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# COSMOSTEELS PRIVATE LTD.

*v.*

# JAIRAM DAS GUPTA & ORS.

*December* 16, 1977

B [M. H. BEG, C.J., P. N. BHAGWATI AND D. A. DESAI, JJ.]

*Companies Act, (Act I of* 1956), *SS.* 77, 100-104, 397, 398 & 402—*Distinction between the procedures u/s* 100-104 *and u/s* 402—*While granting relief u/s* 402, *for reduction of share capital protanto, the procedures u/s* 100-104 *are not necessary—Objects behind procedures prescribing the Court to give notice—Notice u/s* 400 *is not necessary at appellate stage—No injury has been caused to the interveners by non-issue of the notice.*

C In Appeal No. 1347(N) 1977 by special leave against the interlocutory orders dated 21-4-1977 of the Company Judge of the Calcutta High Court in the company petition No. 85/75, filed by the respondents u/ss. 397/398 of the Companies Act, 1956, complaining of oppression by majority and praying for certain reliefs against the appellants and also the orders dated 25-4-1977 of the Division Bench against that order, this Court made an order on 31-5-1977, in terms of an agreement reached between the parties. By one such term the company was directed to purchase 1300 shares held by the respondents-petitioners. The price of the shares was to be determined by Messrs. Price Water D House and Peet, Chartered Accountants and Auditors, as on the date of the filing of the petition u/ss. 397-398, on the basis of the existing as also contingent and anticipated debts, liabilities, claims, payments and receipts of the company. The Chartered Accountants were to determine the value of the shares after examining accounts and calling for necessary explanations and after giving opportunity to both the groups to be heard in the matter and the determination of the value by the Chartered Accountants was to be final and binding and not open to any challenge by either side on any ground whatsoever. After such determination of E the value the company has to purchase the shares, and, on such purchase, the share capital of the company was to stand reduced *protanto*. The order made it clear that if the value of the shares is more than Rs. 65/- per share, the company will have to pay the balance, and, if it is less than Rs. 65/- per share, the respondents who have to sell the shares, will have to refund the difference between the price of the shares calculated at the rate of Rs. 65/- per share and the rate determined by the Chartered Accountants and Auditors within four weeks from the date of determination. After the appeal was thus disposed of, the interveners, claiming to be the creditors of the company to the extent of 40 lakhs, in F their petition dated 22-8-1977 requested the Court (i) to permit them to be heard and (ii) to postpone the purchase of shares by the company until such time as the company adopts proceedings in a competent court by following the procedure laid down by the Companies Act, 1956, particularly in Sections 100 to 104 for reduction of the share capital. In the alternative they prayed for safeguarding their interests by modifying the Court's order dated 31-5-1977.

Rejecting the petition to interfere with its order dated 31-5-1977, the Court, G after hearing the interveners,

HELD : (i) Section 77 envisages that, on the purchase by a company of its own shares, reduction of its share capital may be effected and sanctioned in either of two different modes : (i) according to the procedure prescribed in Sections 100 to 104; or (ii) under section 402, depending upon the circumstances in which reduction becomes necessary. [427E-F]

(ii) Section 77 of the Companies Act, 1956 prohibits the company from H buying its own shares unless the consequent reduction of capital is effected and sanctioned in pursuance of Sections 100 to 104 or Section 402. It places an embargo on the company purchasing its own shares so as to become its own member, but the embrago is lifted, if the company reduces its share capital *protanto*. [427E]

(iii) Section 77 leaves no room for doubt that reduction of share capital may have to be brought about in two different situations by two different modes. Undoubtedly, where the company has passed a resolution for reduction of its share capital and has submitted it to the Court for confirmation, the procedure prescribed by Sections 100 to 104 will have to be followed, if they are attracted. On the other hand, where the Court, while disposing of a petition under Ss. 397 and 398, gives a direction to the company to purchase shares of its own members, consequent reduction of the share capital is bound to ensue, and, before making such a direction it is not always necessary to give notice of the consequent reduction of the share capital to the creditors of the company. No such requirement is laid down by the Act. The two procedures ultimately bringing about reduction of the share capital are distinct and separate and stand apart from each other; and one or the other may be resorted to according to the situation. That is the clearest effect of the disjunctive 'or' in S. 77. [428H, 429AB]

