

(2018) 12 DEL CK 0097
In the Delhi High Court
Case No : CO.APP. 26 Of 2018

Amarpreet Singh Oberoi & Ors.

APPELLANT

Vs

A N Buildwell Pvt Ltd. & Ors

RESPONDENT

Date of Decision : 11-12-2018

Acts Referred:

Companies Act, 1956 — Section 391, 393

Citation : (2018) 12 DEL CK 0097

Hon'ble Judges : S. Muralidhar, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Vivek Kohli, Mudit Gupta, Prerna Kohli, Ruchi Sindhwani

Final Decision : Allowed

Judgement

1. This is an appeal by nine Appellants against an order dated 16th October, 2018 passed by the learned Single Judge in Co.App.(M) 115/2016 and Co.Appl. (M) 332/2018 in Co.P.704/2014.
2. Notice. Mr.Vivek Kohli, Advocate accepts notice on behalf of the Respondents No.2 & 3. Ms. Ruchi Sindhwani, Standing Counsel accepts notice on behalf of the Official Liquidator (OL) and Mr. Sayed Aquib Ali, Advocate accepts notice on behalf of the Respondent No.5. With the consent of the learned counsel for the parties, the appeal is heard finally.
3. The background to the present appeal is that during the pendency of Company Petition No.704/2014 filed by the present Appellants seeking winding up of A.N. Buildwell Private Limited (Respondent No.1 herein), Co. Appl. (M) 115/2016 was filed under Section 391 of the Companies Act, 1956 seeking approval of the proposed scheme of ?compromise and arrangement? between the Respondent No.1 company and its members and creditors.
4. Directions were sought to convene a meeting of all the allottees of various blocks of two real estate projects of the Respondent No.1 company:

(i) Spire Edge Project which has blocks of commercial - IT space and IT enabled space - located at Plot No.CP-4, Sector-8, IMT Manesar, Tehsil and District Gurgaon, Haryana

(ii) Spire Wood Project which comprises residential space which is located at Sector 103, Gurgaon, Haryana.

5. It must be noted at this stage that all the nine Appellants, who are parties in person, purchased IT enabled space in the Spire Edge Projects in Blocks B, C & D.

6. In deciding the above application by the impugned order, the learned Single Judge has ordered meetings of various groups, but excluded the allottees of Blocks B, C & D of the Spire Edge Project for the following reasons:

(i) The company had already issued completion certificates and had already handed over possession of the spaces booked by those allottees.

(ii) The proposed scheme does not deal with the rights and liabilities of those who had booked units in Blocks B, C & D.

7. The learned Single Judge came to the above conclusion on the basis of the plea of the Respondent No.1 company that as far as Blocks B, C & D are concerned, it had handed over possession of an area of 8,48,000 sq. ft. The company further stated before the learned Single Judge that "occupation certificate has been received for these blocks and lease deeds have been executed in favour of number of allottees". The company also informed the learned Single Judge that "the lease deeds have not been got registered for some of the allottees and some area is unsold".

8. The Appellants are aggrieved by the above order of the learned Single Judge because according to them they were misled into making investment of valuable money into Spire Edge Project on the basis that the company had been allotted Plot No. CP -4, Sector-8, IMT Manesar, Gurgaon (Haryana) by the Haryana State Industrial and Infrastructure Development Corporation Ltd. (HSIDC) on freehold basis and that in turn the company would be allotting spaces/units on perpetual lease basis.

9. A sample of agreement dated 19th March, 2010 in which such assurance is held out in the preamble clause of the agreement is enclosed with the present appeal. The Appellants further contend that from the lease deeds entered into with the Respondent No.1 company, they learnt that the lease would be only for 29 years at a time with a renewal clause. This made a huge difference to the Appellants since it was contrary to what they had been assured. Further, according to the Appellants they were compelled to take possession 1st October, 2011 even without the units actually being complete.

10. For the purposes of the present appeal it is not necessary to list out all the grievances that the Appellants have against the Respondent No.1 company. It is sufficient to notice that it is the Appellants, who in fact filed Company Petition

No.704/2014 against the Respondent company basing their claim on:

"a. non-payment of assured returns

b. non-payment of penalty

c. forced possession of incomplete building by using a false & fabricated completion certificate

d. forcing to take lease of 29 years instead of perpetual lease".

11. It is argued by the Appellants, who appear in person, that they have legitimate claims against the company and that they should have been treated as a creditors for the purposes of the convening of the meetings to consider the proposed scheme of ?compromise and arrangement?. They submit that the facts concerning them placed before the learned Company Judge by the Respondent No.1 were either incomplete or misleading.

12. Mr. Vivek Kohli, learned counsel appearing for the Respondent No.1 company, vehemently resisted the entertaining of the present appeal. He repeatedly urged before the Court that since this proposed scheme of ?compromise and arrangement? did not alter the rights of the present Appellants in any manner, there was absolutely no necessity for convening a meeting of the allottees of Blocks B, C & D. According to him, there was no justification for the Appellants to have any grievance in that regard against the impugned order of the learned Single Judge.

13. At the same time, Mr.Kohli did not dispute that the Appellants did have a grievance against the Company, although according to him many of the grievances/claims of the Appellants were untenable. Mr. Kohli submitted that the allottees of Blocks B, C & D Spire Edge cannot come in the way of the approval of the proposed scheme of ?compromise and arrangement? of the Respondent No.1 company and its members and creditors.

14. Mr. Kohli also referred to the decision of the Supreme Court in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* (1997) 1 SCC 579 to urge that although the present Appellants constituted a distinct class, they had no legitimate claim against the company and, therefore no separate meeting for them was warranted.

