

(2003) 08 AHC CK 0143
In the Allahabad High Court
Case No : Company Petition No. 149 of 1998
In Re: Macroplast Pvt. Ltd., Tayal Potteries

Date of Decision : 13-08-2003

Acts Referred:

Companies (Court) Rules, 1959 — Rule 24, 24(1), 24(2)
Companies Act, 1956 — Section 433, 434(1)

Citation : (2003) 08 AHC CK 0143

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : Vivek Chaudhary, for the Appellant; Dharmesh Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—Shri Rahul Mishra holding brief for Shri Vivek Chaudhary, learned Counsel for the petitioners and Shri Dharmesh Chaturvedi, learned Counsel for the respondent-company (namely, M/s Macroplast Pvt. Ltd.) are present.

2. The aforesaid Company Petition No. 149 of 1998 was filed by the petitioners under Sections 433(e) and 434(1) of the Companies Act, 1956, inter-alia, praying for winding up the respondent-company, namely, M/s Macroplast Pvt. Ltd. having its Registered Office at A-14, Old Kavi Nagar, Ghaziabad (U.P.).

3. By the order dated 25th May, 1999, this Court, inter-alia, directed that the Company Petition be advertised under Rule 24 of the Companies (Court) Rules, 1959, and the petitioners were granted three weeks" time for taking steps in this regard.

4. It appears that pursuant to the said order dated 25th May, 1999, the Petition was advertised in the Official Gazette and in the Hindi newspaper "Bhavi Satta" dated 1.7.1999 published from Ghaziabad, but the Petition was not advertised in any English newspaper.

5. In the circumstances, by the order dated 8th August, 2000, this Court, inter-

alia, directed that publication in English newspaper "Times of India", published from Delhi, be also made fixing 13th September, 2000.

6. On 13th September, 2000, Shri Vivek Chaudhary, learned Counsel for the petitioners prayed for and was allowed one week's time to file the newspaper containing publication as per the said order dated 8.8.2000, and the case was directed to be listed after one week.

7. It further appears that, thereafter, the case was listed on several dates and was adjourned on account of the reasons mentioned in the respective orders passed on the said dates.

8. On 21st July, 2003, this Court passed the following order:

Shri Rahul Mishra, holding brief of Shri Vivek Chaudhary, learned Counsel for the petitioners prays for and is granted three weeks' time to bring on record, the steps taken on behalf of the petitioners for complying with the directions given in the order dated 8.8.2000 read with the order dated 13.9.2000.

List this case after three weeks.

9. Pursuant to the said order dated 21st July, 2003, the case is listed today. Shri Rahul Mishra holding brief for Shri Vivek Chaudhary, learned Counsel for the petitioners states that despite repeated communications sent to the petitioners, Shri Vivek Chaudhary has not received any instructions from the petitioners, and as such, it is not possible for him to state as to whether any publication in English newspaper "Times of India," as directed by the order dated 8th August, 2000, was in fact, made or not.

10. In views of the aforesaid statement made by Shri Rahul Mishra holding brief for Shri Vivek Chaudhary, learned Counsel for the petitioners, there is no option, but to presume that publication in English newspaper "Times of India", as directed by the order dated 8th August, 2000, had not been made by the petitioners.

11. Rule 24 of the Companies (Court) Rules, 1959 provides as follows:

Rule 24. Advertisement of petition.?(1) Where any petition is required to be advertised, it shall, unless the Judge otherwise orders, or these rules otherwise provide, be advertised not less than fourteen days before the date fixed for hearing, in one issue of the official Gazette of the State or the Union Territory concerned, and in one issue each of a daily newspaper in the English language and a daily newspaper in the regional language circulating in the State or the Union Territory concerned, as may be fixed by the Judge.

(2) Except in the case of a petition to wind-up a company the Judge may, if he thinks fit, dispense with any advertisement required by these rules.

(Emphasis supplied)

12. Reading Sub-rule (2) with Sub-rule (1) of Rule 24, quoted above, shows that

in case of a petition to wind-up a Company, it is mandatory that the company petition be advertised, inter-alia, in one issue of "a daily newspaper in the English language".

13. The aforesaid Company Petition, as noted above, has been filed, inter-alia, praying that the respondent-company be wound-up.

14. As the publication in English newspaper "Times of India", as directed by the order dated 8th August, 2000, has not been made by the petitioners, the mandatory requirement of Rule 24 of the Companies (Court) Rules, 1959 has not been complied with.

15. In view of the non-compliance of the said mandatory requirement of Rule 24 of the Companies (Court) Rules, 1959, the aforesaid Company Petition is liable to be dismissed, and the same is accordingly dismissed.