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

+ COMPANY PETITION NO. 134/2006

% Date of Decision : October 9 , 2006

In the matter of the Companies Act, 1956

under Sections 391(2) to 393 of the Companies Act, 1956

Scheme of Amalgamation of

Shrey Promoters Private Limited ... Applicant/Transferor Company

with

EMAAR MGF Land Private Limited ... Applicant/Transferee Company

Mr. S GaneGanesh, Sr.Advocate with
Mr.Vikram Dhokalia and Mr. Kamal
Budiraja

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be

allowed to see the judgment? -

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported Yes
in the Digest ?

SANJIV KHANNA, J

1. The present petition under Section 391(2) to 393 of the Companies Act, 1956 (hereinafter referred to as the Act) has been filed by M/s Shrey Promoters Private Limited (hereinafter referred to as the transferor company) and M/s EMAAR MGF Land Private Limited (hereinafter referred to as the transferee company).
2. The registered office(S) of the transferor company and the transferee company are located in Delhi within the jurisdiction of this court.
3. It is stated in the petition that no proceedings under Sections 235-251 of the Act are pending against the transferor company and the transferee company.
4. That the transferee company and the transferor company had earlier filed Company Application (M) No. 89/2006. The said application was disposed of vide order dated 5th May, 2006 dispensing with the requirement to convene and hold meetings of their shareholders and creditors in view of the no objection certificates/consent letters issued by

them. It was stated that transferor company had no secured or unsecured creditor as on 28.2.2006. The creditors of the transferor company after 28.2.2006 had given their consents/no objection certificates.

5. After filing the present petition citations were directed to be published. As per affidavit of service citations have been published. Notice was also issued to the Official Liquidator and the Regional Director (Northern Region). to file their response/reply.

6. The Official Liquidator has filed reply/response, inter alia, stating that he has not received any complaint/objection to the proposed scheme of amalgamation. He has further submitted that on the basis of information submitted by the transferor company, the Official Liquidator is of the view that the affairs of the transferor company were/are not being conducted in a manner which is prejudicial to the interest of public.

7. The Regional Director has also filed his response/reply. The first objection raised by the Regional Director is that the proposed scheme envisages merger of authorised share capital of the transferor company with the transferee company and with this merger, authorised share capital of the transferee company shall stand increased by the issued authorised share capital of the transferor company. It is stated that the authorised share capital of a company can be increased after following

the prescribed procedure under the Act and on payment of requisite fee and stamp duty. The said objection has to be overruled in view of the decision of this Court in Hotline Hol Celdings Pvt. Ltd. and Ors, In re (2005) 127 Company Cases 165. It has been held that in case of complete merger of the transferor company with the transferee company, authorised share capital of the transferor company can be added to form a part of the authorised share capital of the transferee company. The stamp duty and the registration fee paid by the transferor company on its authorised share capital is treated as fee and stamp duty paid on the enhanced authorised share capital. The said decision is squarely applicable to the present case also, as the present scheme stipulates complete merger of the transferor company with the transferee company.

8. The second objection raised by the Regional Director is with reference to the balance sheet dated 15.12.2005 of the transferee company. As per the balance sheet the transferee company had received Rs. 17,68,67,81,664/- as share application money. This amount was further enhanced to Rs.24,49,72,27,613/- as on 31.3.2006. It is stated that it is not clear how the transferee company could have accepted share application money of Rs.24,49,72,27,613/- when it's authorised share capital was/is only Rs.100 crores. It is further stated that the transferee

company vide letter dated 28.7.2006 had received share application from Emaar Holdings, Mauritius for allotment of equity shares in the transferee company of Rs.10/- each at a premium of Rs.540/- per share. Similarly, the transferee company has also received from Citigroup Venture Capital International Mauritius Ltd. Share application money for allotment of shares of Rs.10/- each at a premium of Rs.1573/- per share. The transferee company has, however, given an undertaking to the Regional Director that any allotment and paid up share capital shall be within the authorised share capital as per the scheme and the allotment, if any, shall be made in accordance with law.

9. The Regional Director has also pointed out that the transferee company has given advances of Rs.16,17,82,70,586/- to the 31 subsidiary companies of the transferor company for the joint venture projects and the said companies have, therefore, used the share application money for business purpose for purchase of land.

