

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.25534 of 2021 (O&M)

Date of Decision: 19.04.2022

MGF Developments Ltd.

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sanjeev Sharma, Sr. Advocate and
Mr. Akshay Bhan, Sr. Advocate with
Mr. Rajesh K. Sheoran, Advocate
Mr. Sandeep Singh, Advocate and
Mr. A.S. Talwar, Advocate
for the petitioner.

Ms. Safia Gupta, Asstt. A.G, Haryana.

Mr. Randeep Rai, Sr. Advocate and
Mr. Ashish Chopra, Sr. Advocate with
Mr. Kunal Dawar, Advocate,
Ms. Rupa Pathania, Advocate and
Ms. Rubina Virmani, Advocate
for respondents No.5 to 11.

Mr. Gaurav Goel, Advocate
for respondent No.12/Axis Bank.

Mr. Amit Jhanji, Sr. Advocate, with
Mr. Sanjeev Sachdeva, Advocate,
Mr. Suneet Pal Singh, Advocate and
Ms. Eliza Gupta, Advocate
for respondents No.13 to 15.

RAJ MOHAN SINGH, J.

CM-4893-CWP-2022

Prayer made in this application is for placing on record the reply filed by the petitioner dated 31.03.2022 to the application for placing on record affidavit dated 28.03.2022 filed by respondents No.5 to 11.

For the reasons mentioned in the application, the same is allowed. The reply is taken on record, subject to all just exceptions.

CM-4895-CWP-2022

Prayer made in this application is for placing on record Annexure P-25 to Annexure P-29.

For the reasons mentioned in the application, the same is allowed. Annexure P-25 to Annexure P-29 are taken on record, subject to all just exceptions.

Main case

[1]. Petitioner has preferred this writ petition for the issuance of an appropriate writ, order or direction especially in the nature of certiorari for quashing the award dated 09.12.2016 passed by the Daily Lok Adalat in Civil Suit No.160 of 2016/CS No.2536 of 2016 titled "*Sparash Promoters Pvt. Ltd. And others vs. Cosmo Propbuild Pvt. Ltd. And others*" along with all

subsequent proceedings arising therefrom. Further a writ, order or direction in the nature of prohibition has also been sought seeking to stay the operation of Award dated 09.12.2016 passed by the Daily Lok Adalat and also directing the respondent No.2 to defer the proceedings pending before the Authority in the context of change of land use. Petitioner has also prayed for issuance of mandamus directing respondent No.1 to submit an inquiry report with regard to entry of mutations and the conduct of contesting respondents while entertaining the licence application.

[2]. Petitioner is a Company duly incorporated in terms of Companies Act, 1956. M3M India Limited (respondent No.5) is a holding company. Subsidiary group of companies are Nourish Developers Pvt. Ltd. (respondent No.6), Cosmo Propbuild Pvt. Ltd. (respondent No.7), Surya Propcon Pvt. Ltd. (respondent No.8), Neer Builders Pvt. Ltd. (respondent No.9), Vibrant Infratech Pvt. Ltd. (respondent No.10) and Starcity Realtech Pvt. Ltd. (respondent No.11). EMAAR India Ltd. is the holding company. Subsidiary group of companies are Sparsh Promoters Private Limited (respondent No.13), Sandesh Buildcon Private Ltd. (respondent No.14) and Sidhant Building Private Ltd.(respondent No.15). Similarly the petitioner i.e. MGF Developments Ltd., is also the holding company.

[3]. The dispute of the petitioner/MGF Developments Ltd., is with M3M India Ltd. (respondent No.5) and its subsidiary companies i.e. respondents No.6 to 11, who are trying to obtain licence qua the land parcels for which the petitioner claims to have exclusive right of usage and development as per the demerger order dated 08.01.2018 corrected on 16.07.2018 passed by the National Company Law Tribunal, Principal Bench, New Delhi (hereinafter to be referred as 'the NCLT'). Petitioner claims that there is no dispute with respondents No.13 to 15 or their holding company EMAAR India Ltd. However, since the award dated 09.12.2016 has been obtained in their names, therefore, they are being impleaded as proforma respondents.

[4]. The impugned award passed by the Daily Lok Adalat, Gurugram is between proforma respondents No.13 to 15 on the one hand and respondents No.7 to 11 on the other hand. Names of respondents No.13 to 15 are incorporated in the column of ownership in the revenue record. Under the demerger order dated 08.01.2018 corrected on 16.07.2018, respondents No.13 to 15 were under legal obligation to act as per instructions of the petitioner. Petitioner being the beneficiary has an exclusive right to use and develop the land parcels and the petitioner has direct and substantial interest in the litigation. Petitioner further claims that writ is maintainable in view of law

laid down by the Hon'ble Apex Court in **State of Punjab vs. Jalour Singh, (2008) 2 SCC 660** and **Bhargavi Construction & Anr. vs. Kothakapu Muthyam Reddy & Ors., 2017 SCC Online SC 1053.**

[5]. It has been pleaded that during statutory demerger, the petitioner received usage and development rights in certain land parcels in village Chauma, Tehsil & District Gurugram. The said land parcels are situated in Sectors 111 and 113, Gurugram. As per demerger order dated 08.01.2018 corrected on 16.07.2018 passed by the NCLT, petitioner has exclusive right to use and develop these land parcels. Respondents No.7 to 11 fraudulently obtained the consent of the petitioner in passing of impugned award by the Daily Lok Adalat, Gurugram vide order dated 09.12.2016 and have fraudulently managed to get the mutation of the ownership entered in the revenue record. The agreed amount of Rs.114.00 crores as mentioned in the award has not been paid to the petitioner except an amount of Rs.16,30,03,539/-. An amount of Rs.96,68,83,585/- still remains unpaid. The cheques have already been dishonoured, therefore, as per clause 7 of the compromise deed dated 23.11.2016 which is integral part of the impugned award, the deed is automatically stood cancelled and has been rendered null and void. Respondents No.7 to 11 have filed an application for grant

of licence to develop a Group Housing Colony over the land measuring 16.1125 acres which includes land measuring 7.01 acres of the petitioner and the said application is under consideration.

