

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) CR-33-2023 (O&M)

M/s Sparsh Promoters Pvt. Ltd. and others
...Petitioners

VERSUS

MGF Developments Ltd. and others
...Respondents

(ii) CR-858-2023 (O&M)

MGF Developments Ltd.
...Petitioner

VERSUS

Cosmo Propbuild Pvt. Ltd. and others
...Respondents

Date of Decision: July 13, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Amit Jhanji, Senior Advocate, assisted by
Ms. Eliza Gupta, Mr. A.S. Shera, and Mr. Varun Singh Thappa,
Advocates, for the petitioners (in CR-33-2023) and
for respondents No.8 to 10 (in CR-858-2023).

Mr. Sanjeev Sharma, Senior Advocate,
Mr. Akshay Bhan, Senior Advocate,
Mr. D.S.Patwalia, Senior Advocate and
Mr. Sunil Chadha, Senior Advocate, assisted by
Mr. A.S. Talwar, Mr. A.S. Rawaley, Mr. Akhilesh Barak,
Mr. Varun Sandhu, Mr. Abhilaksh Grover, Mr. Alok Jagga and
Mr. Harshit Anand, Advocates, for the petitioner
(in CR-858-2023) and for respondent No.1 (in CR-33-2023).

Mr. R.S. Rai, Senior Advocate,
Mr. Anand Chibbar, Senior Advocate,
Mr. Puneet Bali, Senior Advocate and

Mr. Ashish Chopra, Senior Advocate, assisted by
Mr. Kunal Dawar, Ms. Nitika Sharma, Ms. Bhavna Chaudhary,
Mr. Vishavjeet S. Beniwal and Ms. Sukriti Rai, Advocates,
for respondents No.2 to 6 (in CR-33-2023) and
for respondents No.1 to 5 (in CR-858-2023).

Ms.Ambika Luthra, Addl. A.G. Haryana
for respondents No.7 and 8 (in CR-33-2023) and
for respondents No.6 and 7 (in CR-858-2023).

ARCHANA PURI, J.

These are two revision petitions filed by the rival parties to assail the order dated 22.12.2022 passed by learned Court below in CM-600-2022 and application bearing IA No.04 of 2022 in Civil Suit No.2536-2016 titled as 'M/s Sparsh Promoters Pvt. Ltd. and others vs. Cosmo Propbuild Pvt. Ltd. and others'.

CR-33-2023 has been filed by M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd., through their authorized representatives., to challenge the denial of release of the balance sale considerations of the registered Exchange Deeds executed between the petitioner companies with respondents No.2 to 6 (Cosmo Propbuild Pvt. Ltd., Surya Propcon Pvt. Ltd., Star City Realtech Pvt. Ltd., Neer Builders Pvt. Ltd., Vibrant Infratech Pvt. Ltd.) and the compromise deed, which forms the part of Lok Adalat Award dated 09.12.2016, which amount had been deposited by respondents No.2 to 6 (as detailed aforesaid) before the Court below.

CR-858-2023 has been filed by MGF Developments Ltd.

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thereby, challenging the dismissal of an application bearing CM No.600-2022 vide order dated 22.12.2022 relating to Civil Suit No.2536-2016, wherein, it had claimed setting aside of the Lok Adalat Award dated 09.12.2016, on the ground of non-compliance of the terms of the settlement reached between M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd. (plaintiffs of the suit) with Cosmo Propbuild Pvt. Ltd., Surya Propcon Pvt. Ltd., Star City Realtech Pvt. Ltd., Neer Builders Pvt. Ltd., Vibrant Infratech Pvt. Ltd., (defendants of the suit).

For the convenience of the discussion, the parties are referred to as petitioners and respondents, as making appearance in CR-33-2023.

Before proceeding further, it shall be appropriate to take note of the background facts.

The facts, as culled out, from the grounds of revisions and the documents, coming forth, fall in two sets.

First set of facts is that Emaar MGF Land Limited (now Emaar India Ltd.) was incorporated as joint venture between respondent No.1 i.e. MGF Developments Ltd., Emaar Properties, PJSC and Sareen Estate Pvt.. However, in 2016, the joint venture was subjected to demerger process. Before initiation of demerger process, various agreements were executed between joint venture partners and agreed scheme of arrangement of demerger was drawn and rights in the assets of joint venture were agreed to be distributed. The Demerger Scheme was prepared and filed and the same was sanctioned/approved by the **National Company Law Tribunal (NCLT)**,

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Principal Bench, New Delhi, vide order dated 16.07.2018 in **Company Petition No. 689 of 2016**. In consequence of the same, respondent No.1 i.e. MGF Developments Ltd. claimed right over the subject land i.e. **31.1 acres** situated in village Chauma. However, in view of the scheme of arrangement, M/s Sparsh Promoters Pvt. Ltd. etc. i.e. petitioners, claimed about the development rights, having already dealt with prior to the approval Demerger Scheme on 16.07.2018.

This is first set of facts, as noted above.

The second set of facts is that M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd. filed a suit bearing **Civil Suit No.2536-2016** for declaration with consequential relief of permanent injunction against Cosmo Propbuild Pvt. Ltd., Surya Propcon Pvt. Ltd., Star City Realtech Pvt. Ltd., Neer Builders Pvt. Ltd., Vibrant Infratech Pvt. Ltd., who are respondents No.2 to 6 (in CR-33-2023), vis-a-vis, the negotiations, having taken place between them for the exchange of land measuring 31.1 acres situated at village Chauma with 15 acres of land of the aforesaid respondents situated at village Mohammadpur Gujar, Tehsil Sohna, District Gurgaon, in addition to the money consideration.

The plaintiffs (M/s Sparsh Promoters Pvt. Ltd. etc.) had therein, sought declaration to the effect that till date, no concluded transaction of exchange has taken place between the parties; that the transaction of exchange shall be subject to terms and conditions, as mentioned in paragraphs 10B to 10E of the plaint with consequential relief of permanent

injunction, to restrain the defendants i.e. Cosmo Propbuild Pvt. Ltd. etc.- Respondents No.2 to 6 (defendants in the suit) from alienating the land holdings mentioned in paragraph No.4 of the plaint and fully described in schedule, situated in revenue estate of Chauma, creating any encumbrances over the same and from creating any third party rights of any nature in respect of the aforesaid land holdings. Also, a prayer was made that the defendants may further be restrained from making any representation to the public at large with regard to their competence, capability and capacity to transfer valid and marketable title and/or to deliver possession in respect of aforesaid landholdings.

However, during the pendency of the aforesaid suit, a compromise was effected between the parties to the lis on **23.11.2016** and on that very day, in consonance with the compromise, so reached, Exchange Deeds with various clauses of payment by way of post-dated cheques and the implications, thereof, in the eventuality of dishonour of the cheques, was effected between the parties. In consonance with the aforesaid compromise, on **24.11.2016**, Exchange Deeds were also got registered before the concerned Sub-Registrar. On the basis of the aforesaid compromise, an Award was passed by the Daily Lok Adalat, on **09.12.2016**.

This is second set of facts, coming forth.

In the backdrop of the aforesaid factual position, it was thereafter, respondent No.1-MGF Developments Ltd. had entered into first round of litigation, when it filed **CWP No.25534-2021**, which was disposed of while observing that MGF Developments Ltd. (respondent No.1 in CR-

33-2023 and petitioner in the writ petition) cannot maintain the present petition i.e. CWP-25534-2021, being suffered with '**Delay and Latches**' and also the petitioner having acquiesced the subject matter of civil suit, Exchange Deeds, compromise etc. There was another limb of arguments relating to the manner of conducting of the proceedings, pending at that time, before District Town and Country Planner (DTCP). However, it is not an issue of controversy, to be considered at this stage. The said writ was filed in **July 2021** and was disposed on **19.04.2022**. Review application was also filed by MGF and the same was dismissed vide order dated **04.05.2022**.

