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(1992) 09 DEL CK 0041

In the Delhi High Court

Case No : Company Application No. 670 of 1992

Government of India APPELLANT

Vs

Jindal (India) Ltd. RESPONDENT

Date of Decision : 09-09-1992

Acts Referred:

Citation : (1992) 24 DRJ 358

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : Suman Khaitan, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) By this application Filed u/s 391(1) of the Indian Companies Act, 1956 (for short the "Act") the applicant seeks directions for convening, holding and conducting the meeting of its equity shareholders and, if necessary, of its secured and unsecured creditors for the purpose of considering and if thought Fit approving with or without modifications the proposed Scheme of Amalgamation of Mehrotra Properties Ltd. with the applicant.

(2) The only question for consideration for the present is whether at this stage notice is required to be issued to the Central Government so that the court may take into consideration the representation if made by the Government before passing any order u/s 391(1) of the Act. Mr. Khaitan submit that at this stage this notice is not required to be issued to the Central Government and in support of the submission reliance is placed upon two decisions, one of Calcutta and another of Madras High Court. The further submission is that in such matters, in the past, this court has not been directing issue of notice to the Central Government at this stage. The Court, in the past, has issuing notice to the Central Government on filing of petition u/s 391(2) of the Act and, Therefore, as per past practice, at this stage of consideration of application u/s 391(1) notice to Central Government is not required to be issued.

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(3) The requirement to send notice to Central Government is contained in Section 394A of the Act which reads as under:-

S.394A:-"The Court shall give notice of every application made to it u/s 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections."

(4) A plain reading of Section 394A does not show that notice to Central Government is required to be sent only on filing of petition u/s 391(2) and not at the stage of consideration of application u/s 391(1) of the Act. The plain reading of Section 394A shows that notice of every application made to Court u/s 391 or 394 should be sent to Central Government. The Calcutta High Court, however, in the matter of Bangeswari Cotton Mills Ltd. 37, Company Cases, 195 while interpreting Section 394A has held that notice to Central Government need not be given at the initial stage when the court makes an order on an application u/s 391(1) for calling a meeting of the creditors and members and the notice to Central Government is to be given only before the Court makes a final order sanctioning the compromise or arrangement on an application u/s 391(2) of the Act. According to opinion of the Calcutta High Court there was conflict between rules made by the Supreme Court in exercise of powers u/s 643 of the Act, on the one hand, and the newly inserted Section 394A on the other, on the question of giving notice to the Central Government. The Companies(Court) Rules were framed in the year 1959. Section 394A was inserted in the Act by Companies (Amendment) Act, 1965 with effect from 15 October 1965. The learned Single Judge of Calcutta High Court has held that the rules give a right to a petitioner to move the court ex-parte and if notice of every application u/s 391(1) or 391(6) is given to the Central Government to comply with the provisions of Section 394A of the Act, the petitioner''s right to move the court ex-parte would be completely taken away. It has been further held that section 394A gives no indication of the deprivation of that right and rules and Section 394A. With a view to avoid the said conflict the learned Judge held that notice to Central Government was not required for making an order u/s 391(1) of the Act and notice to Central Government was to be given before court sanctions compromise or arrangement on an application u/s 391(2) of the Act. The learned Judge held that the word ''every application'' in Section 394A means an application u/s 391(2) or Section 394 and the word ''any orders'' u/s 394A was construed to mean ''any final order''. This decision was followed by Madras High Court in Re: W.A.Beardsell & Co. (P) Ltd. 38, Company Cases, 197.

(5) The provisions of Section 394A arc unambiguous and clear. The plain reading requires sending of notice of every application u/s 391 or 394 to the Central Government. The words ''every application......... u/s 391 or 394 in section 394A necessarily includes an application u/s 391 (1) of the Act. In my view, there is no conflict between the Rules and Section 394A of the Act. The mere right to move summons ex parte as provided in the Rules does not necessarily means passing

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of an ex parte order on an application moved by means of summons. In view of the clear and unambiguous language of Section 394A I find it difficult to limit the ambit of Section 394A by reading words in the said section which do not exist. Section 394A, inter alia, mentions ''Section 391''. It cannot be read as Section 391(2). Likewise for the words ''any order'' used in section 394A the words ''any final order'' cannot be read. I do not see any compelling or overriding need to adopt the course of interpretation adopted by the learned Judges of Calcutta and Madras High Courts. With respect, I cannot subscribe to the opinions expressed in the cited decisions of Calcutta and Madras High Courts. For the view I have taken I am fortified by a decision of the Allahabad High Court in Re: Hind Auto Industries Ltd. Vs. Premier Motors (P) Ltd and another, 39 Comp Cas 137. As has been noticed by Allahabad High Court on notice being given to the Central Government on an application u/s 391(1) the Central Government may draw the attention of the court to certain matters which may make the holding of the proposed meeting or meetings necessary or unnecessary. The Central Government may also show that the company proposed to be amalgamated with another is not being run in a satisfactory manner and is liable to be wound up. It may also point out that there is no need for holding a meeting because the Central Government itself was about to pass an order u/s 396 of the Act. The light may be thrown by Central Government on these and many other matters if notice is given to the Central Government of an application u/s 391(1) as required by Section 394A of the Act.

(6) No decision of this court has been cited taking any view one way or the others on the applicability of Section 394A on its plain reading or on its restricted reading. Regarding the contention that in the past this court in most of the matters at the stage of consideration, of an application u/s 391(1) has not been directing issue of notice to the Central Government. In my opinion, if the past practice or procedure is contrary to the mandate of law it cannot be argued that the court should continue to follow it.

(7) For the reasons stated above, I hold that notice to Central Government is necessary to be issued before making an order u/s 391(1) of the Act and I direct accordingly.

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