[6]. On coming to know the fraudulent filing of application for licence, the petitioner filed a complaint before respondent No.2, who vide notice dated 26.11.2021 granted an opportunity of hearing to all the stakeholders and listed the case for 24.02.2022. Later on without there being any application for preponement on the part of the petitioner, hearing of the case was preponed by respondent No.2 for the reasons best known to the Authority and the petitioner received a notice on 08.12.2021, requiring it to appear on 09.12.2021. It was only on the persuasion of the petitioner one week's time was given by the Authority. The petitioner has reasonable apprehension that respondent No.2 on the basis of influence exerted by respondent No.5 has shown indifferent behaviour by preponing the date of hearing without notice to the petitioner and was adamant not to adjourn the case. Petitioner seeks to assail the award dated 09.12.2016 passed by the Daily Lok Adalat on the ground that exchange deeds are without consideration and the petitioner would face *fate accompali* during course of hearing before respondent No.2.

[7]. It has been pleaded that on 18.12.2004, a joint venture between EMAAR properties PJSE Dubai and MGF Developments Ltd. & Sareen Estates Pvt. Ltd. was executed. The new Company namely EMAAR MGF India Land Limited was incorporated. On 13.04.2016/ 23.05.2016, due to business exigency, the Company i.e. EMAAR MGF India Land Limited was subjected to statutory demerger process. Before initiation of demerger process, various agreements were executed between the joint venture partners and by virtue of these agreements, rights of the assets and interest therein came to be distributed in the manner as indicated in the agreements. The gist of the agreements before initiation of demerger process was that the rights on 1685 acres of land and shareholding of 21 Companies came to the petitioner/MGF Developments Ltd. In the present writ petition, the petitioner has right to develop and use certain land parcels (total measuring 31.03 acres) situated in Sectors 111 and 113, Gurugram i.e. in the revenue estate of village Chauma, Tehsil & District Gurugram).

[8]. In the present writ petition the petitioner has pleaded that in furtherance of its business interest, the petitioner expressed interest in exchange of the aforesaid land parcels in Sectors 111 and 113 Gurugram with respondents No.7 to 11 i.e. Subsidiaries companies of respondent No.5/M3M Developers

Ltd. On 18.11.2016, respondents No.7 to 11 started to claim interest in the aforesaid land even before execution of any formal document. Petitioner got filed a civil suit No.160 of 2016/CS No.2536 of 2016 titled 'Sparash Promoters Pvt. Ltd. and others Vs. Cosmo Propbuild Pvt. Ltd. and others. During pendency of the suit, a compromise was effected between the plaintiffs (which the petitioner claims that the suit was filed on its behalf as it was represented by the proforma respondents No.13 to 15) and defendants (respondents No.7 to 11 herein). According to the petitioner, the compromise was effected by proforma respondents No.13 to 15 on its behalf, which was in consonance with the agreements executed between the joint ventures partners (EMAAR Properties PJSE Dubai & MGF Developments Ltd.) The compromise was effected on 23.11.2016.

[9]. In terms of the compromise deed dated 23.11.2016, exchange deeds were executed between respondents No.13 to 15 (claims to be on behalf of the petitioners) and respondents No.7 to 11 on 24.11.2016. As per terms and conditions of the exchange deeds, the respondents had agreed to exchange the respective land parcels total measuring 15.13 acres and in addition they undertook to pay an amount of Rs.114.00 crores to the proforma respondents No.13 to 15 (on behalf of the

petitioner). One of the conditions of the exchange deeds was that in case the cheques are dishonoured, the exchange deeds would be rendered null and void. Clause 4 of the exchange deed was identical in all the exchange deeds. Petitioner has relied upon clause 4 of the exchange deed dated 24.11.2016 and clause 7 of the compromise deed dated 23.11.2016.

[10]. Petitioner further alleges that under the garb of false assurances of clearance of cheques, respondents No.7 to 11 got sanctioned mutations of the land parcels of the petitioner on 07.12.2016. In terms of the compromise deed and exchange deeds executed in the civil suit, an award was passed by the Daily Lok Adalat and civil suit was disposed of on the basis of compromise deed dated 23.11.2016. Perusal of compromise deed dated 23.11.2016 in terms of clause 7 would show that in case the post dated cheques furnished by respondents No.7 to 11 are dishonoured, the understanding between the parties and the compromise deed would be rendered null and void and shall automatically cancelled/terminated. The cheques furnished by respondents No.7 to 11 were dishonoured and, thereafter respondents No.7 to 11 replaced the dishonoured cheques with fresh cheques twice and on all three occasions, all cheques were dishonoured except for an amount of Rs.16,30,03,539/-. An amount of Rs.96,68,83,585/- still remained unpaid till date.