Thereafter, MGF Developments Ltd. filed a suit bearing **Civil Suit No.2886-2022** at Gurugram Courts, seeking permanent, mandatory injunction and for declaration, thereby giving a challenge to the Award dated **09.12.2016** passed in **Civil Suit No.2536-2016**, on account of consequences, due to non-performance and non-adherence, on the part of defendants No.1 to 5, who were defendants in the earlier suit bearing No.2536-2016 and who are respondents No.2 to 6 in CR-33-2023, in terms therein, as regards payment of consideration. **This suit is still pending in the Court.**

Thereafter, MGF Developments Ltd. also resorted to Order 21 CPC by filing execution petition No.126-2022 qua **Civil Suit No.2536-2016**, titled as '**M/s Sparsh Promoters Pvt. Ltd. and others vs. Cosmo Propbuild Pvt. Ltd. and others**', which had culminated into passing of Lok Adalat Award on 09.12.2016. However, vide order dated 24.08.2022, the execution petition was dismissed, wherein, an observation was made, as herein given:-

‘XXXX....The petitioner cannot maintain the execution petition seeking negative enforcement of the Award which would certainly result in quashing of the Lok Adalat Award and may also amount to review of the order passed by the Hon’ble High Court. Thus, the execution proceedings are not maintainable at the behest of the petitioner under Order 21, CPC’.

After the dismissal of the execution petition, an application under **Order 23 Proviso to Rule 3 read with Section 151 CPC** was filed by MGF Developments Ltd. Therein, MGF Developments Ltd. had sought declaration for setting aside the compromise deed dated **23.11.2016** and the Award dated **09.12.2016** in Civil Suit No.**2536-2016**, being null, void and illegal and for issuing directions to cancel the mutation and exchange deed registered with the Patwari and Sub-Registrar, on the basis of the compromise deed and Award. Along with the said application, even an application under Order 39 Rule 1 and 2 CPC was filed and the same was disposed of vide order dated **13.10.2022**, by making observations, while giving directions to the defendants i.e. Cosmo Propbuild Pvt. Ltd. and others, to deposit the balance sale consideration of **Rs.96,68,83,585/-**, with **simple interest @ 6% per annum w.e.f. 01.01.2018**, within a period of one month, by way of demand draft, in the name of the plaintiffs i.e. M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd., failing which, the defendants shall be restrained from raising construction or creating third party interest in the land compromised in the Exchange Deeds. Further also, an observation was made that the amount shall be deposited in fixed deposits to prevent loss of interest and

shall be released or returned subject to final adjudication of the dispute. Thereupon, the said amount was deposited by Cosmo Propbuild Pvt. Ltd. etc. and notice of the same was given to the M/s Sparsh Promoters Pvt. Ltd. etc. vide order dated **15.10.2022**. Thereupon, when M/s Sparsh Promoters Pvt. Ltd. etc. had made appearance, the requisite amount, vide order dated **02.11.2022**, was ordered to be invested in the form of FD for one month one day, at first instance.

The aforesaid orders of **13.10.2022**, **15.10.2022** and **02.11.2022** were challenged by MGF Developments Ltd., by filing CWP-26396-2022, which was dismissed, being not maintainable vide order dated **09.12.2022**.

It was thereupon, that an application was filed by M/s Sparsh Promoters Pvt. Ltd. etc., who were plaintiffs in Civil Suit No.2536-2016, for release of FDs, in their favour. However, vide impugned order, the same was also **denied** to M/s Sparsh Promoters Pvt. Ltd. etc.

In this background, learned senior counsel for the parties to the lis, made their respective submissions.

Learned senior counsel for M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd., submitted that the relief sought qua release of balance sale consideration of the Exchange Deeds was **denied** only on the count of dispute pending between M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd., which are Land Owning Companies (LOCs) and MGF Developments Ltd. in NCLT. However, it is submitted that there was no dispute pending between LOCs and MGF Developments Ltd. The

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only dispute that was pending at the relevant time was between Emaar India Limited and MGF Developments Ltd. It is also submitted that MGF Developments Ltd., asserts only entitlement to Development Rights as arising out of Demerger Scheme executed between Emaar India Limited and MGF Developments Ltd. The ownership rights always vested in LOCs and that being so, the LOCs being owners are entitled to sale consideration. To so substantiate his submissions, learned senior counsel has made reference to the recitals of the Demerger Scheme as well as order dated **19.04.2022** passed in **CWP-25534-2021** and also the pleadings of the Civil Suit No.**2886-2022** and of course, to the grounds of revision of **CR-858-2023**.

Furthermore, learned senior counsel submits that in Civil Suit No.**2536-2016**, it has been specifically asserted that the plaintiff-companies M/s Sparsh Promoters Pvt. Ltd. etc., are full fledged and lawful owners in physical possession of the land holding measuring 31.1 acres, situated in village Chauma. Part payment of the sale consideration has also been made to LOCs, which fact stands repeatedly, so admitted, by MGF Developments Ltd. in the subsequent litigation.

Also, post-dated cheques have been issued in favour of LOCs, which also finds mention in the subsequent litigation, initiated at the instance of MGF Developments Ltd.

Also, it is submitted by learned senior counsel that if MGF Developments Ltd. proclaims itself to be entitled to sale consideration, then what was the hitch to have so inserted in the suit relating to the same and furthermore, could have also sought insertion of the Clause with regard to its

right to receive sale consideration or post-dated cheques, to be issued to it, in the compromise or Exchange Deeds. This conduct of not choosing of being party to the suit or non-mention of its right to sale consideration in Exchange Deeds as well as compromise, also shows about the right of LOCs, only to the consideration amount. Even payment of part consideration and post-dated cheques, in favour of LOCs, having not been objected to, more so, when it claimed suit to have been filed, at the behest of MGF Developments Ltd., also demolish the claim, now asserted by MGF Developments Ltd.

It is submitted by learned senior counsel that when no relief has been granted to MGF Developments Ltd., in the application bearing **CM-600-2022**, filed under Order 23 Proviso to Rule 3 read with Section 151 CPC and there is no lis existing, in view of the conduct of MGF Developments Ltd. and the part payment, having already been made to the LOCs, **CR-33-2023** deserved to be accepted, thereby setting aside the order of learned Court below of denial of release of money and application, be allowed and the amount be released to LOCs, who were plaintiffs in Civil Suit No. **2536-2016**.

Furthermore, it is submitted by learned Senior counsel representing M/s Sparsh Promoters Pvt. Ltd. etc., that MGF Developments Ltd. also asserts denial of right of LOCs to consideration, as Exchange Deeds stand automatically terminated, on account of dishonour of cheques. However, it is submitted that Exchange Deeds were executed prior to the compromise and also got registered, prior to the passing of the Award dated **09.12.2016**. Thus, the Exchange Deeds, as such, cannot be terminated

automatically, as alleged, as they are registered documents. Otherwise also, it is submitted by learned Senior counsel that to interpret the document, the intention of the parties towards document is to be gathered and for the same, the document in entirety, with all its clauses and not just one clause, has to be taken into consideration. Besides the same, even the conduct of the parties, subsequent thereto, is also to be looked into. Also, it is pointed out that as per Clause 1 of the Exchange Deeds, evident intention was to vest all the rights, title and interest of Chauma land, in the transferee, from the date of execution of the document itself. Thus, the intention was to pass on the title on the said date itself. Otherwise also, it is submitted that Exchange Deeds and compromise culminated into Award, which, as such, cannot be nullified, at the behest of one party singularly by assuming and presuming nullity, at its own level, without further taking any step, on this count. Further, learned Senior counsel submits that MGF Developments Ltd. has placed, much reliance, on the financial statements of LOCs, to emphasize and show that LOCs have reduced the land parcel, out of their account books, as per Demerger Scheme. In this regard, it is submitted that the LOCs made this adjustments, in the year 2018-2019, qua 15.11 acres of land situated at Mohammadpur Gujar, received in exchange for the Chauma land. However, as per 31.1 acres of Chauma land, the LOCs made appropriate adjustment in the financial year 2016-2017, pursuant to the Exchange Deeds in question. In the light of the same, it is submitted that as per contemporaneous conduct of the LOCs, the exchange transaction stood completed, there and then, in the year 2016.

