

**(1968) 10 AHC CK 0018**  
**In the Allahabad High Court**  
**Case No : Company Application No. 37 of 1968**

Hind Auto Indo Ltd.

APPELLANT

Vs

Premier Motors (P) Ltd. and Another

RESPONDENT

**Date of Decision :** 15-10-1968

**Acts Referred:**

Companies (Court) Rules, 1959 — Rule 11, 11(10), 32, 67, 69  
Companies Act, 1956 — Section 391(1), 391(2), 394A, 643

**Citation :** AIR 1970 All 165

**Hon'ble Judges :** M.H. Beg, J

**Bench :** Single Bench

**Advocate :** J. Swarup, V. Swarup and G.P. Swarup, for the Appellant; S.N. Verma, for the Respondent

**Final Decision :** Disposed Of

## Judgement

M.H. Beg, J.—This is an application by a company u/s 391(1) of the Companies Act which has given rise to preliminary questions at the outset before the issue of any notice either to the Central Government u/s 394-A or to the share-holders of the company. Mr. Jagdish Swarup, learned counsel for the applicant company, submitted that no notice at this stage need be given either to the Central Government or to the share-holders because all that was prayed for, by means of summons in Form 33, was a set of directions for convening, holding and conducting of meetings after the appointment of a chairman for the consideration of a scheme by equity and preference share-holders of the company. It was submitted that neither the Central Government nor the share-holders had a locus stand before meetings had been convened and had considered the proposed amalgamation of the company with M/s. Automobile Products of India Ltd., Bombay.

2. Mr. S.N. Kacker has appeared on behalf of a share-holder even before issue of notice and has been heard on the question whether the share-holders are entitled to a notice of such an application before any directions are given. By an

order of this Court, passed on 7-10-1968, a notice of the application was also served upon the Standing Counsel for the Central Government so that he may also be heard on the preliminary question whether a notice of the application before the Court should go to the Central Government at this stage. Consequently, Mr. H.N. Seth appeared for the Central Government and submitted that the Central Government was also entitled at this stage to a notice u/s 394-A of the Act, before any order is passed to convene a meeting.

3. Learned counsel for the applicant has pointed out that there are two methods under the Companies (Court) Rules 1959, in which applications may be made. The first is by means of an application through summons and the other is by means of a petition. The method for applying u/s 391(1), given by Rule 67, is by means of a summons supported by an affidavit. The summons has to be in Form 33 which may be reproduced as follows:

"Company Application No. of 19, ..... Applicant (s) Summons for directions to convene a meeting u/s 391.

Let all parties concerned attend the Judge in Chambers on....day, the.... day....of....19.....at....O'clock in the .....noon of the hearing of an application of the above named company (or of the applicant (s) ) above named for an order that a meeting (or separate meetings) be held at....of (here enter the creditors or class of creditors e.g. debentures holders, other secured creditors, unsecured creditors etc., or the members or class of members e.g., preference shareholders, equity share-holders etc., of which class or classes, the meetings have to be held) of the above company for the purpose of considering, and if thought fit, approving with or without modification, a scheme of compromise or arrangement proposed to be made between the company and the said (here mention the creditors or class of creditors or members, or the class of members) of the said company.

And that directions may be given as to the method of convening, holding and conducting the said meeting (s) and as to the notices and advertisements to be issued.

And that a Chairman (or Chairmen) may be appointed of the said meeting (s), who shall report the result thereof to the Court.

Advocate for the applicant (s) Registrar. The affidavit of.....will be used in support of the summons."

4. Another method of applying is by means of a petition prescribed for proceedings u/s 391(2) after a proposed arrangement has been considered by a meeting or meetings of the creditors or any class of creditors or members.

These petitions are provided for in Rule 11 of the Companies (Court) Rules where Rule 11 (a) (10) mentions that an application u/s 391(2) "to sanction a compromise or arrangement" must be made by means of a petition. Rule 11 (b)

provides: "All other applications under the Act or under these Rules shall be made by a Judge's summons, returnable to the Judge sitting in Court or in Chambers as hereinafter provided."

5. The contention is that Section 394-A must be so read as to preclude notice to the Central Government of an application made through summons only. Similarly, it is contended that no notice need be given at all to the creditors or shareholders before a decision is taken to hold a meeting inasmuch as they will be heard at the meeting. It is contended that it is enough if they are heard at the meeting or meetings and then by this Court before any scheme is sanctioned. The contention, if accepted, would prevent the Central Government as well as creditors and share-holders, whose meeting or meetings may be proposed, before a scheme has been actually considered at a meeting. In support of this contention learned counsel has relied on two cases: In the matter of In Re: Bangeswari Cotton Mills Ltd., and In re, W. A. Beardsell & Co. (P) Ltd. and Mettur Industries Ltd. (1968) 38 Comp Cas 197 (Mad).

6. In Beardsell and Company's case (1968) 38 Comp Cas 197 (Mad) (Supra) the Madras High Court had followed the decision of the Calcutta High Court in In Re: Bangeswari Cotton Mills Ltd., and had held: "In an application to the Court u/s 394 of the Companies Act for the sanctioning of a compromise or arrangement, notice to the Central Government need not be given at the initial stage before the Court makes an order on an application u/s 391(1) calling for a meeting of the creditors or of the members." The reason given was: "The role played by the Central Government in such cases is that of an impartial observer who acts in public interest and advises the Court that it is or it is not feasible for the two companies to amalgamate." The question whether shareholders are also entitled to a notice at this stage was not considered in the two cases mentioned above where the ratio decided seemed to be that the Central Government is not concerned with matters of internal management only. With great respect, I do not consider this to be a correct basis In view of provisions of law such as Section 396 of the Act, authorising Governmental interference with a Company's affairs.

7. The ground Riven, in the In Re: Bangeswari Cotton Mills Ltd., by the Calcutta High Court was that a conflict existed between the provisions of Section 394-A and the law as it existed prior to the introduction of this provision so that the conflict had to be resolved. Apparently, the reference to the law as it existed before the amendment of the Companies Act, which introduced Section 394-A, was meant to include the rules. The view seemed to be that there was some conflict between Section 394-A and the pre-existing rules. In my opinion, if such a conflict really existed at all, it could not be resolved by restricting the clear ambit of Section 394-A of the Act which reads as follows:

"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."

8. If, as the learned counsel for the applicant himself submits, the term "application", as used in the Act and in the rules, includes an application by means of a summons as well as an application by means of a petition, Section 394-A having used the words "every application made u/s 391 or 394" must necessarily be held, *prima facie*, to include both applications by means of petitions and applications by means of summons. This is the plain and obvious meaning of the section which cannot be modified to meet the supposed intention of the Companies (Court) Rules. These rules were framed in 1959 u/s 643(1) (2) of Companies Act, 1956. by the Supreme Court of India. With great respect for the views taken in the above mentioned cases, I find it difficult to use rules made by the Supreme Court for the purposes given in Section 643 of the Act to interpret the intentions of Parliament in enacting Section 394-A in 1964. So far as rules relating to the "holding of meetings of creditors and members in connection with proceedings u/s 391" are concerned, Section 643(1)(b)(iii) enables the Supreme Court to make rules which are "consistent with the Code of Civil Procedure, 1908." u/s 643(1) rules can be made for the purpose of carrying out the duties imposed on the Court by the Act, *inter alia* with regard to "the holding and conducting of meetings to ascertain the wishes of the creditors and contributors".

9. It is true that the Supreme Court has not, so far, made rules for service of notices upon the Central Government u/s 394-A of the Act.

