

(1982) 08 BOM CK 0010

In the Bombay High Court

Case No : Company Application No. 235 of 1982 in Company Petition No. 84 of 1981 connected with Company Application No. 2665 of 1980

Centron Industrial Alliance Ltd.

APPELLANT

Vs

Pravin Kantilal Vakil and another
 Mrs. Rohini Ramesh
Save Vs Pravin Kantilal Vakil and another

RESPONDENT

Date of Decision : 16-08-1982

Acts Referred:

Companies Act, 1956 — Section 169, 173, 274, 391, 391(1)
Monopolies and Restrictive Trade Practices Act, 1969 — Section 23

Citation : (1985) 57 CompCas 12

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Judgement

Mrs. Sujata V. Manohar, J.—The petition company, Centron Industrial Alliance Limited, has filed a company Petition bearing No. 84 of 1981 (See Centron Industrial Alliance Limited Vs. Pravin Kantilal Vakil and another, under the provisions of s. 391 of the Companies Act, 1956, for sanctioning a scheme of amalgamation of the petitioner company with M/s. Brooke Bond India Ltd. The petitioner company was incorporated in the year 1949. It became a public limited company in the year, 1974. It is admittedly in financial difficulties since 1975. In September, 1976, the board of directors of the petitioner company was reconstituted and director sponsored or nominated by the State Industrial and Investment Corporation of Maharashtra Ltd. (SICOM) and United commercial Bank (UCO Bank) were inducted on the board of directors of the petitioner company. Ever since the petitioner company became a public limited company in the year 1974, the petitioner company has not paid any dividend whatsoever under the shareholders. The company has been declared a relief undertaking under the provisions of the Bombay Relief Undertaking (Special Provisions) Act, 1958, with effect from January 1, 1977. In these circumstances, in or about 1980, a scheme of amalgamation was proposed on behalf of the petitioner company of its amalgamation with the Brooke Bond India Ltd. Thereafter, in

pursuance of an order passed by this court in November 26, 1980, statutory meeting of the shareholders, secured creditors and unsecured creditors of the petitioner company were held on January 27, 1981, to consider the proposed scheme of amalgamation. At the meeting so held, 97.30 per cent. of the shareholders, 100 per cent. of the secured creditors and 98.50 per cent. of the unsecured creditors approved of this scheme. Thereafter, on March 6, 1981, Company Petition No. 84 of 1981 (See Centron Industrial Alliance Limited Vs. Pravin Kantilal Vakil and another, was filed for auctioning the said scheme of amalgamation. An application was also made to the Central Govt. under the provision of s. 23 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as "the MRTP Act"), for its approval to the said scheme of amalgamation.

2. It seems that at about the time that scheme of amalgamation in question was propounded, there the time was an alternative scheme under which Harbans Lal Malhotra and Sons Ltd. (hereinafter referred to as "the Malhotra") who were competitors in trade of the company, had proposed to take on lease the factory premises of the petitioner-company. This alternative proposal was rejected at that time by the board of directors and the two secured creditors (SICOM and UCO Bank) of the petitioner company as not advantageous to the company.

3. When the petitioner company applied for approval of the Central Govt. under s. 23 of the MRTP Act, the scheme was strongly opposed by the Malhotra. The secured creditors, on the other hand, supported the scheme of amalgamation. By an order dated January 21, 1982, the Central Govt. of the proposal of M/s. Brooke Bond India Ltd. for amalgamation of the petitioner company with it the application dated February 20, 1980. The Malhotras moved the Supreme Court against the order of the Central Govt. dated January 21, 1982. The Supreme Court, however, by its order dated March 12, 1982, declined to stay further proceeding in any High Courts or any authority but ordered that any order passed would be subject to the result of the appeals. It also directed that in the event of either of the high Courts sanctioning the scheme of amalgamation, the judgment will not take effect for a period of four weeks. After the above order was passed by the Supreme Court, the opponents in this company application, Pravin Kantilal Vakil and another, lodged a requesting dated May 28, 1982, signed by the requisite number of shareholder at the registered office of the petitioner company to be held on July 9, 1982, to consider the following resolution :