Even the petitioner did not get the land in exchange as per terms of the exchange deeds.

[11]. Petitioner further pleads that on 08.01.2018, demerger process was finalized by the National Company Law Tribunal, New Delhi and agreements executed between the joint venture partners in the month of April 2016 were acknowledged and approved in accordance with law. The order dated 08.01.2018 was corrected on 16.07.2018 due to some inadvertent mistakes. The 3rd set of cheques given by respondents No.7 to 11 were dishonoured on presentation with the Banker/respondent No.12 on 27.03.2018. In the month of October 2018, petitioner got into dispute with its erstwhile joint venture partner EMAAR Properties PJSE Dubai along with EMAAR MGF Land Limited on the other part i.e the holding company of respondents No.13 to 15 since June 2019. Respondents No.7 to 11 took undue advantage of dispute and obtained partition of the land parcels at the back of the petitioner and got the revenue entries incorporated in the names of respondents No.13 to 15. All these things happened at the back of the petitioner. Petitioner further claims that factum of partition came to the notice of the petitioner only in the month of July, 2021, when its officials were pursuing other licence applications and application for change of land use was being processed in the office of District Town

Planner, Gurugram. On 27.08.2021, petitioner filed a formal complaint against the grant of licence in favour of respondents No.7 to 11 in collaboration with respondents No.5 & 6. On this application, the date was fixed and thereafter it was preponed and intimation was given to the petitioner only on 08.12.2021 for the date of appearance for personal hearing on 09.12.2021. It was only on long persuasion, a week's time was given to the petitioner.

[12]. Notice of motion was issued on 15.12.2021 and following order was passed by this Court:-

“Learned Senior Counsel for the petitioner contends that in a suit for permanent injunction filed by the predecessors of the petitioner-Company i.e. M/s Sparash Promoters Pvt. Ltd. and other against M/s Cosmo Propbuild Pvt. Ltd. and others, a compromise was entered into between the parties. The terms and conditions of the exchange between the plaintiffs and defendant were settled. Under the compromise, the defendant was to pay an amount of Rs.114 crores to the predecessors of the petitioner towards the monitory consideration to the transaction of exchange as referred to in the compromise. The post dated cheques were required to be issued for the said amount in favour of the plaintiffs. In case of dishonouring of the cheques, the exchange deed was to terminate automatically. The exchange deed was to assume validity only after encashment of the cheques. The development rights of the plaintiffs are with the present petitioner. National Company Law Tribunal passed an order

dated 08.01.2018 (corrected on 16.07.2018), vide which development rights of EMAAR Land Limited and subsidiaries were ordered to be vested in the resulted company i.e. the petitioner. As a result of that 31.12 acres of land situated in village Chouma, District Gurgaon came to the fold of the petitioner for development purposes. The cheques issued in favour of the predecessors of the petitioner were ultimately dishonoured on 27.03.2018 and without disclosing the said fact, the respondents applied for a licence before respondent No.2 on 19.07.2021. Petitioner made a complaint before respondent No.2 on 27.08.2021. On the complaint of the petitioner, notice was issued vide memo No.30170 dated 26.11.2021 for 24.02.2022. Vide the common intimation, notice was issued to the petitioner as well. Petitioner was required to produce the relevant record before respondent No.2 on the date fixed. Learned Senior Counsel further submits that respondent No.2, to the utter surprise of the petitioner, changed the date of appearance and preponed the date from 24.02.2022 to 09.12.2021 unilaterally and vide communication dated 08.12.2021, only a day's time was given to the petitioner to appear and submit its case. On 09.12.2021, respondent No.2 was not inclined to give sufficient time to the petitioner to produce its documents and only a week's time was given thereafter and now the case is fixed for 16.12.2021 for disposal. Learned Senior Counsel submits that the petitioner apprehends that the aforesaid indifferent attitude on behalf of respondent No.2 is on account of influence of respondents No.5 to 11.

Notice of motion for 20.01.2022.

Dasti as well.

Till the next date of hearing, respondent No.2 shall adjourn the proceedings arising out of Annexures P17 and

P18.”

[13]. Learned Senior counsel for the petitioner submits that the civil suit was filed by respondents No.13 to 15 only at the instance of the petitioner and petitioner is a necessary party.

[14]. Learned Senior counsel further submits that the award dated 09.12.2016 passed by the Daily Lok Adalat is totally non-speaking and no satisfaction has been recorded as required under Order 23 Rule 3 CPC. For ready reference, the award dated 09.12.2016 is reproduced hereasunder:-

“AWARD

The case taken up before Daily Lok Adalat for compromise. Learned counsel for parties stated that parties to the suit have compromised the matter. Shri Rakshit Jain, Authorized Representative of plaintiffs and Ms. Kiran Bishnoi Authorized Representative of defendants have made joint statement to the effect that they have compromised the matter as per compromise Ex.C1.

3. Heard. In view of statements of the parties to the suit and compromise Ex.C1, the award is hereby passed and claim of the plaintiffs is allowed, as prayed for, subject to the provisions of the Registration Act. However, this transfer shall not defeat right of the prior mortgage, if any, over the suit property. The charge, if any, shall move with the suit property. This award shall be binding only on the parties to the suit and shall not effect the right of any third person. Both the plaint and the compromise (Ex.C1) shall form part of this award. File be consigned to the record room after due compliance.”

