

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 109/2015

Reserved on 6th July, 2015
Date of pronouncement: 27th July, 2015

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Application under Section 391 of the
Companies Act, 1956**

Scheme of Arrangement between:

Mhaya Buildcon Private Limited

Applicant/Transferor Company No. 1

DLF Buildcon Private Limited

Applicant/Transferor Company No. 2

DLF Telecom Limited

Applicant/Transferor Company No. 3

DLF Info City Developers (Chennai) Limited

Non-Applicant/Transferor Company No. 4

DLF Universal Limited

Non-Applicant/Transferor Company No. 5

AND

DLF Home Developers Limited

Applicant/Transferee Company

**Through Mr. Karan Malhotra, Advocate
for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Section 391 of the Companies Act, 1956 by the applicant/transferor companies no. 1 to 3 and the applicant/transferee company seeking directions of this court to

dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors and for convening of separate meetings of the secured and unsecured creditors of the applicant/transferee company to consider and approve, with or without modification, the proposed Scheme of Arrangement between Mhaya Buildcon Private Limited (hereinafter referred to as the transferor company no. 1); DLF Buildcon Private Limited (hereinafter referred to as the transferor company no. 2); DLF Telecom Limited (hereinafter referred to as the transferor company no. 3); DLF Info City Developers (Chennai) Limited (hereinafter referred to as the transferor company no. 4) and DLF Universal Limited (hereinafter referred to as the transferor company no.5) and DLF Home Developers Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor companies no. 1 to 3 and the transferee company are situated at New Delhi, within the jurisdiction of this Court. However, the registered offices of the transferor companies no. 4 & 5 are situated at Gurgaon, outside the jurisdiction of this Court. Learned counsel for the applicants submitted that a separate application has been filed by the transferor companies no. 4 & 5 in the court of competent jurisdiction for sanction of the Scheme of Arrangement in their respect which is still pending.

3. The transferor company no. 1 was incorporated under the Companies Act, 1956 on 9th April, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 30th November, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of DLF Limitless Developers Private Limited. The company changed its name to DLF Buildcon Private Limited and obtained the fresh certificate of incorporation on 22nd August, 2014.

5. The transferor company no. 3 was originally incorporated under the Companies Act, 1956 on 10th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Camila Builders & Constructions Private Limited. The company changed its name to Bhubaneswar I.T. Park Developers Private Limited and obtained the fresh certificate of incorporation on 31st March, 2007. The company again changed its name to Bhubaneswar I. T. Park Developers Limited and obtained the fresh certificate of incorporation on 8th May, 2007. The company finally changed its name to DLF Telecom Limited and obtained the fresh certificate of incorporation on 8th November, 2007.

6. The transferee company was originally incorporated under the Companies Act, 1956 on 29th December, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Uppal Hotels Private Limited. The word 'Private' was deleted from the name of the company w.e.f. 05.05.2000. The company changed its name to Uppal Hotels Limited and obtained the fresh certificate of incorporation on 19th October, 2001. The company again changed its name to DLF Home Developers Limited and obtained the fresh certificate of incorporation on 19th June, 2004.

7. The present authorized share capital of the transferor company no.1 is Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferor company no.2 is Rs.25,00,00,00,000/- divided into 2,50,00,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.4,02,51,00,000/- divided into 40,25,10,000 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.3 is Rs.12,00,00,000/- divided into 1,20,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.11,15,00,000/- divided into 1,11,50,000 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.77,40,55,20,000/- divided into 3,34,94,52,000 equity shares of Rs.10/- each aggregating to Rs.33,49,45,20,000/-; 34,00,00,000 0.01% redeemable preference shares of Rs.100/- each aggregating to Rs.34,00,00,00,000/-; 80,000 10% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.80,00,000/-; 15,000 6% redeemable preference shares of Rs.100/- each aggregating to Rs.15,00,000/-; 9,90,00,000 preference shares of Rs.100/- each aggregating to Rs.9,90,00,00,000/-; and 15,000 6% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.15,00,000/-. The present issued, subscribed and paid-up share capital of the company is Rs.9,26,65,38,390/- divided into 4,12,13,839 equity shares of Rs.10/- each aggregating to Rs.41,21,38,390/-; and 8,85,44,000 0.01% redeemable preference shares of Rs.100/- each aggregating to Rs.8,85,44,00,000/-.

11. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

12. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It has been submitted by the applicants that all the companies involved in the present scheme are directly/indirectly subsidiaries of DLF Limited, which is the ultimate holding/parent company. It has been further submitted that the present Scheme envisaged the amalgamation of the transferor companies no. 1 to 4 and demerger of the Real Estate Undertaking of the transferor company no. 5 into the transferee company. It is claimed that the proposed Scheme would enable the companies to harness and optimize the resources in the best interest of the respective stakeholders. It is further claimed that the proposed arrangement will result in better, efficient and economical management, achieve cost savings, pooling of resources, reduction of corporate tiers, rationalization of administrative expenses/services, control and running of businesses and further development and growth of the business of the companies.

13. So far as the share exchange ratio is concerned, the Scheme provides that the transferor company no. 1 is a wholly owned subsidiary of the transferee company and, therefore, upon the Scheme becoming effective, the entire share capital held by the transferee company and/or its nominee shall be extinguished and cancelled and no shares shall be issued by the transferee company. It has been further provided that the transferee company shall issue and allot equity shares to the shareholders of the transferor companies no. 2 & 3 in the following ratio:

“the transferee company shall allot 10,44,513 equity shares of Rs.10/- each fully paid up to DLF Limited, whose name appears in the register of members of the transferor company no. 2.”

“the transferee company shall allot 59,653 equity shares of Rs.10/- each fully paid up to DLF Limited, whose name appears in the register of members of the transferor company no. 3.”

14. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or under Section 206 to 229 of the Companies Act, 2013, to the extent applicable, are pending against the applicant companies.

15. The Board of Directors of the transferor companies no. 1, 2, 3 & 5 and the transferee company and the Board of Directors of the transferor company no. 4 in their separate meetings held on 31st March, 2015 and 27th March, 2015 respectively have unanimously approved the proposed

Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

16. The transferor company no. 1 has 07 equity shareholders and 03 unsecured creditors. All the equity shareholders and all the unsecured creditors have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditors of the transferor company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with. There is no secured creditor of the transferor company no. 1, as on 31st December, 2014.

17. The transferor company no. 2 has 07 equity shareholders. All the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the transferor company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Scheme

of Arrangement is dispensed with. There is no secured or unsecured creditors of the transferor company no. 2, as on 31st December, 2014.

18. The transferor company no. 3 has 07 equity shareholders and 01 unsecured creditor. All the equity shareholders and the only unsecured creditor have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditor of the transferor company no. 3 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with. There is no secured creditor of the transferor company no. 3, as on 31st December, 2014.

19. The transferee company has 08 equity shareholders and 01 preference shareholder. All the equity shareholders and the only preference shareholder have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and preference shareholders of the transferee

company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with.

20. The transferee company has 6 secured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the transferee company shall be held on 5th September, 2015 at 10:00 a.m. at Niryat Bhawan, Rao Tula Ram Marg, Opposite Army Hospital Research and Referral, New Delhi - 110057. Ms. Madhurima Mridul, Advocate, (Mobile No. 9810175151) is appointed as the Chairperson and Mr. Sunil Sharma, Advocate, (Mobile No. 9811383958) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the transferee company shall be 02 in number and more than 25% in value of the total secured debt.

21. The transferee company has 9003 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferee company shall be held on 5th September, 2015 at 11:00 a.m. at Niryat Bhawan, Rao Tula Ram Marg, Opposite Army Hospital Research and Referral, New Delhi - 110057. Mr. Yogesh Jagia,

Advocate, (Mobile No. 9810043405) is appointed as the Chairperson and Ms. Alka Srivastava, Advocate, (Mobile No. 9811950380) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferee company shall be 200 in number and more than 25% in value of the total unsecured debt.

22. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings is filed with the registered office of the transferee company at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

23. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the secured and unsecured creditors of the transferee company, along with copies of the Scheme of Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the secured and unsecured creditors of the transferee company by ordinary post at their registered or

last known addresses at least 21 days before the date appointed for the meeting, in their presence or in the presence of their authorized representatives. Notice of the meetings shall also be published in the Delhi editions of the newspapers “Indian Express” (English) and “Jansatta” (Hindi) editions in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

24. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the transferee company so that the aforesaid meetings of the secured and unsecured creditors of the transferee company is conducted in a just, free and fair manner.

25. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.50,000/- each in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

26. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

July 27, 2015