

**(1956) 01 PAT CK 0019**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 2 of 1956

Homi Cawasji Bharucha and Others

APPELLANT

Vs

Arjun Prasad and Another

RESPONDENT

**Date of Decision :** 11-01-1956

**Acts Referred:**

Companies Act, 1913 — Section 153, 55, 81, 81(2)  
Companies Act, 1956 — Section 189, 391

**Citation :** AIR 1956 Patna 364 : (1957) 27 CompCas 6

**Hon'ble Judges :** Ramaswami, J;Imam, J

**Bench :** Division Bench

**Advocate :** S.N. Dutt and Akbar Imam, for the Appellant; Lalnarayan Sinha, N.L. Untwalia and S.C. Mukherji, for the Respondent

**Final Decision :** Allowed

## Judgement

Ramaswami, J.—This appeal is presented on behalf of Homi Cawasji Bharucha and 43 other appellants against the order of Mr. Justice Jamuar dated the 4th January, 1956 in Company Act Case No. 3 of 1951.

2. The history of the case is important. On the 22nd of July, 1952, respondent No. 1, Arjun Prasad who was a shareholder of the Company made an application u/s 153 of the Indian Companies Act, proposing a scheme for reconstruction of the Company in liquidation. On the 6th of October, 1953, respondent No. 1 was directed to arrange by the Court for holding separate meetings of (1) the debenture-holders and other secured creditors, (2) the unsecured creditors, (3) the preference shareholders, and (4) the ordinary shareholders. The meetings were fixed to be held on the 9th and 10 of November, 1953.

The first three meetings were held on the 9th and 10th of November, 1953. But on the 10th of November, 1953, respondent No. 1 made an application to the Court that the meeting of the ordinary shareholders be postponed because there was a dispute between him and the Central Bank of India with regard to the title to about Rs. 8 lacs worth of shares and also as to which party had the right of

exercising his vote. The meeting was adjourned by the Court to the 12th of December, 1953, and later on there was another order of the Court dated the 12th of January, 1954 adjourning the meeting sine die.

The dispute between the respondent No. 1 and the Central Bank of India as regards the transfer of Rupees eight lacs worth of shares was decided by the Company Judge on the 22nd of January, 1954 and that decision was confirmed by a Bench of this Court on Letters Patent Appeal on the 8th of November, 1954. On the 6th of May, 1955, respondent No. 1 prayed that the postponed meeting of the shareholders may be held. The Court directed that the meeting should be held on the 26th of June, 1955 and on that date the meeting of ordinary shareholders was duly held.

On the 14th of October, 1955, respondent No. 1 made another application seeking the direction of the Court for holding fresh meetings of preference shareholders and of ordinary shareholders for consideration of a modified scheme of reconstruction. On the 18th of October, 1955, the Court directed that the meetings of the ordinary shareholders and of preference shareholders should be held on the 27th of November, 1955. There was a direction by the Court that notices should be sent under certificate of posting and that there should also be publication of the notice in two newspapers, namely, the Indian Nation and the Aryavarta.

But the important point is that in this order of the 18th October, 1955, the learned Company Judge gave no direction as to the length of the notice. It appears that notices of the meetings were posted at Calcutta on the 10th of November 1955. It also appears that these notices were received by a number of share-holders at Bombay on the 16th of November, 1955 and onwards. On the 23rd of November, 1955, an application was filed by Hariyesh Daulatjada, one of the shareholders, challenging the validity of the meetings which were proposed to be held on the 27th of November, 1955. It was contended on his behalf that at least 21 days' notice was essential and in the absence of such notice, the meetings of the shareholders could not be validly held. There is also a letter sent to the Court purporting to be signed by twenty-five shareholders containing objection to the same effect. The matter was heard by Januar, J. on the 25th of November, 1955, and he made the following order:--

"On an application filed on behalf of Arjun prasad, the 27th of November, 1955, was fixed by order No. 173, dated the 18th of October, 1955, for the meeting of the preference shareholders and of the ordinary shareholders. Two applications have been placed before me, one by Hariyesh, son of Lallubhai Daulatjada of Bombay, praying that the Court may be pleased to adjourn the meeting for at least one month and the other by quite a number of shareholders of the Gaya Sugar Mills Ltd., making the same prayer.

Mr. Untwalia states that this Court need not extend the date of the meetings which has already been fixed as the 27th November, 1955, but he says that, at

the meeting, adjournment of the meetings will be taken for a period of not less than one month in order to enable the petitioners, who have filed petitions for an adjournment of the meetings to attend the adjourned meetings.

Mr. Untwalia further undertakes to send intimation under certificate of posting to the shareholders informing them of the adjourned date of the meeting."