[15]. Learned Senior counsel further submits that the National Company Law Tribunal, New Delhi passed an order dated 08.01.2018 corrected on 16.07.2018 in the matter of scheme of arrangement between EMAAR MGF Land Limited (demerged company) and MGF Developments Limited (resulting company) i.e. the petitioner. The Scheme was approved. In terms of the Scheme, the Tribunal passed the following order:-

- “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)”*

[16]. The Scheme of arrangement before the NCLT was approved wherein EMAAR MGF Land Ltd. was the demerged company and MGF Developments Ltd., was the resulting company. The scheme of arrangement provided for the demerged company (as defined hereinafter) from the demerged company to the resulting company and consequent issue of shares by the resulting company to the shareholders of the demerged company, except to the extent shares held by the resulting company in the demerged company. The Scheme also provided provisions for various other matters consequential or related thereto and otherwise integrally connected therewith, including reorganization/reduction of the share capital of the demerged company. 30.09.2015 was the appointed date which shall mean closing hours of September 30, 2015 or such other date as may be fixed or approved by the Hon'ble High Court. According to definition of share capital shown in the scheme of

arrangement, the effective date when the National Company Law Tribunal, New Delhi approved the scheme was 16.07.2018.

[17]. All development rights relating to, in respect of, connected with the land and all development rights in the projects comprised in the assets as set out in Annexure 2; in each case, together with advances/deposits made by the demerged company to its subsidiaries or any other persons or third party/ies owning the land in respect of the assets as set out in Annexure 2 as shown in the scheme including all monies applied by the Demerged Company towards accounting for such rights. It is understood that all the assets as set out in Annexure 2, shall be free and clear of all encumbrances and liens and that the Demerged Company shall take necessary steps to release the encumbrances/liens of such assets, if any by December 31, 2016 except as otherwise agreed. All permits quotas, rights (including rights under any contracts, government contracts and project service agreements, pre-qualifications, applications, bids, tenders, letter of intent, concession agreements, memorandum of understanding executed in respect of land/joint development agreements being demerged non-possessionary contractual rights or any other contracts) land bank entitlements, municipal permissions, approvals, consents, tenancies in respect of properties either solely or jointly with other parties

obtained by the Demerged Company in relation to the Demerged Undertaking.

[18]. By referring to the other components of Scheme of arrangement , learned Senior counsel for the petitioner submits that whatever was to be done by respondents No.13 to 15, the same was to be done on behalf of the petitioner being the resulting company. Petitioner also referred to part II of the aforesaid Scheme of arrangement. Paras No.3.1, 3.3, 3.4 and 3.5 of transfer of undertaking and paras no.4.1 and 4.3 of contracts and deeds are relevant to be quoted hereasunder:-

“3.1. Upon the coming into effect of this Scheme and with effect from the Appointed Date, the Demerged Undertaking (including all the estate, assets, rights, title, interest, investments, authorities, liabilities (contingent or not), debts, duties, obligations, including accretions, deductions, subtractions and appurtenances of the Demerged Undertaking) shall be demerged from the Demerged Company and transferred to and vested in and be deemed to have been transferred to and vested in the Resulting Company as a going concern in the mode and manner provided herein pursuant to the provisions contained in Section 391 to 394 and all other applicable provisions, if any, of the Act and without any further act, deed, matter or thing.

3.3. In respect of the assets of the Demerged Company relating to the Demerged Undertaking other

than those referred to in Clause 3.2 above, including immovable properties, trade receivables, outstanding loans and advances, advances paid to any parties for acquisition of development rights, recoverable in cash or in kind or for value to be received, bank balances, deposits and balances, if any, with Government Authorities, customers and other persons, the same shall be transferred to and vested in and be deemed to have been transferred to and vested in the Resulting Company pursuant to the provisions of Section 394(2) of the Act upon the coming into effect of this Scheme.

3.4. Upon coming into effect of this Scheme, all debts, duties and obligations of every kind, nature and description and liabilities (including contingent liabilities) relating to the Demerged Undertaking shall without any further act, application, instrument or deed, matter or thing stand transferred to and assumed by and/or deemed to be transferred to and assumed by the Resulting Company and shall thereupon become the debts, duties, obligations and liabilities of Resulting Company on the same terms and conditions as were applicable to the Demerged Company and the Resulting Company undertakes to meet, discharge and satisfy the same. Where any of the liabilities and obligations attributed to the Demerged Undertaking which are deemed to be transferred on the Appointed Date, have been discharged by the Demerged Company after the Appointed Date such discharge shall be deemed to have been for and on behalf of the Resulting Company.

3.5. Upon the Scheme becoming effective, the

Demerged Company and the Resulting Company shall execute any instruments or documents or do all the acts and deeds as may be required, including the filing of necessary particulars and/or modifications(s) of charge, with the RoC, compliance with other Government Authorities (including the Securities and Exchange Board of India, stock exchanges and Reserve Bank of India) to give formal effect to the above provisions, if required.