"Resolved that the company renegotiate with the Brooke Bond India Ltd. and/or examine alternate scheme(s) in the interest of the company and for the purpose, resolved further that the company should withdraw Company Petition No. 84 of 1981 (See Centron Industrial Alliance Limited Vs. Pravin Kantilal Vakil and another, filed in the High Court in Bombay from date of this resolution."

4. There was an explanatory statement annexed to this notice to which I will refer later. Pursuant to this requisition, the board of directors by their notice

dated June 11, 1982, convened an extraordinary general meeting of the company as requisitioned. The notice convening the extraordinary general meeting is exhibit "C" to the petition. Thereafter, one Bhagwandas, a shareholder of the petitioner-company, filed a suit in the Bombay City Civil Court for an injunction restraining the company from holding the extraordinary general meeting. He also took out a notice of motion for an injunction to restrain the holding of the meeting. The City Civil Court, however, did not grant such an injunction. Thereafter, the applicant herein, who is also a shareholder of the petitioner company has taken out the present judge, s summons for an order, that pending the hearing and final disposal of Company Petition No. 84 of 1981 (See Centron Industrial Alliance Limited Vs. Pravin Kantilal Vakil and another, the opponents, their servants and agents should be restrained from holding and proceeding with the extraordinary general meeting.

5. In order to consider Whether an injunction as prayed for can be granted or not, it is necessary to consider the nature of the requisition which has been received by the petitioner-company and the purpose for ordered at the requisitioned meeting is in two parts. The first part of the resolution call upon the company to renegotiate with M/s. Brooke Bond India Ltd. and/or to examine alternate scheme in the interest of the company. The main part of the resolution, however, calls upon the company to withdraw Company Petition No. 84 of 1981 (See Centron Industrial Alliance Limited Vs. Pravin Kantilal Vakil and another, The main purpose of requisitioning the meeting of shareholder is to compel the company to withdraw Company Petition No. 84 of 1981 (See Centron Industrial Alliance Limited Vs. Pravin Kantilal Vakil and another, which is petition for sanctioning the scheme of amalgamation. The resolution itself makes it quite cleat that unless Company Petition No. 84 of 1981 is withdrawn, the company cannot either renegotiate with M/s. Brooke Bond India Ltd. or examine any alternative schemes. It was strongly argued by Mr. Bhabha, the learned counsel for the opponents, that the requisitioned meeting has been called mainly for the purpose of considering alternative scheme which may be beneficial statement attached to it, it becomes quite clear that the requisitionists have not put fort before the shareholders may alternative scheme what so ever. The explanatory statement sets out the following :

(i) That one of the shareholder of the company, Mr. Joseph Sabastian D'Mello has filed an affidavit out the fact and figures for the proposed scheme of amalgamation with M/s. Brooke Bond India Ltd. as not fair and equitable to the shareholder of the company. Under sub-paras. (a) to (e), the explanatory statement sets out why, according to the requisitionists the scheme of amalgamation is not beneficial to the shareholders of the petitioner-company.

(ii) In the next paragraph, it is stated that the final sanctioning of the scheme of amalgamation of the scheme will not be granted before September, 1982, and this delay is very long. It then sets out that the company should either renegotiate the terms of merger with M/s. Brooke Bond India Ltd. or it should

examine any alternative course of action. There is nothing in this explanatory statement which would show either that there are any alternative proposals more beneficial to the company, or that there is any possibility of renegotiation with M/s. Brooke Bond India Ltd. Quite clearly, the purpose of requisitioning the meeting of the shares should be to get rid of the company petition which is pending before this court for considering the scheme of amalgamation with M/s. Brooke Bond India Ltd.

6. Under s. 391 of the Companies Act, 1956, whenever scheme of amalgamation is put before the members or classes of members or credit or classes of creditors of a company at the statutory meeting converted for the purpose under s. 391(1) of the Companies Act, 1956, if a majority in number representing three-fourths in this value of the class of members or creditors, as the case may be, present and voting at the meeting agree to any compromises or arrangement, it shall, if sanctioned by the court be binding on all members or creditors of the class, as the case may be, and also on the Company. As pointed out by the Privy Council in the case of *Raghubar Dayal v. Bank of Upper India Ltd.* AIR 1919 PC 9, the arrangement will take effect from the date of approval of the arrangements at the statutory meeting held for the purpose, and not from the date of sanction by the court. Thus, under s. 391 of the Companies Act, 1956, a specific method company to a proposed scheme. Once such an approval is obtained in the manner proceeded by s. 391., the scheme, subject to being sanctioned, become binding on all the members and/or creditors of the company as also on the company from the date of granting of such approval by the members and/or creditors. Under r. 79 of the Companies (Court) Rules, 1959, where the proposed compromise or arrangement is agreed on with or without modification, as proceeded by sub-s. (2) of s. 391, the company shall, within 7 days of the filing of the report by the chairman of the statutory meeting (s), present a petition to the court for confirmation of the arrangement. If the company fails to present any petition for confirmation within the time prescribed, it shall be open to any creditor or contributory, with the leave of the court, to present the petition the petition and the company shall be liable for the cost thereof. Thus, after a scheme is approved at the statutory meeting(s) held for the purpose, the company is under an obligation to present a petition for confirmation of the scheme within 7 days of the filing of the report by the chairman of such meeting or meetings.

7. Can the Shareholders after requisition a meeting for the purpose of compelling the company to withdraw the petition for sanctioning the scheme ? In other words, is it independent the shareholders to compel the company to result from its legal obligation to present a petition for confirmation of the scheme ?

8. It is nobody's case in this application that the statutory meeting which were covered and held for the purpose of considering the scheme for the amalgamation in questions were either not properly covered or that there was any withholding of the relevant information from the persons attending and

voting and these meetings. The statutory meetings were properly covered and properly held. At these meetings, there was no dispute that an overwhelming majority of member of members and secured creditors and unsecured creditors approved of the scheme. What is stated is that, now, the secured creditors and substantial body of the shareholders have changed their mind; and they wish to demonstrate this change of mind at the requisitioned meeting. The two secured creditors of the company, the requisitioned meeting. The two secured creditors of the company. "SICOM and UCO Bank", have appeared through a common counsel and have stated that they do not now support the scheme of amalgamation. While "SICOM" has filed an affidavit purporting to explain this change of stand, no affidavit has been filed on behalf of "UCO Bank". I have to consider whether such a subsequent change of mind by some of the members and creditors of the company can be taken note of and whether it is necessary to permit the shareholders to hold a requisitioned meeting of the company in order to demonstrate that they have changed their stance.

9. There have been instances where at the time of consideration of a scheme of amalgamation, a dispute has been raised as to whether the statutory meeting held for the purpose was properly held or not. In *Dorman Long and Co. Ltd., in re* [1934] 1 Ch.D. 635, there was a dispute as to whether the statutory meeting for considering the scheme had been properly held and whether voting was properly recorded at the statutory meetings. It was, in this context, that the court was required to consider whether the petition should be dismissed or whether a meeting should be summoned. The question of holding a fresh meeting for considering the scheme on account of a subsequent change in the stand of the members did not arise in that case at all. In *Waxed Papers Ltd., In re* [1937] 156 LT 452, the court was required to consider whether proxy votes which were cast at the statutory meeting convened for considering the scheme were valid. The difficulty in that case arose because the proxy votes were utilised for voting on a resolution to adjourn consideration of the scheme and a point was raised that the power to vote by proxy on the scheme did not entail a power to vote on a resolution to adjourn the consideration of the scheme. Once again, the dispute related to the manner in which the statutory meeting had been held. The court was not called upon to consider any subsequent change of mind by any members. In that case, however, Lord Justice Slesser observed :

"Speaking for myself, I should like to reserve the question, whether, in any event, a subsequent change of mind on the part of the shareholders is a matter which the court ought to consider at all if when considered by the court, the scheme cannot be legally impeached for reasons other than those which would be appropriate at the meeting. I do not think that in the present case, it is necessary to express the learned judge has said that such change of mind as did arise in this case was induced by statements which were not fair, and therefore, I think that he was perfectly justified in disregarding that matter; but it would appear, when the sections looked at, that which the court is sanctioning is the arrangement or compromise made at the meeting which has been called under

the orders of the court. I think it is difficult to see how, if no new matters, had they been known at the time the meeting was held, would have influenced the position (so that at that time, the scheme was a proper one for all reasons to sanction) a mere change of mind later, on the part of persons, either transfers of the shares or the shareholders themselves, where there were really now to be considered by the court. Certainly, the number of such persons do not seem to be materials in this sense, that, while it is true that under subs (2) the majority to approve the scheme must represent three-fourths in value of the members, it cannot I think make any difference of the members or class of members, it cannot I think make any difference that the members who change their minds and opposes later on are or are not that the members who change their minds and opposes later on are or are not more or less than three-fourths in number, if they have a good ground for opposition, that ground would be good, even if they have a good ground for opposition, that ground would be good, even if they were less than three for this in value, if they have represent more than three-fourths in value."

10. Nearer home, in the case of Sidhpur Mills Co. Ltd., In Re: Sidhpur Mills Co. Ltd., , a learned judge of the Gujarat High Court, while considering a scheme of amalgamation, observed as follows (at p. 311) :

"Therefore, in my judgment, the correct approach to the presents case is (i) to ascertain whether the statutory requirements have been complied with, and (ii) to determine Whether the scheme as a whole has been arrived at by the majority bona fide and in the interests of the whole body of at by the major of injury fide and in the interests of the whole body of shareholders in whose interests the majority purported to act, and (iii) to see whether the scheme is such that a fair and reasonable shareholder will considerate to be for the benefit of the company and for himself I do not wish to be understood to say that, in no case post facto circumstances or events cannot be taken into account, but, on the whole, I have come to the conclusion that, whilst, in some rare and exceptional cases, the court may take into consideration subsequent event to protect the interest of the company or the shareholders, as a general rule, the court should consider the resolution the footing of the circumstances which were in existence at the time when the scheme was formulated, deliberated upon and approved. If any other approach were to be made, then, in that case, there would be no sanctity about business contracts. In fact, such an approach may induce interested persons to shape future event and circumstance in such a way as to convert a reasonable scheme into an unreasonable one."

11. With all respect to the learned judge, I am inclined to agree with his observations.

12. I have not been shown a single case where in considering a scheme of amalgamation, the court ordered a fresh meeting of the members and/or creditors on the ground that after the statutory meetings were held, the

members or creditors have had second thoughts about the scheme. All cases where the question of recovering the statutory meeting was discussed, were cases where there were disputes relating to the validity of the cusses, were cases where there were disputes relating to the validity of the statutory meetings. There is no such dispute in the present case. Secondly, though the requisition talks about a charge of circumstances, I have not though the requisition the scheme. Mr. Bhabha has pointed out lakes of time as one such circumstance. He has submitted that more than 20 months have elapsed since the scheme was put before the statutory meeting of the members and the creditors. This delay, however, has been occasioned because sanction of the Central Govt. was seriously opposed by MRTTP Act, and the application for sanction was strenuously opposed by persons who were interested in the alternate scheme. How this delay of 20 months has affected the merits of the scheme has not been explained by anybody. Nor is there any guarantee that any alternate scheme will be sanctioned within a shorter. Period It was also submitted before me that alternative and better schemes are forthcoming. No particulars, however, have been given in any affidavit of anybody as to what these alternative scheme are more beneficial. SICOM, Who is one of the secured creditors of the petitioner company, has filed an affidavit in which it has stated as follows :

"After the Scheme of merger was presented to this Hon"ble court and the meetings of the shareholders and the creditors were held in January, 1981, the Governments of Maharashtra which is holding 100 per cent. shares Of SICOM received an alternative proposal for rehabilitation of the petitioners which, according to the Government, had the main advantage of continuing the petitioners as an in depend entity.

The Government of Maharashtra, therefore, instructed SICOM to withdraw its support to the merger."

13. It is apparent from this affidavit that SICOM has withdrawn its support to the merger on instructions from the Government of Maharashtra. Apart from bare reference to the alternative proposal, there is nothing in this affidavit which would show that SICOM is aware of the nature the alternative proposal or whether it is better that the existing proposal or whether it is sufficiently worked out so as to be capable of being postal or whether it is sufficiently worked out so as to be capable of being put before the statutory meeting of members and creditors of the company. If there is such a scheme which is more benefits to the company. There is nothing which prevents any member or creditor from coming before the court and asking for the scheme being considered at the statutory meeting, though whether the propounding of a subsequent but more beneficial scheme can be a good reason for not sanctioning a scheme beneficial to the company and binding on the company and its meeting and creditors, is a moot point.

14. It has also been submitted that the shareholders are entitled to express their

views and the voice of the shareholders should not be satisfied. If the shareholders or any of them have goods ground for opposing the scheme of amalgamation, there is nothing which prevents such shareholders from appearing at the company petition for sanctioning the holders from appearing at the company petition for sanctioning the scheme of amalgamation and pointing out their objections, If the objection are weighty, they can be certainly considered at the time of the hearing of the company petition. It makes no difference of the such an matters is the basis of the opposition. Thus, the requisition is wholly misconceived.

15. It has next been submitted that under s. 391, statutory meeting required to be called to ascertain the view of the shareholders. If the voice of the shareholders is required to be heard, then they must be allowed to hold a requisitioned meeting. A requisitioned meeting however, is not the only way in which the voice of the shareholder is required to be heard, nor is such a requisitioned meeting contemplated in the scheme of s. 391. Views of the shareholders under s. 391 are required to be ascertained by calling a statutory meeting of the shareholders for that purpose. In addition, the shareholders also have a right to appear at the hearing of the scheme of amalgamation and to put forth their objections to the scheme if they have any. Both these methods clearly ensure that the voice of the shareholders will be heard, and there is no need, not is there any legal sanction, for departing from the prescribed method.

16. It has been submitted before me that it will be easier forth shareholders to attend the requisitioned meeting, and it will before difficult for the shareholders to appear in court in order to voice their objection I do not see how it will be more difficult for the shareholders to appears in court. Undoubtedly, their objection, if voiced before the court, will have to be supported by reasons, while presumably, in a requisitioned meeting, the resolution can be carried by a majority vote without having to assign any reason for it. If giving reasons for objections make for hardship, then there is a hardship in appearing before the court. In the interests of justice, the shareholders must put up with this hardship.

17. It has next been submitted that by calling the requisitioned meeting, the shareholders will be able to draw attention to the change of circumstances that has taken place. In spite of my repeated enquires, I have not been told what these changed circumstances are except that a period of about 20 months has elapsed since the scheme was first proposed. This lapse of 20 months does not, in view, justify the calling of the requisitioned meeting.

18. As I have pointed out earlier, under r. 79 of the Companies (Court) Rules, 1959, the company is required to present the petition for sanctioning the scheme within 7 days of the filing of the report by the chairman; and if the company does not do so, then any member or creditor has been given the right to present a petition for sanctioning the scheme. The company is thus under a statutory obligation to present petition for sanctioning the scheme. The requisitioned meeting clearly interferes with the company's obligation in this connection.