Precisely, on this account, learned Senior counsel submits that the impugned order has been rightly so passed. To so substantiate his arguments, learned Senior counsel has placed reliance upon the judgments passed in *Dahiben vs. Arvindbhai Kalyanji*, 2020 (7) SCC 366, *Amteshwar Anand vs. Virender Mohan Singh*, 2006(1) SCC 148, *Sneh Gupta vs. Devi Sarup and others*, 2009(6) SCC 194 and *Rajpal Singh vs. Saroj*, 2022 SCC Online SC 638.

Further, it has been submitted by learned Senior counsel that MGF Developments Ltd. asserts its entitlement to Development Rights over the Chauma land, vide Demerger Scheme. However, qua the same, learned counsel submits that the scheme envisages transfer on a '**Going Concern Basis**'. In this regard, the attention of the Court has been drawn to the scheme of arrangement between Emaar MGF Land: Demerged Company and MGF Developments Limited: Resulting Company and their respective shareholders and creditors, copy whereof is **Annexure A-1** (as in CR-33-2023). Learned counsel referred to Part-I, Definitions and Share Capital of the scheme and made reference to the demerged undertaking, which mentions about the transfer, on a '**Going Concern Basis**'. Also, reference is made to Part-II, under the heading of 'Transfer of Undertaking' Clause 3.1.

It is submitted that being '**Going Concern Basis**', the business done at the behest of MGF Developments Ltd., during the interregnum period from the filing of the scheme, till effective date of the scheme, the same cannot revert back to the State, as at the date of filing of the scheme, more particularly, when MGF Developments Ltd. asserts the exchange of land,

having taken place with its consent and knowledge. It is further submitted that assets and liabilities that were initially part of demerged undertaking, but dealt with, prior to the effective date, which was in accordance with Clause 8 of the scheme, these were no longer part of the demerged undertaking and therefore, they do not stand transferred to MGF Developments Ltd. on effective date. In the case in hand, Development Rights over Chauma land, never stood transferred to MGF Developments Ltd., as land stood exchanged, prior to demerger order by way of Exchange Deeds, which culminated into Lok Adalat Award.

Further, learned Senior counsel submits that core issue to be considered in the revision petition also relates to the maintainability of an application under Order 23 Proviso to Rule 3 read with Section 151 CPC. Qua the same, it is submitted that during the pendency of the Civil Suit No.2536-2016, compromise deed dated 23.11.2016 was executed between LOCs and defendants i.e. Cosmo Propbuild Pvt. Ltd. etc. and five Exchange Deeds were executed. The case was thereafter, taken up in Daily Lok Adalat and Award was passed by merely incorporating the terms of compromise arrived between the parties to the lis. It was in the form of Award, under the seal of Lok Adalat, to make it enforceable. No decree, as such, was drawn. However, the Award under Section 21 of the Legal Services Authorities Act by deeming fiction is a decree, for a limited purpose, to clothe the same with enforceability. So far as, Order 23 Rule 3 CPC is concerned, it is mandatory for the Court concerned to apply its mind to find the compromise between the parties to be lawful and then to pass a decree. In the case in hand, there

was no application of mind by the Lok Adalat nor any decree was prepared. Thus, it is submitted that no adjudication, in consonance with the provisions of Order 23 Rule 3 CPC has been done and precisely, on this account, it cannot be termed to be compromise decree under Order 23 Rule 3 CPC.

In the light of the above, it is submitted that since Lok Adalat Award is final and binding on the parties, it could only have been challenged by filing of a writ under Article 226 and 227 of the Constitution of India and in fact, it was so filed by MGF Developments Ltd. and the same stood dismissed. Even, the review application was dismissed. However, both these orders have never further been challenged and thus, have since attained finality.

In this background, it is submitted that now MGF Developments Ltd. cannot make somersault and claim that it is not Lok Adalat Award, but a compromise decree, in terms of Order 23 Rule 3 CPC. As such, it is submitted that MGF Developments Ltd. could not challenge the Award dated **09.12.2016** by way of filing of application under Order 23 Proviso to Rule 3 read with Section 151 CPC, more particularly, when the decisions rendered in civil writ petition and review petition have remained unchallenged and have since attained finality.

Besides the aforesaid, also learned Senior counsel has resisted the claim of MGF Developments Ltd., on the ground of limitation. It is pointed out that it is an admitted case of MGF Developments Ltd. that Civil Suit No.2536-2016 has been filed by the LOCs, at their behest and with their consent. Even, compromise, Exchange Deeds and the Award was passed

with their consent. In this regard, reference is made to the order dated 19.04.2022 passed in CWP-25534-2021 and contents of Civil Suit No.2886-2022 as well as order dated 09.12.2022 passed in CWP-26396-2022 and of course, the grounds of revision of CR-858-2023. That being so, it is further submitted that period of limitation begins to run from the date, when the right to sue first accrue and in the case in hand, at the maximum, limitation will begin to run from 27.03.2018 i.e. when the 3rd set of cheques were dishonoured. So, it could be challenged within a period of three years, since the date of intimation of the dishonour i.e. from 31.03.2018 till 31.03.2021, but however, the application under Order 23 Proviso to Rule 3 read with Section 151 CPC has been filed on 09.09.2022, which is clearly barred by time. Even, CWP-25534-2016 was dismissed on the ground of 'Delay and Latches'.

Thus, summing up his arguments, learned Senior counsel for M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd. submitted that impugned order has been correctly passed by learned Court below and deserves to be upheld.

Learned Senior counsel for respondent No.1-MGF Developments Ltd. (in CR-33-2023 and petitioner in CR-858-2023) refuted the claim of M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd. (petitioners in CR-33-2023 and respondents No.8-10 in CR-858-2023). Learned Senior counsel submits that undisputedly, the Demerger Scheme sanctioned by operation of law, is in force w.e.f. Appointed Date i.e. 30.09.2015 and it is binding upon

respondents No.8-10 i.e. M/s Sparsh Promoters Pvt. Ltd. etc. It was also so acted upon by petitioners of CR-33-2023, while deleting the land from their inventory, whose Development Rights had come to MGF Developments Ltd., on the basis of the Demerger Scheme.

It is submitted that exchange of 31.1 acres of land (during the period between Appointed date and Effective date) between M/s Sparsh Promoters Pvt. Ltd. etc. and Cosmo Propbuild Pvt. Ltd. etc., was accepted and agreed by MGF Developments Ltd. However, it was on the specific terms, given under the scheme and of course, as per specific terms, mentioned in Exchange Deeds, as well as compromise deed and further, as incorporated in the Award dated 09.12.2016. It is submitted that in these documents, it has been **clearly, adequately and repeatedly** stated about the part payment to be never an option and was expressly ruled out, calling for a complete automatic cancellation/termination. It is further submitted that undisputedly, the money, which forms the basis of exchange of land was never paid by Cosmo Propbuild Pvt. Ltd. etc. (respondents No.2 to 6). Whatever may have been the reason for the same, but in the light of the same, the Exchange Deeds never attained validity. In this regard, learned Senior counsel made reference to the dishonour of 3rd set of 14 cheques and the bank intimation as well as affidavit filed by M/s Sparsh Promoters Pvt. Ltd. etc., in the quashing petition, thereby, admitting that exchange was void, on account of non-payment. Also, it is submitted that such being the position, in pursuance of non-payment of residue consideration, MGF Developments Ltd. came to know about the steps initiated by the rival

parties i.e. respondents No.2 to 6 (Cosmo Propbuild Pvt. Ltd. etc.), to obtain licence for the land, which also included portion of the subject land i.e. part of Chauma land. Accordingly, objections were filed before DTCP and besides the same, challenged the action of DTCP, challenged the Award dated **09.12.2016** in **CWP-25534-2021** and thereafter, by way of filing of Civil Suit No.**2886-2022**, execution petition No.**126-2022** and then, by an application under **Order 23 Proviso to Rule 3 read with Section 151 CPC**, relating to Civil Suit No.**2536-2016**.