Contracts and Deeds:

4.1. Upon the coming into effect of this Scheme, and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements including joint development agreements, schemes, arrangements and other instruments of whatsoever nature which are capable of being legally transferred in relation to the Demerged Undertaking to which the Demerged Company is a party or to the benefit of which the Demerged Company may be eligible, and which are subsisting or having effect immediately before the Effective Date, shall be in full force and effect on or against or in favour, as the case may be, of the Resulting Company, be enforced as fully and effectually as if, instead of the Demerged Company, the Resulting Company had been a party or beneficiary or obligee thereto and the Resulting Company shall be bound by the terms and conditions thereof, obligations and duties thereunder.

4.3. For the avoidance of doubt and without

prejudice to the generality of the foregoing, it is clarified that upon the coming into effect of this Scheme, all consents, permissions, licenses, certificates, clearances, authorities, power of attorneys given by, issued or executed in favour of the Demerged Company in relation to Demerged Undertaking shall stand transferred to the Resulting Company as if the same were originally by, issued to or executed in favour of the Resulting Company; and the rights and benefits under the same shall be available to the Resulting Company.”

[19]. Similarly, para no.6 relates to legal proceedings. Paras No.6.1 and 6.2 read as under:-

“6.1. Upon the coming into effect of this Scheme all suits, actions, administrative proceedings, tribunals, proceedings, show cause cases, demands and legal proceedings of whatsoever nature by or against the Demerged Company pending and/or arising on or before the Appointed Date or which may be instituted any time thereafter and in each case relating to the Demerged Undertaking shall not abate or be discontinued or be in any way prejudicially affected by reason of the Scheme or by anything contained in this Scheme but shall be continued and be enforced by or against the Resulting Company with effect from the Appointed Date in the same manner and to the same extent as would or might have been continued and enforced by or against the Demerged Company. Except, as otherwise provided herein, the Demerged

Company shall in no event be responsible or liable in relation to any such legal or other proceedings that stand transferred to the Resulting Company. The Resulting Company shall be replaced/added as party to such proceedings and shall prosecute or defend such proceedings at its own cost, in cooperation with the Demerged and the liability of the Demerged Company shall consequently stand nullified.

6. If any proceedings are taken or demand is made by the relevant governmental authorities or any other person against the Demerged Company in respect of matters referred in Clause 6.1 above, it shall defend the same or deal with such demand in accordance with the advice of the Resulting Company, for the benefit of the Resulting Company and at the cost of the Resulting Company and the latter shall reimburse and indemnify the Demerged Company against all liabilities and obligations incurred by or against the Demerged Company in respect thereof.”

[20]. Para 8 relates to conduct of Business of the Demerged Undertaking in trust for the Resulting Company. The same reads as under:-

“8.1. For the period between the Appointed Date and the Effective Date:-

(i) *The Demerged Company shall carry on and be deemed to have carried on its business and activities in relation*

to the Demerged Undertaking in the ordinary course of business and shall stand possessed of the Demerged Undertaking in trust for, and shall account for the same, to the Resulting Company.

- (ii) *All profits accruing to the Demerged Company (including taxes paid thereon) or losses arising or incurred by it, or relating to the Demerged Undertaking or the period falling on and after the Appointed Date shall for all purposes of the Scheme, be treated as the profits (including taxes paid) or losses, as the case may be, of the Resulting Company.*
- (iii) *All costs, in relation to the operation and management of the Demerged Undertaking shall be to the account of the Resulting Company.”*

[21]. Perusal of the aforesaid para would show that the Demerged Company shall carry on and be deemed to have carried on its business and activities in relation to the Demerged Undertaking in the ordinary course of business and shall stand possessed by the Demerged Undertaking “in trust” for and shall account for the same to the resulting company. Much stress has been made on this paragraph to highlight that whatever was

done by respondents No.13 to 15, the same was done in trust for the resulting company i.e. the petitioner. Similarly para No.8.5 is also reproduced hereasunder:-

“8.5. All assets (including fixed assets, current assets, cash and bank balances etc.) acquired by the Demerged Company after the Appointed Date and prior to the Effective Date for operation of the Demerged Undertaking or pertaining to the Demerged Undertaking shall be deemed to have been acquired for and on behalf of the Resulting Company.”

[22]. Para 11 of the Scheme relates to mutual co-operation for giving effect to the Scheme. In nutshell, the petitioner laid emphasis on the Scheme to contend that whatever was done on the appointed date/effective date by respondents No.13 to 15, the same was for the benefit of the petitioner and, therefore, petitioner is a necessary party in respect of land in question. Technically petitioner is not party in the civil suit, in the compromise and in the exchange deeds, but for all intents and purposes petitioner would be deemed to be a party as all steps taken by respondents No.13 to 15 were for the benefit of the petitioner.

