

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

CAPP No.4 of 2017

Date of decision:04.09.2017

Diamond Leasing and Finance Limited and others

...Appellants

Versus

Allgrow Finance and Investment Pvt. Ltd.

...Respondent

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

Present: Ms. Munisha Gandhi, Sr. Advocate with
 Mr. Vaibhav Sharma, Advocate
 for the appellants.

Mr. Deepankur Sharma, Advocate
for the official liquidator.

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

This is an appeal against the order of the learned Company Judge transferring the case to the National Company Law Tribunal, Chandigarh. The appellants filed the above petition for sanctioning the scheme of amalgamation under Section 391 and 394 of the Companies Act, 1956.

2. The appellants sought the sanction of the Court of a scheme whereunder appellants No.1 to 10 (transferor Companies) are to be amalgamated with appellant No.11 (transferee company). It is important to note that it is a composite petition seeking directions of this Court for dispensing with the meetings of the equity shareholders, unsecured creditors and preference shareholders of the appellants concerned. They are no secured

creditors of any of the appellants. Each of the appellants is a closely held company of the same group. The preference shareholders, equity shareholders and the unsecured creditors of the appellants concerned have consented to the scheme. There is no opposition to the scheme by any of the concerned parties.

3. The above composite petition was filed on 16.09.2016. By an order dated 23.09.2016, the learned Company Judge recorded the above facts, issued notice to the Regional Director, Northern Region Ministry of Corporate Affairs, New Delhi and the Official Liquidator for 16.12.2016 and issued directions for the publication and notice in the newspapers specified in the order. The above directions were carried out by the appellants. The affidavit of compliance was filed on 09.12.2016. The Regional Director submitted his report on 05.05.2017 and the reply thereto was filed on 25.05.2017. The Official Liquidator filed his report on 26.05.2017 and the reply thereto was filed on 30.05.2017.

4. The matter, thereafter came up before the learned Company Judge who passed the following order on 30.05.2017:

"An affidavit in the circumstances existing in the present case has been filed to the effect that as per the observations made by the Chartered Accountant and the Official Liquidator, the scheme of amalgamation between the transferor companies and the transferee company, is not, in any manner, prejudicial to the interests of its

members, creditors or to the public interests with a request that the matter should be decided on merits and a scheme may be sanctioned. The affidavit is taken on record. Copy supplied to the Official Liquidator.

Adjourned to 10.7.2017, for further directions."

The order indicates that the learned Company Judge not only merely took the affidavit on record but also considered the same, inter alia recording the contents thereof. Thereafter, the matter was adjourned to 10.07.2017 for "further directions". The directions were obviously to be passed on the petition. In our view the matter was thereafter reserved for directions/orders. The Companies (Removal of Difficulties) Fourth Order 2016 issued by the Central Government makes it clear that matters where the order for allowing or otherwise of the proceedings are reserved are not to be transferred to the National Company Law Tribunal. The issue is in fact covered in favour of the appellants on this point by the judgement of a Division Bench of this Court dated 31.03.2017 to which one of us (S.J. Vazifdar, CJ) was a party in the matter of Alpha Corp Development Pvt. Ltd. and Euthoria Developers Private Ltd. (CAPP No.2 of 2017).

5. In the circumstances, the above proceedings ought to have been decided by the learned Company Judge himself. The impugned order, is therefore, set aside to this extent.

6. Had there been any dispute regarding the legality or validity of the scheme for any reason, we would at this stage

have remanded the matter to the learned Company Judge to decide the petition on merits. However, in the facts and circumstances of the case, we intend disposing off the petition ourselves. Not a single party concerned has objected to the scheme of amalgamation in respect of any of the appellants. There are no secured creditors. The equity shareholders and preference shareholders and the unsecured creditors have consented to the said scheme.

7. The learned counsel for the Regional Director and the Official Liquidator states that the appellants have by now complied with all the requirements and states that there is no objection to the said scheme. In any event, this order will be subject to each of the appellants complying with all the requirements of law.

8. In the circumstances, the impugned order is set aside and the petition is allowed on the following terms and conditions:

i) The appellants are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies electronically along with E-Form INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956.

ii) Each of the appellants to pay costs of Rs.50000/- to the Regional Director, Northern Region, Noida by 4th October, 2017. Each of appellant nos.1 to 10 i.e. the transferor companies shall also pay Rs.50,000/- to the Official Liquidator.

iii) The sanction of the scheme and copies of this order be published in the Financial Express (English) and Jagbani (Punjabi) newspapers, both Punjab Editors and in the Official Gazette of the Government of Punjab.

iv) Filing and issuance of the drawn up order is dispensed with.

v) All concerned authorities to act on a copy of this order alongwith Scheme and form of Minutes duly authenticated by the Reader of this Court.

vi) The appellants shall comply with all statutory and other requirements consequent to and in connection with this order.

vii) It shall be open to any party aggrieved by this order to file an application for modification, review/recall of this order.

(S.J. VAZIEDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

04.09.2017

Atul

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No