19. It is also extremely doubtful if any subsequent change of circumstances can be taken in to account while considering the scheme of amalgamation (See Sidhpur Mills Co. Ltd., In Re: Sidhpur Mills Co. Ltd.,

20. The opponents, in the present case strongly relied on the provision of s. 169 of the Companies Act and have submitted that no injunction should be granted restraining the holding of a requisitioned meeting of the company. Under the provision of s. 169 of the Companies Act, the board of director of a company shall, on the requisition of such number of members of the company as is specified in sub-s. (4) forthwith proceed duly to call an extraordinary general meeting of the company. Thus, if the board of directors receive a valid requisition signed by the request it numbers of members, they are bound to call a requisition signed by the requisite number of members they are bound to call a requisitioned meeting of the company. In this connection, the opponents rely upon a decision in the case of Isle of White Railway Co. v. Tahourdin [1884] 25 Ch.D. 320 . The Court, in that case, held that when the shareholders had requisitioned a meeting, the board of directors is bound to call such a meeting and it cannot refuse to call such a meeting on the ground that some of the resolutions, if passed at such a meeting, would be irregular. Lord Justice Lindley observed in that case as follows (at p. 333) :

"We must bear in mind the decision in Foss v. Harbottle [1843] 2 Hare 461 and the line of cases following it, in which this court has constantly and consistently refused to interfere on behalf of shareholder, until they have done the best thickens to set right the matters of which they complain, by calling general meetings. Bearing in mind that line of decisions, what would be the position of the shareholders if there were to be another line of decisions, prohibiting meetings of the shareholders to consider their own affairs ? It appears to me that it must be a very strong case indeed which would justify this court in restraining a meeting of shareholders. I do not mean to say of course that there could not be case in which it would be necessary and proper to exercise such a power I can conserve a case in which a meeting might be called under such a notice that nothing legal could be done under it. Possibly in that case an injunction to restrain the meeting might be granted."

21. In the case of Cricket Club of India Ltd. and Others Vs. Madhav L. Apte and Others, a special case was taken before a learned single judge of this court to consider the questions whether the board of direction of a public limited company was bound to call a meeting requisitioned by its members when the resolution which was purported to be passed in such a meeting was contrary to the provisions of s. 274 of the Companies Act. The learned single judge, who answered this question of, held that the board of directors were bound to call a meeting which was so requisitioned, even though the resolution which would be passed at such a meeting would be contrary to the provisions of s. 274 of the Companies Act. Now, these company for considering matters relating to the internal management of requisitioned. Meeting being called to consider matters

which affected persons other than the members and the company or to compel the company to resile from statutory obligations or to interfere with the exercise of the court's jurisdiction under s. 391 of the Companies Act.

