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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.PET. 129/2015**

TRACTEBEL CONSULTING ENGINEERS PRIVATE LTD.Transferor company / petitioner company

WITH

TRACTEBEL ENGINEERING PRIVATE LTD.

...Transferee company / petitioner company
Mr. Arun Saxena and Mr. Simran Jyot Singh,
Advocates for the petitioners
Mr. Rajiv Behl, Advocate for the OL
Ms. Aparna Mudiam, AR for the RD

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **22.01.2016**

CA 3286/2015 (for seeking clarification in order dated 16.03.2015)

1. This is an application whereby modification of order dated 16.03.2015 is sought by the petitioner. The modification sought is to the extent the order dated 16.03.2015, passed by my predecessor, directed the publication of the citations inter alia, in the official gazette, as well.

2. The counsel for the petitioner says that in terms of Rule 80 of the Companies (Court) Rules, 1959, there is no requirement of publishing the citation in the official gazette in case of actions filed qua amalgamation and mergers.

2.1 Reliance in this behalf is placed on Rule 80 of the Companies

(Court) Rules, 1959. A distinction is sought to be drawn by the learned counsel with Rule 24, which relates to advertisements of petition.

3. Mr. Behl, who appears for the official liquidator, joins the counsel for the applicants / petitioners in his submission. He says that he has examined the position, and that, even according to his understanding, Rule 80 would apply qua actions filed for amalgamation and mergers.

3.1 Mr. Behl, also relies upon Rule 74 in support of the aforementioned submission.

4. The said Rules 24, 74 and 80 are, therefore, extracted hereinbelow for the sake of convenience :-

“..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.

Rule 74 – Advertisement of the notice of meeting – the notice of the meeting shall be advertised in such newspapers and in such manner as the Judge may direct, not less than 21 clear days before the date fixed for the meeting. The advertisement shall be in Form No.38.

Rule 80 – Date and notice of hearing – the court shall fix a date for the hearing of the petition, and notice of the hearing shall be advertised in the same papers in which the notice of

the meeting was advertised, or in such other papers as the court may direct, not less than 10 days before the date fixed for the hearing...”

5. A perusal of the Rules would show that where a petition is to be advertised as against where a court directs hearing of the petition or advertisement of the notice of the hearing, the aforementioned Rules seem to draw a distinction as how publication is to be carried out.

5.1 In case where a petition is required to be advertised, Rule 24, inter alia, requires its publication in the official gazette. This does not appear to be a requirement where, like in rule 74, notice of a meeting is to be advertised or, as in Rule 80, where the court fixes a date of hearing qua the petition and the notice of hearing is to be advertised. In situations falling in Rule 74, and 80, there is no requirement to publish the notice of meeting or the notice of hearing respectively, in the official gazette.

6. Having regard to the aforesaid, order dated 16.03.2015 is modified to the extent prayed.

7. I am informed that citations were published as directed by this court on 16.03.2015 in the two newspapers, referred to in the said order. According to the learned counsel for the applicants, compliance report has also been filed in that behalf.

8. The application is thus, disposed of, in the aforesaid terms.

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9. It appears that there is no objection to the proposed scheme of

amalgamation either by the Regional Director or the Official Liquidator. This aspect has already been recorded in this court's order dated 09.09.2015.

10. Heard.

11. Reserved.

RAJIV SHAKDHER, J

JANUARY 22, 2016

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