

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH AT NEW DELHI**

COMPANY PETITION NO. 689/2016

CONNECTED WITH

COMPANY APPLICATION NO. CA (M) 77 of 2016

(Transferred from Hon'ble High Court of Delhi)

Judgement dated 08.1.2018
16.07.2018

Coram:

**CHIEF JUSTICE (Rtd.) M.M. KUMAR
Hon'ble President**

**MS. DEEPA KRISHAN
Hon'ble Member (T)**

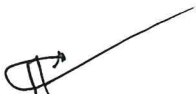
In the matter of:

Sections 230 and 232 and other applicable sections and provisions of the
Companies Act, 2013 read Companies (Compromises, Arrangements, and
Amalgamations) Rules, 2016

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN



EMAAR MGF LAND LIMITED

Having Registered Office at:

ECE HOUSE, 28, KASTURBA GANDHI MARG,

NEW DELHI-110001

.....Petitioner Company No. 1/ Demerged Company

AND

MGF DEVELOPMENTS LIMITED

Having Registered Office at:

MGF HOUSE- 4/17-B, ASIF ALI ROAD,

NEW DELHI-110002

.....Petitioner Company No. 2 /Resulting Company

AND

Their respective Shareholders and Creditors

FOR THE PETITIONERS: Dr. U.K. Chaudhary, Senior Advoacte, Mr. Rajeev Goel, Mr. Rohan Jaitley, Mr. Ajay Garg & Mr. Himanshu Vij, Advocates

FOR THE OBJECTOR: Mr. V.K. Bhatnagar, Mr. Anurag Bhatnagar, Mr. Mohit Jolly & Mr. Pranag Agarwala, Advocates

FOR THE RD (NR)/ ROC Delhi: Mr. Manish Raj, Company Prosecutor



JUDGMENT/ORDER

M.M. KUMAR, PRESIDENT

1. The Petitioner Companies have filed instant petition for final disposal before us for the purpose of the approval of the proposed Scheme of Arrangement, between the companies above named and its shareholders by way of Arrangement of the Petitioner Companies.

2. It is highlighted that initially the application seeking the directions for convening the meetings of Shareholders, Secured and Unsecured Creditors of the Petitioner Companies were filed before the Hon'ble High Court of Delhi in Company Application (M) 77/2016. The High Court vide its order dated 30.05.2016 was pleased to direct convening the meetings of the Shareholders, Unsecured Creditors and Secured Creditors of both the Petitioner Companies.

3. Subsequent to the above order dated 30.05.2016, the Petitioner Companies preferred the instant Petition before the High Court which vide its order dated 09.08.2016 directed them under Sections 230 to 232 of the Companies Act, 2013 read with relevant Rules in connection with the Scheme , to issue Notice in the Second Motion petition to the Regional Director, Northern Region, Ministry of Corporate Affairs, Registrar of



Companies, Income Tax Department, Official Liquidator and to such other Sectoral Regulators who may govern the respective companies involved in the Scheme. The Petitioner Companies, in compliance with the aforesaid order published the notice of Petition in Business Standard (English, Delhi Edition) and Business Standard (Hindi, Delhi Edition) on 24.08.2016 inviting objections to the Scheme.

4. Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, after receiving the report from the Registrar of Companies has filed his report dated 02.03.2017. the Regional Director has not raised any serious objection to the Scheme of Arrangement except that the ROC has pointed out that the Resulting Company has not filed its Audited Annual accounts for the year ended 31.03.2016. The same were filed on 28.12.2016 with additional filing fee for one-month delay in filing. Therefore, the objection has been effectively met.

OBJECTIONS OF VARIOUS OBJECTORS: BHATNAGARS

5. Against the aforesaid Scheme, various sets of objections have been filed by the objectors. One set of objections have been filed by one Mr. Virendra Kumar Bhatnagar and Mr. Anurag Bhatnagar dated 31.03.2017 vide CA No. 147 of 2017. The objectors are JV Partners with the Demerged



Company-EMAAR MGF Land Ltd. in one of the Real Estate Project (Commercial Complex by the name of Capital Tower in Gurugram, Haryana). The said project is proposed to be demerged from the Demerged Company to the Resulting Company as part of the Demerged Undertaking.

Reply to the objection was filed and even rejoinder has been filed by the objectors. The objector is a JV partner and has requested not to be a part of Demerger Scheme. However, the parties have agreed to bury their differences and the objector is not to be a part of Demerged Undertaking.

In that regard, an affidavit dated 05.09.2017 has been filed, duly sworn in by one Mr. Bharat Bhushan Garg (PAN:AAXPG0721B), who is a Company Secretary. In the affidavit, it has been pointed out that the parties have amicably settled with the objectors in the larger interest of the ongoing project and the petitioners have acceded to the request of the objectors. Accordingly, it has been agreed to exclude the aforesaid project – (Capital Tower, Gurugram) from the Demerged Undertaking and to retain the same in the Demerged Company-Emaar MGF Land Ltd.

