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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 11.11.2016

+ **CO.PET.911/2015**

**IN THE MATTER OR MHAYA BUILDCON
PRIVATE LIMITED & ORS.**

.... Petitioners

versus

....

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Dr.U.K.Chaudhary, Senior Advocate with Ms. Manisha Chaudhary, Mr Naveen Dahiya and Mr Himanshu Vij, Advocates.

For the Respondent : Ms. Aparna Mudiam, AROC for Regional Director, Ms Chetana Kandpal, Company Prosecutor on b/o. Official Liquidator.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

11.11.2016

SANJEEV SACHDEVA, J (ORAL)

1. This petition has been filed under Sections 391 and 394 of the Companies Act,1956 by the Petitioner Companies seeking sanction of the Scheme of Arrangement between Mhaya Buildcon Private Limited (hereinafter referred to as petitioner No. 1/transferor company no. 1), DLF Buildcon Private Limited (hereinafter referred to as petitioner no. 2/transferor company No. 2), DLF Telecom Limited (hereinafter referred to as petitioner no. 3/ transferor company No.3), DLF Info City

Developers (Chennai) Limited, (hereinafter referred to as non-petitioner/ transferor company No.4), DLF Universal Limited (hereinafter referred to as non-petitioner/demerged/transferor company no.5) and DLF Home Developers Limited (hereinafter referred to as petitioner no. 4/ transferee company).

2. The registered office of the Petitioner No. 1 to 4 company are situated at New Delhi, within the jurisdiction of this court. However, the registered office of the Non-Petitioner/ Transferor Company No.4 and Non-Petitioner/Demerged/Transferor Company No.5 are situated in the State of Haryana i.e. within the Jurisdiction of the High Court for the States of Punjab & Haryana at Chandigarh.

3. Learned counsel for the petitioners has submitted that the a separate petition had been filed by the Non-Petitioner/ Transferor Company No.4 and Non-Petitioner/Demerged/Transferor Company No.5 in the court of competent jurisdiction i.e. High Court for the States of Punjab & Haryana at Chandigarh, seeking sanction to the Scheme of Arrangement, and the Scheme has been already been approved by the said High Court on 29th March, 2016.

4. The Petitioner No.1/Transferor Company No. 1 was incorporated under the Companies Act, 1956 on April 09, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The authorized share capital of the Petitioner No.1 /Transferor Company No. 1 as on 31.03.2014 is Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each. The 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.

6. The Petitioner No.2 /Transferor Company No. 2 was incorporated under the Companies Act, 1956 on November 30, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The authorized share capital of the Petitioner No.2 /Transferor Company No. 2 as on 31.03.2014 is Rs.25,000,000,000/- divided into 2,500,000,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.4,025,100,000/- divided into 402,510,000 equity shares of Rs.10/- each.

8. The Petitioner No.3 /Transferor Company No. 3 was incorporated under the Companies Act, 1956 on March 10, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

9. The authorized share capital of the Petitioner No.3 /Transferor Company No. 3 as on 31.03.2014 is Rs.120,000,000/- divided into 12,000,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.111,500,000/- divided into 11,150,000 equity shares of Rs.10/- each.

10. The Petitioner No.4 /Transferee Company was incorporated under the Companies Act, 1956 on December 29, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The authorized share capital of the Petitioner No.4 /Transferee Company No. 4 as on 31.03.2014 is Rs.77405,520,000/- divided into

3,349,452,000 Equity Shares of Rs 10/- each, 340,000,000 0.01% redeemable preference shares of Rs 100/- each, 80,000 10% non-cumulative redeemable preference shares of Rs 100/- each, 15,000 6% redeemable preference shares of Rs 100/- each, 99,000,000 preference shares of Rs 100/- each and 15,000 6% non-cumulative redeemable preference shares of Rs 100/- each. The issued, subscribed and paid-up share capital of the company is Rs.9,26,65,38,390/- divided into 41,213,839 Equity Shares of Rs 10/- each fully paid up 88,544,000 0.01% redeemable preference shares of Rs 100/- each fully paid up.

12. Copies of the Memorandum and Articles of Association of the petitioner companies have been filed on record. The audited balance sheet, as on 31st March, 2014, of the petitioner companies, along with the report of the auditors, has also been filed.

