

\$~23

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

+ CRL.M.C. 1228/2013 and Crl. M. A. 3779/2013

ALCHEMIST INFRA REALTY LTD. & ORS. Petitioners
Through Mr. Darpan Wadhwa, Sr. Advocate
with Ms. Sonia Dube, Mr. Saurabh
Seth, Mr. S. Chakraborty and Mr.
Anurag Singh, Advocates

versus

UOI & ORS. Respondents
Through Ms. Amrita Prakash, CGSC with
Mr. Hari Shankar Sharma, Advocate
for UOI

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **27.02.2019**

1. By this petition under Section 482 of Cr.P.C., the petitioner has prayed for quashing of complaint case No.248/3/12 filed by the respondent No. 2 against the petitioner in the Court of Chief Metropolitan Magistrate, (Special Acts) Central District, Tis Hazari Courts, Delhi for the violation of Section 234(1) and (7) of the Companies Act, 1956 ("The Act", for short).
2. Respondent no.2 alleged in the complaint under Section 234(4) of the Act that on examination of complaint against the petitioner no. 1 and the documents including Balance-sheets filed by the petitioner, the office of

respondent no. 2 issued order dated 27th March, 2012 under Section 234(1) read with Section 234 (7) of the Act to petitioner no. 1 thereby calling upon it to furnish the documents, referred to in the order, within 15 days. Thereafter, orders under Section 234 (3A) were issued on 18.04.2012, 16.05.2012, 22.05.2012, 12.06.2012 and 06.07.2012 thereby calling upon the petitioners to furnish information/documents but to no effect. It was thus alleged that the petitioners had committed offence under Section 234 (4) of the Act. Subsequently order dated 5th November, 2012 was also passed thereby directing the Serious Fraud Investigation Office (SFIO) to investigate the offences of petitioner no.1 company.

3. Section 234 of the companies Act reads as under:-

“234.POWER OF REGISTRAR TO CALL FOR INFORMATION OR EXPLANATION.

(1) Where, on perusing any document which a company is required to submit to him under this Act, the Registrar is of opinion that any information or explanation is necessary with respect to any matter to which such document purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation, within such time as he may specify in the order.

(2) On receipt by the company of an order under sub-section (1), it shall be the duty of the company, and of all person who are officers of the company, to furnish such information or explanation to the best of their

power.

(3) On receipt of a copy of an order under sub-section (1), it shall also be the duty of every person who has been an officer of the company to furnish such information or explanation to the best of his power.

(3A) If no information or explanation is furnished within the time specified or if the information or explanation furnished is, in the opinion of the Registrar, inadequate, the Registrar may by another written order call on the company to produce before him for his inspection such books and papers as he considers necessary within such time as he may specify in the order; and it shall be the duty of the company, and of all persons who are officers of the company, to produce such books and papers.

(4) If the company, or any such person as is referred to in sub-section (2) or (3) refuses or neglects to furnish any such information or explanation [or if the company or any such person as is referred to in sub-section (3A) refuses or neglects to produce any such book and papers], -

(a) the company and each such person shall be punishable with fine which may extend to [five hundred rupees] and in the case of a continuing offence, with an additional fine which may extend to [fifty hundred rupees] for every day after the first during which the offence continues; and

(b) the Court trying the offence may, on the application of the Registrar and after notice to the company, make an order on the company for production before the Registrar of such books and papers as in the opinion of the Court, may reasonably be required by the Registrar for the purpose referred to in sub-section (1).

(5) On receipt of any writing containing the

information or explanation referred to in sub-section (1), or of any book or paper produced whether in pursuance of an order of the Registrar under sub-section (3A) or of an order of the Court under sub-section (4), the Registrar may annex that writing, book or paper, or where that book or paper is required by the company, any copy or extract thereof, to the document referred to in sub-section (1); and any writing or any book or paper or copy or extract thereof so annexed shall be subject to the like provisions as to inspection, the taking of extracts and the furnishing of copies, as that document is subject.