Pursuant to the settlement ‘Capital Tower Project’ is now being retained by the Demerged Company and being excluded from the definition of the Demerged Undertaking, the reference of “Capital Towers”, Biosphere Capital Towers”, “Sikandepur Ghosi – 6.28 acres” and other assets/liabilities in relation thereto, shall stand deleted from the Scheme



and the same shall be retained in the Demerged Company. Pursuant to the 'Capital Tower Project' now being retained by the Demerged Company and being excluded from the definition of the Demerged Undertaking, the following clauses shall stand substituted to ensure compliance with Section 2(19AA) and section 72A(4) of the Income Tax Act 1961:

Clause 1(vii)(C)(b) of the Scheme shall stand substituted with "accumulated losses and unabsorbed depreciation to the extent attributable to the demerged undertaking in accordance with the provisions of Section 72A(4) of the Income Tax Act."

Clause 3.6 of the Scheme shall stand substituted with "Subject to consent of the debenture holders, in so far as the 22,600 Non-Convertible Debentures of the face value of Rupees One Million (INR 1,000,000) each issued by the Demerged Company is concerned, upon coming into effect of the Scheme, the face value of each such debentures shall without further act or deed be reduced by Rupees Three Hundred and Seven Thousand Eight Hundred Seventy Six (INR 307,876) such that the face value of each such debenture shall stand reduced to Rupees Six Hundred Ninety Two Thousand One Hundred Twenty Four (INR 692,124). Simultaneously and without any further act or deed, and without payment of any further amount to the Resulting Company, the debenture holders shall be entitled to an equivalent number of fully paid debentures of the face value of Rupees Three Hundred and Seven Thousand Eight Hundred Seventy Six (INR



307,876) each in the Resulting Company. At the time of redemption, the liability in respect of the debentures of the Demerged Company as aforesaid shall be Rupees Six Hundred Ninety Two Thousand One Hundred Twenty Four (INR 692,124) per debenture, and the liability in respect of the debentures of the Resulting Company shall be Rupees Three Hundred and Seven Thousand Eight Hundred Seventy Six (INR 307,876) per debenture. The above shall be subject to Applicable Law, listing and/or admitted to trading on the relevant stock exchange in India where the debt securities are listed and/or admitted for trading and the Demerged Company and the Resulting Company will make necessary filings to the Stock Exchange in relation to the same.

In accordance with Clause 24.2 of the Scheme, any other part of the Scheme which as a result of Capital Tower Project now being retained in the Demerged Company requires modification to ensure compliance with Section 2(19AA) of the Income Tax Act, shall also stand modified. In fact, the affidavits on behalf of the demerged company and the resulting company in support of revised/ updated schedule of properties of the demerged undertaking of the demerged company proposed to be demerged into the resulting company has been placed on record.



OBJECTOR: STATESMAN

- Another set of objections have been filed by the Statesman Ltd. on behalf of the objectors Shri J.S. Bakshi, learned Counsel has raised the following arguments:

The Scheme presented before the Hon'ble High Court at the stage of First Motion did not disclose the fact that there was an Award dated 12.05.2016, announced by Arbitral Tribunal of three Hon'ble Judges in pursuance of settlement reached on the same date, which was duly signed by Mr. Rakshit Jain. The same person, Mr. Rakshit Jain also signed the petition for First Motion filed before the Hon'ble Delhi High Court. According to the learned Counsel, this was an attempt to misrepresent, conceal material fact from the Court and such a conduct should result in dismissal of the petition and declining of approval of the scheme of demerger. Even in the second motion, the misrepresentation, concealment and suppression of the aforesaid fact has continued. In support of his submission, learned Counsel has placed reliance on the judgements of the Supreme Court in the cases of *Bhaskar Laxman Jadhav v. Karamveer, reported in (2013) 11 SCC 531* & *Dalip Singh v. State of U.P., reported in (2010) 2 SCC 114*.

According to the learned Counsel, the payment of Rs. 40 crores has not been received fully as TDS has illegally deducted approx. amount of Rs. 5.9 crores.



- The second submission made by the learned Counsel is that arbitration proceedings are still pending as the property as per the Award has not been transferred to the objector-applicant. In that regard, reference has been invited to Annexures-P-VII & P-VIII appended with CA No. 77 of 2016. Our attention has also been drawn to Annexure P-IX dated 17.10.2016 showing that arbitration has recommenced.

It was then submitted that the aforesaid action of the petitioner suffers from malafide in order to avoid issuance of personal notice for approval of the Scheme by the creditors such like, the objector-applicant.

