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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.APP. 21/2015 and CMs No.10568/2015, 10569/2015 & 10570/2015

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Date of decision: 29th May, 2015

UNITECH REALTY PRIVATE LIMITED Appellant

Through: Mr.Sandeep Sethi, Sr. Adv.
with Mr.Tarun Dua and
Mr.Anant Garg, Advs.

versus

THE UNIWORLD GARDEN APARTMENT
OWNERSASSOCIATION

..... Respondent

Through: Mr.Jatin Mongia and Ms. Niyati
Kohli, Advs.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S.TEJI

GITA MITTAL, J. (Oral)

CM No.10570/2015 (Exemption)

1. Allowed, subject to just exceptions.

The application is disposed of.

CM No.10569/2015

2. Heard. For the reasons stated, the delay in filing the appeal is condoned.

CO.APP. 21/2015 & CM No.10568/2015

3. Issue notice. Mr. Jatin Mongia, Advocate accepts notice on behalf of respondent.

4. With the consent of both the parties this appeal is taken up for consideration. The respondent has filed petition under Section 443 of the Companies Act, 1956 being Company Petition No.513/2014 seeking winding up of the appellant in the capacity of an association of apartment owners in the Uniworld Garden Complex. The respondent is an association comprising of 506 members, all of whom are owners of apartments in the Uniworld Garden, a Group Housing complex situated in Gurgaon. The appellant is only a subsidiary of M/s Unitech Ltd. and is responsible for construction of the Uniworld Garden Complex.

5. It has been claimed that in terms of the flat buyers agreements between the appellant company and the members of the respondent association, various amounts were collected by the present appellant including an amount that is known as 'Sinking Fund' which has been captioned as Interest Bearing Maintenance Security (IBMS) in the agreement. The respondent has claimed that in terms of the flat buyer agreements, maintenance and other responsibilities in the housing complex, have been handed over to it as has been mentioned in the hand over letter dated 30th August, 2013.

6. The winding up petition was necessitated inasmuch as

despite repeated notices and admission of the liability, the amount collected towards (IBMS) with all accruals thereon has not been handed over to the association.

7. An interim application being Co. Application No.375/2015 was filed praying for interim orders. On this application, various orders were passed directing the respondent to file an affidavit giving details of the manner in which IBMS collection was dealt with by the company. The affidavit filed by the appellant came up for consideration on 11th March, 2015 whereupon the learned Single Judge concluded that *prima facie*, the security deposit was to be maintained as a security and the fact that the same has been utilised by the appellant would, *prima facie*, indicate a breach of trust. Under these circumstances, the respondent was restrained from selling, parting with or alienating any of its movable and immovable assets.

8. The appellant filed Co. Application No.852/2015 seeking modification of the order and permission to sell off or part with its movable and immovable assets in the ordinary course of its business. By the impugned order dated 27th March, 2015, the learned Single Judge modified the order of injunction permitting the appellant company to do so provided that the entire amount of IBMS (reflected as Rs.10,12,67,430/-) with interest is deposited with the Registrar General of this Court. Subject to the said deposit being made and only thereafter the petitioner

was permitted to sell or alienate its other assets by the impugned order.

9. The appellant has filed the present appeal aggrieved by the direction to deposit the entire amount as a pre-condition to deal with its movable and immovable assets in the ordinary course of business. It is vehemently argued on behalf of the appellant by Shri Sandeep Sethi, learned senior counsel that the order in fact completely interdicts the appellant from meeting his expenses like payments of salaries to his employees and operating its business. It is submitted that this fact has been completely ignored in the impugned order. Mr. Sethi submits that without prejudice to the rights and contentions of the appellant if the company is permitted to deal with its immovable assets, it would be willing to secure the amount. The appellant urges that large amounts of money are owed by the various flat owners to it.

10. Mr. Mongia, learned counsel for the respondent staunchly opposes grant of any relief to the appellant. He submits that in the affidavit which was filed by the appellant, it had admitted the receipt of the amount of IBMS and in terms of the agreement with the several flat owners, the appellant company was bound to maintain the amount in the form of security to be utilised for the maintenance of the subject flats. It was submitted that in the affidavit the company has admitted that large amount which was collected from the flat buyers towards

maintaining 'Sinking Funds', was liquidated as back as in the year 2008.

11. Our attention has been drawn to the balance sheet for the year ending 31st March, 2014 submitted with the affidavit of which the company which reflects that the company had available a large amount of reserve and that it had also extended short term loans of large amounts to its parent company. Mr.Mongia contends that the appellant is flush with funds and deserves to be given no accommodation so far as impugned order dated 27th March, 2015 is concerned.

12. On a consideration of the entirety of the matter as well as the documents filed by the parties which have been placed before us, it was the responsibility of the appellant to place the amounts collected towards (IBMS) from the apartment owners in a separate account. Even before us, the appellant does not dispute receipt of this amount from the apartment owners.

13. A reading of the affidavit filed by the appellant would show that the entire amount collected towards IBMS has been utilised by it. The nature of the utilisation, however, is not disclosed. It is also not known whether the amount has been utilised for the purpose or in the manner required in the flat buyers agreement. The respondent has also absolutely refuted the liability of any dues at all.

14. Thus a question would arises as to whether the amounts being claimed by the appellant are owed by the individual

apartment owner or by the association. So far as the liability claimed with regard to the amounts being owed by apartment owners is concerned, this matter has to be considered by the learned Single Judge and not in the present appeal. Be that as it may, so far as the present appeal is concerned this matter does not need us to detain any further.

15. In the factual background noted above, the impugned order of the learned Single Judge calling upon the appellant to secure the amount is clearly justified and cannot be assailed on any legally tenable grounds.

16. The appellant, however, pleads financial difficulty in making a lump sum deposit. The amount can be secured by other conditions as well to mitigate this expressed difficulty.

17. Mr.R.K. Patni, an active member of the respondent association is present. It is submitted that the parties may be given an opportunity to resolve the dispute by recourse to mediation. We are of the view that with the amicable resolution of the dispute of the parties deserves to be explored.

In view of the above, we direct as follows:

- (i) Subject to the appellant depositing an amount of Rs.2.00 crore with the Registrar General of this Court within two weeks, a further amount of Rs.3,06,5,000/- within a period of six weeks and furnishing security of Rs.5,65,00,000/- to the satisfaction of Registrar General of this Court

within a period of four weeks from today. The appellant shall be permitted to deal with movable and immovable assets in the ordinary course of its business.

- (ii) The order dated 27th March, 2015 shall stand modified to the above extent.
- (iii) The parties or their authorised representative(s) shall appear before Mr. J.P. Sengh, Mediator in the Delhi High Court Mediation & Conciliation Centre on 1st June, 2015 at 11:00 am.
- (iv) This appeal and all pending applications are disposed of in above terms.

Dasti.

GITA MITTAL, J

P.S.TEJI, J

MAY 29, 2015
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