13. 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 petition and the accompanying affidavit. It is submitted by the petitioner that the Scheme, inter alia, provides for the Merger/Amalgamation of Mhaya Buildcon Private Limited (“Petitioner/Transferor Company no.1”), DLF Buildcon Private Limited (Petitioner/Transferor Company No. 2), DLF Telecom Limited (“Petitioner/Transferor Company No.3”), DLF Info City Developers (Chennai) Limited (“Non-petitioner/Transferor Company no. 4”) and Demerger of Real Estate Undertaking of DLF Universal Limited (“Non-Petitioner/Transferor Company no.5/ Demerged Company ”) with DLF Home Developers Limited (“Petitioner Company No 4/Transferee

Company”). It is claimed that the arrangement would enable the consolidated entity to carry on the businesses more efficiently and effectively and meet the regulatory norms for the specified businesses.

14. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall:

“Allot 10,44,513 (Ten lacs forty four thousand five hundred thirteen) 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, in terms of the valuation report dated 26.03.2015 given by M/s Daver Karnatak & Associates, Chartered Accountants, New Delhi.

Allot 59,653 (fifty nine thousand six hundred fifty three) 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, in terms of the valuation report dated 26.03.2015 given by M/s Daver Karnatak & Associates, Chartered Accountants, New Delhi.”

15. It has been submitted by the petitioners that no proceedings under Sections 235 to 250A of the Companies Act, 1956 are pending against the demerged and resulting companies.

16. The Board of Directors of the petitioner companies in their separate meetings held on 31st March, 2015 have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the petitioner companies have been placed on record.

17. The petitioner Companies had earlier filed CA (M) No.109/2015

seeking appropriate directions of this court with respect to dispensing/convene the meetings of their respective shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 27th July, 2015, this court allowed the application and dispense with the meeting of shareholders of petitioner companies. This court also dispensed with the meeting of all the creditors of petitioner company nos. 1 to 3 and directed convening of meetings of the secured and unsecured creditors of the petitioner no. 4/transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

18. The Chairpersons of the ordered meetings of the secured and unsecured creditors of the petitioner no. 4/ transferee company have filed their reports stating that the meetings were duly held on 05th September, 2015, as directed, and that the Scheme of Arrangement has been approved unanimously by the secured creditors, and by majority of unsecured creditors of the petitioner no. 4/transferee company, present and voting, in the meetings.

19. The petitioner companies has thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 10th December, 2015, notice in the petition was directed to be issued to the Official Liquidator and Regional Director, Northern Region. Citations were also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi) editions. Affidavit of Compliance dated 19th April, 2016 has been filed by the petitioners showing compliance regarding service on the official liquidator on 16th December, 2015 and Regional

Director, Northern Region on 15th December, 2015 and also regarding publication of citations in the aforesaid newspapers on 15th January, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

20. In response to the notices issued in the petition, Mr. A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 24th April, 2016 not raising any objection to the proposed Scheme.

21. In response to the notices issued in the petition, the official liquidator has also filed his report dated 19th April, 2016 not raising any objection to the proposed Scheme.

22. No objection has been received to the Scheme of Arrangement from any other party. The petitioner companies through affidavit dated 28th April, 2016 of Mr. Ankur Jain, authorized signatory of the petitioner no. 4/ transferee company, have submitted that neither the petitioner company nor their counsel have received any objection pursuant to the citations published in the newspapers on 15th January, 2016.

23. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Arrangement and the affidavit filed by the Regional Director, Northern Region not raising any objection to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently sanction is hereby granted to the Scheme of Arrangement under Sections 391 and 394 of the

Companies Act, 1956. The petitioner company will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Arrangement, i.e. 1st April, 2014, the Mhaya Buildcon Private Limited (“Petitioner/ Transferor Company no.1”), DLF Buildcon Private Limited (Petitioner/Transferor Company No. 2), DLF Telecom Limited (“Petitioner/Transferor Company No.3”) shall be merged with DLF Home Developers Limited (“Petitioner Company No 4/Transferee Company”) and Mhaya Buildcon Private Limited (“Petitioner/ Transferor Company no.1”), DLF Buildcon Private Limited (Petitioner/Transferor Company No. 2), DLF Telecom Limited (“Petitioner/Transferor Company No.3”) shall stand dissolved without the process of winding up and without any further act or deed.

24. Learned Senior Counsel for the Petitioners states that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 3,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

25. The petition is allowed in the above terms.

26. *Dasti* under signatures of the Court Master.

NOVEMBER 11, 2016
‘sn’

SANJEEV SACHDEVA, J