[23]. Learned Senior counsel for the petitioner further submits that the compromise decree obtained by respondents No.5 to 11 is fraudulent and the same is not executable. Firstly

the Court has not recorded its satisfaction. Learned counsel by relying upon **Sumtibai & others vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) & Ors., 2007(4) R.C.R. (Civil) 524; Thomson Press (India) Ltd., vs. Nanak Builders & Investors P. Ltd. and others, 2013(2) R.C.R. (Civil) 875; Baluram vs. P. Chellathangam and others, 2015(13) SCC 579; Harbans Singh vs. Badan Singh and another, 2010(9) R.C.R. (Civil) 934; Amit Uppal vs. Surinder Mohan Arora and another, 2006(4) R.C.R. (Civil) 637; Parminder Kaur vs. Shamsheer Singh and another, 2015(9) R.C.R. (Civil) 155; Ranjit Singh vs. Ashok Kumar Jain and others, 2015(48) R.C.R. (Civil) 888; Natasha Dalip Singh and another vs. Michael Tony Ferns and others, 2019(1) CivillJ 6; Smt. Santosh vs. Smt. Mewa and others, 2017(5) R.C.R. (Civil) 49 and Jaswinder Kaur vs. Bhajan Kaur and others, 2019 AIR (Punjab) 36** submitted that 3rd party can be impleaded in the suit where 3rd party shows some semblance of title or interest in the property. In the present case, petitioner is a necessary party as all the steps taken by respondents No.13 to 15 were in trust for the benefit of the petitioner, therefore, petitioner has semblance of interest in the property and is necessary party in order to avoid multiplicity of litigation.

[24]. Secondly, the order passed under Order 23 Rule 3

CPC is not amenable to further challenge as all the issues are to be decided in the same proceedings. Under Order 23 Rule 3 CPC, the Court has to record its satisfaction and this is a statutory requirement that the Court must satisfy that the agreement or compromise entered into between the parties is lawful. The Court has to apply its judicial mind and on filing the objections or application, the Court has to entertain the same and decide the legality and validity of such compromise. The explanation to Order 23 Rule 3 CPC made it clear that an agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of this rule. Since independent suit is barred under Order 23 Rule 3-A CPC, therefore, all the issues are to be decided in the same suit by way of following proper procedure. The statute requires the Court to first satisfy itself that the compromise which has been entered into between the parties is lawful before executing the same. The Court is expected to apply its judicial mind while examining the terms of settlement before suit is disposed of in terms of settlement. The Court shall decide the question where it is alleged by one party or denied by other party that an adjustment or satisfaction has been arrived, the Court shall decide the question. The Court before whom the compromise is effected has to decide the question whether satisfaction has been arrived at on the basis of any

lawful settlement. Learned Senior counsel referred to **Banwari Lal vs. Smt. Chando Devi (Through LR), 1993 AIR (SC) 1139.**

[25]. Learned Senior counsel further submits that the compromise forming the basis of decree can only be questioned before the same Court which has recorded the compromise and the fresh suit would be barred under Order 23 Rules 3 and 3-A, CPC. The said provision also covers the decree based on fraudulent compromise that it was obtained by fraudulent means and the same would also fall under the provisions of Order 23 Rule 3-A CPC. When independent suit is barred under Order 23 Rule 3-A CPC, therefore, the Court was obligated to decide all questions. Reference has been made to **Charanjit Singh vs. Jagtar Kaur (dead) through Lrs, 2016(2) PLR 480** and **Horil vs. Keshav and another, 2012(2) R.C.R. (Civil) 852**. Since the petitioner was not privy on deemed fiction, therefore, the petitioner could not espouse the cause by way of filing any petition before the civil Court. Since the civil suit has been decided by the Daily Lok Adalat, therefore, on the strength of **State of Punjab vs. Jalour Singh** and **Bhargavi Construction & Anr.'s** cases (supra), petitioner is a necessary party and can maintain the present writ petition.

[26]. Learned Senior counsel also by referring to **Lata vs. Shankar and others, 2021 SC OnLine Bom 6358; Kusumbai**

and others vs. Bhausahab and others, 2019 SCC OnLine Bom 585 and **A.M.D. Estate Private Limited vs. Mamta and others, 2019 SCC OnLine P&H 5196** submits that it is true that a party aggrieved by the Lok Adalat award can approach the High Court, if it discovers any fraud post the Lok Adalat award. Petitioner is not party to the said award/compromise decree before the Daily Lok Adalat, however petitioner being the aggrieved person either can file a separate suit for seeking declaration that such decree would not be binding upon the petitioner or petitioner may file writ petition on the ground of fraud for setting aside the award passed by the Lok Adalat. The party aggrieved by the Lok Adalat award can approach the High Court if it discovers any fraud post the Lok Adalat award. It is equally true that the 3rd party, who is not a litigant in the suit and who has suffered a compromise decree can also file a separate suit for seeking declaration that such decree would not be binding upon the said party as the said decree was delivered in the matter in which said 3rd party was never arrayed. The aggrieved party has option to either prefer a separate suit or file a writ petition in the High Court. In **Bhargavi Constructions and another's** case (supra) it was held that the aggrieved party can approach the High Court for challenging the Lok Adalat award. Such aggrieved party would also include 3rd party and

the 3rd party would be covered by the meaning of aggrieved person.

[27]. In the aforesaid precedents, the scope of 3rd party has been discussed. The aggrieved party has a right to approach the High Court. According to Section 36 of the Indian Contract Act, 1872, contingent agreements to do or not to do anything, if impermissible event happens, are void.