The meetings of the preference shareholders and of ordinary shareholders were accordingly held on the 27th of November, 1955, but no business was transacted on that date and the meetings were adjourned to the 8th of January, 1956. On the 23rd of December, 1955, two applications were again filed before Jamuar, J., one on behalf of appellants 1 and-2, and the other on behalf of appellants 3 to 44 along with seven other persons challenging the validity of the meetings held on the 27th of November, 1955,

It was contended on their behalf that the meetings held on the 27th of November, 1955 were illegal because there was an omission to serve notice of the meetings at least twenty-one days before the date fixed for the meetings. It was pointed out that Section 81(2) of the Indian Companies Act required that at least 21 days' notice should be given if a special resolution was to be passed at a meeting of the shareholders. It was complained on behalf of the appellants that in the present case only ten or eleven days' notice was given and there was a breach of the statutory requirement.

On behalf of respondent No. 1 Mr. Untwalia submitted that Section 81(2) of the Indian Companies Act was not applicable and that, on the contrary, the matter was governed by the rules framed by the High Court u/s 246, and Rule 127 required only seven days' notice to be given.

Jamuar, J. did not decide the question of law but ordered that the adjourned meetings fixed for the 8th of January, 1956 should be held and "if the validity of these meetings be challenged, appropriate orders will then be passed." This order was passed by Jamuar, J. on the 4th of January, 1956, and the propriety of that order is the sole Question at issue in the present appeal.

3. In support of this appeal Mr. Dutt put forward the submission that the proposed resolution for consideration at the meeting of the shareholders held on the 27th of November, 1955 was not purely a scheme for compromise falling u/s 153 of the Indian Companies Act, but the question of reduction of share capital was involved and so the special formalities prescribed by Section 81 of the Indian Companies Act should have been followed.

The opposite view point was put forward by Mr. Lalnarain Sinha appearing on behalf of respondent No. 1. It was contended by Mr. Lalnarain Sinha that the provision of Section 153 of the Indian Companies Act was self-contained and that it was open to the Company Judge to give directions not only with regard to the place and time of the meeting but also with regard to length of notice to be given to the shareholders.

It was submitted that the jurisdiction conferred by Section 153 was of a special character and the orders of the Court in exercise of its special jurisdiction would over-ride the provisions of Section 55 of the Companies Act. I do not think that this argument is right.

On the contrary, I am satisfied that the special formalities required for a resolution with respect to reduction of share capital u/s 55 of the Companies Act cannot be overridden by any direction of the Court given u/s 153 of the Indian Companies Act. It is manifest that Section 153 of the Indian Companies Act and Section 55 of the said Act deal with two separate class of special matters, and as a matter of construction I hold that both these special provisions are equally important and neither of the special provisions can be nullified or overridden by each other.

It follows, therefore, that if there is a scheme or a proposed compromise which involves a dealing with reduction of share capital, the formalities prescribed not only by Section 153 but also by Section 55 have got to be complied with. That is the view expressed by Younger, J. "in *Re White Pass and Yukon Rly. Co., Ltd.*, 1918 W. N. 323 (A)". This case has been cited with express approval in Buckley on the Companies Act, 12th edition, page 414, where the following passage occurs:

"The words at the end of this sub-section are taken from Section 45 of the Act of 1908, repealed by the Act of 1928, which prescribed a separate and different procedure for effecting reorganizations of share capital of the two classes mentioned. Such reorganizations can now, even if they could not whilst s. 45 was in force, be effected" as arrangements with members under this section, as can also all other modes of reorganizing the share capital, even when involving an interference with preferences or special rights attached to shares by the memorandum, although when the arrangement involves a reduction of capital the requirements of the Act with regard to such reduction of capital must also be complied with. If it be desired to convert issued shares into redeemable preference shares, the scheme should provide for a reduction of capital by cancelling the issued shares and a reincrease by the creation of redeemable preference shares of an equivalent amount."

It is, therefore, clear that it is open to the parties to propose any mode of reorganising the share capital as a part of a scheme for arrangement or compromise u/s 153 of the Indian Companies Act, but if the arrangement or compromise involves a dealing with reduction of share capital for which other provisions of the Act prescribe special formalities, such special formalities must also be complied with.

4. The admitted position in this case is that twenty-one days' notice was not given to the ordinary or preference shareholders of the proposed meetings. It is said that ten to eleven days' notice was given. Admittedly, therefore, the requirements of sections 55 and 81 have not been complied with. Section 55

states :

"55. Reduction of share capital. -- (1) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may --

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital".

Section 81(2) is to the following effect :

"A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which less than twenty-one days" notice specifying the intention to propose the resolution as a special resolution has been duly given:

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days" notice has been given."

Reading Sections 81(2) and 55 together, it is manifest that a resolution which involves a reduction of share capital can only be considered at a meeting of which No. less than 21 days" notice has been duly given. Since there has been a violation of Section 81 with regard to the period of notice, I think that the meetings held on the 27th of November, 1955 for considering the modification of scheme must be held to be illegal and invalid. In support of my view, I would refer to the decision of the Privy Council in "The Garden Gully United Quartz Mining Co. v. McLister", (1875) 1 A. C., 39 (53) (B)).