(iv) Where the reduction of share capital is necessitated by directions given by the Court in a petition under ss. 397 and 398, the procedure prescribed in Sections 100 to 104 is not required to be followed in order to make the direction effective. [428G]

(v) It would not be correct to say that, whenever it becomes necessary to reduce the capital of a company, the reduction can be brought about only by following the procedure prescribed in Ss. 100 to 104. Sections 100 to 104 specifically prescribe the procedure for reduction of share capital where the Articles of the company permit and the company adopts a special resolution which can only become effective on the Court according sanction to it. Reduction of share capital may also take pursuant to a direction of the Court requiring the company to purchase the shares of a group of members while granting relief u/s 402. Both the procedures, by which reduction of capital of a company may be effected, are distinct and separate and stand apart from each other. [427F-H]

(vi) The scheme of Ss. 397 to 406 is to constitute a code by itself for granting relief to oppressed minority shareholders and for granting appropriate relief, a power of widest amplitude, *inter alia,* lifting the ban on company purchasing its share under Court's direction, is conferred on the Court. When the Court exercises this power by directing a purchase of its shares by the company, it would necessarily involve reduction of the capital of the company. Such a power of the Court is not subject to a resolution to be adopted by the members of the company which, when passed with statutory majority, has to be submitted to Court for confirmation. No canon of construction would permit such an interpretation in which the statutory power of the Court for its exercise depends upon the vote of the members of the company. [428C-E]

(vii) If reduction of share capital can only be brought about by resorting to the procedure prescribed in Ss. 100 to 104, it would cause inordinate delay and the very purpose of granting relief against oppression would stand self-defeated. [428E-F]

(viii) When minority shareholders complain of oppression by majority and seek relief against oppression from the Court under Ss. 397 and 398 and the Court, in a petition of this nature, considers it fair and just to direct the company to purchase the shares of the minority shareholders to relieve oppression, if the procedure prescribed by Ss. 100 to 104 is required to be followed, the resolution will have to be first adopted by the members of the company, but that would be well nigh impossible because the very majority against whom relief is sought would be able to veto it at the threshold and the power conferred on the Court would be frustrated. That could never have been the intention of the Legislature. [428F-H]

(ix) The object behind prescribing this procedure requiring, in special circumstances as contemplated in Section 101(3), the court to give notice to the creditors is that the members of the company may not unilaterally act to the detriment of the creditors behind their back. If such a procedure were not prescribed, the Court might, unaware of all the facts, be persuaded by the members to confirm the resolution and that might cause serious prejudice to the creditors. But such a situation would not be likely to arise in a petition

under Ss. 397 and 398. In such a petition the Court would be in a better position to have all the relevant facts and circumstances before it and it would be the Court which would decide whether to direct purchase of shares of the members by the company. Before giving such a direction, the Court would certainly keep in view all the relevant facts and circumstances, including the interest of the creditors. Even if the petition is being disposed of on a compromise between the parties, yet the Court, before sanctioning the compromise, would certainly satisfy itself that the direction proposed to be given by it pursuant to the consent terms, would not adversely affect or jeopardise the interest of the creditors. Therefore, it cannot be said that merely because s. 402 does not envisage consent of the creditors before the Court gives direction for reduction of share capital consequent upon purchase of shares of some of the members by the company, there is no safeguard for the creditors. [430EH]

In the instant case, there is no scope for apprehension on behalf of the interveners that the reduction of share capital to be effected under the Court's direction, without reference or notice to creditors, would adversly affect their interests because: (1) As per the order of the Court dated 31st May, 1977 while ascertaining the break-up value of the shares on the date of filing the petition under Sections 397 and 398, the Chartered Accountants and Auditors will have to take into account the assets of the company as also the existing, contingent and anticipated debts, liabilities, claims, and demands etc., as revealed in the accounts of the company for the last five years, which would indisputably include the claims made by the interveners in the two suits filed by them to the extent to which they appear genuine and well founded and (ii) the order of the Court did not fix any minimum price at which the shares shall be purchased by the company. [431A-C, D]

(x) A right to notice by reason of any rule of natural justice, which a party may establish, must depend for its existence upon proof of an interest which is bound to be injured by not hearing the party claiming to be entitled to a notice and to be heard before an order is passed. If the duty to give notice and to hear a party is not mandatory, the actual order passed on a matter must be shown to have injuriously affected the interest of the party which was to be given no notice of the matter. [431G]