[28]. Learned Senior counsel for the petitioner also submits that the petitioner cannot be left remediless. Filing of independent suit in terms of Order 23 Rule 3-A CPC is barred. If petitioner is divested of its rights arising from Scheme of Arrangement framed by the National Company Law Tribunal, New Delhi, the petitioner would be remediless. Where there is a right, there has to be a remedy to redress the grievance. *Ubi jus ibi remedium* applies to the present set of circumstances. The writ Court is competent to interfere in such circumstances as held by the Hon'ble Apex Court in **Shiv Shakti Coop. Housing Society, Nagpur vs. M/s Swaraj Developers, 2003(2) R.C.R. (Civil) 676 (SC); Surya Dev Rai vs. Ram Chander Rai, 2004(1) R.C.R. (Civil) 147 (SC)** and **Radhey Shyam and another vs. Chhabi Nath and others, 2015(2) R.C.R. (Civil) 606.**

[29]. On the other hand, learned Senior counsel for respondents No.5 to 11 vehemently submits that the present writ petition is not maintainable. Petitioner never filed the civil suit, nor entered into any such exchange deeds. Petitioner was never privy to such litigation/deeds. Admittedly, the civil suit was filed by proforma respondents No.13 to 15. Exchange deeds were executed between the proforma respondents No.13 to 15 and respondents No.7 to 11. Petitioner was not privy to any such litigation nor the compromise. Petitioner has itself filed an application under Section 231 of the Companies Act before the National Company Law Tribunal which shows that the Scheme is not final. Petitioner has specifically pleaded in para no.16 of the aforesaid application that the list of documents/steps which were required to be executed or performed by the Demerged Company for effective implementation of the Scheme have not yet been executed or performed. Different instances have been narrated in the said application in para no.16(i) to (viii). In para No.19 of the application, the petitioner has pleaded that the petitioner/resultant company further submits that if the application is not allowed, it would cause irreparable prejudice to the petitioner as well as to other stakeholders relating to the resultant and demerged companies. The delay in the implementation of the scheme is causing irreparable loss to the petitioner as the petitioner being resultant company is not able

to carry out its objectives despite the scheme having been passed with statutory and regulatory compliances and approved vide an order of National Company Law Tribunal.

[30]. Learned Senior counsel for respondents No.5 to 11 further submits that respondent No.2 has to act in terms of Haryana Development and Regulation of Urban Areas Rules 1976, wherein specific arbitration has been provided in terms of Rules 7 to 9. On receipt of the application for change of land use, enquiry has to be conducted by the Director in terms of title to the land, extent and situation of the land, capacity to develop the colony, layout plan of the colony, plan regarding the development works to be executed in the colony, conformity with the development scheme of the land in question and the neighbouring areas and conformity with the development plan. Title of the land has to be seen in terms of revenue record. Since title of the land in terms of mutation is with respondents No.13 to 15, therefore, respondent No.2 has legal obligation to abide by requirement of Rules to see title of land as shown in the revenue record. In such eventuality, there is no illegality committed by respondent No.2. Petitioner has number of remedies. Firstly, application under Section 231 of the Companies Act and secondly, petitioner can approach the same Court which has passed the compromise decree under Order 23

Rule 3 CPC. Petitioner if, permitted by law can assail exchange deed by way of declaratory civil suit against the incorporation of names in the revenue record. The petitioner can initiate necessary proceedings under Section 45 of the Punjab Land Revenue Act in accordance with law.

[31]. Learned Senior counsel for respondents No.5 to 11 further submits that in the pleadings of the writ petition itself, the petitioner has acquiesced the knowledge of filing civil suit and knowledge of execution of exchange deed, therefore petitioner's action is highly belated and cannot espoused by the petitioner under the garb of maintaining this writ petition.

[32]. Learned Senior counsel for respondents No.13 to 15 on the other hand by relying upon **New Okhla Industrial Development Authority (Noida) vs. Yunus and others, 2022 SCC OnLine SC 138; Triloki Nath Singh vs. Anirudh Singh and others, (2020) 6 SCC 629** and **Sneh Gupta vs. Devi Sarup and others, 2009(6) SCC 194** submits that the award passed by the Lok Adalat is the culmination of a non-adjudicatory process. The parties are persuaded even by members of the Lok Adalat to arrive at mutually agreeable compromise. The Award sets out the terms. The provisions contained in Section 21 of the Act by which the Award is treated as if it were a decree is intended only to clothe the Award with

enforceability. In view of the provisions of Section 21 by which it is to be treated as a decree which cannot be challenged, undoubtedly, by way of an appeal in view of the express provisions forbidding it, unless it is set aside in other appropriate proceedings, it becomes enforceable. The purport of the law giver is only to confer it with enforceability in like manner as if it were a decree. Thus, the legal fiction that the Award is to be treated as a decree goes no further. There is a distinction where compromise is arrived under Order 23 CPC between the parties and the Court is expected to look into the compromise and satisfy itself that it is lawful before it assumes efficacy by virtue of Section 21. Without anything more, the award passed by the Lok Adalat becomes a decree. Petitioner being a stranger to the compromise decree cannot maintain independent suit in view of bar under Order 23 Rule 3-A CPC. Since petitioner is not privy to the compromise decree, therefore, ratio of **State of Punjab vs. Jalour Singh** and **Bhargavi Construction & Anr.'s** cases (supra) are not attracted in favour of the petitioner.

[33]. Learned Senior counsel for respondents No.13 to 15 further submits that even void orders are to be assailed in accordance with law within limitation. Even if order is void or voidable, the same must be set aside in accordance with law. Reference has been made to **M. Meenakshi vs. Metadin**

Agarwal, (2006) 7 SCC 470; Sultan Sadik vs. Sanjay Raj Subba, (2004) 3 SCC 377 and State of Punjab vs. Gurdev Singh, (1191) 4 SCC 1.