Both orders passed in **CWP-25534-2021** and Execution Petition No.**126-2022**, alluded to be correct remedy, as one under Order 23 Proviso to Rule 3 read with Section 151 CPC. As the intention of the legislature is to clothe to the Award with enforceability, the MGF Developments Ltd. had filed an execution before the Lok Adalat. The executing court, indicated that the negative covenant of the Award cannot be executed and the only remedy is to seek remedy in the same proceedings under Order 23 Proviso to Rule 3 read with Section 151 CPC. Furthermore, MGF Developments Ltd. filed an application under Order 23 Proviso to Rule 3 read with Section 151 CPC before the same Court, as of the original suit, for mandatory injunction. An application under Order 39 Rule 1 and 2 CPC was dismissed and challenge to the same, in the writ also, was dismissed, as the order was found to be appealable. Such being the position, it is submitted that to seek satisfaction and enforceability of the Award, revert to Order 23 Proviso to Rule 3 read with Section 151 CPC, could only be there.

Further, it is submitted that respondents No.2 to 6 had malafide intention from the very beginning and completely gave a 'go-bye' to the terms of the Exchange Deeds and compromise and ultimately, the Award so passed. Despite having knowledge of payment of residue consideration having failed, they took no step to make the payment and this long silence, speaks about their conduct and malafide intention. It was only in view of escalation of price of land, they staked claim over the land for a licence, knowing fully well that they have not paid for the land and it was only after a period of six years, they made an offer to pay before the Court. In fact, it is submitted that Court while considering the application under Order 39 Rule 1 and 2 CPC had given a complete 'go-bye' to the terms of compromise as well as para 10B to 10E of the plaint and the recitals of the Exchange Deeds. The Court failed to take into account the said terms and was swayed by the title virtue of Exchange Deeds. However, it is submitted that document has to be read as a whole and from its terms, the intention of the parties is to be seen. Precisely, on this account, in view of the recitals of the plaint, Exchange Deeds and compromise, the Exchange Deeds being contingent and conditional, had never assumed validity and default in payment rendered them, being void. While overlooking the two set of cheques, having not presented, it is submitted that 3rd set of cheques was dishonoured, information, relating to which, was given by the bank authorities, in due course, as per statutory requirement to respondents No.2 to 6 and also was further informed by petitioners of CR-33-2023. Thereupon also, no step was taken to make payment by direct transfer and total silence was maintained.

It is also pointed out further by learned Senior counsel that it was only in July 2021 that it came to the notice of MGF Developments Ltd. about respondents No.2 to 6 to be seeking licence over the part of same very land, for which they had not paid, in terms of the contract that was agreed to and which became an Award, on the basis of the Exchange Deeds, which have automatically terminated as per the Award. It is pointed out that a complaint was made to DTCP on 21.08.2021 and thereafter, even writ petition was filed against the action of DTCP and the Lok Adalat Award. Then, even the fresh Civil Suit No.2886-2022 was filed. Even resort was taken to Order 21 by filing execution petition and then filing an application under Order 23 Proviso to Rule 3 read with Section 151 CPC.

In these circumstances, the petitioners (M/s Sparsh Promoters Pvt. Ltd. etc.) who admit about they to be acting on behalf of MGF Developments Ltd. and admit that Exchange Deeds never fell through in the pleadings in quashing proceedings, took the new stand and want the money to be paid to them. They want to re-write the terms of final order passed by the Court in Civil Suit No.2536-2016.

It is further submitted by learned Senior counsel that the Court below in the impugned order has overlooked various aspects of the arrival of the compromise and non-compliance of the same and implications, resulting therein and had gone out of way, to allow respondents No.2 to 6 to make payment of residue consideration amount. The Court below while doing so, has given specific performance to Cosmo Propbuild Pvt. Ltd. etc., qua the matter, to which quietus was given six years ago and MGF Developments

Ltd. has been made worse off, in its own application under Order 23 Proviso to Rule 3 read with Section 151 CPC. It is also submitted that the Court below, at the maximum, could have allowed or denied the application, but erroneously, issued direction for payment and thereafter, following the same view, in the final order, which was never prayed for. In fact, the Court below empowered Cosmo Propbuild Pvt. Ltd. etc. to remedy their default and such a course is impermissible in the eyes of law.

In these circumstances, further learned Senior counsel submits that the Award dated 09.12.2016 was upheld in CWP-25534-2021 and became final and therefore, to be so executed like a decree. Respondents No.2 to 6- Cosmo Propbuild Pvt. Ltd. etc. cannot be permitted to escape the consequences of the default by taking unsustainable objections. Also, learned Senior counsel submits that so far as, M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd. are concerned, a bare reading of their averments, made on oath, in criminal quashing shows that they admit that they are bound by the scheme, that the exchange was made, at the behest of MGF Developments Ltd. and the terms of exchange of compromise were again on the asking of the MGF Developments Ltd. and that exchange has failed on account of non-payment.

Learned Senior counsel for MGF Developments Ltd. has cited judgments passed in *Marshall sons & Co (India) Ltd. vs. Income Tax Officer, 1997(2) SCC 302, Dalmia Power Limited and another vs. Assistant Commissioner of Income Tax Circle 1, Trichy, 2020(14) SCC 736* and *Pushpa Devi Bhagat vs. Rajinder Singh and others, 2006(5) SCC 566*.

Thus, summing up his submissions, learned Senior counsel submits that the application under Order 23 Proviso to Rule 3 read with Section 151 CPC, ought to have been allowed, qua nullity of the exchanged deeds, in view of the upholding of the Award in CWP-25534-2021.

Proceeding further, learned senior counsel for respondents No.2 to 6 (in CR-33-2023) and respondents No.1 to 5 (in CR-858-2023) submit that basis of dispute between the parties to the lis is the Award dated **09.12.2016** passed by Daily Lok Adalat, in Civil Suit No.**2536-2016**, titled as '**M/s Sparsh Promoters Pvt. Ltd. and others vs. Cosmo Propbuild Pvt. Ltd. and others**'. It is submitted that MGF Developments Ltd. and M3M were never a party to the aforesaid suit. Plaint clearly states plaintiffs i.e. M/s Sparsh Promoters Pvt. Ltd. etc., who are LOCs, to have filed suit in their own capacity. Time and again, reference is made to plaintiffs therein as beneficiary of exchange. The part payment of the consideration was received by LOCs i.e. plaintiffs and even, post-dated cheques, were issued to them. The Exchange Deeds were executed at their behest. In the Award, specifically, it has been mentioned that Award shall be binding only on the parties to the suit and shall not affect the rights of any third party. Also, there is mention made about plaint and compromise shall form part of the Award. It is pointed out that this Award, now cannot be termed as compromise decree under Order 23 Rule 3 CPC. This Award by virtue of deeming fiction of being a decree is only limited to a extent to clothe the same with enforceability. In this regard, learned Senior counsel has cited

judgment passed in *Okhla Industrial Development Authority (Noida) vs. Yunus and others, 2022(9) SCC 516*.