(6) If such information or explanation is not furnished within the specified time or if after perusal of such information or explanation or of the books and papers produced whether in pursuance of an order of the Registrar under sub-section (3A) or of an order of the Court under sub-section (4), the Registrar is of opinion that the document referred to in sub-section (1), together with such information or explanation or such books and papers discloses an unsatisfactory state of affairs or does not disclose a full and fair statement of any matter to which the document purports to relate, the Registrar shall report in writing the circumstances of the case to the Central Government.

(7) If it is represented to the Registrar on materials placed before him by any contributory or creditor or any other person interested that the business of a company is being carried on in fraud of its creditors or of persons dealing with the company or otherwise for a fraudulent or unlawful purpose, he may, after giving the company an opportunity of being heard, by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order, within such time as he may

specify therein; and the provisions of sub-sections (2), (3), (3A) , (4) and (6) of this section shall apply to such order. If upon inquiry the Registrar is satisfied that any representation on which he took action under this sub-section was frivolous or vexatious, he shall disclose the identity of his informant to the company.

(8) The provisions of this section shall apply mutatis mutandis to documents which a liquidator, or a foreign company within the meaning of section 591, is required to file under this Act.”

4. Petitioners filed Writ Petitions being W.P.(C) Nos. 7529/2012 in this Court whereby challenged the order dated 27.03.2012 under Section 234(1) and Section 234(7) of the Act as well as the orders dated 18.04.2012, 16.05.2012, 12.06.2012 and 06.07.2012 under Section 234(3A) of the Companies Act. It was contended in the said writ petitions that respondents could not have asked for furnishing of the documents under Section 234(1) and 234 (7) of the Act without affording opportunity of hearing to the petitioners in view of Section 234 (7) of the Act. Another Writ Petition (C) No. 8065/2015 was also filed whereby order dated 5th November, 2012 was assailed.

5. The aforesaid writ petitions have been disposed of by the learned Single Judge of this Court vide order dated 07.02.2019 and the impugned order dated 27.03.2012 has been set aside. All other orders dated

18.04.2012, 16.05.2012, 12.06.2012 and 06.07.2012 are consequential to order dated 27.03.2012 and same stands set aside. The learned Single Judge has held thus:-

“11. The aforesaid course commends to this Court. Accordingly, the impugned order dated 27.03.2012 is set aside. It is directed that the present petitions will be treated as a representation by the Registrar of Companies, who shall afford the petitioner company an opportunity of being heard. The petitioner company will appear before the Registrar of Companies through its authorised representative on 22.02.2019 at 2:00 pm and if required, on subsequent dates fixed by the Registrar. After hearing the parties, the Registrar may pass an order calling upon the petitioner company to submit the information as required. The Registrar shall also consider the petitioner company’s contention as to whether provisions of Section 234 (1) of the Act are applicable.

12. It is clarified that if any such order is passed, the petitioner company shall furnish all information within the period as specified by the Registrar. Needless to state if such information not provided, the Registrar is at liberty to initiate such penal proceedings as provided in the Act or the Companies Act, 2013.

13. Since, it is not disputed that the order dated 05.11.2012 directing investigation of the affairs of the petitioner company under Section 235 of the Act and the order dated 14.12.2012 appointing inspectors also follow from the orders passed under Section 234(7) of the Act, the said orders are also set aside. This would not preclude respondent no.1 from directing investigation of the affairs of the petitioner company either on the report submitted by the Registrar or in Public Interest.”

6. Since the order dated 27.03.2012 has been quashed and other orders

are consequential to the aforesaid order, I am of the view that criminal complaint filed by the respondent no. 2 against the petitioners for non-furnishing the information and or documents as contained in the aforesaid orders, cannot continue and is liable to be quashed. Accordingly, aforesaid criminal complaint case and all consequential proceedings are quashed.

7. The petition is disposed of. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J

FEBRUARY 27, 2019

b