as he then was. had to consider the provisions of Section 79(3) of the Companies Act, 1913, which were the same as in Section 18G of the new Act. There were disputes between two rival groups of directors. His Lordship has laid down certain general principles to be observed in applying Section 79(3). These principles are as follows:

1. The Court would not ordinarily interfere in the domestic management of the Company which must be conducted in accordance with the powers contained in the regulations of the Company.

2. But where the meeting can be called only by the directors and there are serious doubts and controversy as to who are the directors and where there is possibility that one or other or both the meetings called by the quarrelling groups of directors may be invalid, the shareholders should not be exposed to the uncertainties flowing from the situation and the consequent litigation and it should he held that a position has arisen which makes it 'impracticable' for the meeting being called in accordance with the articles.

3. The Court should exercise its powers where it cannot say with reasonable approach to certainty, or even prima facie that the meeting called in exercise of the powers contained in the regulations will be valid.

73. This is the first case of this Court cited before me. Sinha. J., on the facts of the case upon considering the disputes raised by the rival groups did exercise his powers under Section 79(3) 'in order to resolve the conflict and uncertainty' which had arisen. With respect I agree with the broad principles enunciated by the learned Judge; but by applying those principles to the instant case, I am finding it difficult to invoke my powers under Section 186. I cannot with reasonable approach to certainty or even prima facie say that a meeting called in accordance with the articles of this Company, will not be valid. There is no challenge here to the appointment of directors ab inilio. So far as the Bliesanias are concerned, the allegation is that by reason of some specific act after a valid appointment they have ceased to be directors. Such an allegation has to be examined to sec if there is a prima facie case. The Bhesania group's contention before me is, that money was received for the specific purpose of payment of excise duly: it was received entirely for the benefit of the Company; it would be realised by the Company out of the sale proceeds: and it was not repayable by any of the directors at all. As a matter of fact uptil now no suit has been filed for the recovery of any alleged loan. It is also stated that the money did not belong to the Company at all; it waspaid in cash bv some one else as the Company had no money. On these facts I cannot prima facie hold that the four Bhesa-nias have ceased to be directors; and then draw the conclusion that it is 'impracticable' to call a general meeting in the ordinary way.

74. The next case to which my attention was invited, was the case of Malhati Tea Syndicate Ltd. reported in (1951) 55 Cal WN 653. Here also there were disputes as to whether there was a valid Board of Directors. At page 655. Banerjee, J., observes: 'It is difficult for me on this application and it would be inexpedient having regard to the pending suits, to decide which of the directors have been validly appointed. I am not satisfied on the facts of this case that there is a Board of Directors who can call a meeting in the manner in which a meeting of the Company may he called. Meetings held otherwise than under direction of the Court under Section 79 in the circumstances of this case, would lead to interminable troubles and prejudice the interest of the Company-'

75. On the same grounds which I have advanced in discussing the Lothian Jute Mills Co. Lid's case, the judgment of Banerjee, J. is also distinguishable.

76. We next come to the case of the Indian Shipping Mills Ltd. v. M. S. J Bahadur Rana. : AIR1953 Cal355 . This is a judgment of the Appellate Court by Harries, C. J. sitting with Banerjee, J. The question arose as to whether it was im practicable to hold an extraordinary general meeting. The Trial Court made an order calling a meeting under Section 79 (31 of the 1913 Act. One A. C. Boy Chowdhury had been elected Chairman of the Board of Directors but disputes arose and eventually the other directors challenged his position on the Board, ;md he was requested 'to vacate from the Board of Directors ..... '. Hov Chowdhury was thereafter excluded from the Board and another share-holder was co-opted in his stead and a new Chairman was appointed.' The contesting respondents contended that the entire proceedings excluding Roy Chowdhury and appointing a new Chairman were illegal and of no effect. The position of Hov Chowdhury also became the subject-matter of two suits in which the contestants aforesaid tried to assort their respective positions. In one of the suits there was a praver for a declaration that an extraordinary gene-ral meeting which had been called on September, 9. 1950, was improperly con vcned. and further that anv directors appointed at that meeting should be declared to have been invalidly appointed. It appears that a requisition was served on the directors to call an extraordinary general meeting but they did not comply with the requisition and when the requisitioniststhemselves proceeded to call the meeting, the suit was filed to

defeat it.

77. The facts of this case clearly point to the impracticability of calling a general meeting in the usual way and the Appellate Court affirmed the decision of the Trial Court calling a meeting under Section 79 (3). Harries, C. J. observes in paragraph 18 at page 356: 'The learned Judge rightlv refused to decide the matters which are in issue in the suit and 1 do not think it will be right for us to express anv opinion upon these matters. However, it is clear that there is serious dispute between the parties as to whether Mr. Roy Chowdhury was qualified to act aa a director and whether or not he was wrongly excluded from the Board. If it transpired in the suit that he was wrongly excluded from the Board. difficulties might arise concerning any meeting which the requisitionists might call under Section 78 (3). In fact it seems fairlv clear that if such a meeting was railed it would be the cause of considerable litigation'. In paragraph 19 at page 357 Harries. C. J. savs: 'If the meeting was called, difficulties would undoubtedly arise as to the conduct of the meeting. In an extraordinary general meeting the parties might elect their own Chairman, but the probabilities are that objection would at once be taken to Mr. Roy Chowdhury either acting as Chairman or even voting or being concurred in the proceedings at all. It seems to me that if the requisitionists were allowed to conduct this meeling endless difficulties would arise and therefore, I think the learned Judge was right in holding that it was impracticable to hold such a meeting.'