15. The above submissions have been considered. At the outset, it requires to be noticed that although the impugned order dated 16th October, 2018 has issued a large number of directions regarding the holding of meetings of unsecured and secured creditors, shareholders etc. and has also fixed the time schedule, the said order itself was not made available in good time and this led to another order being passed by the learned Company Judge on 14th November, 2018 revising the dates of all such meetings. In terms of the further order dated 14th November, 2018, the meetings of the equity shareholders classes A, B & C, the allottees of the Spire Edge Project, the allottees of Block A of the Spire Edge Project, Blocks A, E furnished offices Spire Edge Project, secured creditors and

unsecured creditors are to be held between 16th December, 2018 and 13th January, 2019.

16. In a scheme of ?compromise and arrangement? of a company, it is essential that all affected parties, who may have claims against the company, should have the opportunity of examining and commenting upon a proposed scheme of compromise and arrangement, unless it is shown to the satisfaction of the Company Judge that the claims of such claimants already stand settled.

17. In the course of the appeal today, while Mr. Kohli was unable to dispute that the Appellants have grievance against the company, he was not able to show or even give an assurance that the Company was prepared to settle all such grievances. His only response was that such grievances would have to be aired in other fora and not before the Company Judge.

18. The above submission overlooks the basic fact that it is the present Appellants who are Petitioners in Company Petition 704/2014 seeking the winding up of the Respondent No.1 company. That itself straightway identifies them as claimants against the company. The Court clarifies at this point that it is not deciding whether such claims are justified, maintainable or otherwise tenable on merits. That is an issue that need not engage this Court at the present moment. It is for the learned Company Judge to decide that issue at the appropriate stage.

19. As far as the present appeal is concerned, the only short question that the Court is considering is as to whether there was any justification to not convene the meeting of the allottees of Blocks B, C & D of the Spire Edge Project for the purpose of considering the proposed scheme of ?compromise and arrangement?. Even the decision of the Supreme Court in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* (supra) acknowledges that there can be different class of creditors and members and "if there are different groups within a class, the interest of each are different from the rest of the class and each are to be treated differently". The Supreme Court there noted:

"...If there are different groups within a class the interests of which are different from the rest of the class, or which are to be treated differently under the Scheme such groups must be treated as separate class for the purpose of the scheme."

20. Considering that the Appellants have listed out what their grievances against the Respondent No.1 company are and they have in fact filed Company Petition 704/2014, they cannot be considered to be persons who stand outside the winding up proceedings, particularly since their grievances have still not been satisfactorily addressed by the Company. They do have monetary claims against the company. If a scheme of ?compromise and arrangement? is finalised without taking into account their claims against the Respondent No.1 company, their rights would definitely be prejudiced. Therefore, it is incorrect on the part of the Respondent No.1 company to contend that the proposed scheme of ?compromise

and arrangement? does not alter or affect the rights of the allottees of Blocks B,C and D who are the Appellants here.

21. The Court is of the view that the complete and correct facts concerning the allottees of Blocks B, C & D were perhaps not placed before the learned Company Judge.

22. For the afore-mentioned reasons, the Court modifies the impugned order dated 16th October 2018 of the learned Single Judge (as further modified by order dated 14th November, 2018) to the extent of holding a meeting shall be held also of the allottees of Blocks B, C & D of the Spire Edge Project.

23. Accordingly it is directed as under:

(i) A meeting of all the allottees of Blocks B, C & D including the present Appellants shall be held on 14th January, 2019 at Plot No.CP-04, Spire Edge Project, IMT Manesar, Gurgaon, Haryana at 12 p.m.

(ii) Mr. K. G. Gopalakrishnan, Advocate (Mobile No. 9810813707) is appointed as the Chairperson and Mr. Abhishek Ghai, Advocate (Mobile No. 8377090210) is appointed as Alternate chairperson to conduct the said meetings.

(iii) The Quorum of the above said meetings of Block B, C and D allottees shall be 50% in number.

(iv) In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter, the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum: the valid proxies received from the total applicants herein shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the respective meetings is filed. The Chairperson and Alternate Chairperson shall ensure that the proxy registers are properly maintained.

(v) The Chairperson and Alternate Chairperson shall ensure that notices for convening the aforesaid meetings, along with copies of the proposed Scheme and the statement under Section 393 of the Act along with the proxy form, shall be sent to all the allottees of Blocks B, C and D Spire Edge Project by speed post at their registered or last known addresses and also by e-mail at least 14 (fourteen) days before the date appointed for the meeting, in their presence or in the presence of their authorized representatives.

(vi) Notice of the meeting shall also be published in Delhi and Haryana editions of the newspaper, namely, 'Business Standard', (both in English and Hindi) in terms of the Companies (Court) Rules, 1959, at least 14 (fourteen) days before the date appointed for the meeting.

(vii) The Chairperson and Alternate Chairperson will be at liberty to issue suitable directions to the applicant in order to ensure that the aforesaid meeting is conducted in a just, free and fair manner.

(viii) The fee of the Chairperson and the Alternate Chairperson for the meeting shall be Rs. 1 lakh each in addition to meeting their incidental expenses, to be borne by the company in advance. The Chairperson shall file a report before the Company Court within 2 (two) weeks from the date of holding of the aforesaid meeting.

24. The Appellants before the Court also undertake to inform the other allottees of Blocks B, C & D of Spire Edge project of the date of the above meeting. All the other issues raised by the Appellants will be dealt with by the learned Company Judge in the pending applications already filed by them.

25. The appeal is accordingly disposed of in the above terms.

26. Allowed, subject to all just exceptions.