10. Regional Director has also referred to the report of M/s S N Dhawan & Co., Chartered Accountants, who have given the valuation report in respect of share exchange ratio. As per the said valuation report each issued and paid up equity share of Rs. 10/- of the transferor company has been valued at Rs.2376/- per share. This is on account of value of land purchased by 31 subsidiary companies of the transferor company.

While making reference to the report given by M/s S N Dhawan & Co., Chartered Accountants, it has been observed that the said valuer has indicated that “the ultimate test of value is the willingness of the parties to enter into the contract at an agreed price”.

11. The transferee company pursuant to the orders passed by this court was asked to submits its reply/response to the objections raised by the Regional Director and also a file copy of the valuation report of the chartered accountant. In the response filed it has been stated that application money has been received from Emaar Holdings, Mauritius and Citigroup Venture Capital International Mauritius Ltd for allotment of shares in the transferee company with a clear understanding that the shares would be issued at a premium. It is further stated that as per Section 78 of the Act, the paid up capital does not include premium paid/payable on the shares. It is further stated that it is normal business practice to accept share application money with premium. Undertaking has been given that allotment and issue of shares would not exceed limit of authorised share capital of transferee company.

12. In view of what has been stated in the affidavit dated 21st August, 2006 filed by the transferee company, the first portion of the objection or observation of the Regional Director is taken care of. It has been explained that the share application money has been received for issue

of shares at a premium and allotment of shares shall be in accordance with law. However, the transferee company will be bound by the undertaking that it will not exceed and shall allot shares within the limit of the authorised share capital of the transferee company. If required, the transferee company shall follow the procedure for enhancement of authorised share capital.

13. With regard to advances given by the transferee company to the subsidiary of transferor company, it has been stated that these advances have been given in normal course of business and are in conformity between the understanding and arrangement between the transferor company and the transferee company. It is further submitted that the Regional Director has failed to appreciate that both the transferor and transferee companies are owned and controlled substantially by same group of shareholders and, therefore, valuation of share and determination of share exchange ratio has to be considered in light of the said crucial circumstance. Reference in this regard is made to the unequivocal and unanimous consent letters given by the shareholders to the scheme of amalgamation and the exchange ratio mentioned therein. It is mentioned that the transferor company and transferee company are private limited companies and had two and three shareholders respectively as on 15.12.2005. It is stated that both

companies belong to the same group. It is submitted that M/s S N Dhawan & CO., chartered accountants have acted on the basis of land valuation report of Mr. Vishwamitra Kain, a government approved valuer. It is submitted that the said chartered accountant has determined value of each share of the transferor company at Rs.2376/- by following an accepted method of valuation and has furnished cogent reasons for adopting the said valuation. With regard to the share exchange ratio also it is submitted that the shareholders of transferor company and transferee company are substantially the same persons and, therefore, the share exchange ratio cannot be a valid ground to object to the scheme of amalgamation.

14. In the additional affidavit dated 13th September, 2006 it is stated that a joint venture agreement was entered into between Emaar Properties PJSC, Dubai and MGF Group in India pursuant to which, both groups have decided to develop real estate projects in various locations in India. The Joint venture agreement specifically provides incorporation of the transferee company. It is submitted that the Emaar Properties PJSC, Dubai has agreed to purchase 40.4% shares of the transferee company. It is further stated that Emaar Properties PJSC Dubai has agreed to purchase 4,04,00,000 equity shares of Rs. 10/- each at a premium of Rs.540/- per share. It is pointed out that after one year of

the said joint venture agreement, M/s Citigroup Venture Capital International, Mauritius Ltd invested a sum of Rs.229 crores in the transferee company for purchasing share capital at a premium of Rs.1547.84 per share. The higher price agreed to be paid by the Citigroup Venture Capital International Mauritius Ltd, it is stated, is on account of higher growth potential of business of the transferee company.

