

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CAPP-30-2016 (O&M)

Date of decision:- 13.09.2017

Mr. Gangji Kalyanji Bhanusali

...Appellant

Versus

GLM Infratech Private Limited and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present:- Mr. Adarsh Jain, Advocate,  
for the appellant.

Mr. Harish Mehla, Advocate,  
for the respondents.

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**S.J. VAZIFDAR, C.J. (ORAL)**

CMA-96-2016 (for exemption)

The application is allowed subject to all just exceptions.

CMA-97-2016 (for condonation of delay in filing the appeal)

For the reasons mentioned in the application, the delay of three days in filing the appeal is condoned.

The application stands disposed of.

CMA-98-2016 (for condonation of delay in refiling the appeal)

For the reasons mentioned in the application, the delay of thirty eight days in refiling the appeal is condoned.

The application stands disposed of.

CAPP-30-2016

This is an appeal against the order of the learned Company Judge dated 29.07.2016 refusing to even issue notice to the respondent-company for admission of a petition for winding up under Sections 433 and 434 of the Companies Act, 1956, inter alia, on the ground that the respondent-company is unable to pay its debts.

2. As there was some doubt as to whether the liability, if any, is of the respondent-company, the petitioner filed

CMA-17-2017. The petitioner's claim on the basis of an MoU

dated 02.02.2012 was originally against a partnership firm. However, that partnership firm was converted into a private limited company under the provisions of Sections 366 to 470 of the Companies Act, 1956 and the Company Court Rules. Clause 9 of the Deed of Admission states that the newly incorporated company had taken over the assets and liabilities of the partnership firm. Moreover, this is admitted in the reply dated 06.05.2016 (Annexure P-24) to the statutory notice dated 21.03.2016.

3. The respondents state that the said MoU did not constitute an agreement between the parties and that it is only a draft.

4. We do not wish to make any observations regarding the merits of the rival contentions including as regards the validity or effect of the MoU. This, however, is not a case where notice ought not to be issued at all merely because fourteen flats have been furnished as security. The effect thereof would also have to be considered at least at this stage.

5. In these circumstances, the impugned order and judgement dated 29.07.2016 is set aside. The matter shall be placed before the learned Company Judge at the stage of admission. Needless to clarify that this order does not admit the petition, but only places the petition before the Company Court for admission. The respondents shall be entitled to file their reply to the petition on merits.

The appeal is accordingly disposed of.

**(S.J. VAZIFDAR)**  
**CHIEF JUSTICE**

**(HARINDER SINGH SIDHU)**  
**JUDGE**

**13.09.2017**

Amodh

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |