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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 30/NCLT/AHM/2017 (New)
C.P. No. 523/2016 (Old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.03.2017

Name of the Company: Pehnav E-Retail Ltd.

Section of the Companies Act: Section 391-394 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	NAVIN PAHWA THAKKAR & PAHWA	ADV.	PETITIONER	
2.				

ORDER

Learned Advocate Mr. Navin Pahwa with Learned Advocate Ms. Natasha Sutaria present for petitioner.

1. Company Petition No. 523 of 2016 was filed by Pehnav E-Retail Private Limited under Section 391 read with 394 of the Companies Act before the Hon'ble High Court of Gujarat seeking sanction of amalgamation of Pehnav E-Retail Private Limited with Zylog Plastalloys Private Limited.

2. The petitioner Company filed Company Application No. 820 of 2016 before the Hon'ble High Court of Judicature at Bombay wherein the Hon'ble High Court by order dated 27.10.2016 was pleased to dispense with the meeting of Equity Shareholders of the petitioner company. It is observed in the said order that there are no Secured and Unsecured Creditors.

3. During the pendency of Company Petition No. 523 of 2016, Notification has been issued by the Ministry of Corporate Affairs,

notifying the enforcement of Sections 230 to 232 of the Companies Act, 2013 with effect from 15.12.2016.

4. The Hon'ble High Court of Gujarat, by its order dated 03.2.2017 passed in Company Petition No. 523 of 2016, transferred the said petition to this Tribunal in view of Rule 7 of The Companies (Transfer of Pending Proceedings) Rules, 2016. The Company Petition No. 523 of 2016 is renumbered as "TP No. 30 of 2017" in this Tribunal and that is how this petition came up before this Tribunal for hearing.

5. It is stated in the Purshis filed by the learned advocate on behalf of the Petitioner Company that the petitioner Company made a publication of advertisement of notice of hearing in English Daily Newspaper "Indian Express" and Gujarati Daily Newspaper "Financial Express", both having circulation in Ahmedabad. It is also stated in the said Purshis that as per the orders of the Hon'ble High Court of Gujarat, dated 14.12.2016, the petitioner served a copy of the petition along with its Annexures to the Regional Director. It is further stated in the said Purshis that no objections against the proposed Scheme of Amalgamation are received either by the Company or by the Office of Advocates of the Petitioner Company. It is also stated that no objections have been received by the Company or by the Office of Advocate of the Company from the Regional Director. It is further stated in the Affidavit that no notice need be issued to the Reserve Bank of India or Competition Commission of India. It is also stated that Regional Director already sent notice to Income Tax Authorities.

6. It is contended by the learned counsel appearing for the petitioner that in view of publication of notices in the newspapers about the date of hearing and in view of notices already issued to the statutory authorities no further notice is required.

7. In this context, it is necessary to mention that the Hon'ble High Court of Gujarat ordered notices to the public and statutory authorities on 14.12.2016 and had fixed the date of hearing as "24.01.2017". But from 15.12.2016, provisions of Sections 230 to 232 came into force and the jurisdiction in respect of those provisions is vested in this Tribunal. The Hon'ble High Court, ultimately, on 03.2.2017, passed the order transferring this Company Petition No. 523 of 2016 to this Tribunal. Therefore, from the record, it is clear that no hearing took place in Company Petition No. 523 of 2016 before the Hon'ble High Court after 15.12.2016 or thereafter till the date of transfer. It is also stated that notice to Income Tax Authorities already sent by Regional Director.

8. The record in Company Petition No. 523 of 2016 was received by this Tribunal after 03.02.2017. Therefore, the public notices issued and the notices issued to the regulatory authorities pursuant to the order of the Hon'ble High Court dated 14.12.2016 are not given effect in substance. Moreover, when there is a change in the Forum, the notices issued, asking the public to appear before the High Court and asking the regulatory authorities to file their representations before the Hon'ble High Court, may not hold good and therefore, this Tribunal is of the view that there is need for issuance of fresh publication informing the public and notice to the regulatory authorities.

9. Irrespective of the fact whether any objections were filed or not, and irrespective of the fact whether Regional Director filed any report or not, whether he sent notice to Income Tax Department or not, the principles of natural justice require that a notice shall go to public at large and the statutory authorities about the transfer of this Petition from the Hon'ble High Court to this Tribunal and about the date of hearing in continuation of the publication made and notice issued to the Regional Director.

10. In view of the above said facts, it is ordered that;

(1) Notice of hearing of this petition shall be advertised in "Indian Express", English Daily Newspaper, Ahmedabad Edition and "Financial Express", Gujarati Daily Newspaper, Ahmedabad Edition not less than 10 (Ten) days before the date fixed for hearing calling for their objections, if any, on or before the date of hearing;

(2) Issue individual notices to Equity Shareholders not less than 10 days before the date of hearing informing the date of hearing and calling for their objections, if any, to the Arrangement;

(3) Notice be issued to the following statutory authorities in Form No. CAA-3 accompanied with the copy of the Scheme of Amalgamation, copy of Petition and its Annexures along with copy of this order to;

(A) Central Government, through the Regional Director, Gujarat;

(B) Income Tax Authorities;

(C) Registrar of Companies (ROC), Gujarat, Ahmedabad.

stating that if they desire to make any representation, the same shall be sent to this Tribunal within 30 days from the date of receipt of notice and in case no representation is received by this Tribunal within a period of 30 days, it shall be presumed that the above said authorities have no representation to make on the proposed Scheme of Amalgamation.

11. The date of hearing is now fixed on 12.4.2017.

6/3/17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this, the 6th day of March, 2017.