15. Some facts may be noticed here. (i) The transferor company was incorporated on 6.10.2005 and the transferee company was incorporated on 18.2.2005. Thus, the transferor company was incorporated after transferee company was incorporated. The transferee Company it is stated was incorporated in terms of joint venture agreement agreement dated 18.2.2005 between Emaar Properties PJSC Dubai and MGF Group Ltd. (ii) transferee company has transferred huge funds to the 31 subsidiaries of the transferor companies on or before 6.12.2005 i.e. within about two months, when the transferor company was incorporated. The transferor company itself does not own any land. Land is owned by 31 subsidiaries of the transferor company who were flushed with money and funds provided by the transferee company. (iv) investment/advances given by the transferee company of Rs. 16,178,270,286/- as on 15th December ,

2005 was/is much more than the paid up share capital of Rs. 7 crores of the transferor company. This paid up share capital has been utilized by the transferor company for purchase of shares in the 31 subsidiary companies at cost price of Rs. 66,039,719/-. Thus the 31 subsidiary companies of the transferor company have used advance/investment made by the transferee company to purchase land,(v) total net value of investments made by the 31 subsidiary companies on or before 15th December, 2005 was Rs. 6,93,27,024/- (the specific dates on which these investments have been made have not been stated). Within about two months from incorporation of the transferor company on 6th October, 2005 till 15th December, 2005, the market value of the said investments of Rs. 6,93,27,024/- made by the 31 subsidiary companies is stated to have increased to Rs. 16,62,80,95,323/- (vi) on the basis of the market value of the investments made by the 31 subsidiary companies as per the valuation report, within about two months value of each issued share of the transferor company has gone up from Rs.10/- to whooping Rs. 2376/- per share (vii) the approved valuer has valued the assets and liabilities of the transferee company at book value and not at market price of the assets, though the said company has as per balance sheet dated 15th December 2005 had given advance of Rs.16,05,00,000/- to a body corporate for project related works and/or

acquisition of land for projects planned to be implemented and Rs. 80,25,00,000/- as advance under an agreement to sell.(viii) the valuer has justified valuation of shares of the transferee company on book value basis as the said company was passing through a transitional phase. Value of each issued share of the transferor company on 15th December 2005 has been done on market value of investments made by the 31 subsidiary companies. The valuer probably forgot that the transferor company was incorporated two months back only on 6.10.2005 and the transferee company was incorporated earlier on 18.2.2005 and was the joint venture vehicle as per the terms of the joint venture agreement (ix) the dates on which subsidiary companies were incorporated has not been stated and how and when the said 31 companies became subsidiaries of the transferor company is also not mentioned. The dates on which the subsidiary companies purchased land has also not been mentioned. (x) the transferee company has after 15th December 2005 issued 2,96,00,000 shares of Rs.10 each @ Re.1 paid up value to two foreign companies and 30,00,000 shares of Rs.10 each to Mr. Shravan Gupta at paid up value of Re.1. It is not stated that the said shares have been issued at premium, though earlier the joint venture partner had agreed to purchase shares of the transferee at premium of Rs. 540/- per share and another investor had agreed to

purchase shares at a premium of Rs.1547.84 per share. (xi) the post merger shareholding pattern shows that the Indian group will be holding 3300000 shares and the two foreign companies shall be holding 2660000 shares. Thus, the two foreign companies shall be holding about 45% shares and the Indian group about 60% shares in the transferee company. The joint venture partner group company Emaar Holding had earlier, prior in point of time deposited Rs.17,686,781,664/- with the transferee on or before 15th December 2005 for allotment at premium of Rs. 540 per share and M/s Citigroup Venture Capital International Mauritius Ltd. Who have paid Rs.229 crores at premium of Rs.1573/- per share. Lastly, the valuation report is a well guarded and evasive document , which neither affirms nor negates the valuation made. The report and the “limitations” mentioned by the valuer have been quoted below.

16. What is not understandable and remains completely unexplained is the incorporation of the transferor company and transfer of funds held by transferee company into the subsidiaries of the transferor company for purchasing land. Though it is not stated in the petition, during the course of arguments, it was stated that under the joint venture agreement the transferee company intends coming out with a public issue. It was further stated that an initial public issue is likely to be announced by 31st

March, 2007 or near about the said period. If this fact is kept in mind probably the objective and purpose of incorporating the transferor company and making investments in purchase of land through subsidiaries of the transferor company becomes apparent. The three shareholders of the transferor company in view of the share exchange ratio would become entitled to allotment of 4.2828 shares in the transferee company for every one share held by them in the transferor company. Thus investment of Rs.10/- each share shall increase and get enhanced to Rs.40.2828/- without any further investment. Mr. Shravan Gupta, Mr. Siddharth Gupta and Mr. Siddharth Sareen who hold 23,30,220, 21,01,401 and 25,68,379 shall be allotted 2,99,80,000 shares of Rs.10 each credited as fully paid up.(see paras 5.1 and 2.1 of the scheme).

