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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on : 22.07.2020

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CONT. CAS(C) 610/2019 & CM APPL. 43304/2019

ALCHEMIST HEALTHCARE LTD. & ANR.Petitioners

Through: Mr. Rajiv Nayyar, Sr. Adv.with
Mr. Saurabh Seth,
Ms. Sonia Dube,
Mr. Shatadru Chakraborty and
Mr. Anurag Singh, Advs.

versus

MINISTRY OF CORPORATE AFFAIRS & ORS.....Respondents

Through: Mr. Jasmeet Singh, CGSC with
Mr. Srivats Kaushal and
Ms. Tejaswini, Advs.

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

ORDER

A.K.CHAWLA, J.

By the present order, the Court proceeds to dispose of the
contempt petition being Cont. Case (C) No. 610/2019 as also CM No.

43304/2019 filed by applicants - the petitioners under Order VI Rule 17 CPC seeking to amend the contempt petition.

2. At the onset, it would be apposite to note that the court has not yet issued notice either of the contempt petition or the misc. application filed seeking amendment thereof. Here itself, it would also be appropriate to note that the contempt petition was originally placed before the Division Bench along with CM No. 16956/2019 filed in LPA No. 189/2019.

3. The contempt petition preferred by Alchemist Healthcare Ltd. in short **Healthcare** and one of its Directors is founded on the allegations of willful disobedience / violation of the orders passed by the Division Bench in LPA 189/2019 Alchemist Infra Reality Ltd. Vs. Union of India & Ors. on 18.03.2019 & 10.04.2019. It would therefore be necessary to advert to the origin of the proceedings culminating into LPA 189/2019 - the orders passed where-under, are the basis to maintain the instant petition.

4. It emerges from the record that on the receipt of the complaints - which raised issues with regard to the affairs of Alchemist Infra Reality Ltd. in short **Infra Realty** and its Directors, the Ministry of Corporate

Affairs o/o Registrar of Companies in short ROC invoked the provisions of Section 234 (1) & (7) of the Companies Act, 1956 and vide letter dated 27.03.2012 called upon Infra Realty to furnish information, documents and the explanation sought there-under, failing which, penal action under the relevant provisions of the Act, 1956 was to follow. Infra Realty on the receipt of such communication sought a few opportunities to comply with the command so given by ROC. It appears on account of failure to comply within the time granted, the ROC proceeded to pass an order under Section 234(3A) of the Act, 1956 and thereby, Infra Realty and its defaulting Directors were called upon to show cause as to why no prosecution be launched against them. On this, Infra Realty and one of its Directors namely, N. Madhav Kumar preferred W.P.(C) 7529/2012 inter alia assailing the letter dated 27.03.2012 and the order dated 14.09.2012. While issuing notice thereof, the Court reserved liberty to ROC to proceed with the process commenced with the caveat that no order will be passed resulting in the initiation of prosecution till the next date of hearing. Later, it emerges, Serious Fraud Investigation Office, Ministry of Corporate Affairs in short SFIO proceeded to investigate the affairs of Infra Realty under Section 235 of the Act, 1956 having passed an order

dated 05.11.2012 and issued letter/notice dated 14.12.2012. It resulted into filing of another W.P.(C) 8065/2012 by Infra Realty. Issuing notice thereof on 21.12.2012, the Court directed for the operation of the order dated 14.12.2012 to remain stayed for the present. The foregoing two writ petitions being W.P.(C) 7529/2012 and W.P.(C) 8065/2012 came to be disposed of by the Ld. Single Judge vide a common order dated 07.02.2019. In and by virtue thereof, the orders dated 27.03.2012 and 05.11.2012 passed under Section 235 of the Act, 1956 and another order dated 14.12.2012 passed under Section 234(7) of the Act, 1956 were set aside inter alia with the directions to the ROC to treat the subject writ petitions as the representations and afford an opportunity of hearing to Infra Realty and then, pass order. Infra Realty challenged the said order dated 07.02.2019 passed by the Ld. Single Judge by way of LPA 189/2019 to the extent it related to the disposal of W.P.(C) 8065/2012. In doing so, it however impleaded Alchemist Life Sciences Ltd.; Alchemist Township India Ltd.; Alchemist Ltd.; Alchemist Holdings Ltd.; Netedge Technosoft Private Ltd.; Alchemist Capital Ltd.; Alchemist Hotels & Resorts Ltd. and N. Madhav Kumar as the *pro forma* respondent nos.5 to 13. In this appeal, Infra Realty also prayed for the issuance of a writ of