In the instant case, after hearing the interveners it was found that no interest of theirs has been injured by not hearing them before the order was passed. The order passed by this Court on 31st May, 1977, is not vitiated on the ground of non-issue of notices to them under the inherent powers of the Court under Rule 9 of the Company (Court) Rules, 1959, even though there was no statutory duty to hear them. [431H. 432A]

(xi) Undoubtedly, when a petition is made to the Court under Ss. 397 and 398, it is obligatory upon the Court to give notice u/s 400 of the petition to the Central Government and it would be open to the Central Government to make a representation and if any such representation is made, the Court would have to take it into consideration before passing the final order in the proceeding. But Section 400 does not envisage a fresh notice to be issued at the appellate stage. [432C-D]

(The Court directed to expedite the suit Nos. 729/74 and 933/76 filed by the interveners in the Bombay High Court and dispose off within a period of six months).

CIVIL APPELLATE JURISDICTION: Civil Misc. Petition No. 7962 of 1977.

(Application for Intervention)

*Civil Appeal No.* 1347(*N*) *of* 1977

*Shankar Das Ghosh, J. B. Dadachanji, K. J. John* and *Shri Narain* for the Appellants in the Appeal and Opp. party in CMP. 7962/77.

*A. K. Sen, R. P. Bhatt, E. C. Agrawala, S. S. Khanduja* and *S. Sahni* for Respondents Nos. 1-6.

*Niren De* and *S. V. Tambvekar* for the applicant/Interveners (Bharat Refineries). A

The Judgment of the Court was delivered by

DESAI, J.—This miscellaneous petition by interveners raises a short but interesting question in the field of Company Law.

Briefly stated, the facts leading to the present miscellaneous petition are that Company Petition No. 85 of 1975 was filed by Jairam Das Gupta and others (for short 'Gupta Group') in the Calcutta High Court under ss. 397-398 of the Companies Act, 1956, complaining of oppression by the majority, and praying for various reliefs. Respondents in this petition were Cosmosteels Private Limited (for short 'the Company') and three others who would be referred to in this judgment as 'Jain Group'. By an order made by the Company Judge on 21st April 1977 the Board of Directors of the Company was superseded and one Mr. Sachin Sinha, Advocate, was appointed as Administrator to discharge various functions set out in the order. The Court also appointed Mr. N. Chakraborty, a Chartered Accountant and Auditor to investigate into the accounts of the Company and one Mr. A. K. Dey, Engineer and Surveyor for valuation of the assets of the Company and further the Auditor and the Surveyor after investigation of the accounts and evaluation of the assets of the Company were to determine the break-up value of the shares as on the date of the petition and on the determination of such break-up value the Administrator was to call upon the Jain Group to purchase the shares belonging to the Gupta Group within a period of three months from the date of service of notice failing which the Administrator was directed to purchase the shares of the Gupta Group for the Company at the break-up value determined as hereinabove mentioned. A further direction was given that if the Company was required to purchase the shares of Gupta Group on the failure of the Jain Group, the capital of the Company would *protanto* stand reduced. There were also some other directions which are not relevant for the purpose of this judgment. Against this Order made by the Company Judge, the Jain Group and the Company preferred an appeal under the Letters Patent and certain interim reliefs were sought. On an undertaking given on behalf of the Jain Group, the order superseding the Board of Directors and payment of Rs. 7 lacs to certain parties was stayed but the order directing valuation of the shares was not stayed and the proceeding for valuation was to go on. The Company was restrained by an injunction of the Court from creating any encumbrance on the assets of the Company and dealing with or disposing of its assets or spending any of its money except in usual course of business with a certain ceiling fixed. This interim relief was modified by the order made on 25th April 1977 by which the Company was directed to carry out the order for payment of Rs. 7 lacs to the persons named in the order under appeal within a fortnight from the date of the order failing which the Administrator appointed by the learned trial Judge was to take over possession for the purpose of making payment of Rs. 7 lacs. The direction for investigation of the accounts of the Company was stayed and simultaneously the proceeding for evaluation was also