17. Incorporation of the transferor company on 6th October 2005, transfer of funds from the transferee company to the subsidiaries of the transferor company, purchase of land by the subsidiaries of the transferor companies from the said funds, moving of the present application for amalgamation of the transferor company with the transferee company etc. are all part of a well and carefully designed plan. The transferor is basically a shell company doing no activity of its own. The entire paid up capital of Rs. 7 crores stands transferred as subscribed and paid capital

of the 31 subsidiary companies. The subscribed and paid up capital of the transferee company on the effective date i.e. 15th December 2005 was Rs.2 lacs only. The said subscribed paid up share capital on that date was held by the promoters of the transferor company. Nothing prevented and it defies logic why the transferee company did not float and incorporate these 31 subsidiary companies or purchase land on its own? Similarly it is not explained why one promoter/joint venture partner of the transferee company did not invest and purchase shares in the transferor company itself?

18. The reason is not very difficult to appreciate and understand. The investment of Rs. 7 crores made by the promoters of the transferor company in the transferor company will get substantially enhanced. They shall get 4.2 shares in the transferee company for every one share held by them in the transferor company, as per the proposed scheme. Thus, the investment of Rs. 7 crores will jump to more than Rs. 29 crores. The paid up share capital of the transferee company shall substantially go up with the issue of 2,99,80,000 shares credited as fully paid up, while at the same time funds provided by the Emaar Group are freely available (and can even be refunded) and have been effectively used to prop up the value of each share of the transferor company. This aspect has to be kept in mind in view of the admission made by the

counsel for the petitioner that the transferee company is going to come out with Initial Public Offer (IPO) inviting general public to purchase shares in the said company.

19. There are only three shareholders in the transferor company. On the effective date the shareholders of the transferor and transferee company were substantially common. It was always open for the transferee company to purchase the shares held by the shareholders of the transferor company at a mutually acceptable price. In this manner the transferee company would have become the holding company of the transferor company and thus gained control over 31 subsidiary companies of the transferor company. This was an easy way and a pragmatic method for the transferee company to take over charge and control 31 subsidiary companies of the transferor company. This has not been done but a cumbersome and difficult procedure to obtain sanction of this court with the proposed scheme has been resorted to. It is obvious that the transferor company and the transferee company seek, seal of approval from this court on the scheme. They have in mind the proposed initial public offering.

20. It is also quite apparent that there is a tacit understanding between the two joint venture partners, the exact details and particulars have not been brought out and have been hidden under the veil of secrecy. Why

and for what reason funds from the transferee company were transferred to the 31 subsidiaries remains unknown. One promoter of the transferee company has made investment of about 6.60 crores in shares of the 31 subsidiaries of the transferor company. Much bigger and higher investment has been made by the joint venture partner Emaar Holdings, Mauritius in these 31 subsidiary companies by using the transferee company as a conduit. With the help of these funds, the subsidiary companies has purchased assets, these assets form basis of fixing the Net Asset Value (NAV) at Rs.2376/- for each share of the transferor company of face value of Rs.10/- each.

21. After the appointed date i.e. 15th December, 2005 one of the promoters of the transferor and two foreign companies have been allotted shares in the transferee company in March,2006 on face value. The two foreign companies, Lupen Services Ltd. and Kallarister Trading Ltd. have been allotted 44,97,600 shares and 2,21,02,400 equity shares of paid up value of Rs.1/-. Mr. Sharvan Gupta has been allotted 30,00,000 shares at face value of Rs.10 each at par on paid up value of Rs 1 per share. It is not stated that these shares are allotted at a premium. Before the said allotment, issued share capital of the transferee company was only 20000 shares fully paid up and equal to Rs2,00,000/-. It now stands enhanced by issue of 97,10,000/- fresh shares of Rs.10 each for paid

up value of Re.1 each. Normally, I would not have gone into all these aspects knowing fully well the jurisdiction of this court but I cannot close my eyes especially in view of the fact that the transferee company is, in the near future, going to invite public to invest in its shares at a pretmium.

