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

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Date of Decision: 10.04.2024+ **FAO(OS) 80/2023 & CM APPL. 35788/2023****MR RAKSHIT JAIN, DIRECTOR, MGF
DEVELOPMENTS LTD**

..... Appellant

Through: Mr Sudhir Nandrajog, Sr Adv with
Ms Pooja M Saigal, Mr Ydhister
Singh, Mr Nipun Gupta and Mr.
Nikhil, Advs.**Versus****EMAAR INDIA LIMITED FORMERLY EMAAR
MGF LAND LIMITED & ORS.**

..... Respondents

Through: Mr Darpan Wadhwa, Sr Adv with Mr
Shivangi Bajpai, Mr Ashish Joshi and
Mr Ashwani Malhotra, Advs. for R-1.
Mr Mohit Jolly with Ms Shikha
Bhardwaj, Advs. for R-2 to 5.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****RAJIV SHAKDHER, J.: (ORAL)****[Physical Hearing/Hybrid Hearing (as per request)]**

1. This appeal is directed against the judgment and decree dated 03.07.2023 passed by the learned Single Judge. The operative directions are captured in paragraphs 33 to 38 of the impugned judgment. For convenience, the same are extracted hereafter:



“33. Subsequently, on objections being filed by the respondents herein, it was directed by the NCLT, vide judgment/order dated 16.07.2018 as under:

“OBJECTIONS OF VARIOUS OBJECTORS: BHATNAGARS

5. Against the aforesaid Scheme, various sets of objections have been filed by the objectors. One set of objections have been filed by one Mr. Virendra Kumar Bhatnagar and Mr. Anurag Bhatnagar dated 31.03.2017 vide CA No. 147 of 2017. The objectors are JV Partners with the Demerged Company-EMAAR MGF Land Ltd. in one of the Real Estate Project (Commercial Complex by the name of Capital Tower in Gurugram, Haryana). The said project is proposed to be demerged from the Demerged Company to the Resulting Company as part of the Demerged Undertaking. Reply to the objection was filed and even rejoinder has been filed by the objectors. The objector is a JV partner and has requested not to be a part of Demerger Scheme. However, the parties have agreed to bury their differences and the objector is not to be a part of Demerged Undertaking. In that regard, an affidavit dated 05.09.2017 has been filed, duly sworn in by one Mr. Bharat Bhushan Garg (PAN-AAXPG0721B), who is a Company Secretary. In the affidavit, it has been pointed out that the parties have amicably settled with the objectors in the larger interest of the ongoing project and the petitioners have acceded to the request of the objectors.

Accordingly, it has been agreed to exclude the aforesaid project, - (Capital Tower, Gurugram) from the Demerged Undertaking and to retain the same in the Demerged Company-Emaar MGF Land Ltd. Pursuant to the settlement “Capital Tower Project” is now being retained by the Demerged Company and being excluded from the definition of the Demerged Undertaking, the reference of “Capital Towers”, Biosphere Capital Towers”, “Sikandepur Ghosi - 6.28 acres” and other assets/liabilities in relation thereto, shall stand deleted from the Scheme and the same shall be retained in the Demerged Company. Pursuant to the „Capital Tower Project” now being retained by the Demerged Company and being excluded from the definition of the Demerged Undertaking, the following clauses shall stand substituted to ensure compliance with Section 2(19AA) and section 72A(4) of the Income Tax Act 1961:

Clause 1(vii)(C)(b) of the Scheme shall stand substituted with accumulated losses and unabsorbed depreciation to the extent attributable to the demerged undertaking in accordance with the provisions of Section 72A(4) of the Income Tax Act.”

Clause 3.6 of the Scheme shall stand substituted with “Subject to consent of the debenture holders, in so far as the 22,600 Non-



Convertible Debentures of the face value of Rupees One Million (INR 1,000,000) each issued by the Demerged Company is concerned, upon coming into effect of the Scheme, the face value of each such debentures shall without further act or deed be reduced by Rupees Three Hundred and Seven Thousand Eight Hundred Seventy Six (INR 307,876) such that the face value of each such debenture shall stand reduced to Rupees Six Hundred Ninety Two Thousand One Hundred Twenty Four (INR 692,124). Simultaneously and without any further act or deed, and without payment of any further amount to the Resulting Company, the debenture holders shall be entitled to an equivalent number of fully paid debentures of the face value of Rupees Three Hundred and Seven Thousand Eight Hundred Seventy Six (INR 307,876) each in the Resulting Company. At the time of redemption, the liability in respect of the debentures of the Demerged Company as aforesaid shall be Rupees Six Hundred Ninety Two Thousand One Hundred Twenty Four (INR 692,124) per debenture, and the liability in respect of the debentures of the Resulting Company shall be Rupees Three Hundred and Seven Thousand Eight Hundred Seventy Six (INR 307,876) per debenture. The above shall be subject to Applicable Law, listing and/or admitted to trading on the relevant stock exchange in India where the debt securities are listed and/or admitted for trading and the Demerged Company and the Resulting Company will make necessary filings to the Stock Exchange in relation to the same.

In accordance with Clause 24.2 of the Scheme, any other part of the Scheme which as a result of Capital Tower Project now being retained in the Demerged Company requires modification to ensure compliance with Section 2(19AA) of the Income Tax Act, shall also stand modified. In fact, the affidavits on behalf of the demerged company and the resulting company in support of revised/ updated schedule of properties of the demerged undertaking of the demerged company proposed to be demerged into the resulting company has been placed on record”

34. *It is evident from the aforesaid order of the NCLT that the land/project in question has been excluded from the definition of “Demerged Undertaking” and the same has been directed to be retained by the petitioner herein (Demerged Company).* 35. *As far as the “Capital Towers Economic Benefit Agreement” dated June, 2017 is concerned, a duly signed copy thereof has not been placed on record. Moreover, a perusal of the same reveals that it contemplates that MGF Developments Limited would become a “contributor” in respect of the project pertaining to construction and development of the land in question, and in lieu thereof, it would be entitled to a share of the economic benefit arising out*



of the “Developer Project Share”. The said agreement also contains an arbitration clause. If at all the said agreement creates any rights in favour of MGF and/or warrants that MGF should have joint custody of the title documents in respect of the land in question, it is open for MGF to initiate appropriate proceedings seeking the same. Likewise, if at all, the “Letter Agreement” confers any right upon MGF, it is open to MGF to assert those rights in appropriate proceedings and seek appropriate order/s. In the present proceedings, there is no warrant to accede to the prayer/s sought in IA No.7896/2023. 36. In the circumstances, as jointly prayed by the petitioner and the respondents, the custody of the title deeds/documents are directed to be placed in the joint custody of the petitioner and the respondents. 37. It is clarified that Mr. Rakshit Jain and/or MGF shall be at liberty to initiate appropriate proceedings asserting their right/s, if any, in respect of the land/project which shall be decided in accordance with law. This order should not be considered as an expression of opinion with regard thereto. 38. In the circumstances, IA No. 14881/2022, 7896/2023 are dismissed. IA No. 2935/2020 is disposed of with the direction that the title deeds of the land in question, which are presently lying with the Registrar General of this court, be released to the petitioner and the respondents, who shall retain joint custody thereof. The same shall be subject to further order/s in the pending arbitration proceedings.

35. As far as the “Capital Towers Economic Benefit Agreement” dated June, 2017 is concerned, a duly signed copy thereof has not been placed on record. Moreover, a perusal of the same reveals that it contemplates that MGF Developments Limited would become a “contributor” in respect of the project pertaining to construction and development of the land in question, and in lieu thereof, it would be entitled to a share of the economic benefit arising out of the “Developer Project Share”. The said agreement also contains an arbitration clause. If at all the said agreement creates any rights in favour of MGF and/or warrants that MGF should have joint custody of the title documents in respect of the land in question, it is open for MGF to initiate appropriate proceedings seeking the same. Likewise, if at all, the “Letter Agreement” confers any right upon MGF, it is open to MGF to assert those rights in appropriate proceedings and seek appropriate order/s. In the present proceedings, there is no warrant to accede to the prayer/s sought in IA No.7896/2023.

36. In the circumstances, as jointly prayed by the petitioner and the respondents, the custody of the title deeds/documents are directed to be placed in the joint custody of the petitioner and the respondents.

37. It is clarified that Mr. Rakshit Jain and/or MGF shall be at liberty to initiate appropriate proceedings asserting their right/s, if any, in respect of



the land/project which shall be decided in accordance with law. This order should not be considered as an expression of opinion with regard thereto. 38. In the circumstances, IA No. 14881/2022, 7896/2023 are dismissed.

IA No. 2935/2020 is disposed of with the direction that the title deeds of the land in question, which are presently lying with the Registrar General of this court, be released to the petitioner and the respondents, who shall retain joint custody thereof. The same shall be subject to further order/s in the pending arbitration proceedings.”

2. Mr Sudhir Nandrajog, learned senior counsel, who appears on behalf of the appellant, says that it is not disputed that MGF Land Limited [hereafter referred to as “MGF”] of which the appellant is a director, pursuant to the impugned judgment, has instituted a suit [i.e., CS no.2978/2023] in the concerned court in Gurugram.

3. Mr Nandrajog also says that MGF has asserted rights *vis-à-vis* the land in issue, which is subject matter of the title deeds referred to in paragraph 38 of the impugned judgment.

3.1 It is Mr Nandrajog’s contention that the appeal is still being pressed only because of certain observations made in the impugned judgment, which could impact the outcome of the aforesaid suit.

4. Mr Darpan Wadhwa, learned senior counsel, who appears on behalf of respondent no.1, says that the apprehension of the appellant expressed on behalf of MGF is misconceived.

5. The learned Single Judge in paragraph 37 of the impugned judgment has made it amply clear that the impugned judgment would not be considered as an expression of opinion with regard to MGF’s rights in respect of the land in issue.

6. To put the apprehension of MGF, which is prosecuting CS 2978/2023, to rest, the appeal is disposed of with a direction that the observations made



in the impugned judgment concerning the land in question which admeasures, we are told, 42 acres will not impact the aforesaid suit.

7. The parties will have their say in the pending suit without being burdened by the observations made by us as well.

8. At this stage, Mr Wadhwa points out that the directions contained in paragraph 38 of the impugned judgment have been given effect to. This aspect is not disputed by Mr Nandrajog.

9. Needless to emphasize, we have not expressed any view on the merits of the matter.

10. Pending applications shall stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

APRIL 10, 2024

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