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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CO. APP. 11/2020, C.M. Appl. Nos.21228-21229/2020
VINEET GOELAppellant

Through: Mr. Sanjeet Paliwal, Advocate

versus

A.N. BUILDWELL PRIVATE LTD & ORS.Respondents

Through: Mr. Jaisurya Jain, Advocate for
R-2.
Mr. Abhimanyu Bhandari, Mr.
Vikrant Pachnanda & Mr. Aarush
Bhatia, Advocates for R-3.
Ms. Pooja Jain, Advocate for
SELFC.
Ms. Ruchi Sindhwani, Advocate
Mr. Vikas Sethi, investor, in
person.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

% **ORDER**
01.09.2020

[VIA VIDEO CONFERENCING]

C.M. Appln. No.21229/2020 (Exemption from filing certified copies/clear/legible copies of annexures with proper margin)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

CO. APP. 11/2020, C.M. Appl. No.21228/2020 (of the appellant for condonation of delay of 172 days in filing the Company Appeal)

3. This appeal impugns the order dated 17th February, 2020 of the Company Judge sanctioning the Scheme under Sections 391 and 393 of the Companies Act, 1956, subject to certain conditions.

4. The appellant has nowhere pleaded having filed any objections to the Scheme or having participated in the hearing on the said objections. On enquiry, the counsel for the appellant states that the appellant though had participated in the meetings preceding the order sanctioning the Scheme but had not filed any objections and had not participated in the hearing on the objections preferred by others, before the Company Judge.

5. The counsel for one of the propounders, namely respondent No. 3 Schleicher Intec Private Limited, of which Mr. Hooda is one of the Directors and who is also an Ex-Director of the Company in liquidation, has contended, (i) that the main concern of the appellant, as evident from reading of the appeal, is with respect to the criminal cases which the appellant has filed against the company in liquidation and its Directors/officials; (ii) however the said concern has been taken into consideration in paragraphs 18 and 19 of the impugned order dated 17th February, 2020 and thus the appellant need have no apprehensions in this regard; upon it being pointed out that in the operative paragraph of the impugned judgment, the said clarification does not find mention, the counsel

for the propounder/respondent No. 3 Schleicher Intec Private Limited states that the said clarification can be included in the operative paragraph of the judgment; (iii) that the appellant had booked a space in one of the commercial buildings under construction by the company in liquidation and was already offered possession of the said space but had not been taking possession and can now take possession; and, (iv) that a number of other persons who had booked similar spaces, have taken possession of their spaces.

6. We have enquired from the counsel for the propounder/respondent No. 3 Schleicher Intec Private Limited, whether the space of which the possession is offered to the appellant is in a ready to occupy condition, to enable the appellant to earn profits therefrom; in a large number of cases, it is found that the space of which possession is offered is only in the air, with no possible use thereof, owing to the building in which the space is situated, having no proper access and common areas and amenities.

7. We have thus enquired, whether the said space is in a position to be let out to prospective tenants and has all the amenities, as in a multistoried building viz. functioning elevators, electricity, etc.

8. The counsel for the propounder/respondent No. 3 Schleicher Intec Private Limited states that the appellant has not placed before this Court the Scheme and which, when placed, would clarify all

the doubts. Else, it is contended that the Scheme having been sanctioned by majority, as held by the Single Judge, has to go through and the appellant, being merely one of the persons who had booked the space, cannot thwart the same, prejudicing the interest of others.

9. It thus appears that the hearing will have to be adjourned to enable the counsels to place before this court all the documents which they seek to rely upon.

10. The counsels to, on the next date of hearing, also address us on the aspect of the unsold spaces in the building, the expected cost of construction for completion of the project, the likely earnings therefrom and whether any dues of persons such as the appellant, who are but the creditors of the company in liquidation, should be settled first thereout of. The counsels to also address us on whether all the said aspects are required to be considered in exercise of such jurisdiction.

11. On enquiry, it is also stated that the occupation certificate with respect to buildings/towers of the buildings of which possession is being offered has already been obtained.

12. Issue notice.

13. Notice is accepted by the counsels for the respondents. We, on enquiry are informed that no notice is required to be issued to any other party/person.

14. Copy of the appeal be also given to the Advocate for Spire Edge Maintenance Lease and Facilitation Ltd. (SELFC) who has appeared without being impleaded.

15. List on 9th October, 2020.

16. The counsels may file whatever documents they want to rely upon in support of their contentions.

17. No ground to stay the proceedings before the Company Judge or pursuant to sanction of scheme vide the impugned order, at this stage is made out.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 01, 2020

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