Further, it is submitted that Lok Adalat Award is final and binding and it can only be challenged by virtue of a writ petition under Article 226 and 227 of the Constitution of India. In this regard, reference has been made to the decision rendered in *State of Punjab & anr. vs. Jalour Singh, 2008(2) SCC 660*. It was this remedy, so available, which was availed by MGF Developments Ltd., at first instance, when it filed **CWP-25534-2021**, which was dismissed. Even, review application was dismissed and these orders have since attained finality.

In the light of the above, learned Senior counsel submitted that MGF Developments Ltd. was neither a party to the original Civil Suit No. **2536-2016**, nor to the **Exchange Deeds** and **compromise** and also the cheques in **question**, to be the subject matter of the dispute, having been issued to M/s Sparsh Promoters Pvt. Ltd. etc., who were plaintiffs in that suit, there was no **privity of contract** and **no locus** of MGF Developments Ltd. to approach the Court, to challenge the said transaction.

In fact, it is submitted by learned Senior counsel that there is **forum shopping conduct** of MGF Developments Ltd., which began post M3M and Starcity Realtech's licence application (LC-4672A) dated 19.07.2021, before DTCP. It is pointed out that at first instance MGF Developments Ltd. filed **CWP-25534-2021**, which was filed on **14.12.2021** and was ultimately, dismissed on **19.04.2022**. Thereafter, MGF Developments Ltd. had filed Civil Suit against Cosmo Propbuild Pvt. Ltd.

and others, bearing Civil Suit No.2886-2022, in the Court of Civil Judge (Sr. Divn.). The date of filing of the suit is 01.07.2022 and the said suit is still pending. Not only this, it is further pointed out that application under Order 39 Rule 1 and 2 CPC was also filed in the aforesaid suit, but however, it was never argued before the said Court. Also, it is pointed out that execution petition No.126-2022 was filed in the Court of Civil Judge, which was ultimately dismissed, on account of seeking negative enforcement under Order 21 CPC vide order dated 24.08.2022. Then, an application CM-600-2022 in Civil Suit No.25360-2016 was filed on 09.09.2022. Also, it is pointed out that application under Order 39 Rule 1 and 2 CPC was filed. The said application was also dismissed on 13.10.2022. In the said order only, the Cosmo Propbuild Pvt. Ltd. etc. were directed to deposit remaining sale consideration amount along with interest @ 6% within a period of one month. The said amount was deposited on 15.10.2022. It was further ordered to be invested in the form of FDR, after issuance of notice to the respondents. The said order, on the application under Order 39 Rule 1 and 2 CPC and consequential order of the investment of the amount, in the form of FDR, were challenged further by MGF Developments Ltd. by way of CWP-26396-2022, which was filed on 16.11.2022 and dismissed on 09.12.2022. CM-600-2022 was finally dismissed vide order dated 22.12.2022, which is impugned in the present revision petition.

In the light of the aforesaid litigation, it is submitted that MGF Developments Ltd. is all out to seek the relief in one forum or the other. Undisputedly, it has only Development Rights and ownership rights qua said

land always vested in LOCs i.e. M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd. Also, it is submitted that the first set of post-dated cheques, were never presented and on the asking, second set of cheques were issued and again, the same were never presented. The third set of cheques, were issued, which were allegedly dishonoured. It is submitted that on the account of acceptance of second set of cheques, when the first set of cheques were never dishonoured, the same amounted to waiver of Clause 7 of the compromise effected in Civil Suit No.2536-2016 and thus, the dishonour was never the essence of Exchange Deeds, as now projected and the said conduct on the part of the plaintiffs of that suit, shows that the intention of the parties was to give effect to the Exchange Deeds, implying the only remedy was of recovery. Moreover, registered document cannot be cancelled automatically and the same is to be cancelled through appropriate court proceedings. Even, LOCs acknowledge the transfer of the land of village Chauma and reflected the same, in their financial statement, which establish about the exchange transaction to have been duly completed and precisely, on this account, in further implementation of the exchange deed, the land parcel of village Mohammadpur Gujar was mutated, in their favour.

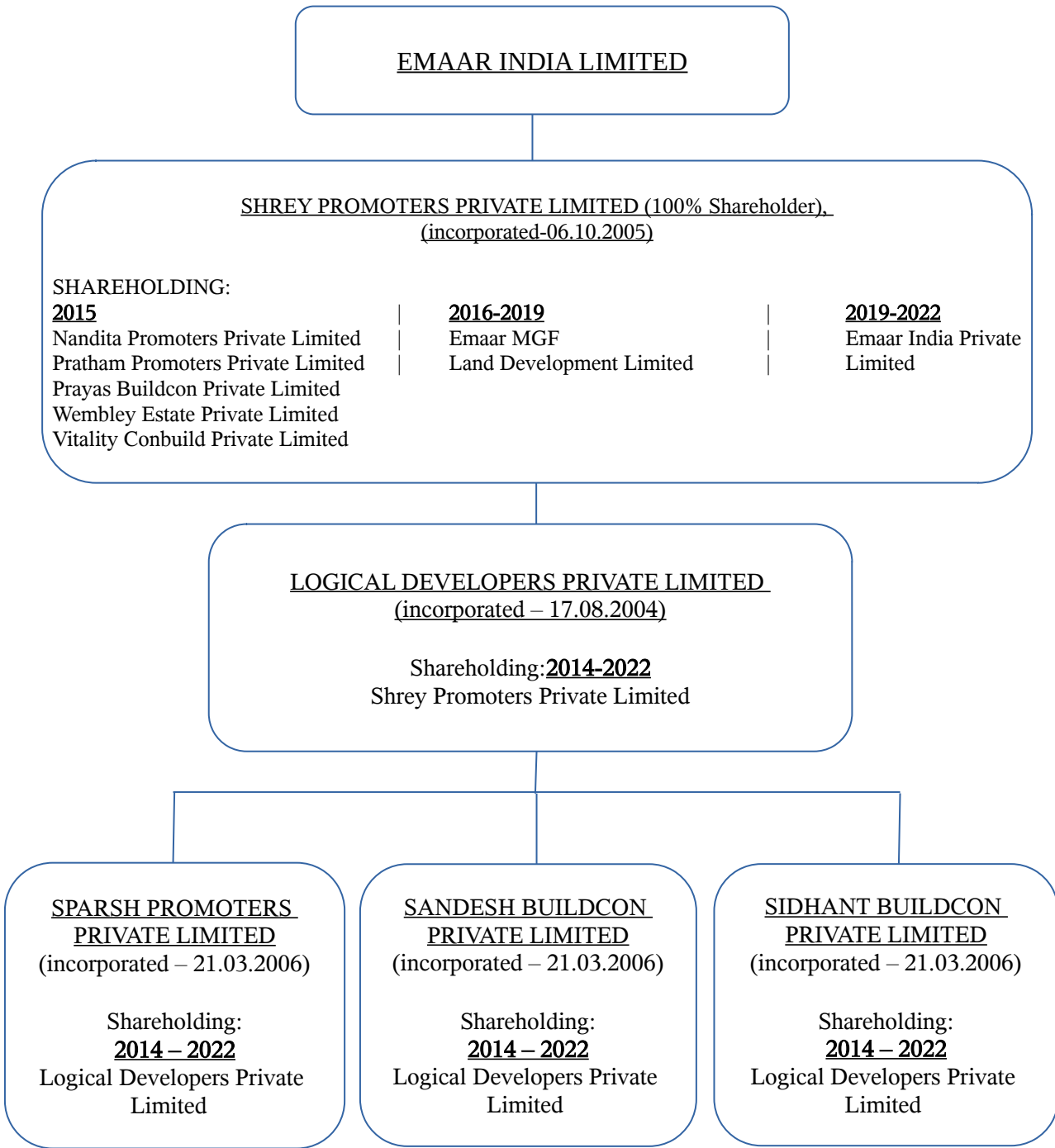
Thus, summing up his arguments, learned Senior counsel submits that MGF Developments Ltd., even, on the basis of Demerger Scheme, as such, is not empowered to assert its right over the land, which forms the basis of exchange transaction, as the rights have been transferred in the said land, prior to the approval of the Demerger Scheme, in any case. Moreover, the

amount of Rs.124.48 crore has been deposited in the Court. The LOCs are ready to accept the said money and Cosmo Propbuild Pvt. Ltd. etc. are ready to pay the same, relating to which, there should not be any further issue of not releasing this amount, as asked for by the LOCs.

Learned Senior counsel, on behalf of Cosmo Propbuild Pvt. Ltd., Surya Propcon Pvt. Ltd., who are respondents No.2 and 3 (in CR-33-2023) and respondents No.1 and 2 (in CR-858-2023), who were defendants No.1 and 2 in the Civil Suit, submits that scheme of arrangement/compromise is only a contract amongst the shareholders or creditors concerned, superimposed with the seal of the Court. It follows that parties to the contract cannot seek to transfer and/or deal with assets of the entities, who are not parties to contract or any other third party. Reference has been made to Sections 230 and 232 of the Companies Act, 2013, for Demerger of Companies and the arrangements between the companies, its creditors and shareholders. In the light of the same, it is submitted that the ambit and power of the Company Court or the NCLT under Section 391 and 394 of the Companies Act, 1956, and/or under sections 230 and 232 of the Companies Act, 2013, is circumscribed to see that it is only the shareholders, creditors, amalgamated and demerged companies who are bound by the order of NCLT and that no third party is bound by the said scheme. It is submitted that subsidiary companies are separate juristic entities, having their own legal existence and are not bound by the scheme of Demerger. Learned Senior counsel pointed out that the parent and subsidiary company relationship, in the present case, is not as simple, as it is made out to be. In

fact, learned Senior counsel has prepared a chart, describing the accurate position of the breakdown of the structure of shareholding, which is as herein given:-

SHAREHOLDING CHART



In the light of the aforesaid, it is submitted that requirement of separate petition, was required to have been filed under Section 391 and 394

of the Companies Act, 1956, for sanctioning of the scheme, pursuant to the consent of the shareholders, creditors and secretarial regulators of all the companies, specified in the chart above and not just of the parent holding company solely, as in the case of present scheme of Demerger.

The Effective Date and the Appointed Date are applicable only to amalgamating companies i.e. the transferor and the transferee companies, whose scheme of arrangement has been sanctioned, pursuant to the approval of its shareholders, creditors and secretarial regulators. However, they are not applicable to the third parties, who are not party to the scheme. Also, it is submitted that merger and demerger is binding only upon the shareholders, creditors, secretarial regulators and the persons, who have been given notice, pursuant to Section 230(4) and Section 230(5) of the *ibid* Act. However, a third party, who is not part of the scheme and was never given a notice thereof, but whose properties have been included in the scheme, are not bound by the orders of the NCLT. It is only the '**judgment in rem**', qua the parties, who have been given notice thereof and not applicable to the third parties, who are strangers to the scheme of Demerger. In the light of the same, it is submitted that since, the LOCs were never a party to the Demerger process, they could not be bound by the Demerger Scheme. To so substantiate his submission, learned Senior counsel has cited *Miheer H. Mafatlal vs. Mafatlal Industries Ltd., 1997(1) SCC 579*, *Vodafone International Holdings BV vs. Union of India and another, 2012(6) SCC 613* and also placed reliance upon *Dalmia's case (supra)*.

Learned Senior counsel for MGF Developments Ltd., again in rebuttal to the aforesaid arguments submitted that a party cannot go beyond pleadings. In fact, right from the beginning, in their pleadings, it is the claim of Cosmo Propbuild Pvt. Ltd. etc., thereby, admitting M/s Sparsh Promoters Pvt. Ltd. etc., to be **subsidiary companies of Emaar India Limited**. In fact, in view of the express admission, at the behest of M/s Sparsh Promoters Pvt. Ltd. etc. that they have acted in pursuance of Clause 8 of the Scheme, on behalf of MGF Developments Ltd., in entering the transaction of exchange, Cosmo Propbuild Pvt. Ltd. and others, have no locus standi to state that M/s Sparsh Promoters Pvt. Ltd. etc. are **not bound** by the scheme. Right from the beginning, in their pleadings, it has been admitted that M/s Sparsh Promoters Pvt. Ltd. etc. are subsidiaries of Emaar India Limited. In this regard, reference has also been made to the reply filed at the behest of Cosmo Propbuild Pvt. Ltd. etc., to the application under Order 23 Proviso to Rule 3 read with Section 151 CPC and also with regard to the reply filed at the behest of M/s Sparsh Promoters Pvt. Ltd. etc., in this application. Thus, it is submitted that arguments, so made about the Demerger Scheme to be not bound upon M/s Sparsh Promoters Pvt. Ltd. etc., is without any basis. Also, it is submitted that Demerger Scheme is final and grants MGF Developments Ltd. rights to claim Development Rights, over the land, as the consequence of the Exchange Deeds, being rendered void, by virtue of the finality of the Award of the Lok Adalat. So far as, submission made qua forum shopping is concerned, it is submitted by learned Senior counsel for MGF Developments Ltd. that it was in pursuance of the decision, given by

the writ Court and the executing Court that an application under Order 23 Proviso to Rule 3 read with Section 151 CPC was filed and thus, the submission made that the application under Order 23 Proviso to Rule 3 read with Section 151 CPC, is not maintainable, is wholly misconceived.

In the light of the submissions made by learned Senior counsel for the parties, certain undisputed facts, as culled out and some reproduced earlier, are herein given:-

That, in the year 2005, Emaar MGF Land was incorporated as joint venture. However, in year 2016, it was subjected to demerger process and scheme of demerger was drawn, in relation to which, various agreements were executed between the parties, including MGF Developments Ltd. and Emaar India Limited. The scheme of arrangement is Annexure A-1 in CR-33-2023. It gives the definition of '**Appointed Date**', '**Demerged Company**' and '**Demerged Undertaking**', as herein given:-

*(iii) "**Appointed Date**" shall mean closing hours of September 30, 2015 or much other date as may be fixed or approved by the Hon'ble High Court.*

*(vi) "**Demerged Company**" shall mean Emaar MGF Land Limited, an existing company within the meaning of the Act, having its registered office at ECB House 28, Kasturba Gandhi Marg, New Delhi, 110001.*

*(vii) "**Demerged Undertaking**" shall mean a part of the continuation and development business of the Demerged Company and operations relating to such business undertaking comprising of the business activities of management, land identification, collaboration with land owners and execution of*

development agreements, project planning and designing, development of Integrated townships, sale of housing built up infrastructure and other construction projects and provision of various services for the aforesaid, including marketing financing, project management, etc and shall include the following, as proposed to be transferred to the Resulting Company, on a going concern basis.

Under the heading of ‘**Assets**’, relevant Clause is (d), which reads, as herein given:-

“(d) all development rights relating to, in respect of, or 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, including all monies applied by the Demerged Company towards accounting for such rights. It is understood that all of 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.”

The ‘**Effective Date**’ and ‘**Resulting Company**’ are defined as herein given:-

*(viii) "**Effective Date**" shall mean date or last of the dates of filing of the certified copy of the order of the High Court sanctioning the Scheme with the Registrar of Companies by the Demerged Company and the Resulting Company.*

(xiv) "Resulting Company" shall mean MGF Developments Limited, an existing company within the meaning of the Act, having its registered office at MGF House, 4/17-B, Asaf Ali Road, New Delhi-110002, into which the Demerged Undertaking shall be demerged in accordance with the Scheme.