22. One of the main reasons why injunctions are not normally granted to restrain the holding of a requisitioned meeting is that the shareholders ought to be allowed to regulate and set right the affairs of the company by calling general meetings. The court, has, therefore, been reluctant to interfere with the internal management of the company. Secondly, such an injunction was sought in the cases cited before me by the board of directors of the company. The courts have not normally permitted the board of directors of the company to sit in judgment over the requisition received by them to call a meeting of the shareholders. Normally, such a meeting would be required to be requisitioned by the shareholders in order to pass resolutions which are not supported by the board of directors or the management of the company. The board of directors would, therefore, be expected to call such a requisitioned meeting. It is thus undesirable that the board of directors should be allowed to refuse to call a requisitioned meeting, because the board considers the resolutions which were proposed to be passed at such a meeting. Undesirable or not in the interest of the company. Courts have, therefore, consistently held that if the requisition is called for the purpose of passing a resolution which can be implemented in a legal manner, although the form in which the resolution has been proposed is irregular on the face of it, nevertheless, such a meeting must be called because ultimately a decision taken at the meeting can be implemented in a legal manner. Lord Justice Lindley has, in the case of *Isle of Wight Railway Co. v. Tahourdin* [1884] 25 Ch.D. 320, in his guarded language, expressed a view that if the resolution proposed to be passed at the requisitioned meeting were wholly illegal, then the board of directors would be under no obligation to call a meeting requisitioned for the purpose of passing such an illegal resolution. Left to myself, I would rather lend my humble support to the witty pronouncement of Lord Justice Lindley rather than to the stand taken by learned brother, Desai J. when he stated that the requisitioned meeting must be called, even if the resolution proposed at the requisitioned meeting was illegal. To my mind, there can be no point in calling a meeting for passing a resolution which is illegal. In any event, in the present case, it is not necessary to decide one way or the other on this aspect, because there are various reasons why the meeting sought to be requisitioned in the present case is not covered by any of the considerations which have led the courts in the past to refuse to injunct such meetings.

23. In the first place, the present meeting has not been called to consider the internal management of the company. The resolution which has been proposed does not deal with matters which concern only the company and its shareholders. The purpose of the requisition is to compel the company to withdraw the petition for amalgamation which is pending before the court. Such a resolution does not pertain only to the company's management and the line of decisions starting

with *Foss v. Harbottle* [1843] 2 Hare 461, therefore, cannot have any bearing on such a meeting. Secondly, the board of directors are not asking for an injunction to prevent thus shareholders from discussing the management of the company. They have called the requisitioned meeting. If the meeting has been called to preempt a consideration by the court of the scheme of amalgamation, the calling of such meeting can be questioned by any affected person. It is irrelevant whether such a person has been put up by the board of directors or not.

24. A scheme of amalgamation affects not merely the company and its shareholders, but it also vitally concerns an important body of outsiders, viz, the creditors of the company, both secured and unsecured. It is, therefore, important that any opposition to this scheme should be expressed and taken note of in the manner provided in s. 391 of the Companies Act and not by the shareholders requisitioning a meeting in order to compel the company to withdraw the petition. In the present case, there appears to be a clear attempt on the part of the opponents to interfere with the petition under s. 391 which is pending in this court. It seems they are seeking to undo the effect of the statutory meetings which have been held, are seeking to undo the effect of the statutory meeting which have been already held to consider the scheme and are seeking to postpone the sanctioning of the scheme by the court as far as possible. In fact, the timing of requisition lends support to such a suspicion. The requisition has been made after the Supreme Court to stay consideration of the amalgamation petitions pending in the High Court. The requisitioned meeting in the present case, therefore, is convened for a purpose which is totally different from the purpose for which such meetings are ordinarily convened. The ratio, therefore, of *Isle of Wight Railway Co. v. Tahourdin* [1884] 25 Ch.D. 320 and *Cricket Club of India Ltd. and Others Vs. Madhav L. Apte and Others*, does not apply to the present application.

25. Lastly, learned counsel appearing for the opponents and for the secured creditors have urged that the requisitioned meeting has been called to consider alternative schemes. Even if I accept this submission, it is clear from the requisition that no alternative schemes are being put before the shareholders at the requisitioned meeting. The resolutions which are proposed to be moved themselves do not refer to any specific alternative scheme. In the explanatory statement annexed to the requisition by the requisitionists, there is no reference to any specific alternative proposal. The explanation is confined mainly to pointing out in very vague and general terms why, according to the requisitionists, the Brook Bond Scheme should not be approved. The Requisitionists have not put forward any alternative or better scheme for the consideration of the shareholders at the requisition meeting. If the purpose of calling the requisitioned meeting is more beneficial to the company, that purpose is not going to be served by calling the requisitioned meeting. It has been argued before me that in the 30th annual report of the company for the year ending December 31, 1980, it has been mentioned that a modified proposal to lease the company's factory at