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A stayed. This order dated 25th April 1977 was challenged in Special Leave Petition No. 2042 of 1977 preferred by the Company and the Jain Group. CMP. 3801/77 was moved on behalf of the appellants for certain interim reliefs. This Court by an order dated 12th May 1977 granted stay of the order of the Division Bench dated 25th April 1977 directing refund of Rs. 7 lacs by the Company and in default by the Administrator. The order of injunction granted by the learned B trial Judge and confirmed by the Division Bench was kept alive subject to the same condition about not encumbering the assets of the Company. The appellants then sought liberty to amend the Special Leave Petition by including a prayer for special leave against the order of the learned Company Judge dated 21st April 1977 which was granted by the Court and also special leave to appeal was granted. The appeal came to be numbered as Civil Appeal No. 1347(N) of C 1977. The parties settled the dispute as per the consent terms and requested this Court to make an order in terms of the consent terms. The Court accordingly made an order on 31st May 1977 disposing of the appeal in terms of the consent terms. The only term relevant for the present purpose is the one by which the Company was directed to purchase 1300 shares held by the Gupta Group. The price of the shares was to be determined by Messrs. Price Water House and D Peet, Chartered Accountants and Auditors, as on the date of the filing of the petition under sections 397-398 on the basis of the existing as also contigent and anticipated debts, liabilities, claims, payments and receipts of the Company. The Chartered Accountants were to determine the value of the shares after examining accounts and calling for necessary explanations and after giving opportunity to both the groups to be heard in the matter and the determination of the value by the E Chartered Accountants was to be final and binding and not open to any challenge by either side on any group whatsoever. On the value being so determined the Company had to purchase the shares and on such purchase, the share capital of the Company was to stand reduced *protanto*.

After the appeal was thus disposed of on 31st May 1977, the F interveners filed the present miscellaneous petition on 22nd August 1977 requesting the Court to permit them to intervene in the proceedings pending in Civil Appeal No. 1347 of 1977 and to postpone the purchase of shares by the Company until such time as the Company adopts proceedings in a competent Court by following the procedure laid down by the Companies Act, 1956, and particularly sections 100 to 104 for reduction of the share capital. In the alter- G native there was a prayer for safeguarding the claims of interveners by modifying the order dated 31st May 1977.

The interveners claim to be the creditors of the Company to the tune of Rs. 40 lacs. They say that the 'Cosmos Pioneer', an oil tanker belonged to the Company. By a Tanker Time Charter Party executed on 21st November 1972 between the Company on the one H hand and Burmah Shell Oil Storage and Distribution Co. of India Ltd., and Esso Eastern Inc., on the other, the vessel 'Cosmos Pioneer' was chartered in Indian Coastal waters for carriage of petroleum products. Pursuant to this contract the vessel was loaded at Bombay Port on

15th June 1973 for carrying cargo to the port of Kandla. On the voyage the vessel ran aground and was stranded on 18th June 1973 and the vessel and the cargo were abandoned. Intervener No. 2 is the underwriter with whom the charterers had effected an insurance covering the marine adventure of the aforesaid cargo and presumably on payment of the loss the underwriter has been subrogated. The interveners have filed two suits being Suit No. 729/74 by the intervener/petitioners and another suit No. 933/76 by Bharat Refineries Ltd. and Hindustan Petroleum Corporation against the Company and the total amount sought to be recovered in the two suits comes to Rs. 40 lacs. Both the suits are pending. The interveners say that they are thus creditors of the Company and before any reduction in the share capital of the Company is effected, the creditors are entitled to notice because by the reduction they are likely to be adversely affected.

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There was some dispute before us whether there was any substance in the claims of the interveners and whether they could be said to be creditors of the Company but for the purpose of this judgment we will proceed on the assumption that they are creditors of the Company. But even on this assumption, can it be said that the order of this Court dated 31st May 1977 directing the Company to purchase the shares of the Gupta Group and providing that consequent upon this purchase, the share capital of the Company would *protanto* be reduced, is bad for want of notice to the interveners and other creditors of the Company?

