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

+ **W.P.(C) 7529/2012 & CM APPL. 19148/2012, 14112/2014**

ALCHEMIST INFRAREALTY LTD & ANR Petitioners

Through Mr Darpan Wadhwa, Senior
Advocate with Mr Surendra Dube, Mr
Saurabh seth, Mr S. Chakraborty, Mr
Ankit Yadav, Mr Rahul Kriplani,
Advocates.

versus

UOI & ORS Respondents

Through Mr Jasmeet Singh, CGSC with
Mr Srivats Kaushl, Mr Aditya Madan,
Advocates for UOI.
Ms Suparna Srivastava, CGSC with
Ms Sanjna Dua, Advocate.

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+ **W.P.(C) 8065/2012 & CM APPL. Nos.20101/2012, 12699/2013,
48298/2018**

M/S ALCHMIST INFRA REALTY
LTD AND ANR

..... Petitioners

Through Mr Darpan Wadhwa, Senior
Advocate with Mr Surendra Dube, Mr
Saurabh seth, Mr S. Chakraborty, Mr
Ankit Yadav, Mr Rahul Kriplani,
Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through Mr Jasmeet Singh, CGSC with

Mr Srivats Kaushl, Mr Aditya Madan,
Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **07.02.2019**

1. The petitioners have filed Writ Petition (C) No.7529/2012, *inter alia*, impugning an order dated 27.03.2012 passed by respondent no.3 (Assistant Registrar of Companies) under Section 234(1) and Section 234(7) of the Companies Act, 1956 (hereafter 'the Act'). The petitioners also impugn other orders issued under Section 234(3A) of the Act issued thereafter, including the orders dated 18.04.2012, 16.05.2012 and 12.06.2012, *inter alia*, affording petitioner no.1 company further opportunity to provide the necessary information as sought by respondent no.3. In addition, the petitioners also impugn a communication dated 06.07.2012, whereby petitioner no.1 company was informed that the information provided was unsatisfactory and, accordingly, was called upon to furnish further information indicated therein.
2. In Writ Petition (C) No.8065/2012, the petitioners have impugned an order dated 05.11.2012 passed by respondent no.3 directing respondent no.2 (Serious Fraud Investigation Office – SFIO) to investigate the affairs of petitioner no.1 company. In addition, the petitioners also impugn an order dated 14.12.2012 issued by the SFIO appointing inspectors to carry out investigation with regard to the affairs of petitioner no.1 company.
3. Admittedly, the orders passed under Section 234 (3A) of the Act

and the order dated 05.11.2012 directing investigation under Section 235 of the Act have been passed consequent to the order dated 27.03.2012 passed under Section 234 (1) and 234 (7) of the Act. The only contention urged on behalf of the petitioners for assailing the above order is that the petitioner company has not been afforded an opportunity to be heard as required under Section 234 (7) of the Act.

4. Mr. Jasmeet Singh, learned counsel appearing for the respondents contested the aforesaid contentions and drew the attention of this Court to various opportunities that were afforded to the petitioner company to provide information and clarification as sought for. He submitted that in the aforesaid circumstances, it could not be contended that the petitioner had not been afforded adequate opportunities. He relied on the decision of the Madras High Court in *The Coimbatore Spinning and Weaving Co. Ltd. v. M. S. Srinivasan Chartered Accountant, Coimbatore and Another: AIR 1959 Madras 229*, and the decision of the Co-ordinate Bench of this Court in *Hardicon Ltd. v. Registrar of Companies: (2009) 152 CompCas 13 (Delhi)*.

5. Before proceeding further, it would be important to refer to the relevant provisions of Section 234 of the Act, which read 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 nor 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 nor 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 persons who are officers of the company, to furnish such information nor 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 furnish 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.

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- (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 orders, within such time as he may specify therein; and the provisions of sub-sections (2), (3), [3A)], and (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 information to the company.”

6. Section 235 of the Act is also relevant and reads as under:

“Investigation of the affairs of a company – (1) The Central Government may, where a report has been made by the Registrar under sub-section (6) of section 234, or under sub-section (7) of that section, read with sub-section (6) thereof, appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct.

(2) Where –

- (a) in the case of a company having a share capital, an application has been received from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and
- (b) in the case of a company having no share capital, an application has been received from not less than one-fifth of the persons on the company’s register of members,

the [Tribunal] may, after giving the parties an opportunity of being heard, by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration

being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct.]”

7. A plain reading of sub section (7) of Section 234 of the Act indicates that the Registrar can make an order calling upon the petitioner company to furnish any information or explanation on the matter specified in the order, provided that he has received a representation that the business of the company is being carried on in fraud of its creditors, or otherwise for fraudulent or unlawful purpose. He is further required to give that company opportunity to be heard and thereafter, by a written order call for information or explanation with regard to the specified matters.

8. Admittedly, in the present case, the petitioner company was not afforded any opportunity to be heard prior to issuance of order dated 27.03.2012. The decision in the case of ***The Coimbatore Spinning and Weaving Co. Ltd.*** (*supra*) also does not support the view that no hearing is required to be afforded to the company prior to passing an order under Section 234 (7) of the Act. In that case, the Court had noted that, in fact, the company had been heard through advocates, albeit, at least two days subsequent to the order. Thus, the requirement of affording a company an opportunity for being heard was duly complied with. Similarly in the case of ***Hardicon Ltd.***(*supra*), the Coordinate Bench of this Court had expressly held that before an order under Section 234(7) of the Act is passed, the petitioner company should have been given an opportunity to

be heard.

9. Having stated the above, this Court cannot be oblivious of the fact that there are serious allegations against the petitioner company and several complaints were received. The petitioner company has been duly informed of the allegations that it had accepted money from public for allotment of land /plot/development of infrastructure and had failed to discharge its obligations. It is also alleged that the money collected by the petitioner company amounted to the petitioner company floating a collective investment scheme.

10. Mr Wadhwa, learned Senior Counsel appearing for the petitioners also conceded that the petitioner company would have no objection if an opportunity of hearing is afforded to the petitioner company in terms of the decision of this Court in ***Hardicon Ltd.*** (*supra*).

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.

14. The petitions are disposed of. All pending applications also stand disposed of.

VIBHU BAKHRU, J

FEBRUARY 07, 2019
pkv/DR