10. The reason for this is obvious. In 1959, when these rules were made, Section 394-A was not on the statute book. The rules, therefore, provide only for issue of the summons in form 33 which, as set out above, itself, indicates that notice must be given to "all parties concerned." It is true that there is no specific rule so far laying down who are "the parties concerned" before a decision is taken u/s 391(1) of the Act. The mere silence of these rules on this question does not, in my opinion, amount to a conflict with the provisions of Act itself. On the other hand, the Form 33 indicates that all parties concerned must be given notice in accordance with Rule 67 of the Companies (Court) Rules, 1959,

11. One of the reasons given in the case of *Bangeswari Cotton Mills* 1967 37 Com Cas 195 (Cal) (Supra) for adopting the view expressed there was, that the right of a party "to move" the summons *ex parte* will be defeated if it was necessary to send a notice of proceedings u/s 391(1) to the Central Government. With great respect, I find it very difficult to adopt this view. Moving a summons *ex parte* cannot, in my opinion, mean the passing of an order upon an application which had been moved by means of summons. The "moving" is confined to the initial stage at which notices are to be issued to persons concerned. At that stage the proceeding has necessarily to be an *ex parte* proceeding. But, the "hearing" takes place only after the summons have been served. That hearing cannot be *ex parte* in accordance with the intendment of the rules as I read it.

12. It is a well established rule of construction that a statute cannot be interpreted in such a way as to limit the ambit of the words used by reading words into it unless there is some overriding need to reconcile a conflict with a statutory provision. I fail to see the need for reading a limitation in Section 394-A of the Act confining the term "application" to a petition when the rules clearly indicate that the word "applications" cover applications by summons as well as applications by means of petitions. The limitation can only be introduced by adding words. It was held in *Dr. Ishwari Prasad Vs. Registrar, University of Allahabad and Others*, "It is, however, a well known rule of construction that if there is nothing to modify or qualify the language which the Statute contains it must be construed in the ordinary and natural meaning of the words". I find nothing either in the enactment or in the rules to indicate that the word "application" is used in Section 394-A for applications by petitions only. Nor do I find a conflict between Section 394-A (Sic and?) the Companies (Court) Rules.

13. Coming to the question whether the share-holders have a locus stand or not to be heard at this stage, it is clear that there is no statutory provision, such as Section 394-A of the Act, for serving notices upon them before a decision to hold a meeting. Nevertheless, the questions which require adjudication in proceedings u/s 391(1) of the Act, even before the stage of the approval of an arrangement is reached, are given in Rule 69. These are decided when giving "directions at hearing of summons". "Hearing", as contemplated by Rule 69, obviously implies hearing of all sides which are to be heard. The matters to be decided after hearing of the summons are specified as follows:--

".....(1) determining the class or classes of creditors and/or members whose meeting or meetings have to be held for considering the proposed compromise or arrangement;

(2) fixing the time and place of such meeting or meetings;

(3) appointing a chairman or chairmen for the meeting or meetings to be held, as the case may be;

(4) fixing the quorum and the procedure to be followed at the meeting or meetings, including nothing by proxy;

(5) determining the values of the creditors and/or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held;

(6) notice to be given of the meeting or meetings and advertisement of such notice;

(7) the time within which the chairman of the meeting is to report to the Court the result of the meeting, and such other matters as the Court may deem necessary".

14. Now each of the questions specified above involves the interest or at least the convenience of persons whose meetings are to be held.

15. I may also mention here another matter which is said to be involved in the decision of the petition before me. This arises out of the definition of the term "company" given in Section 390 which says. "In Sections 391 and 393(a) the expression "company" means any company liable to be wound up under this Act". It has been contended on behalf of the share-holders who desire a hearing to be given to the share-holders before a decision is taken to hold the meeting that the word "company" as used in Section 391, is necessarily confined to a company which has incurred the liability to be wound up or is at least one which may have incurred such a liability and that the applicant company is not such a company. On the other hand, it is contended that provisions of Section 391(2) make a distinction between companies which are not being wound up and those which are being wound up. It is also pointed out that the words "liable to be wound up" used in Section 390(a), merely indicate that even unregistered companies, which are liable to be wound up under the Act, may apply u/s 391. There is, I find, some authority to support each of the two views. I do not propose to decide this question at this stage before hearing all parties concerned. The shareholders are, in my opinion, necessary parties before a decision can be taken on this matter and other matters specified in Rule 69.