D

Section 77 prohibits the Company from buying its own shares unless the consequent reduction of capital is effected and sanctioned in pursuance of sections 100 to 104 or s. 402. This section places an embargo on the Company purchasing its own shares so as to become its own member but the embargo is lifted if the Company reduces its share capital *protanto*. It is clear that this section envisages that on purchase by a Company of its own shares, reduction of its share capital may be effected and sanctioned in either of two different modes: (i) according to the procedure prescribed in ss. 100 to 104; or (ii) under s. 402, depending upon the circumstances in which reduction becomes necessary. Sections 100 to 104 specifically prescribe the procedure for reduction of share capital where the Articles of the Company permit and the Company adopts a special resolution which can only become effective on the Court according sanction to it. On the other hand, reduction of share capital may have to be done pursuant to a direction of the Court requiring the Company to purchase the shares of a group of members while granting relief under s. 402. Both the procedures by which reduction of capital of a Company may be effected are distinct and separate and stand apart from each other. It would not, therefore, be correct to say that whenever it becomes necessary to reduce the capital of a Company the reduction can be brought about only by following the procedure prescribed in ss. 100 to 104. There is another independent procedure prescribed in s. 402 and recognised by s. 77, by which reduction of the share capital of a Company can be effected. But both these

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A procedures have one feature in common, namely, that there is Court's intervention before the Company can reduce its share capital, and this is of vital importance from the stand point of creditors of the Company.

Sections 100 to 104 provide a detailed procedure for reduction of share capital. Without being exhaustive s. 100 mentions three modes B of reduction of share capital, viz., (i) extinction or reduction of the liability on any of the shares in respect of share capital not paid up, (ii) cancellation of any paid up share capital which is lost or is unrepresented by available assets, and (iii) paying off any paid up share capital. Section 101 provides that a Company which has adopted a special resolution for reduction of share capital has to move the Court by a petition for an order confirming the reduction. A C detailed procedure is prescribed which the Court should ordinarily follow before confirming the resolution. This procedure has to be followed where the proposed reduction of share capital involves either the dimunition of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital and in any other case if the Court so directs. But even in first mentioned two cases, sub-section (3) confers a discretion on the Court to dispense with the D procedure if the Court having regard to any special circumstances thinks proper to do so. The procedure envisages a list of creditors to be settled and a notice to be published which will enable the creditors whose names are included in the list to object to the reduction and a provision has to be made in respect of dissenting creditors.

Sections 397 and 398 enable the minority shareholders to move E the Court for relief against oppression by majority shareholders. In a petition under ss. 397 and 398, section 402 confers power upon the Court to grant relief against oppression, *inter alia,* by providing for the purchase of shares of any of the members of the Company by other members thereof or by the Company and in the case of purchase of its shares by the Company, the consequent reduction of the share capital of the Company. Rule 90 of the Companies F (Court) Rules, 1959, provides that where an order under ss. 397 and 398 involves reduction of capital, the provisions of the Act and the Rules relating to such matter shall apply as the Court may direct.

The question is : whether when on a direction given by the Court, while granting relief against oppression to the minority shareholders of the Company, to the Company to purchase the shares of some of G its members which would *ipso facto* bring about reduction of the share capital because a Company cannot be its own member, is it obligatory to serve a notice upon all the creditors of the Company ? It was conceded that the procedure prescribed in sections 100 to 104 is not required to be followed where reduction of share capital is necessitated by the direction given by the Court in a petition under ss. 397 and 398. Section 77 leaves no room for doubt that reduction of a H share capital may have to be brought about in two different situations by two different modes. Undoubtedly, where the Company has passed a resolution for reduction of its share capital and has submitted it to the Court for confirmation the procedure prescribed by ss. 100

to 104 will have to be followed, if they are attracted. On the other hand, where the Court, while disposing of a petition under ss. 397 and 398, gives a direction to the Company to purchase shares of its own members, a consequent reduction of the share capital is bound to ensue, but before granting such a direction it is not necessary to give notice of the consequent reduction of the share capital to the creditors of the company. No such requirement is laid down by the Act. Two procedures ultimately bringing about reduction of the share capital are distinct and separate and stand apart from each other and one or the other may be resorted to according to the situation. That is the clearest effect of the disjunctive or in section 77.

The scheme of sections 397 and 406 appears to constitute a code by itself for granting relief to oppressed minority shareholders and for granting appropriate relief, a power of widest amplitude, *inter alia,* lifting the ban on company purchasing its shares under Court's direction, is conferred on the Court. When the Court exercises this power by directing a purchase of its shares by the Company, it would necessarily involve reduction of the capital of the Company. Is such power of the Court subject to a resolution to be adopted by the members of the Company which, when passed with statutory majority, has to be submitted to Court for confirmation? No canon of construction would permit such an interpretation in which the statutory power of the Court for its exercise depends upon the vote of the members of the Company. This would inevitably be the situation if reduction of share capital can only be brought about by resorting to the procedure prescribed in ss. 100 to 104. Additionally, it would cause inordinate delay and the very purpose of granting relief against oppresson would stand self defeated. Viewed from a slightly different angle, it would be impossible to carry out the directions given under s. 402 for reduction of share capital if the procedure under ss. 100 to 104 is required to be followed. Under ss. 100 to 104 the Company has to first adopt a special resolution for reduction of share capital if its articles so permit. After such a resolution is adopted which, of necessity must be passed by majority, and it being a special resolution, by a statutory majority, it will have to be submitted for confirmation to the Court. Now, when minority shareholders complain of oppression by majority and seek relief against oppression from the Court under ss. 397 and 398 and the Court in a petition of this nature considers it fair and just to direct the Company to purchase the shares of the minority shareholders to relieve oppression, if the procedure prescribed by ss. 100 to 104 is required to be followed, the resolution will have to be first adopted by the members of the Company but that would be well nigh impossible because the very majority against whom relief is sought would be able to veto t at the threshold and the power conferred on the Court would be frustrated. That could never have been the intention of the Legislature. Therefore, it is not conceivable that when a direction for purchase of shares is given by the Court under s. 402 and consequent reduction in share capital is to be effected the procedure prescribed for reduction of share capital in ss. 100 to 104 should be required to be followed in order to make the direction effective.

A A very serious apprehension was voiced by Mr. De that if the Court directs the Company to purchase the shares of some of its members while granting relief against oppression, the Company would part with its funds which would jeopardise the security of the creditors of the Company and that if such a direction for reduction of share capital can be given by the Court behind the back of the creditors, the creditors would be adversely affected and therefore, it was contended B that, even though, while giving direction under s. 402 directing the Company to purchase the shares of its members, it is not obligatory upon the Court to give notice to the creditors, such notice ought to be given in the interests of the creditors. This apprehension is, in our opinion, unfounded. Even when the Court is moved to confirm the resolution for reduction of share capital under ss. 100 to 104, the Court may in its discretion dispense with the procedure prescrib- C ed in that group of sections [vide s. 101(3)]. Undoubtedly, the Court would use the discretion only upon proof of special circumstances as contemplated by s. 101(3), but when such discretion is used, the creditors would have no opportunity to object to the reduction. The opportunity to object would thus depend upon the Court exercising its discretion one way or the other. It may be noticed that until the Company submits its resolution for reduction of share D capital to the Court, the creditors have no say in the matter and, therefore, the Court is empowered to ascertain the wishes of the creditors by following the procedure prescribed in sections 101 to 104. The object behind prescribed this procedure requiring, save in special circumstances as contemplated in section 101(3), the Court to give notice to the creditors is that the members of the Company may not unilaterally act to the detriment of the creditors behind their back. E If such a procedure were not prescribed, the Court might, unaware of all the facts, be persuaded by the members to confirm the resolution and that might cause serious prejudice to the creditors. But such a situation would not be likely to arise in a petition under ss. 397 and 398. In such a petition the Court would be better in a position to have all the relevant facts and circumstances before it and it would be the Court which would decide whether to direct purchase F of shares of the members by the Company. Before giving such a direction the Court would certainly keep in view all the relevant facts and circumstances, including the interest of the creditors. Even if the petition is being disposed of on a compromise between the parties, yet the Court, before sanctioning the compromise, would certainly satisfy itself that the direction proposed to be given by it pursuant to the consent terms, would not adversely affect or jeopardise the inter- G est of the creditors. Therefore, it cannot be said that merely because s. 402 does not envisage consent of the creditors before the Court gives direction for reduction of share capital consequent upon purchase of shares of some of the members by the Company, there is no safeguard for the creditors.

H But quite apart from that, it is clear on the facts of this case that the apprehension of Mr. De is not well founded. The order of the Court dated 31st May 1977 clearly provides that the Chartered Accountants and Auditors will determine the value of the shares as on

the date of filing of the petition under ss. 397 and 398 *on the basis of the existing as also contingent and anticipated debts, liabilities claims, demands and receipts of the Company* (underlining is ours) and for the purpose of determining the value, they will be at liberty to examine the accounts of the Company for the last five years. Therefore, while ascertaining the break-up value of the shares on the date of filing of the petition under ss. 397 and 398, the Chartered Accountants and Auditors will have to take into account the assets of the Company as also the existing, contingent and anticipated debts, liabilities, claims, demands, etc.

This would indisputably include the claims made by the interveners in the two suits filed by them to the extent to which they appear genuine and well-founded. They need not, therefore, have the slightest apprehension that their interests are not safeguarded by the direction given by the Court. It must also be made distinctly clear that the order of the Court does not fix any minimum price at which the shares shall be purchased by the company. The order makes it clear that if the value of the shares is more than Rs. 65 per share, the Company will have to pay the balance and if it is less than Rs. 65 per share the Gupta Group who have to sell the shares, will have to refund the difference between the price of the shares calculated at the rate of Rs. 65/- per share and the rate determined by the Chartered Accountants and Auditors within four weeks from the date of such determination. This pragmatic and flexible approach clearly safeguards the interests of the creditors including the interveners. There could have been a legitimate apprehension if some minimum price were fixed at which the company was bound to purchase the shares. Then it could have been plausibly argued that if such minimum price were higher than the real value of the shares, the company would have to part with some of its funds jeopardising the security of the creditors. Such not being the position, there is no scope for apprehension on behalf of the interveners that the reduction of share capital to be effected under the Court's direction without reference or notice to creditors would adversely affect their interests.

We may also point out that a right to notice by reason of any rule of natural justice, which a party may establish, must depend for its existence upon proof of an interest which is bound to be injured by not hearing the party claiming to be entitled to a notice and to be heard before an order is passed. If the duty to give notice and to hear a party is not mandatory, the actual order passed on a matter must be shown to have injuriously affected the interest of the party which was given no notice of the matter. The facts discussed above by us show that no interest of the interveners, on whose behalf we have heard Mr. De at length, has been injured by not hearing them before the order was passed. They have not shown us how the order could be different if they had been heard by issuing notices to them under the inherent powers of the Court under rule 9 of the Company (Court) Rules, 1959, even though there was no statutory duty to hear them. Hence, we hold that the order passed by this Court on 31st May 1977 is not vitiated on such a ground.

A It was also urged that the Court was in error in making the order without notice to the Central Government. Section 400 provides that the Court shall give notice of every application made to it under ss. 397 or 398 to the Central Government and shall take into consideration the representation, if any, made to it by that Government before passing a final order under that section. It was urged that before this Court made the final order dated 31st May 1977, the record does B not show that any notice was given to the Central Government and, therefore, also the order is vitiated. We see no merit in this contention. Undoubtedly, when a petition is made to the Court under ss. 397 and 398 it is obligatory upon the Court to give notice of the petition to the Central Government and it would be open to the Central Government to make a representation and if any such representation is made, the Court would have to take it into consideration before pas- C sing the final order in the proceeding. But s. 400 does not envisage a fresh notice to be issued at the appellate stage. The present petition under ss. 397 and 398 was made to the Calcutta High Court and it was not disputed that before the learned single Judge finally disposed of the petition *inter alia* directing purchase of shares of the Gupta Group by the Company, notice was issued to the Central Government as envisaged by s. 400. The Central Government apparently did D not appear and make any representation. The matter came before this Court initially against the interim order made by the appellate Bench of the Calcutta High Court in the appeal against the order of the learned single Judge, but subsequently special leave was obtained for appealing against the order of the learned single Judge also and it was after this special leave was granted that this Court made the final order. Therefore, there was no question of issuing fresh notice E to the Central Government under s. 400 and the contention must be negatived.

Accordingly, we find no merits in the Civil Miscellaneous Petition and it must be rejected.

Before parting with this case we would like to point out that, un- F fortunately, though Suit Nos. 729/74 and 933/76 have been filed by the interveners in the High Court at Bombay as far back as 1974, the written statements in these suits have not been filed though more than 3 years have elapsed. The decision in the suits may have a bearing on the value of shares to be determined under the directions of this Court dated 31st May 1977. We, therefore, direct that Suit Nos. 729/74 and 933/76 may be expedited and they may be heard and dis- G posed of without delay at any rate, within a period of six months.

S. R. *Petition rejected.*