78. Harries, C. J. supports the meaning of !he word_ 'impracticable' given by Bancrjce. J. in the case of the Malhati Tea Syndicate Ltd.. (1951) 55 Cal WN 653, ibid. Banerjee. J. adopted the meaning which the Judicial Committee gave to the word 'impracticable' in Commissioner, Lucknow Division v. Deputy Commissioner of Partabgarh, reported in . According to the Priw Council 'impracticable' means impracticable from a reasonable point of view, and B.inerjee. J. has added in the case of the Malhati Tea Syndicate Ltd., (1951) 55 Cal WN 653 that 'the Court takes a commonsense view of the matter and acts as a prudent person of business.'

79. I have discussed this judgment of the Appellate Court slightly in details with a view to point out the meaning that should be given to the word 'impracticable' in Section 186 of the Companies Act. 1956. The Court in every case has to look at the facts from a reasonable commonsense point of view and act as a prudent person of business to decide whether it has become 'impracticable' to call a general meeting. That is one of the reasons why Ihave been saying that a prima facie case against the Bhesanias should have been established in the instant case to enable the Court to decide upon the impracticability of convening a general meeting in the ordinary manner.

80. I would now come to a case recently decided in England. It is the case of El Sombrero Ltd. reported in (1958) 3 All ER 1. The provisions of Section 135 (1) of the English Companies Act, 1948 are similar to those of Section 186 of our Act. The applicant in this case held 90 per cent, of the shares of Private Company incorporated in March, 1956. There were two Directors and each of them held 5 per cent, of the shares. The quorum for general meetings was two members present in person or by proxy, and. if within half an hour from the time appointed for a meeting a quorum was not present, the meeting, if convened on the requisition pf members, was dissolved. No general meeting of the Company had ever been held. On March 11, 1958, the applicant requisitioned an extraordinary general meeting, for the purpose of passing resolutions removing the two directors and appointing two other persons as directors. The existing directors failed to comply with the requisition. The applicant himself convened an extraordinary general meeting for April 21, 1958. The directors deliberately did not attend the meeting either in person or by proxy, and. as a quorum was not present, the meeting was dissolved. On April 29, 1950, the applicant served a special notice, under Section 142 of the Act of 1948, of his intention to move the same resolutions, under Section 142 and Section 184. at the next extraordinary general meeting of the Company. On the same day he took out an originating summons asking for a meeting to be called by the Court, under Section 135 (1), for the purpose of passing the resolutions, and for a direction that one member of the Company should be deemed to constitute a quorum at such meeting. The directors opposed the application. Wynn-Parry, J.. has held: (i) as a practical matter the desired meeting of the Company could not be conducted in accordance

with the articles of association and the Court had jurisdiction under Section 135 (1) of the Companies Act. 1948, to order a meeting to he held notwithstanding opposition by the share-holders other than the applicant and (ii) an order for meeting to be held and that one member present should constitute a quorum would be made be-cause (a) to refuse the application would be to deprive the applicant of his statutory right under Section 184 to remove the directors by means of an ordinary resolution, and (b) the respondent-directors had failed to perform their statutory duty to call an annual general meeting for the reasonthat, if they had convened a general meeting they would have ceased to be directors.

81. It is apparent that the facts of the case before Wynn-Parry, J., were much stronger than the facts here. In the English case the facts established that there was an impracticability to which the directors themselves had contributed. In our case it cannot be said that the directors have failed to call any annual general meeting. In our case there has been no requisition as yet which the directors have not complied with and it is also not yet in evidence that the Bhesania group has deliberately refrained from attending any extraordinary meeting so that the quorum may not be present. I do not think that the decision of Wynn-Parry. J. can be applied to the facts of the present case.

82. Reliance was also placed on Stroud's Judicial Dictionary, Third Edition, Vol. 2, at page 1377. It says: 'The words 'impracticable to conduct a meeting' in Section 115 (2) of the Companies Act, 1929 .... see now Companies Act,1948, ... Section 135 covers thecase where it is impracticable owing to the terms of the articles and the slate of share-holding in the company to get a quorum present: Re Edinburgh Workmen's Housing Improvement Co., 1935 SC 56.' Learned Counsel for the petitioner has urged that having regard to the state of the share-holding in this Company it is impracticable to get a quorum. I have already said that on the facts of the case the proposition at present appears to be hypothetical. In the case of El Sombrero Ltd., (1958) 3 All ER 1 as we have seen, the dissenting group deliberately chose not to attend the meeting to frustrate the purpose of the meeting due to lack of quorum. We do not yet know what the Bhesania group is going to do if an extraordinary general meeting is requisitioned. Until that is known I do not see how the Court in the exercise of its judicial discretion, can call a

meeting under Section 180.

83. I would now come to the case of Bengal and Assam Investors Ltd. v. J. K. Eastern Industries Private Ltd.. reported in : AIR1956 Cal658 . P. B. Mukharji