mandamus to the respondents to proceed, if required, against Infra Realty and/or its group under the provisions of the Act, 1956 only and prohibit them from proceeding further with the investigation under the provisions of the Companies Act, 2013 in short the Act, 2013. The Division Bench disposed off the said LPA 189/2019 vide order 18.03.2019 clarifying and directing that the inquiry be held in pursuance of the directions issued by the Id. Single Judge strictly in compliance with the provisions contemplated under the Act, 1956 with the liberty reserved to the parties to raise all objections as may be permissible with the statutory authority causing an inquiry into the Act, 1956. It appears that after the disposal of the LPA 189/2019, a CM No.16956/2019 came to be filed before the Division Bench on account of summons issued by SFIO to Alchemist Ltd. and Alchemist Hotels & Resorts Ltd. under the provisions of the Act, 2013. Issuing notice thereof, the Division Bench ordered for any coercive steps in terms of the order dated 18.03.2019 and the summons dated 20.03.2019 to be kept in abeyance, simultaneously however, directing that in case the respondent nos. 1 to 4 wish to proceed strictly in accordance with the directions issued by it on 18.03.2019, they may do so. In this background, the instant contempt petition has come to

be filed by Healthcare and one of its Directors alleging wilful and deliberate disobedience / violation of the orders dated 18.03.19 & 10.04.2019 passed by the Division Bench in LPA 189/19. In this contempt petition, Healthcare has also prayed for restraining the respondent Nos. 1 to 3 to give effect to or take any action or further action under the orders/summons dated 06.12.2018; 02.05.2019; and, 13.06.2019 & so on, either against Healthcare or the other companies arrayed as the *pro forma* respondents - its purported group companies except under the Act, 1956. Vide order dated 31.07.2019, the Division Bench disposed off the CM No. 16956/2019 in view of the submission made on behalf of the petitioner that a contempt petition was already filed. In other words, it was not pressed. In this backdrop, the Division Bench directed the instant contempt petition to be listed before the appropriate Bench and was so taken up by this Bench along-with CM Appln. No.43304/2019-under Order VI Rule 17 CPC.

5. According to Healthcare, the orders dated 18.03.2019 & 10.04.2019 passed by the Division Bench cannot be restricted in their applicability to Infra Realty alone. Such a plea proceeds on the premise that the investigations initiated by SFIO - which resulted into filing of the

writ petitions by Infra Realty and the LPA emanating there-from and in which the orders dated 18.03.2019 & 10.04.2019 came to be passed, pertained not only to Infra Realty but its group companies as well. To lend support to such plea, Healthcare refers to the factum of the summons dated 21.12.2018 issued by SFIO to Alchemist Capital Limited; Alchemist Township India Limited; Alchemist Life Sciences Limited; and, Netedge Technosoft Private Limited being on record before the Division Bench, when the orders dated 18.03.2019 & 10.04.2019 came to be passed. As a sequel to such pleas and the submissions, Healthcare seeks to impugn the summons dated 13.06.2019 issued to it by SFIO to carry out the investigations into its affairs under Sec. 212 of the Companies Act, 2013 and prays for restraining the respondent nos. 1 to 3 - (i) Ministry of Corporate Affairs; (ii) Director, SFIO; and, (iii) I.O. SFIO from initiating or continuing any action against it or its Directors or its purported group companies - *pro forma* respondents namely, (i) Alchemist Township India Limited; (ii) Alchemist Limited; (iii) Alchemist Holdings Limited; (iv) Alchemist Realty Limited; (v) Netedge Technology Pvt. Ltd.; (vi) Alchemist Capital Ltd.; (vii) Alchemist Infra Realty Ltd.; and, (viii) Alchemist Hotels & Resorts Ltd.

