NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.P. No. 491/2016 in C.A. No. 485/2016 (Old)
T.P. No. 4/391-394/NCLT/AHM/2017 (New)

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 23.01.2017

Name of the Company: Biochem Pharmaceuticals Industries Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Sandeep Singhvi	Advocate	Petitioner	
2.	Pranjal Buch	Advocate	Petitioner	

ORDER

1. Learned Advocate Mr. Sandeep Singhi along with Learned Advocate Mr. Pranjal Buch present for Petitioner.
Heard the Learned Advocate for Petitioner. This matter is received by transfer from the Hon'ble High Court of Gujarat.

2. The Hon'ble High Court by its order dated 16.11.2016 in CA 485/2016 dispensed with the requirement of holding of meeting of equity shareholders and advertisement to be given in newspapers and as well as publication to be given in Gujarat Government Gazette. The Hon'ble High Court also dispensed with the meeting of creditors of the Applicant company to consider and/or approve the proposed scheme of amalgamation.

3. Thereafter, Petitioner company filed CP 491/2016 before the Hon'ble High Court of Gujarat seeking approval of the scheme of arrangement. The Hon'ble High Court of Gujarat by its order dated 21.11.2016 passed the following order: -

"Notice of the hearing of the petition to be advertised in the English daily newspaper "Indian Express", Ahmedabad edition and the Gujarati daily newspaper "Sandesh", Ahmedabad edition, as submitted by learned advocate for the petitioner. Publication of notice shall appear in the aforesaid newspapers, at least, 10 days before the date of hearing so fixed.

Notice of the hearing of the petition to be served on the Central Government through the Regional Director, ROC Bhavan, Opp. Rupal Park Society, B/h. Ankur Bus Stop, Naranpura, Ahmedabad,

pursuant to Section 394 A of the Companies Act, 1956. Notice shall also be issued to the Official Liquidator, who if required, may appoint Chartered Accountant. Notice of the hearing of the petition on the Regional Director and to the Official Liquidator shall be served, at least, 10 days before the date of hearing so fixed.

Publication of the Notice in the Gujarat Government Gazette be and is hereby dispensed with."

4. On 21.12.2016 when the matter was listed before the Hon'ble High Court, it is ordered that in view of Rule 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016 the Petition stands transferred to NCLT at Ahmedabad and ordered for transfer of CP 491/2016 to this Tribunal as per Rule 7 of the said Rules.

5. The Hon'ble HC in its order dated 21.11.2016 fixed the date of hearing as 21.12.2016 and ordered publication in English daily newspaper "Indian Express" and Gujarati Daily newspaper "Sandesh" with a direction that publication of notice shall appear in aforesaid newspapers at least ten days before the date of hearing.

6. The Hon'ble High Court also ordered notice to the Central Government through Regional Director and Official Liquidator.
   The Petitioner filed affidavit of service before the Hon'ble High Court of Gujarat vide pages 176 to 183 of the Petition.

7. It is contended by the Learned Counsel for the Petitioner that no further notice need be published in newspaper and no further notice need be sent to Regional Director and Official Liquidator.

8. This Petition is filed before the Hon'ble High Court on 18.11.2016 i.e. before the coming into force of sections 230-232 of the Companies Act 2013 which came into force on 15.12.2016. But the date of hearing of the Petition as fixed by the Hon'ble High Court was 21.12.2016 by which date Sections 230-232 and the new Rules under Companies (Compromise, Arrangements and Amalgamation) Rules 2016 came into force.

9. The substance of the publication in the newspaper and as well as the notice given to the statutory authorities was in compliance of the old Rules, i.e., calling for objections from the public and the reports of the Regional Director and Official Liquidator.
   In the Application stage, no notice was prescribed to the statutory authorities under the Company Court Rules 1959. In the case on hand since the meetings were dispensed with, there was no publication of notice to the creditors and other shareholders at the first stage.

10. Rule 16(1) of the Companies (Compromise, Arrangements and Amalgamation) Rules 2016 says that the Tribunal shall fix a date for hearing of the matter, and notice of hearing shall be advertised in newspapers, not less than ten days before the date of hearing. Rule 16(2) says that notice for hearing in the Tribunal shall also be served by the Tribunal to the objectors or their representatives under sub-section (4) of section 230 of Companies Act, 2013 and to the Central Government and other authorities who have made representation under Rule 8.

11. The contention of the Learned Counsel for Petitioner is that already publication of notice in the newspapers were made and already notice given to the Regional Director and Official Liquidator and it is sufficient compliance of Rules 16(1) and (2).

The publication in the newspapers and the notice given to the Regional Director and Official Liquidator is for hearing date 21.12.2016 before the Hon'ble High Court of Gujarat. There is nothing in the order of the Hon'ble High Court dated 21.12.2016 that it has considered about the compliance of the order dated 21.11.2016. The hearing did not take place on 21.12.2016 before the Hon'ble High Court of Gujarat in view of Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016.

12. Irrespective of the fact whether any objections were filed or not, irrespective of the fact whether Regional Director or Official Liquidator filed any report or not, the principles of natural justice require 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 and Official Liquidator.

13. In view of the above said view of this Tribunal-

(a) Petitioner is hereby directed to publish a notice in the newspapers in which already publication has been made, informing the date of hearing and with specific mention that it is in continuation of public notice issued as per the order of the Hon'ble High Court dated 21.11.2016 and published in "Indian Express" dated 24.11.2016 and in "Sandesh" dated 24.11.2016. Publication of notice shall appear in the newspapers, at least, 10 days before the date of hearing so fixed.

(b) Petitioner is also directed to serve a notice on the Regional Director and Official Liquidator informing the date of hearing and making a mention that it is in continuation of notice issued in pursuance of order of the Hon'ble High Court dated 21.11.2016, at least 10 days before the date of hearing.

Petitioner to file proof of compliance of above-said directions.

The date of hearing is now fixed as 14.2.2017.

23.1.17

(BIKKI RAVEENDRA BABU)
MEMBER JUDICIAL

Dated this the 23rd day of January, 2017.