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**Acc Concrete Limited**

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**SooperKanoon Citation** : sooperkanoon.com/1103347

**Court** : Mumbai

**Decided On :** Oct-09-2012

**Judge** : Anoop V. Mohta

**Appeal No.** : COMPANY SCHEME PETITION NO. 605 OF 2012 CONNECTED WITH COMPANY SUMMONS FOR DIRECTION NO. 491 OF 2012

**Judgement** :

PC:

1. Heard learned Counsel for the parties. No-one else appeared.

2. The sanction of the Court is sought to the Scheme of Amalgamation of ACC Concrete Limited, the Transferor Company with ACC Limited, the Transferee Company, under Sections 391 to 394 of the Companies Act, 1956.

3. Counsel appearing on behalf of the Petitioner Company has stated that the Petitioner Company has complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. The Petitioner Company also undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the Rules made thereunder. The said undertaking is accepted.

4. The Regional Director has filed an Affidavit dated 18th September, 2012, stating therein, that save and except as stated in para 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the Affidavit

it is stated that:

6. That the Deponent further submits that, Transferee Company was investigated under the provisions of section 235 of the Act, vide order passed by the Ministry of Corporate Affairs in file No. 3/88/2011-CL-II dated 02/06/2011 by SFIO. The report submitted by the SFIO is under further consideration before the appropriate authority. The Central Government, Regional Director, Registrar of Companies reserve their rights to take appropriate action if any arising out of investigation report submitted by SFIO to Ministry of Corporate Affairs.

5. There is no dispute that the Transferee Company will remain in existence even after the post sanctioned scheme. There is no substance in the apprehension so raised. The Transferee Company, inspite of this, permitted the concerned Authorities to take appropriate action or steps, if any. The pendency of such investigation in no way should be the reason not to sanction the scheme. As regards objection set out in paragraph 6, the Central Government, Regional Director and Registrar of Companies are at liberty to take appropriate action if any, against the Transferee Company.

6. The Official Liquidator has filed his report dated 26th September, 2012, stating that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved.

7. The Counsel for the Petitioner states that in response to the individual notice of hearing of the Petition to the unsecured creditor, Advocate for the Petitioner Company has received letter dated 1st September, 2012 from GMK Concrete Mixing Private Limited raising its objection to the Petition on the grounds of outstanding payment from the Petitioner Company for an amount of Rs. 92,90,635/-. The Counsel for the Petitioner states that the claim made by the aforesaid unsecured creditor is a contractual dispute for balance payment withheld by the Petitioner Company for nonperformance and breach of contractual terms by the aforesaid unsecured creditor and consequential loss suffered by the Petitioner Company and is disputed by the Petitioner. The Counsel for the Petitioner further states that the said unsecured creditor has neither served an affidavit raising his alleged objection upon the Petitioner or its Advocates nor has filed its Affidavit of

objection in this Honble Court nor has given notice in terms of Rule 34 of the Company Court Rules 1959. The Counsel for the Petitioner further submitted that though this Honble Court is not the adjudicating authority to adjudicate the claims under Sections 391-394 of the Companies Act, 1956, in paragraph 18 of the Petition it is stated that the aggregate assets of the Petitioner Company and the Transferee Company are more than sufficient to meet all their respective external liabilities and the Scheme will not adversely affect the rights and interest of any of the creditors of any company in any manner whatsoever and also that pursuant to the amalgamation of the Petitioner Company with the Transferee Company, the Transferee Companys debt repayment capacity will not be adversely affected as the , the amalgamated entity will have an excess of assets over liabilities and hence will not adversely affect the rights and interest of any of the secured creditors and unsecured creditors, of the amalgamated entity. Further Clause 6 (a) of the Scheme states that upon coming into effect of the Scheme and with effect from Appointed Date all debts and liabilities comprised in the Undertaking of the Petitioner Company shall pursuant to sanction of the Scheme be and stand transferred to and vested in the Transferee Company. The Counsel appearing for the Petitioner further states that in any event the Scheme does not affect the rights of unsecured creditors of the Petitioner/ Transferor Company. It will be open to the unsecured creditors of the Petitioner/ Transferor Company including the above mentioned unsecured creditor, to pursue legal remedy as may be advised for recovery of their dues. Even otherwise, there is nothing on record to show that the creditors will be affected if the scheme is sanctioned. **[ Sanvijay Alloys Pvt. Ltd. - 2004 Company Cases Vol. 122 page 754 ]**

8. On hearing the submission made by the Advocate for the Petition, I do not see any substance in the objection of the said unsecured creditor informed to the Petitioner. Further in spite of being on notice the said unsecured creditor of the Petitioner Company has not appeared before this court neither has filed his objection before this Court. Thus the objection is without merit and is rejected. As mentioned above the rights of the unsecured creditor of the Petitioner Company are not affected From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the

Scheme in the Court.

9. I am inclined to observe that all the experts/professionals include financers, auditors, chartered accountants, bankers, creditors, financial institutions apart from unanimous majority decisions to support the scheme, submitted their report and opinion and accepted the scheme.

10. It is necessary to note that in this competitive market, the corporate world with exhaustive strategies is a must. Companies know how to make or arrange and/or adjust their business to run with the national and international markets. Third person may not be in a position to provide them business strategies and above all, companies know their respective shareholders' need and, therefore, may not be bound by the Rules and/or opinion and/or objection, if any expressed by the third persons. As noted, there is no illegality and/or unfairness, unreasonableness. The scheme is well within the frame work of law and the record and as it is difficult for the Court to deal and decide the business strategies as it is not the court's domain. There is no reason not to accept the scheme so filed subject to the averments made in the above paragraphs.

11. Since all requisite statutory compliances have been fulfilled, Company Scheme Petition No. 605 of 2012 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (b) of the said Petition;

12. The Petitioner Company to file a copy of this order alongwith a copy of the Scheme of Amalgamation duly authenticated by the Company Registrar, High (O.S.), Bombay, with the concerned Registrar of Companies, electronically, along with e- Form 21 in addition to physical copy within 30 days from the date of issuance of the order by the Registry.

13. The Petitioner Company to lodge a copy of this order alongwith a copy of the Scheme of Amalgamation duly authenticated by the Company Registrar, High (O.S.), Bombay, with the concerned Superintendent of Stamps, for purposes of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the order.

14. The Petitioner Company to pay costs of Rs. 10,000/- each respectively, to the Regional Director and to the Official Liquidator, High Court Bombay. Costs to be paid within four weeks from the date of the order.

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

16. All authorities concerned to act on a copy of this order along with Scheme attached thereto, duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

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