6. In the submissions of Mr. Nayyar, Id. Senior Counsel for the petitioners, the investigations initiated against Infra Realty under the provisions of the Act, 1956 take into its sweep the other companies of Alchemist group and that the order dated 18.03.2019 passed by the Division Bench was also in that direction and therefore, the summons dated 13.06.2019 issued by SFIO to Healthcare and its purported group companies under the provisions of the Act, 2013 were bad in law and contemptuous. According to Mr. Nayyar, the *pro forma* respondent companies in LPA 189/2019 being the group companies, any investigation and/or action against them had to be initiated and / or prosecuted only under the provisions one enactment i.e. the Act, 1956 and therefore, the issuance of summons dated 21.12.2018 & 13.06.2019 by SFIO to the companies other than Infra Realty was not only illegal but invited action for contempt as it happened in spite of the orders passed by the Division Bench on 18.03.2019 read in conjunction with the order dated 10.04.2019. In his submissions, the order dated 10.04.2019 passed by the Division Bench made it clear that the subject orders were passed in favour of group companies and not Infra Realty alone. Thus, according to Mr. Nayyar, besides passing of the corrective orders, contempt action

was required to be initiated as against the respondent nos.1 to 3. In support of such submissions, reliance is placed on *Century Flour Mills Ltd. Vs. S. Suppiah & Ors. AIR 1975 Mad. 270; and, Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. AIR 1996 S.C. 2005.*

7. In the submissions of Mr. Jasmeet Singh, Id. CGSC, any of the orders passed in the writ petitions culminating into LPA 189/20 and the orders passed there-under, relate to Infra Realty and none else. Mr. Singh submits that the order dated 07.02.2019 passed by the Id. Single Judge granted liberty to initiate penal proceedings as against Infra Realty only and not against any other company and that, the affairs of the other companies of Alchemist group were neither a subject matter of W.P.(C) 7529/2012 or W.P.(C) 8065/2012 nor could be a subject matter of LPA 189/2019 arising there-from. As for order dated 18.03.2019 passed by the ROC which happened on the same day the Division Bench passed the order, it stood withdrawn and that, another order dated 07.05.2019 had come to be passed u/s 234 of the Act,1956. In the given factual conspectus, in his submissions, the issuance of summons dated 20.03.2019 to Alchemist Hotel Resorts Ltd. & Alchemist Limited could

not be faulted with on any account whatsoever. Also, in his submissions, Union of India had passed order dated 06.12.2018 directing investigations into the affairs of the companies of the Alchemist Group named therein and that, it did not pertain to Infra Realty inasmuch as the investigations against Infra Realty could not be carried forward on account of the interim orders passed by the Court - which concluded with the passing of the order dated 07.02.2019 and that, by impleading a few of the purported group companies of Alchemist Group as *pro forma* respondents in the LPA No.189/2019 preferred against the order dated 07.02.2019, a malicious attempt was made to drag the matter into unnecessary controversy where there existed none. Mr. Singh canvasses that neither the writ Court nor the Division Bench in the LPA issued any direction relating to the instant petitioners or any other company of the Alchemist Group and therefore, the contempt petition was wholly misconceived. In the written submissions filed, it also comes to be stated that the present petitioners and the other Alchemist Group Companies have since filed a W.P.(C) No.2385/2020 seeking similar reliefs and it is manifest that even as per the own understanding of the petitioners, the instant proceedings were not maintainable. The contempt petition is thus

sought to be dismissed outrightly with costs. In support of such submissions, reliance is placed on i) *ER K Arumugam v V.Balakrishnan & Ors*; MANU/SC/0149/2019 and ii) *Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. v. Rajasthan Rajya Vidhyut Mandal Sewa Nivrat Karamchari Sangh*; 2008 SCC Online Raj 149.

8. LPA No.189/2019 was preferred by Infra Realty inasmuch as Infra Realty was the petitioner in both the writ petitions being W.P.(C) No.7529/2012 and W.P.(C) No.8065/201. In these two writ petitions preferred by Infra Realty the challenge was extended to the orders passed by ROC / SFIO in the year 2012. It emerges from the record that the instant petitioner No.1 - Healthcare, as per the certificate of incorporation filed along with the petition, was incorporated on 29.01.2016. Equally to note, Healthcare was not even a *pro forma* respondent in the LPA. In this background, can Healthcare maintain the contempt petition and seek issuance of injunction orders merely on the premise of being one of the group companies of Alchemist group, is the first and foremost consideration before the court.

9. The learned Single Judge disposed of the two writ petitions preferred by Infra Realty vide a common order dated 07.02.2019 with the observations and directions, as under:

"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 authorized representative on 22.02.2019 at 2 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 is 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."*

A bare perusal of the foregoing order of the writ court would show that any of the actions initiated either by ROC or SFIO were for the business of Infra Realty being carried on in fraud of its creditors, or otherwise for fraudulent or unlawful purpose and taking note thereof, the learned Single Judge noted that there were serious allegations against the petitioner Company i.e. Infra Realty. It is Infra Realty only which preferred LPA No. 189/2019 to the limited extent of disposal of W.P.(C) No. 8065/2012 vide the common order dated 07.12.2019 and that came to be disposed of by the Division Bench vide order dated 18.03.2019, as under:

*"Having heard the learned counsel for the parties,
we find that in the order passed by the learned writ*

Court the direction issued is to cause an inquiry in the matter and proceed in accordance with law on the ground that before taking the impugned action petitioners were not heard.

Our attention is invited by Mr.Rajiv Nayar, learned Senior Advocate to the provisions of sub-Section 16 of Section 213 of the Companies Act, 2013 which reads as under:

"(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with under that Act as if this Act had not been passed."

According to Mr.Rajiv Nayar, learned Senior Advocate, by virtue of the aforesaid provision the inquiry or investigation into the matter has to be in accordance with the provisions of Sections 234 and 235 of the Companies Act, 1956 and not in accordance to the rules or procedure prescribed in the Companies Act, 2013. We see much force in the aforesaid contention.

We, therefore, clarify and direct that an inquiry be held in pursuance to the directions issued by the learned writ Court strictly in compliance with the provisions contemplated under the Companies Act, 1956. The parties may raise all objections as may be permissible with the statutory authority causing an inquiry into the matter under the Companies Act, 1956 in pursuance to the communication or the complaints received.

In view of the above, the appeal and the pending application stand disposed of."

The foregoing order, there is no doubt to say, equally related to Infra Realty and none else. It does not even remotely suggest that it had any bearing for the *pro forma* respondents which came to be arrayed in the LPA as respondent Nos.5 to 13 without leave of the court or the said respondents having sought to be impleaded in the proceedings as the necessary parties- being the related parties or to say, the group companies of Infra Realty.

10. Quite strangely, after the disposal of the LPA in the foregoing terms, a CM No. 16956/2015 came to be filed before the Division Bench on account of summons issued by SFIO to Alchemist Ltd. and Alchemist Hotels & Resorts Ltd. under the provisions of the Act 2013 which application the applicants did not press and was disposed of as such by the Division Bench vide its order dated 31.07.2019. In other words, the filing of such application was inconsequential but for distracting the court proceedings inasmuch as on the filing of such application and the

issuance of notice thereof by the Division Bench on 10.04.2019, the following order was passed:

" CM No.16956/2019 (for directions)

Issue Notice.