[34]. Learned Senior counsel for the petitioner has rejoined the arguments by referring to para 19 of the reply filed by the respondents to the application under Section 231 of the Companies Act. Reply to para 19 of the application submitted by respondents No.13 to 15 reads as under:-

“19. Without prejudice to the above, it is submitted that the Scheme envisages transfer of the Demerged Undertaking and its concomitant legal rights under contracts, deeds etc. without any further participation of the Respondent. Where the Scheme envisages formalization of such transfer, if necessary, it suitably empowers the Applicant to act on behalf of the Respondent and effect such formalization. Therefore, these documents are not essential for implementation of the Scheme.”

[35]. By referring to the aforesaid stand of respondents No.13 to 15, learned Senior counsel for the petitioner submits that the factum of petitioner being resulting company and beneficiary under the Scheme is an admitted fact, therefore, no attorney for filing the civil suit and other proceedings through respondents No.13 to 15 was required at any point of time and the proceedings undertaken by respondents No.13 to 15 suffice

to bring the petitioner under the ambit of necessary party much less aggrieved party.

[36]. By referring to the financial statements of respondent No.13 i.e. Sparsh Promoters Private Limited for the year 2019-2020, learned Senior counsel for the petitioner submits that the National Company Law Tribunal, New Delhi vide its order dated 08.01.2018 corrected on 16.07.2018 approved the arrangement as embodied in the Scheme of Demerger between EMAAR MGF Land Limited (the ultimate holding company) and MGF Developments Ltd. (the resulting company). The Scheme was filed with Registrar of Companies on 31.07.2018 and is effective from the appointed date of 30th September 2015 (the appointed date). In accordance and subject to the provisions of the Scheme, the development rights over 8.09 acres of land of the Company have been transferred to the Resulting Company and necessary adjustments in the assets and liabilities have been made in the books of accounts during the previous year ended 31 March 2019.

[37]. Having heard the rival submissions made by learned Senior counsel for the parties, I find that the award dated 09.12.2016 is passed by the Daily Lok Adalat. This award has been passed by the Daily Lok Adalat presided by the Civil Judge (Jr. Divn.) Gurgaon, therefore, it has to be treated alike

compromise decree under Order 23 Rule 3 CPC. It is also true that all questions are to be decided in the same suit as the decree is not amenable to appeal and thus fresh independent suit is barred.

[38]. Petitioner in terms of its pleadings has specifically acquiesced the factum of filing civil suit, execution of exchange deeds and compromise, incorporation of mutations in the revenue record, alleged misrepresentation of respondents. In view of above, it would remain debatable as to whether petitioner can espouse the cause at such a belated stage by moving an objection petition in the same proceeding. This Court would not comment upon the remedies which may be availed by the petitioner in accordance with law in future. Certainly *qua* this aspect, the petitioner cannot maintain the present petition being suffered with delay and laches and also the petitioner having acquiesced the subject matter of civil suit, exchange deed and compromise etc.

[39]. The second limb of consideration is the proceedings before respondent No.2. In any case, petitioner is a necessary party in view of proceedings conducted before the National Company Law Tribunal, New Delhi and Scheme of Arrangement approved by the Tribunal in the context of steps to be taken by the parties for the implementation of the Scheme after its

approval. The pending application under Section 231 of the Companies Act would be decided by the NCLT in accordance with law. It would be open to the petitioner to seek relief, if any available to it in terms of Section 232(4) to 232(7) of the Companies Act. Since the petitioner claims itself to be an aggrieved party, therefore, it was expected from respondent No.2 to provide adequate opportunity of hearing to the petitioner. Proceedings undertaken before respondent No.2 in the context of preponing the date of hearing from 24.02.2022 to 09.12.2021 unilaterally and thereafter making communication to the petitioner only on 08.12.2021 requiring petitioner to personally appear on 09.12.2021 need to be deprecated. The application for such preponement is not forthcoming except to see that it was done on the application of respondents No.7 to 11. It is because of this act of respondent No.2, petitioner became apprehensive and came to this Court. In my considered opinion, it was not reasonably expected from respondent No.2 to unilaterally prepone the date of hearing without issuing notice to the petitioner. Preponement was done unilaterally and thereafter intimation was issued to the petitioner on 08.12.2021 to come present on 09.12.2021 to submit its case. Further one week's adjournment was given only on account of persuasion made by the petitioner. In any case, preponement of date of hearing from 24.02.2022 to 09.12.2021 was not justified.

[40]. The apprehension shown by the petitioner would be squarely answered, if the pending proceedings in terms of change of land use are taken before some other competent officer of the respondent-Department. In case, respondent No.2 is the only defined authority, then the respondent No.1 can be asked to allocate the application for change of land use for ultimate processing before some other authority or respondent No.1 may itself take up the issue in accordance with law.

[41]. In view of aforesaid observations, for the first limb of argument, the petitioner would be at liberty to avail its legal remedies in accordance with law. For the second limb of argument, respondent No.1 shall allocate the pending application to any other competent officer or may take up the issue itself in accordance with law. The present arrangement is being made in view of attending facts and circumstances of the present case without creating any such precedent for any other case. Let the needful be done by respondent No.1 within a period of two weeks.

[42]. With the aforesaid observations, this writ petition is disposed of. All pending applications are also accordingly disposed of.

(RAJ MOHAN SINGH)
JUDGE

April 19, 2022
Atik
Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No