

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 08
173/241-242(PB)/2019

IN THE MATTER OF:

Emmar Holding II

.... Applicant/petitioner

v.

Emmar MGF Land Ltd. & Ors.

.... Respondent

Order under Section 241-242

Order delivered on 30.07.2020

CORAM:

SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the applicant

Mr. S.N Mukherjee, Sr. Adv., Mr. Sudhir Kr. Makkar, Sr. Adv. with Mr. Dheeraj Nair, Mr. Kumar Kislay, Mr. Angad Baxi, Advs.

For the respondent

Mr. K. Datta, Mr. Kunal Mimani, Ms. Mehak, Advs. for R-9

Dr. U.K Chaudhary, Sr. Adv., Mr. Abhinav Vashisth, Sr. Adv. with Ms. Manisha Chaudhary, Ms. Priya Singh, Mr. Mansumyer Singh, Advs. with Mr. Pratham Soni, CS for R-2, 3, 4 & 8

Mr. Sajan Poovayya, Sr. Adv. with Mr. Kunal Sinha, Mr. Pratibhanu Singh Kharolia, Ms. Raksha Agarwal, Advs. for R-1

ORDER

It is a Company Petition filed by the Petitioner having more than 70% shareholding in R1 company against the answering Respondents on the ground when the answering Respondents were in the management of R1 Company i.e. before 2016, they had fraudulently taken out R1 funds through their related parties, which the petitioner allegedly has come to know only after some investigation report came to them, therefore, the Petitioner has filed this Company Petition for disgorgement of those funds from the answering Respondents more specifically from the person (R3) acted as Managing Director of R1 company.

When the Petitioner sought for interim relief over this Company Petition, by that time since pleadings in the main Company Petition were already complete, this Bench has suggested both the parties to make submissions on the main Company Petition so that this case need not be heard on interim stage as well as at the final stage.

For both the parties having graciously agreed to the suggestion made by this Bench, this Bench has proceeded to hear main hearing.

After completion of first day hearing, the answering Respondents side filed additional documents along with additional affidavit to be taken on record.

The answering Respondents submit that in view of the false stand taken by the Petitioner that though the transactions made during the tenure of the answering Respondent continuing as MD (R3) of R1 were known to the petitioner, since it was not aware of the related party transactions benefitting R2 and its group, and same having been disclosed in the audit report subsequently, such actions are in violation of the Joint Venture Agreement between the EMAAR group and R2, therefore it is essential for taking the additional affidavit and annexure thereto on record, to bring home that the petitioner as well as its group were and are aware of every transaction, and it cannot be said that it has come to know of these transaction only after audit of R1 Company by a third party.

When this affidavit has come on record since both the parties initially agreed that this Bench could take a call over this issue after hearing the Company Petition, this Bench has not passed any order

as to whether these documents have to be taken on record or not as soon as it has been filed before this Bench.

The counsel appearing on behalf of R4 and R8 has sought the permission of this Bench to refer a document annexed to the affidavit stating that if the said document is perused, it will be evident that the Petitioner group and the Respondent group thread bear discussed all these issues and the same has been reflected in the draft Red Herring for the Years 2008, 2009 & 2010 and in the internal Report of 2010, therefore now this Petitioner could not say that it has not been in the knowledge of the facts.

To bolster this argument, the answering Respondent's counsel has relied upon Rule 43 of NCLT Rules that in the event truth could be disclose by presentation of a document, this Bench even without asking from the parties, can summon a document in the interest of justice, by saying so, the Counsel has prayed this Bench to take this document on record to submit that the averment of the Petitioner is false on the face of the record lying with R1 company.

Lists the applications for hearing on **05.08.2020**.

- Sd -

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

- Sd -

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)