Aurangabad mentioned to M/s. Harbans Lal Malhotra and Sons Ltd. had again chartered accountants for advice. In the 31st annual report of the company for the years ended December 31, 1981, it has been stated that a proposal to lease the company's undertaking by Harbans Lal Malhotra & Sons Ltd., which has been dealt with in the last annual report, has not been further considered in the light of advice that such a scheme of leasing would also require the approval of the Government of India under the MRTP Act. Learned counsel for the opponents and for the secured creditors have submitted that in view of the statements made in the two annual reports, it must be presumed that the shareholders knew what was the alternative scheme; and, hence, in the requisition or in the explanatory statement, it was not necessary to set out any alternative scheme of Harbans Lal Malhotra and Sons Ltd. set out in detail anywhere. Secondly, in the explanatory statement, there is not even a reference to the proposal of Harbans Lal Malhotra and Sons Ltd. If this is so, then the requisition meeting was to consider the scheme proposed by Harbans Lal Malhotra and Sons Ltd., it should have been so stated. The explanatory statement, in my view, is extremely vague and somewhat tricky. In fact, the explanatory statement is insufficient and misleading. If this so, then the requisition for calling the meeting must be considered as bad in law. In this connection reference maybe made to the decision in the cases of Laljibhai C. Kapadia Vs. Lalji B. Desai, and Firestone Tyre and Rubber Co. Vs. Synthetics and Chemicals Ltd. and Others, [1971]41ITR377(Bom) . The explanatory statement which is required to be annexed under s. 173 is for the purpose of ensuring that all facts which have a bearing on the question on which the bearing of the question on which the shareholders have to form their judgment are brought to their notice. If this requirement is not complied with and all relevant facts in the present case, and the alternative schemes are not before the shareholders fairly, then the resolutions will become bad in law. Calling such requisitioned meeting, assuming that the requisitioned meeting is to consider alternative schemes, will in any case, be bad in law.

26. To sum up, the requisitioned meeting which is being called is not to consider matters which affect the company's management or which affect only the company and its members. In view of the several features of the meeting requisitioned in the present case, which distinguished it from ordinary requisitioned meetings, this is a fit case where shareholders can be prevented from holding the requisitioned meeting.

27. It was submitted by Mr. Bhabha, learned counsel for the opponents, that s. 391 is not the only section under which a scheme can be presented. He drew my attention to s. 395 of the Companies Act and to s. 494 of the Companies Act. The latter deals with the power of the liquidator to accept shares as a consideration for the sale of the property of the company in liquidation. He submitted that it is open to the shareholders to present a requisition, in the present case, however, is not for the purpose of the presenting any scheme under any of the provisions of the Companies Act. The purpose is only to get the pending petition under s.

391 of the Companies Act withdrawn.

28. It was lastly submitted that this is a fit case where a suit should be filed against the company and that a judge's summons is not a proper method for obtaining reliefs. It was also pointed out that a suit had, in fact, been filed in the city civil court for this purpose. My attention was also drawn to a decision of the Kerala High Court in the case of *Prakasam v. Sri Narayana Dharma Paripalana Yogam* [1980] 50 Comp Cas 611 (Ker). In this case, the Kerala High Court held that the company court will not assume jurisdiction where a member seeks to redress an individual injustice done to him. In the present case, however, the resolution is aimed at withdrawal of a petition pending under s. 391 of the Companies Act. The meeting which is requisitioned has a direct nexus with the pending petition under s. 391 of the Companies Act; and hence the company court exercising its jurisdiction under s. 391 of the Companies Act can certainly deal with the judge's summons taken out for the purpose of restraining the holding of such a meeting. In the premises, the judge's summons is made absolute in terms of prayer (a) except for the bracketed portion. The opponents to pay to the applicant the costs of the judge's summons fixed at Rs. 300.