The ‘**Effective Date**’ in the case in hand is **16.07.2018**, on which date, the order was passed by NCLT.

In Part-II of the scheme, under the heading of ‘**Transfer of Undertaking**’, Clause 3.1 is relevant, which reads as herein given:-

“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.”

Further, under the heading of ‘**Legal Proceedings**’, Clause 6.1 and 6.2 reads, as herein given:-

“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 of 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.

6.2. 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.”

It is further evident from Annexure P-2, that NCLT had passed order dated **08.01.2018**, which stood corrected on **16.07.2018**, thereby

approving the scheme of arrangement between Emaar MGF Land Limited (Demerged Company and MGF Developments Limited (Resulting Company) and in terms of the same, following order was passed:-

9. *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 the Resulting Company and accordingly the same shall pursuant 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 neverth 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.*

In the light of the recitals of the scheme, whatsoever was required to be done by M/s Sparsh Promoters Pvt. Ltd. etc., the same was

done on behalf of MGF Developments Ltd., being the Resulting Company.

Much emphasis has been laid on Clause 8.1, which reads as herein given:-

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 for 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.

In pursuance of the approval given to the scheme of arrangement, the legal entanglement between the parties began.

For this, it should be noted that at first instance a Civil Suit No. **2536-2016** was filed by M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Siddhant Buildcon Pvt. Ltd. against Cosmo Propbuild Pvt. Ltd., Surya Propcon Pvt. Ltd., Star City Realtech Pvt. Ltd., Neer Builders Pvt. Ltd., Vibrant Infratech Pvt. Ltd. During the pendency of the said suit, compromise was effected. **Exchange Deeds** were executed and the **compromise deed** was also executed and the **Award** was passed on

09.12.2016.

It is this Award, which became rock bottom of the litigation.

Initially, Award was challenged by MGF Developments Ltd., by way of filing of **CWP-25534-2021**. Therein, the ground was about Cosmo Propbuild Pvt. Ltd., Surya Propcon Pvt. Ltd., Star City Realtech Pvt. Ltd., Neer Builders Pvt. Ltd., Vibrant Infratech Pvt. Ltd., who were impleaded as respondents No.7 to 11, in the writ petition and who were defendants in the suit, in a fraudulent manner, having obtained the consent of MGF Developments Ltd. in passing the impugned Award by Daily Lok Adalat and having fraudulently managed to get the mutation of ownership of the land parcels, in their name. Furthermore, also challenged/disputed the exchange consideration amount, having not been paid, which rendered Exchange Deeds, null and void.

After hearing learned counsel for the parties, this Court observed in paragraph No.38 of the order dated 19.04.2022 passed in CWP-25534-2021, which reads, as herein given:-

“[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 latches and also the petitioner having acquiesced the subject matter of civil suit, exchange deed and compromise etc.”

Second limb of arguments in the said writ petition, related to the manner of conducting of the proceedings by DTCP, which need not be touched qua the present revision petition. Ultimately, in view of the aforesaid observations, the writ petition was disposed of.

This was the first remedy availed by MGF Developments Ltd.. Thereafter, review application was filed and the same was dismissed by this Court, vide order dated 04.05.2022 (Annexure P-12). Thereafter, MGF Developments Ltd. filed suit against Cosmo Propbuild Pvt. Ltd., Surya Propcon Pvt. Ltd., Star City Realtech Pvt. Ltd., Neer Builders Pvt. Ltd., Vibrant Infratech Pvt. Ltd. and others, thereby, seeking relief of **Declaration, Permanent and Mandatory injunction**. In the same, following reliefs were sought, which are reproduced in verbatim, as herein given:-

PRAYER

In view of the aforesaid facts and circumstances and in the Interest of justice, it is most humbly prayed that this Hon'ble Court may kindly be pleased to:

a) Pass a decree of Permanent Injunction in favour of Plaintiff and against the Defendant No.1 to 7 including their Directors, successors, attorneys, representatives, assignees and/or nominees, from Interfering in the peaceful possession of the Plaintiff over the land, as detailed in Schedule A of above para 13 of the Plaint and restraining them from claiming any rights under the Exchange Deeds, as described in para 13 of the plaint; and

b) Pass a decree of Permanent Injunction in favour of Plaintiff and against the Defendant No.1 to 7 including their Directors, successors, attorneys, representatives, assignees and/or nominees, restraining them from creating any third party rights in the subject property, as detailed in Schedule A of above para 13 of the Plaintiff;

c) Pass a decree of Permanent Injunction in favour of Plaintiff and against the Defendant No. 8 to 11 or their delegated attorneys, representatives, assignees and/or nominees, from granting any License, permission, sanction on any part of the Land in the subject property, as detailed in Schedule A of above para 13 of the Plaintiff in favour of anybody other than the plaintiff;

d) Pass a decree of mandatory Injunction in favour of the Plaintiff and against the Defendant No. 1 to 5, to act and/or desist from acting contrary to/beyond the terms of Compromise Agreement dated 23.11.2016, Exchange Deeds dated 23.11.2016, registered on 24.11.2014 (as described in para 13 of the Plaintiff) and Award dated 09.12.2016 passed in Civil Suit No. 2536 of 2016, titled as "Sparsh Promoters Pvt. Ltd. & Ors. vs. Cosmo Propbulid Pvt. Ltd. & Ors." and decree passed thereon, on account of consequences due to non-performance and non-adherence on the part of Defendant Nos. 1 to 5 to terms therein as regards payment of consideration;

e) Pass a decree of declaration in favour of the Plaintiff and against the Defendant No.1 to 5, to the effect of making the Defendant No. 1 to 7 bound by the terms of Compromise Agreement dated 23.11.2016, Exchange Deeds dated 23.11.2016, registered on 24.11.2014 (as described in para 13 of the Plaintiff) and Award dated 09.12.2016 passed in Civil Suit No. 2536 of 2016, titled as "Sparash Promoters Pvt. Ltd. & Ors. vs. Cosmo Propbuild Pvt. Ltd. & Ors." and decree passed thereon,

and that they are bound by the consequences arising out due to non-performance and non-adherence on the part of Defendant Nos. 1 to 5 to terms therein e.g. dishonour of cheques furnished towards consideration of the Cheque; and

f) Without prejudice that as per the compromise decree, the Plaintiff is not obligated to secure such declaration as the Exchange Deeds have rendered null and void ab-initio as per the decree Itself; a decree as an abundant caution, of declaration in favour of the Plaintiff and against the Defendant No.1 to 5 to the effect that the Defendant Nos. 1 to 7 have no right remaining on any part of the Land in the subject property, as detailed in Schedule A of above para 13 of the Complaint and further that the Exchange Deeds dated 23.11.2016, registered on 24.11.2014 (as described in para 13 of the Complaint) and all mutations carried out in the revenue records and partition thereof are invalid, null and void;

g) Pass a decree of declaration to declare that all proceedings subsequent to the Compromise decree dated 09.12.2016 including application for grant of license by Defendant No. 7 in collusion with Defendant Nos. 1 to 6 are invalid, null and void;

h) award cost of the proceedings, and

i) Pass such other and further orders as the Hon'ble Court may deem fit and proper in the circumstances of the case in favour of the Plaintiff and against the Defendants.

The said suit is still pending.

This is second remedy, so availed and in this suit, there is deviation from the case pleaded in the earlier writ petition. Copy of the complaint of the said suit is **Annexure P-13**. Thereafter, MGF Developments Ltd. had reverted to Order 21 CPC and filed execution petition No.126-

CR-33-2023 and connected revision

2022, which was also dismissed, as non-maintainable, in view of seeking negative enforcement of the Award, vide order dated **24.08.2022**, copy whereof is **Annexure P-14**. This is third Forum chosen to dispute/enforcement, vis-a-vis, **Award in question**.