Mr.Jasmeet Singh, CGSC for respondent No.1 to 4 accepts notice.

Prima facie a perusal of the summons issued vide Annexure A-2 with this application dated 20.03.2019 shows that it is not in accordance with the directions issued by us on 18.03.2019 which reads as under: -

"Having heard the learned counsel for the parties, we find that in the order passed by the learned writ Court the direction issued is to cause an inquiry in the matter and proceed in accordance with law on the ground that before taking the impugned action petitioners were not heard.

Our attention is invited by Mr.Rajiv Nayar, learned Senior Advocate to the provisions of sub-Section 16 of Section 213 of the Companies Act, 2013 which reads as under:

"(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by the Serious Fraud Investigation Officer under the provisions of the Companies Act, 1956 (1 of 1956) shall continue to

be proceeded with under that Act as if this Act had not been passed."

According to Mr.Rajiv Nayar, learned Senior Advocate, by virtue of the aforesaid provision the inquiry or investigation into the matter has to be in accordance with the provisions of the Sections 234 and 235 of the Companies Act, 1956 and not in accordance to the rules or procedure prescribed in the Companies Act, 2013. We see much force in the aforesaid contention.

We, therefore, clarify and direct that an inquiry be held in pursuance to the direction issued by the learned writ Court strictly in compliance with the provisions contemplated under the Companies Act, 1956. The parties may raise all objections as may be permissible with the statutory authority causing an inquiry into the matter under the Companies Act, 1956 in pursuance to the communication or the complaints received.

In view of the above, the appeal and the pending application stand disposed of."

Summons dated 20.03.2019 issued by the respondents speaks about action taken in accordance with the Companies Act, 2013. Respondent Nos. 1 to 4 to clarify the position within two weeks.

List on 17th July, 2019.

In the meanwhile, any coercive steps in terms of order dated 18.03.2019 (Annexure A-1) and summons dated 20.03.2019 (Annexure A-2) issued by the respondents shall be kept in abeyance. However in case the respondent Nos. 1 to 4 wish to proceed strictly in accordance with the directions issued by us on 18.03.2019, they may do so."

Assuming, the foregoing order dated 10.04.2019 passed by the Division Bench took into its scope Healthcare as a group company of Infra Realty, though, it is not so, the restraint order was to apply against taking any coercive steps, which, mere issuance of summons would not imply.

11. Seen from any angle, not even an iota of substance emerges from the record to say that any act of the respondent Nos.1 to 3 invites any order prayed for. The judgments relied upon by the petitioners are of no avail. It would suffice to say, the initiation of contempt proceedings depends on the facts and circumstances of a given case and that, it is to be exercised in the discretion of the court where required, founded on the well established principles of law.

12. There is no doubt in the mind of the court that the instant petition preferred by Healthcare and one of its Directors is a calculative attempt to involve the respondent No.1 to 3 in unnecessary litigation in an overt

attempt to overawe them in discharge of their statutory obligations and thereby, draw an undue advantage. Suffice it would be to observe, the serious allegations for the business of Infra Realty being carried on in fraud of its creditors, or otherwise for fraudulent or unlawful purpose - which were sought to be initiated way back in the year 2012, continue to remain at its infancy stage with the courts being clogged with vexatious proceedings.

13. In view of the foregoing, the contempt petition along with CM No. 43304/2019 is dismissed with costs of Rs.5,00,000/- (Five Lacs) out of which Rs. 2,50,000/- shall be deposited with Delhi High Court Advocates Welfare Trust and the remaining Rs.2,50,000/- to be deposited with PM CARES Fund, within four weeks from today. In the event, the costs are not so deposited, the Registry shall list the matter before Court within one week of the expiry of the time granted.

A.K.CHAWLA, J.

JULY, 22, 2020/dm