22. A word about the valuation report – The Statement of Limiting Conditions mentioned by M/s S N Dhawan & CO. who also happen to be the statutory auditors of the transferee company is indeed revealing and the relevant portion reads as under:-

> "In the course of valuation, SND were provided with both written and verbal information, including market, technical, financial and operating data. We have evaluated the information provided to us by the management of Emaar through broad inquiry, analysis and review. We have not independently investigated or otherwise verified the land valuation reports. Through the above valuation, nothing has come to our attention to indicate that the factual information provided was materially misstated/incorrect or would not afford reasonable grounds upon which to base our report. We do not imply and it should be construed that we have verified any of the information provided to us, or that our inquiries could have verified any matter, which a more extensive examination might disclose. The terms of our engagement were such that we were entitled to rely upon the information provided by the managements of Emaar/Shrey/MGF without detailed inquiry. Also, we have been given to understand by the management that it has not omitted any relevant and material factors and it has checked out relevance or materiality of any specific information to the present

> exercise with us in case of any doubt. Accordingly, we do not express any opinion or offer any form of assurance regarding its accuracy and completeness. Except where specifically stated otherwise, our conclusions are based on the assumptions, forecasts and other information given by/on behalf of the company. Emaar MGF has indicated to us that it has understood that any omissions, inaccuracies or misstatements may materially affect our valuation analysis/results. Accordingly, we assume no responsibility for the technical/financial information furnished by Emaar/MGF/Shrey and believed by us to be reliable." **(Emphasis supplied)**

23. Similarly the said valuer has observed that " the ultimate test of the value is the willingness of the parties to enter into the contract at an agreed price".The valuer was required to give fair, objective and an independent report. The valuer was fully aware that the report shall form basis of the order for sanction of the scheme. In view of the reservations and limitations expressed by the approved valuer himself, I need not say anything, except that the valuer himself is uncertain and full of scepticism about his own valuation. A hesitating report in the present case is meaningless. It is difficult to act on this report and accept that within two months from Oct.,2005 to December, 2005 the value of each share of the transferor company increased from Rs. 10/- to Rs.2376/-. It is like hitting repeated jackpots in derbies or winning series of lottery tickets. I am aware that normally courts accept valuation reports given by experts but this cannot be done in an impetuous manner

unconcerned and oblivious of the reservations expressed and the guarded language used in the report. This court in the case of Mihir Chakarborty V/s Multi tech Computers Pvt. Ltd. and Ors. (2001) 106 Com. Cases 150 after examining the law in detail has held as under :

> "Be that as it may, the position in law seems to be that a valuer cannot claim immunity any more if he acts negligently in making his determination and can be sued in tort for negligence but action against the valuer for damages cannot come in the way when the court is considering the validity of the valuation itself. The fact that the parties may have agreed that the valuation arrived at by a valuer would be binding on them, the agreement does not imply that they will be bound even by a valuation which is erroneous. In this country the courts cannot be bound to accept the determination or opinion of an expert which is erroneous as otherwise it would amount to perpetuating the mistake. Mr. Khanna contended that the compromise recorded by the court constitutes a decree and if this is so the valuation arrived at by the valuer cannot be challenged in these proceedings. I regret my inability to accept the submission of learned senior counsel. While it may be true that the compromise recorded by the court constitutes a decree but that does not mean that the report of the valuer which was directed to be filed under the order of this court cannot be touched in these proceedings. In case the report suffers from mistake or perversity, the same can certainly be set aside in these proceedings and the matter can be referred for fresh valuation by an expert. The court is not bound to accept the report in case the same is erroneous."

24. Supreme Court in Special Land Acquisition Officer v. Sidappa Omanna Tumari, *1995 Supp (2) SCC 168*, while dealing with reliance on valuation report has held:

> "**15.** It has become a matter of common occurrence with the claimants who seek enhanced compensation for their acquired lands from court to produce the reports of valuation of their lands in court purported to have been prepared by the experts. No doubt, courts can act on such expert evidence in determining the market value of the acquired lands, but the court having regard to the fact that experts will have prepared the valuation reports produced in the court and will depose in support of such reports, at the instance of the claimants, must with care and caution examine such reports and evidence given in support thereof. Whenever valuation report made by an expert is produced in court, the opinion on the value of the acquired land given by such expert can be of no assistance in determining the market value of such land, unless such opinion is formed on relevant factual data or material, which is also produced before the court and proved to be genuine and reliable, as any other evidence. Besides, if the method of valuation of acquired land adopted by the expert in his report is found to be not in consonance with the recognised methods of valuation of similar lands, then also, the opinion expressed in his report and his evidence can be of no real assistance to the court in determining the market value of the acquired land. Since the exercise which will be done by the expert in arriving at the market value of the land in his report on the basis of factual data bearing on such valuation, will be similar to that to be undertaken by the court in determining the market value of the acquired land, it can no doubt receive assistance from such report, if it is rightly done and the data on which the report is based is placed before the court and its authenticity is established.
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> 16. Therefore, when the valuation report of an acquired land is made by an expert on the basis of prices fetched or to be fetched by sale deeds or agreements to sell relating to the very acquired lands or the lands in the vicinity, need arises

> for the court to examine and be satisfied about the authenticity of such documents and the truth of their contents and the normal circumstances in which they had come into existence and further the correct method adopted in preparation of that report, before acting on such report for determining the market value of the acquired land. The opinion expressed in the report that the author of the report has made the valuation of the acquired lands on the basis of his past experience of valuation of such lands should never weigh with the court in the matter of determination of market value of the acquired lands, for such assertions by themselves cannot be substitutes for evidence on which it ought to be based and the method of valuation adoptable in such report."

25. I am conscious of the role of the Court under section 391 -394 of the Act, while deciding the question whether a scheme should be sanctioned. Opinion of the shareholders and creditors have to be given due weight. Their collective wisdom should not be substituted. However, such opinion is not conclusive. The court not only has inquisitorial or supervisory role but has to also ensure that the scheme is genuine, bonafide and in good faith. Without acting as a carping critic and being fastidious, the court can independently apply its mind to satisfy itself that the scheme is prima facie reasonable as a whole. The scheme must be such, as a reasonable man of business would approve. To use the words of the Supreme Court in Employees' Union V/s Hindustan Lever Ltd. 1995 (supp.1) SCC 499 the scheme should pass the "prudent business management test". In the case of Miheer H. Mafatlal v.

Mafatlal Industries Ltd., *(1997) 1 SCC 579*, the following parameters were laid :

> "In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged:
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> 1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(*a*) have been held.
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> 2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 sub-section (2).
>
> 3. That the meetings concerned of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.
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> 4. That all necessary material indicated by Section 393(1)(*a*) is placed before the voters at the meetings concerned as contemplated by Section 391 sub-section (1).
>
> 5. That all the requisite material contemplated by the proviso of sub-section (2) of Section 391 of the Act is placed before the Court by the applicant concerned seeking sanction for such a scheme and the Court gets satisfied about the same.
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> 6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate

> purpose underlying the scheme and can judiciously X-ray the same.
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> 7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purported to represent.
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> 8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.
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> 9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.
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> The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a scheme of compromise and arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction."

26. While deciding this petition I have invoked parameters 6, 8 and 9 above. It is in public interest to over-ride the scheme. Public policy can have many connotations but in the present case it is contrary to justice,

detrimental to commercial morality and interest of public at large. Motivations in moving the scheme are oblique.

27. The scheme is also rejected for failure to disclose all material facts. Pursuant to the Daphtry Sastry Committee report, proviso to section 391(2) of the Act was inserted. The petitioners must candidly place all relevant facts before the court to judge the scheme on its own merits. The court can give its informed opinion and decision upon full disclosure as to the existing state of affairs and it's future. As held above full and complete disclosure is missing in the present case.

28. In view of the above the petition is dismissed, with costs of Rs. 10,000/- which shall be paid to the official liquidator.

October 9, 2006 **JUSTICE SANJIV KHANNA**

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