

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**SPECIAL BENCH**

**ITEM No. 1**  
**384/245/PB/2018**

**IN THE MATTER OF:**

Jacob Mathew

.... Petitioner/Applicant

Vs.

A.V. George and Ors.

.... Respondent

**Order u/S. 245 of the Companies Act, 2013**

**Order delivered on 30.05.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ**  
**HON'BLE MEMBER (JUDICIAL)**

**SH. AVINASH K. SRIVASTAVA**  
**HON'BLE MEMBER (TECHNICAL)**

**HYBRID HEARING (PHYSICAL & VC)**

**PRESENT:**

For the Petitioner : Adv. Namitha Mathews and Adv. Pulkit Malhotra  
For the Respondent : Adv. Philip Mathew, Adv. Vinay Mathew Joseph for R-1, 2, 3 & 8  
Adv. Goutham Shivshankar for R-7

**ORDER**

1. Mr. Philip Mathew, Ld. Counsel appearing for Respondent Nos. 1, 2, 3 and 8 submitted that consequent to order dated 19.10.2023 the Petitioner has failed to take the requisite steps, as laid down in Rule 87 of NCLT Rules, 2016. Essence of plea raised by the Ld. Counsel is that the publication of public notice as per Rule 87 of the NCLT Rules, 2016 should have been made within 07 days of admission of the application by the Tribunal, in the manner as prescribed in Rule 87(1) and (2), which has not been done by the Petitioner.

2. Rule 87 of the NCLT Rules, 2016 reads thus:

*"87. Publication of notice.—*

*(1) For the purposes of clause (a) of sub section (5) of section 245 of the Act, on the admission of an application filed under sub-section (1) of section 245 of the Act, a public notice shall be*

issued by the Tribunal as per Form No. NCLT-13 to all the members of the class by-

(a) publishing the same within seven days of admission of the Application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;

(b) requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper under sub-clause (a):

Provided that such notice shall also be placed on the websites of the Tribunal and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by the Tribunal.

(2) The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.

(3) The public notice shall, inter alia, contain the following--

(a) name of the lead applicant;

(b) brief particulars of the grounds of application;

(c) relief sought by such application;

(d) statement to the effect that application has been made by the requisite number of members/depositors;

(e) statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and these rules and it is satisfied that the application may be admitted;

(f) date and time of the hearing of the said application;

(g) time within which any representation may be filed

*with the Tribunal on the application;*

*(h) the details of the admission of the application and the date by which the form of opt out has to be completed and sent as per Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure "B", and such other particulars as the Tribunal thinks fit.*

*(4) The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant."*

3. As can be seen from sub-rule (2) of Rule 87 (*ibid*), the date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class. Thus, if the notice was not published as per Rule 87(1)(a), the ramification would be only that the same may not be treated as served upon all the members of the class.
4. In the wake, the Petitioner shall comply with Rule 87 of NCLT Rule, 2016 within 07 days from today and the effect of the notice in terms of sub-rule (2) of Rule 87 would be on fresh publication of the notice. Before parting with the matter, we deem it proper to amplify that even when the notice was not published within 07 days of the admission, the only effect thereof could be that service has not been done as the service was to be deemed only on the date of publication. Given the same, non-compliance with Rule 87 cannot be a ground to question the application on merit or its maintainability.
5. Nevertheless, since the aforementioned Respondents have also raised other issues regarding the manner of service of notice, we have directed issuance of fresh notice.
6. The Petitioner is directed to comply with Rule 87 of NCLT Rules, 2016 and would ensure that the service is effected in the letter and spirit of the said Rules.
7. It is also directed that the Respondent No. 3 shall place the order dated

19.10.2023 as also the present order dated 30.05.2024 on its website, if any. If the Respondent No. 3 is not maintaining any website, it shall file an affidavit to that effect.

8. The Petitioner shall also ensure that the public notice shall contain all such particulars as prescribed in Rule 87(3) of NCLT Rules, 2016.
9. The Respondent No. 3 would also ensure that the notice published on the website contain all the aforementioned particulars as prescribed in Rule 87(3) of NCLT Rules, 2016.
10. In the meantime, the Ld. Counsel for the Respondent Nos. 1, 2, 3 and 8 would ensure that the objections raised by them in terms of Rule 87 (*ibid*) are uploaded on the Case Information System of the DMS of this Tribunal and they will also ensure that the hard copies of the objections are filed/placed on record before the next date of hearing.
11. List the matter on 25.07.2024.

**Sd/-**  
**AVINASH K. SRIVASTAVA**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**ASHOK KUMAR BHARDWAJ**  
**MEMBER (JUDICIAL)**

Shubham Pandya – 30.05.2024