

**Company Appeal No. 17 of 2014 in
Company Application No. 198 of 2014 in
Company Petition No. 1 of 2014**

**PISCES PORTFOLIOS PRIVATE LIMITED
WITH
HB ESTATE DEVELOPERS LIMITED**

Present: Mr. Anand Chhibber, Senior Advocate with
Mr. Sandeep Bhuraria, Advocate and
Mr. Vikas Mohan Gupta, Advocate and
Ms. Sonal Datta, Advocate for the appellants.

Company Application No. 37 of 2014

Certified copy of the impugned order be filed in accordance with law.
Application stands disposed of.

Company Application No. 38 of 2014 in Company Appeal No. 17 of 2014

A Scheme of Amalgamation between the two companies before us, was placed before the learned Company Judge. The learned Company Judge passed an order on 24.01.2014 noticing the consent for Scheme of Amalgamation as consent of 99.99% of the share holders of the transferor company and unsecured creditors constituting approximately 84% of total unsecured debt of the transferor company and unsecured creditors of the transferee company constituting 97% of the total unsecured debt, thus directed the meetings to be held of secured creditors of two companies as well as of the share holders of the transferee company on 12.04.2014 as per the specified times. The Chairperson and alternative Chairperson were appointed to submit their reports to the Court. The order also prescribed due notice to all the concerned parties including through publication in English and vernacular newspapers and official gazette of the Government of Haryana. The said notice was to be published at least 21 days before of the date of proposed meetings. Individual notices to the share holders of the transferee company were also ordered to be served through ordinary post through 'Franking' of Postal Department.

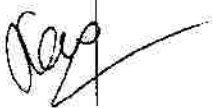


2. The Appellants pleaded that the notices for convening of the meeting including of the share-holders of the transferee company were got approved from the Chairperson duly signed (Annexure A-2 at page 398). The notices have been duly published in the English and vernacular newspapers giving 21 days clear notice on 08.03.2014. A problem, however, arose on account of the fact that the request for publication in the official gazette of the Government of Haryana was made on 20.03.2014 i.e. 23 days in advance but it has been published on 25.03.2014. The second linked problem has been that in the Gazette published, mistakenly the time of the meeting has been mentioned as 11.00 P.M. instead of 11.00 A.M. for the share-holders meeting of the transferee company because of the fact that meeting of the secured creditors of both the transferor and transferee companies were to be held in the afternoon at 2.00 P.M. and 3.00 P.M. respectively and thus A.M. and P.M. appeared to have mixed up together, for which no fault could be attributed to the appellants. The aforesaid situation resulted in C.A. No. 198 of 2014 being filed by the Chairperson in which appropriate orders/directions were sought.

3. There are three aspects pointed out in this application at page No. 408:-

- i) The charges for publication in the official gazette were so deposited as per receipt dated 25.03.2014 beyond the period of advance notice of 21 days.
- ii) The time for the share holders meeting of the transferee company has been wrongly mentioned as 11.00 P.M. instead of 11.00 A.M.
- iii) Only photocopies of the bills of 'Franking' of Postal Department for the purpose of filing service report instead of original bills have been produced.

It appears that the aforesaid application was listed before the learned Company Judge on 07.04.2014 when the orders were passed without giving opportunity to file any reply.



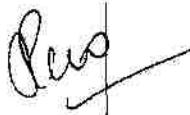
4. As per Mr. Vikas Mohan Gupta, Advocate, who was present in the Court of learned Company Judge representing the appellants before us, the meeting scheduled for 12.04.2014 has been stayed.

5. The appeal was mentioned in the morning as tomorrow is a public holiday on account of general elections and it was pleaded that all the notices have been sent to over 72000 share holders; e-voting and postal ballots were closed on 07.04.2014 at 5.00 P.M.; all arrangements for meeting are in order; publication in newspapers has occurred well in time including sending of individual notices and the appellants have almost spent Rs. 26 lacs in carrying out necessary process, all of which would be brought to naught if the meeting is stayed. It is stated that the share holders are spread over all over the country and though there is broadly consent of all of them, number of share holders spread all over the country would be visiting for the meeting.

6. On the aforesaid plea, we directed the matter to be taken up today. When we perused the file, we find that the impugned order is not available. It is stated by learned counsel for the appellants that the impugned order is still not available. We directed the matter to be verified from the Court of the learned Company Judge and it appears that the copy of the impugned order is still not available and it is 3.45 P.M.

7. It is in the aforesaid peculiar facts and circumstances we proceed to to pass some order which may be appropriate in the given factual situation.

8. Before us there is no dispute as is also apparent from the application filed by the Chairperson that there is no deficiency in compliance of all the requirements for holding the meeting including sending of individual notices, publication in the newspapers etc, which would have given adequate publicity. No doubt, publication in the official gazette has also been carried out as information to the Government as also for additional information to the public at large but that too has occurred albeit with notice of 18 days instead of 21 days. The application for publication in the official gazette was made 23 days in advance and the charges were deposited on the same date and not on 25.03.2014 as recorded in the application of the Chairperson (receipt for deposit shown).



9. Learned Senior Counsel also contends that in other similar case learned Company Judge had infact exercised jurisdiction even waiving of time period for service of notice (C.A. No. 108 of 2014 in C.P. No. 6 of 2014 M/s Osho Gears & Pinion Ltd. with M/s Emson Gears Ltd. decided on 03.03.2014). This was done to facilitate the meeting for being carried on. A reference has also been made to another order passed by the learned Company Judge in C.P. No. 68 of 2013 (Tirupati Aluminium Ltd. and Super Plateck Private Limited.) dealing with the Scheme of Amalgamation, for which schedule was fixed on 29.05.2013 which order was varied on 24.07.2013 recording that the meeting had been held and vide a separate order requirement of publication in the official gazette had been dispensed with.

10. Staying of meeting, in our opinion, would cause grave prejudice to the appellants companies and inconvenience to the share holders who would be visiting for the meeting from different parts of the country and it would be too late for them to change their programme. Not only that, order dated 24.01.2014 shows support of the unsecured creditors and share holders of the transferor company as stated aforesaid.

11. We are thus of the view that it would be appropriate to issue notice to the Chairperson and the alternative Chairperson with the following interim directions:-

- i) The meeting will proceed on 12.04.2014 as originally directed vide order dated 24.01.2014.
- ii) Operation of the order dated 07.04.2014 passed by the learned Company Judge would remain stayed till the next date when the order would be placed on record.
- iii) The validity of the meeting would be determinable subject to the further orders to be passed by this Court.
- iv) The decision taken on the meeting held of secured creditors and the share holders would not be given effect to till the next date.



- v) The result of the meeting will be produced before this Court by the Chairperson/alternate Chairperson on the next date.
- vi) The corrigendum to be published in the official gazette (as proposed by learned counsel for the appellants) would also be placed on record.

Necessary consequences of the order would be that the Chairperson/alternate Chairperson will proceed with the meeting as originally envisaged vide order dated 24.01.2014.

We make it clear that the appellants will claim no special equities arising from the expenses incurred for the meeting, if it ultimately opined against the appellants.

List again on 23.04.2014.

A copy of the order be given dasti to learned counsel for the appellants under the signatures of the Bench Secretary.

Attested

Sans

Principal Secretary
(Judicial)-cum-Joint Registrar
To The Hon'ble Chief Justice

09.04.2014
'ravinder'

SJK
[SANJAY KISHAN KAUL]
CHIEF JUSTICE

AP
[ARUN PALLI]
JUDGE