16. It has also been pointed out that the Central Government may also be interested in drawing the attention of the Court to certain matters which may make the holding of a proposed meeting or meetings necessary or unnecessary. It may be shown, with the help of the information made available by. the Company Law Board, that the company proposed to be amalgamated with another is not being run in a satisfactory manner and is liable to be wound up. Or, it may be pointed out that there is no need for holding a meeting of share-holders or creditors for deciding whether an amalgamation should take place because the Central Government itself was about (Sic to?) pass an order u/s 396 that it is essential in public interest that a amalgamation should take place. The share-holders may also be interested in pointing out whether the use of the powers of the Court u/s 391 is at all called for in a case and whether it is not a matter which should be left to voluntary decisions by the members of the companies concerned. These are questions on which a hearing at the initial stage may prevent unnecessary orders u/s 391(1) and save unnecessary waste of tune, energy and money.

17. It may also be mentioned here that even if the rules do not specifically provide for notice, Rule 9 of the Companies (Court) Rules enables this Court, in the exercise of its inherent powers, to issue directions for service of notice upon the parties interested or concerned, if no specific rule was there for this purpose.

As I have already indicated, my view is that both the Central Government as well as the share holders of the Company, who are distinct legal entities apart from the company (See: Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, are entitled to be heard before a decision is taken u/s 391(1). This is implied, in my opinion, from the nature of the function to be performed by the

Court u/s 391(1). The function is undoubtedly a judicial function in a proceeding which begins with the filing of an application before the Court and terminates in an order u/s 391(1) before another stage or proceeding u/s 391(2) is commenced and terminated. The correct rule to be applied in such cases is that, unless the right of the parties concerned is necessarily excluded by some clear statutory provision, notice should be given to them. Accordingly, I hold that both the Central Government as well as the share-holders are entitled to a notice at this stage.

18. The next question which arises is that of form in which notices are to be issued. It is pointed out that there are a very large number of share-holders. The issue of a notice with copies of the affidavit and the proposals may entail unnecessary expense and delay. Rule 32 of the Companies (Court) Rules provides the mode of service. It provides that ordinarily "all notices, summonses, and other documents required to be served on any person, may be served either personally by delivering a copy thereof to such person, or upon his advocate where he appears by advocate, or, except where personal service is required, by prepaid registered post for acknowledgment due addressed to the last known address of such person." It is also provided there that where no acknowledgment signed by the addressee or his duly authorised agent is received orders of Court shall be obtained as to the sufficiency of service or as to such further steps to be taken for service as the Court may direct. The proviso makes it possible for the Court to presume service when a notice, summons, or other document has been sent and has not been returned undelivered to the post office in the ordinary course. This rule is made subject to any order of the Court which may suitably modify or adopt the mode of service to the requirements of a case. It will be noticed that all that the rules require in such a case is the service of the summons and not of other material.

In the present case, the affidavit supporting the summons is a fairly long document. I, therefore, dispense with the need to serve copies of the supporting affidavits upon the share holders. The Central Government has already been served with a copy of the affidavit through its counsel. The share-holders may be served through summons in form 33 by ordinary post and publication. The sending of the summons may be evidenced by certificates of posting. Service by registered post is dispensed with. The next date of hearing of the application is fixed at 13-11-1968 by consent of parties. The affidavits in reply should be filed by that date. As Mr. S.N. Kacker, appearing on behalf of one of the share-holders, has prayed for a copy of the affidavit in support of the summons, he will be supplied with a copy of the affidavit in support of the summons in the course of the day. Other share-holders, who put in appearance and desire copies of the affidavit, may obtain copies by applying similarly for copies on the next date of hearing. This procedure will obviate delay in the hearing of the application which is the main objection of the applicant against service of notices at this stage on parties concerned.