5. A point was taken by Mr. Lalnarain Sinha that the modified scheme which was to be considered at the meetings held on the 27th of November, 1955 did not involve a reduction of share capital and the statutory provisions of sections 55 and 81 of the Indian Companies Act were not attracted. I do not think that there is any substance in this argument. The draft resolution which was to be placed at the meetings on the 27th of November, 1955 was to the following effect :

"That clause 6(b) of the proposed scheme of arrangement be substituted as

follows :

The preference shares will be redeemed fully by payment in cash of 40% of the face value of the shares out of the money deposited in the Bank by the Preference Trustees and sale proceeds of land at Gaya and Chakand, and with regard to the remaining 60% of the face value, the Company will allot redeemable Preference shares of face value of Rs. 100/- each to the holders of existing Preference shares pro rata. The said redeemable preference shares shall be redeemed as to one-half of their face value on or before 31st December, 1962 and the other half on or before the 31st December, 1972 and shall confer on the holders thereof the right to a fixed non-cumulative preferential dividend at the rate of 4% taxable per annum. In case the money in the hands of the trustees are not sufficient to pay 40% of the face value as aforesaid, the Company will meet the deficit and in case of excess, the trustees will pay the same to the Company. The Preference shareholders will forego all claims for arrears of dividend. A sub-committee be appointed consisting of the following persons to supervise the carrying out of the scheme on behalf of the Preference shareholders : 1. Sri Jagannath Prasad Gupta, 2. Sri Sohanlal Jajodia, 3. Sri Kishan Chand Puri. After reconstruction is effected, the Preference shareholders will be entitled to nominate 2 persons to the Board of Directors. Provided further that the Directors of the Company shall not be entitled to create a charge on the assets of the Company exceeding rupees 7 lacs without the consent of the Directors nominated by the Preference shareholders. It is further resolved that subject to full payment to the Debenture holders and other secured Creditors and 33% to the unsecured creditors the 40% payment to the Preference shareholders in cash must be made within 12 months from the date of the sanctioning of the scheme of reconstruction,"

The proposal, therefore, was that the preference shares would be redeemed fully by payment in cash of 40% of the face value of the shares out of Rs. 10,25,000/- received from the Preference Trustees and with regard to the remaining 60 % of the face value, the Company would agree to allot redeemable preference shares of face value of Rs. 100/- each to the holders of the existing preference shares "pro rata".

It is clear that by payment in cash of 40 per cent of the face value of the preference shares there is a corresponding reduction of the share capital of the Company. Section 55 of the Indian Companies Act also contemplates that the share capital of a company can be reduced in "any" way. There may be such a reduction of share capital if the company returns part of the capital money to the preference shareholders in cash. There is an authoritative statement of law on this point "at page 155" of Buckley on the Companies Act, twelfth edition :

"A reduction therefore by which capital moneys are to be returned to some or one only and not to all of the shareholders may be resolved upon and confirmed if it be fair and equitable. To call such a transaction a purchase by the company of its own shares within "Trevor v. Whitworth" (1887) 12 A.C. 409 Which the

Court cannot sanction (a view which the Court of Appeal "in *Re Denver Hotel Co.*" (1883) 1 Ch. 495 negatived in the particular facts of that case, but regarded as a possible and fatal objection if the facts had been different) is to misunderstand that decision. Every return of capital, whether to all shareholders or to one, is "pro tanto" a purchase of the shareholder's rights. It is illegal as a reduction of capital, unless it be made under the statutory authority, but in the latter case is perfectly valid."

There is also authority for the proposition that the conversion of issued preference shares into redeemable preference shares is equivalent to a reduction of share capital and simultaneous increase of share capital. That was the view expressed by Simonds, J. in "*In re St. James Court Estate, Ltd.* (1944) 1 Ch 6 (D). It was held in that case that Conversion of issued preference shares into redeemable preference shares could take place only if the steps appropriate to a reduction and simultaneous increase of capital had been taken.

I, therefore, consider that the argument of Mr. Lalnarain Sinha on this point is not correct and the draft resolution which was to be placed at the meetings of the shareholders on the 27th of November, 1955, involved a question of reduction of share capital and so the special formalities prescribed in Sections 55 and 81 of the Act should have been adopted and complied with.

6. For the reasons expressed, I hold that the proceedings of the meetings of the preference shareholders and of the ordinary shareholders held on the 27th of November, 1955, are illegal because of failure to comply with the statutory provisions required u/s 81 of the Indian Companies Act. I would accordingly set aside the order of Jamuar, J. dated the 4th January, 1953 and allow this appeal. I would not make any order as to costs in the special circumstances of this case.

Imam, J.

7. I agree.