In response to the objections, Mr. U.K. Chaudhry, learned Counsel for the petitioners has made following submissions:

There was no misrepresentation, concealment or suppression of facts. According to the learned Counsel, all dues of the objectors, as per the Award dated 12.05.2016, have been paid on 29.09.2016 and he is no longer a creditor of the company. It is, therefore, urged that in terms of Section 230(4), the objector has lost his status as a creditor of the company and the present application is not maintainable. In that regard, reference has been made to the payment of the entire amount as reflected in the Form No. 16A and a certificate has been issued under Section 203 of the Income Tax Act on account of tax deducted at source. The total amount has been paid to the objector on 26.07.2016, 24.08.2016 & 02.09.2016, which works out to be Rs. 592814590.00/- and the TDS deduced on the aforesaid amount is



Rs. 59281459.00/-. It was then urged that there was no concealment, suppression or mis-representation. According to the learned Counsel, separate meeting of the Board of Directors of the Demerged and Resulting Companies were held on 11.05.2016 which approved the proposed Scheme of Arrangement and copies of the Resolutions passed by the Board of Directors have been placed on record of the First Motion file. Pursuant to the order dated 30.05.2016 passed by the Delhi High Court the Scheme was also approved by all the stakeholders, like secured creditors, equity shareholders, unsecured creditors etc. in the meetings held. It has further been submitted that due publication was made in the Local Press, which is in the public domain and the objector could have very well filed his objections, if it thought to be a creditor. The objections have been filed without any lawful grievance and therefore, the same are liable to be rejected.

Mr. Chaudhry submitted that the first tranche of dues fell for payment on 31st July, 2016, second tranche became payable on 31.08.2016 and the third was to be paid on 30.09.2016. The whole amount in a phased manner was payable in three equal instalments which has been duly paid. Likewise, EMGF simultaneously executed 'Buyers Agreement' for the fully paid commercial properties as per Schedule 'A', attached with the agreement, situated in its 'Capital Tower 1 Project', Sector 26, MG Road, Sikanderpur, Gurgaon in favour of the objector or its nominees. Accordingly, Buyer



Agreement was signed and its possession is to be handed over within 36 months, which expires on 17.05.2019. Our attention has been drawn to the Buyers Agreement dated 18.05.2016 and its clause 17 underneath the sub-heading 'possession'.

Learned Counsel, then submitted that the list of creditors as per the Scheme was given. The meeting of the Board of Directors of the Companies was held on 11.05.2016 and the arguments on the First Motion were heard on 18.05.2016 and the order was pronounced on 30.05.2016 by Hon'ble Delhi High Court (Annexure-A-9). The audited balance sheets as on 31.03.2015 and also of 30.09.2015 were filed and the list of creditors dated 28.02.2016 were also filed. On the aforesaid date, the objectors were not even the creditors of the Company as no such Award based on settlement was announced. In any case, the objectors were free to file objections in pursuance of notices published in the Press at the time of First Motion. Therefore, there is no question of any concealment, suppression or misrepresentation of facts.

Having heard the learned counsels for the parties we are of the view that the objectors have no locus-standi to raise objections at this stage as the payment of over Rs. 59 crores had been payed on 26.07.2016, 24.08.2016 and 02.09.2016. the whole awarded amount stands payed as has been rightly contented by learned counsel for the applicant. The allegation of concealment of facts is also belied because the award was announced on



12.05.2016 by the arbitral tribunal and whereas the meetings of board of directors of Demerged and Resulting Companies were also held on 11.05.2016 which approved the Scheme of Arrangement obviously without any idea of award. In any case the objector could have filed objections in pursuance of notices published in the press at the time of first motion i.e. on 24.08.2016 wherein objections to this Scheme were invited. No such objections were ever filed. In view of the above, we don't find any substance in the objection and arguments raised by objector Statesman Limited. CA No. 2873 of 2016 filed by Ahluwalia Contracts (India) Limited is also disposed of as no sustainable objection has been raised.

6. In view of the foregoing and considering the approval accorded by the members and creditors of the Petitioner Company to the proposed Scheme and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs whereby no objections have been raised to the proposed Scheme, there appears to be no reservation to grant sanction to the Scheme. However, the Companies shall remain bound by the undertaking filed by each one of them. Consequently, sanction is hereby granted to the Scheme under section 230 to 232 of the Companies Act, 2013. The Petitioner shall however remain bound to comply with the statutory requirements in accordance with law.



7. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
8. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, income tax, GST or other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.
9. THIS TRIBUNAL DO FURTHER ORDER:
- That in terms of the Scheme:
- a) That all the property, rights and powers of the Demerged Undertaking of the Demerged Company be transferred without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Section 232 of 2013 Act, be transferred to and vest in the Resulting Company for all the intents, purpose and interests of the Demerged Undertaking of Demerged Company therein but subject nevertheless to all charges now affecting the same; and



- b) That all the liabilities and duties of Demerged Undertaking of Demerged Company be transferred without further act or deed, to the Resulting Company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Resulting Company; and
- c) That all proceedings now pending by or against the Demerged Undertaking of Demerged Company be continued by or against the Resulting Company; and
- d) That Petitioner/Resulting Company shall file within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies; and
- e) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

Sd/-

(M.M. KUMAR)
PRESIDENT

Sd/-

(DEEPA KRISHAN)
MEMBER (TECHNICAL)