After dismissal of the execution petition, an application under **Order 23 Proviso to Rule 3 read with Section 151 CPC** bearing **CM-600-2022** was filed for seeking declaration and setting aside of the compromise deed dated 23.11.2016 and Award dated 09.12.2016 in Civil Suit No.**2536-2016**, being null void and illegal and for issuing the directions to cancel the mutation and Exchange Deeds registered with Patwari and Sub-Registrar, on the basis of the exchange deed, Award and Decree. The copy of the said application is **Annexure P-15**. Close perusal of the same reveals that the assertions made therein are ditto to the contents of the plaint, earlier filed in Civil Suit No.**2886-2022**, which is still pending adjudication.

Thus, from the initiation of proceedings, as detailed aforesaid, it is evident that MGF Developments Ltd. had maintained long silence, after passing of the Award dated 09.12.2016 and it was only in **July 2021**, it swung into action and filed the writ petition, at first instance. Upon dismissal of the same, it filed Civil Suit No.**2886-2022**, execution petition No.**126-2022**, then an application under **Order 23 Proviso to Rule 3 read with Section 151 CPC**. Many questions crop up, with regard to the maintainability of the remedies, as so availed by MGF Developments Ltd. and also the questions regarding the **legality and validity** of Exchange Deeds, the Award and the rights accruing to MGF Developments Ltd., vis-a-

vis, subject land, in pursuance of approval of Demerger Scheme, do crop up and calls for consideration. However, before adverting to the adjudication, upon such aspects, this Court is conscious of the Civil Suit No.2886-2022, so filed by MGF Developments Ltd., to assert identical issues, as made in the application under Order 23 Proviso to Rule 3 read with Section 151 CPC. One has to keep in mind that the Civil Suit is still pending. Though, maintainability of the same is questioned, but however, still this Court does not want to comment upon the same, as the lower Court concerned, shall look into the question of maintainability and any observations made by this Court, on this aspect, shall hamper the interest and rights of either party to the lis of the present case.

Thus, precisely, on account of pendency of the suit, there is intentional restraint on the part of this Court to adjudicate, upon the questions, so raised, vis-a-vis validity of Exchange Deeds, Compromise, Award and the rights flowing from the same to LOCs or MGF Developments Ltd., on the basis of the Demerger Scheme, being given the seal of approval.

However, one thing is very certain that MGF Developments Ltd., as such, cannot sail in two boats, by way of filing of civil suit and at the same time, on same assertions, filing an application under Order 23 Proviso to Rule 3 read with Section 151 CPC. However, suit had been filed earlier and this application came to be filed later on, which as such, is held to be not-maintainable, in the given circumstances, at least. Therefore, it ought to be dismissed. Thus, the order assailed qua dismissal of the aforesaid application, is hereby affirmed.

Now, coming to the application filed at the instance of M/s Sparsh Promoters Pvt. Ltd. etc., for release of money, which had been deposited by Cosmo Propbuild Pvt. Ltd. etc., as balance consideration of the Exchange Deeds. M/s Sparsh Promoters Pvt. Ltd. etc. had cited the reasons for seeking release of money, deposited by Cosmo Propbuild Pvt. Ltd. etc., while stating that original transaction for transfer and exchange of subject land was between the vendees and the vendors and vendors-respondents were rightful owners of the subject land, prior to the exchange, in terms of compromise deed and thus, vendors are the rightful recipient of the consideration, in terms of the compromise.

Very true, as so pointed out by learned Senior counsel for M/s Sparsh Promoters Pvt. Ltd. etc., that vide impugned order, the release was denied, on account of dispute before NCLT between MGF Developments Ltd. and M/s Sparsh Promoters Pvt. Ltd. etc. Though, undisputedly, the application, pending was with regard to the implementation of the scheme and there was no such dispute pending between MGF Developments Ltd. and M/s Sparsh Promoters Pvt. Ltd. etc., but even then, it has to be kept in mind that, as observed aforesaid, there are various questions cropping up, relating to the various aspects of Award and also implications, arising from the same, on the count of alleged non-performance/non-adherence to the terms of settlement, so reached between the parties.

Very true, as pointed by learned Senior counsel for the MGF Developments Ltd., the amount of consideration was paid by post-dated cheques. However, the requisite conditions, it is submitted, as settled and as

recorded in the compromise, which was made part of the Award, were never complied with. In the application under Order 39 Rule 1 and 2 CPC, the relief sought was to restrain respondents No.2 to 6 i.e. Cosmo Propbuild Pvt. Ltd. etc. or their representatives from interfering in the possession of MGF Developments Ltd. with regard to the suit land as well as from transferring or alienating or creating third party rights and from raising any sort of construction on the said land i.e. 31.1 acres of land situated in village Chauma and as detailed in the plaint and the application.

However, while disposing of the said application on 13.10.2022, the Court below held as hereingiven:-

“29. However, until final adjudication, the equity and interest of justice demands that the defendants cannot be allowed to use the property without making payment by taking excuse of ongoing litigation between the applicant and the plaintiffs. As such, without commenting on merits, the interim injunction application is disposed of by directing the defendants to deposit the balance consideration of 96,68,83,585/- with simple interest @ 6% per annum w.e.f. 01.01.2018 within a period of one month by way of demand draft in the name of the plaintiffs Le. M/s Sparsh Promoters Pvt. Ltd.. M/s Sandesh Buildcon Pvt. Ltd. and M/s Siddhant Buildcon Pvt. Ltd. failing which the defendants shall be restrained from raising construction or creating third party interest in the land comprised in the Exchange Deeds. The amount shall be then deposited in fixed deposits to prevent loss of interest and shall be released or returned subject to final adjudication of the dispute. IA No. 01 of 2022 is disposed of.”

The direction for payment of amount of Rs.96,68,83,585/- was never a **relief** as prayed by the MGF Developments Ltd. nor any party to the suit, made such a prayer. Learned lower Court, by giving direction to deposit the balance consideration amount had exceeded its jurisdiction, while giving such direction. As already observed aforesaid, the question relating to the validity of Exchange Deeds, impact of Award and transaction being valid or void or incomplete, are yet to be adjudicated. The question of dishonour of 3rd set of cheques and the impact of the same, in the light of the recitals of the plaint, compromise deed and in the light of Demerger Scheme having approved by NCLT, are yet to be adjudicated. In the given circumstances, by way of giving such directions to Cosmo Propbuild Pvt. Ltd. etc. defendants in Civil Suit No.2886-2022, should amount to empowering the Cosmo Propbuild Pvt. Ltd. etc., (defendants of that suit), to remedy their default, which is impermissible in the eyes of law. In the light of the same, the release is not to be made and rightly declined by the court below, though by giving a different reasoning.

In the light of the same, it should also be noted that submission was made at the behest of Cosmo Propbuild Pvt. Ltd. etc. that they have no objection to the deposit of the balance consideration to the extent of Rs.96,68,83,585/- and M/s Sparsh Promoters Pvt. Ltd. etc. who were the LOCs have no objection to receive the same, but however, as stated aforesaid, various questions still remain to be answered qua terms settled and compliance and impact of the non-adherence of the same. In the given circumstances, the Court cannot come to the rescue of either party to fill so

called apparent lacunae. Thus, this amount, as such, cannot be released. If so, the depositing companies can withdraw the amount from the court concerned and if so, really interested to pay and the recipient companies also have no objection, they may do so of their own without intervention of the court and at their own risk.

In the light of the aforesaid observations, both the revision petitions are hereby dismissed.

However, these observations are circumscribed, only for the purpose of disposal of the present revision petitions and shall not have any bearing on the pending suit.

July 13, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes