

OL/SE/255/JAN 2020-21

January 16, 2021

The Secretary BSE Limited Phiroze Jeejeebhoy Towers Limited Dalal Street , Mumbai 400 001	The Secretary National Stock Exchange Limited Exchange Plaza Bandra Kurla Complex Bandra (E) Mumbai 400 051
Security code: 532880	Symbol: OMAXE
Fax No 022- 22723121/2037/39/41/61	Fax No 022-2659 8237/38

Subject: Update in the matter of Mr. Sunil Goel & Others Vs. Omaxe Limited & others pending before Hon'ble NCLT Chandigarh Bench

Dear Sir/Madam,

This is to inform you that Hon'ble National Company Law Tribunal, Chandigarh Bench has passed an order on January 12, 2021 in the matter of Mr. Sunil Goel & Other (Petitioners) Vs. Omaxe Ltd. & others (Respondents) granting waiver of the requirements under Section 244 of the Companies Act 2013.

The said order does not fall under Part A & Part B of Schedule III of SEBI (LODR) Regulations, 2015 read with "Policy for disclosure of event or information and determination of Materiality" adopted by the Company. The Hon'ble NCLT Chandigarh Bench has granted only the waiver of the requirements under Section 244 of the Companies Act 2013 for admitting the application and clearly stated that the observations, if any, made in the said order on the merits of the case, shall not have any bearing while deciding the main CP No.184 of 2018, or any other connected cases or applications. The copy of said order is enclosed herewith.

The same is being filed with stock exchange as a part of good corporate governance practice. You are requested to take the same on record.

Thanking You,

For Omaxe Limited


Company Secretary
Navin Jain
Company Secretary

Encl: a/a

" This is to inform that please make all correspondence with us on our **Corporate Office** Address only"

OMAXE LIMITED

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**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH**
(through web-based video conferencing platform)

CA No.388 of 2018
In
CP No.184/Chd/Hry/2018

**Under Section 244 of the Companies
Act, 2013**

In the matter of:- **CP No.184/Chd/Hry/2018**

Mr. Sunil Goel & Others

...Petitioners

Versus

Omaxe Limited & Others

...Respondents

And in the matter of:-

(CA No.388/2018)

Mr. Sunil Goel & Others

...Petitioners

Versus

Omaxe Limited & Others

...Respondents

Order pronounced on 12.01.2021

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)

Present through Video Conferencing :-

For the Applicants	:-	Dr. U.K Chaudhary, Senior Advocate and Mr. Sudhir Makkar, Senior Advocate with Mr. Sai Deepak, Ms. Eshna Kumar, Mr. Prashant Jain, Mr. Arpit Dwivedi, Mr. P.Nagesh and Mr. Shubham Paliwal, Advocates, for the Applicants
For Respondent	:-	Mr. Anirudh Bakhru with Ms. Roohina Dua and Mr. Cheitanya Mada, Advocates, for Respondent No.1 Mr. Ranjit Kumar Senior Advocate with Ms. Roohina Dua, Mr. Cheitanya Madan, Advocates, for Respondent No.12

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

1. Mr. Sunil Goel, Mrs. Seema Goel (Wife of Mr. Sunil Goel) and Sunil Goel (HUF) through its Karta Mr. Sunil Goel, jointly filed CP No.184/Chd/Hry/2018 against the company Omaxe Limited and Others, under Section 241 and 242 of the Companies Act, 2013, alleging various acts of oppression and mismanagement in the affairs of respondent No.1-company.

2. It is submitted on behalf of the petitioners that petitioner No.1-Sunil Goel is holding 1.82% and petitioner No.2-Mrs. Seema Goel is holding 0.1% and petitioner No.3-Sunil Goel (HUF) is holding 0.01% of the total shareholding in Omaxe Limited and in addition to the above shareholding, the petitioners collectively also hold approximately 25% shares in M/s Guild Builders Private Limited, i.e., respondent No.12, in the instant CA as well as the CP, which is a holding company of Omaxe Limited i.e. respondent No.1-Company. Accordingly, it is submitted that the petitioners through respondent No.12 i.e. M/s Guild Builders Private Limited hold approximately 19% shares of respondent No.1-Omaxe Limited, directly or indirectly. It is also submitted that respondent No.12 M/s Guild Builders Private Limited holds 63.76% shares in Omaxe Limited.

3. It is further submitted that petitioner No.1 Mr. Sunil Goel, respondent No.2 Mrs. Rohtas Goel and respondent No.3 Mr. Jai Bhagwan Goel are the real brothers and were the promoters and directors of the company Omaxe Limited at the time of issuance of initial public offer. Respondent No.1-Omaxe Limited was incorporated on 08.03.1989 and engaged, *inter alia*, in the business of construction of residential houses, commercial buildings, flats and factory sheds and buildings in and out of India and to act as builders, colonizers and civil

constructional contractors. The company was converted into a public limited in the year 1999. Petitioner No.1 has pledged/mortgaged almost all his entire shareholding in respondent No.1-company and also extended his own personal guarantees for loans/financial assistance undertaken by respondent No.1-company and has signed post-dated cheques in order to raise funds for respondent No.1-company, at the instance of respondent No.2 i.e. Mr. Rohtas Goel. Mr. Rohtas Goel also persuaded petitioner No.1 and Mr. Jai Bhagwan Goel to resign from the directorship of respondent No.1-company with the understanding that they will not be directly involved in running the company but would remain as shareholders of the company and stated that the affairs of the company shall be professionally managed.

4. It is also submitted that on 29.06.2017, Omaxe Limited took a loan of Rs.250 Crores from Indiabulls Housing Finance Limited based on the minutes of the Executive Committee. Though petitioner No.1 was a part of the Executive Committee but did not receive any notice of the meeting wherein resolution for borrowing of loan of Rs.250 Crores was approved. It is also stated that petitioner No.1- Mr. Sunil Goel has been repeatedly appointed as Joint Managing Director of Omaxe Limited till 27.09.2017 on which date he was illegally ousted in the 28th Annual General Meeting of the company where several resolutions, declaring dividend only to non-promoter shareholders and appointment of Mrs. Seema Prasad as Director of Omaxe Limited, were passed. The respondents illegally restrained the petitioners from participating in the Annual General Meeting by using force and threats.

5. It is also alleged that respondent No.2- Mr. Rohtas Goel is involved in exclusion of the petitioners from the affairs of the respondent No.1-company to

gain control over the company and all its subsidiaries in order to financially disable the petitioners. It is stated that respondent No.2-Mr. Rohtas Goel abused his position of influence and control in respondent No.1-company and respondent No.12-company from the end of 2017 onwards, thereby conducting the affairs of the company oppressive to the petitioners as also to the interest of the respondent No.1-company. It is stated that owing to such financial mismanagement and fraudulent transactions the financial debts have increased and profits have dipped down. Various letters have been issued on behalf of the petitioners, objecting to the illegal and oppressive acts of respondents, but in vain.

6. The petitioners stated that the shareholding pattern of respondent No.1-Omaxe Limited, is as under:-

Sr. No.	SHAREHOLDERS	NUMBER OF SHARES	% OF EQUITY SHARE-HOLDING (APPROX.).	% OF TOTAL SHARE-HOLDING (APPROX.)
	Promoters & Promoters Group			
1.	Sunil Goel Group	33,71,170	1.84	0.78
2.	Rohtas Goel	51,38,560	2.81	1.19
3.	Jai Bhagwan Goel Group	25,98,650	1.04	0.60
	Corporates			
4.	Guild Builders Private Limited (with Kautilya Monetary Services Pvt. Ltd.)	11,66,32,697	63.57	26.94
5.	Dream Home Developers Private Limited	89,25,117	4.88	2.06
6.	TOTAL PROMOTER SHAREHOLDING (1+2+3+4+5)	13,56,06,918	74.14	31.57
7.	PUBLIC SHAREHOLDING	4,72,93,622	25.86	10.68
8.	TOTAL EQUITY SHAREHOLDING (6+7)	18,29,00,540	100	42.25

PREFERENCE SHAREHOLDERS				
9.	Guild Builders Pvt. Ltd.	25,00,00,000		57.75
TOTAL ISSUED CAPITAL (8+9)		43,29,00,540	100	100

7. It is submitted that the shareholding pattern of M/s Guild Builders Private Limited is as under:-

PARTICULARS	NO. OF SHARES	% (Approx.)
SUNIL GOEL BRANCH		
Sunil Goel	90,70,722	16.85%
Seema Goel	26,74,267	4.95%
Sunil Goel (HUF)	14,91,595	2.77%
Annay Realtors Private Limited	39,690	0.07%
Total Group Holding	1,32,76,274	24.64%
ROHTAS GOEL BRANCH		
Rohtas Goel	3,06,11,558	56.88%
Rohtas Goel (HUF)	17,51,662	3.25%
Sushma Goel	63,29,142	11.76%
Mohit Goel	1,561	0.003%
VSG Builders Private Limited	55,567	0.11%
NJS Developers Private Limited	55,567	0.11%
Total Group Holding	3,88,05,057	72.11%
JAI BHAGWAN GOEL BRANCH		
Jai Bhagwan Goel	17,08,067	3.18%
Rekha Goel	27,402	0.05%
Total Group Holding	17,35,469	3.23%
TOTAL SHARES	5,38,16,800	100%

8. The instant CA No.388 of 2018 in CP No.184 of 2018 has been filed by the petitioners in CP No.184 of 2018 under Section 244 of the Companies Act, 2013, seeking waiver from all or any of the requirements specified in Clause (a) and (b) of Section 244 of the Companies Act, 2013.

9. The petitioners submitted that they have substantial interest in respondent No.1-company, as they directly and indirectly have approximately 18% of the equity shareholding and 22% of the total issued capital of the company. Accordingly, it is submitted that the petitioners are entitled for waiver of all the requirements for filing the petition under Section 241 of the Companies Act, 2013.

10. The petitioners in CP No.184/Chd/Hry/2018 have also filed another CP, being CP No.183/Chd/Hry/2018 along with M/s Annay Realtors Private Limited against Guild Builders Private Limited and Others also under Section 241 and 242 of the Companies Act, 2013, alleging various acts of oppression and mismanagement in the affairs of respondent No.1-company therein i.e. M/s Guild Builders Private Limited and others.

11. The respondents have filed counter affidavits both in the instant CA No. 388/2018 and the main CP No. 184/Chd/Hry/2018, denying all the allegations of oppression & mismanagement and also prayed for dismissal of the CA and CP.

12. However, both sides have not disputed the shareholding pattern prevailing either in Omaxe Limited or in M/s Guild Builders Private Limited which is the holding company of Omaxe Limited.

13. Heard Dr. U.K. Chaudhary and Mr. Sudhir Makkar, learned senior counsels for the applicants, Mr. Abhimanyu Bhandari for Respondent No.1 and Mr. Ranjit Kumar, learned senior counsel for Respondent No.12 and perused the pleadings on record.

14. The learned senior counsel appearing on behalf of the applicants, *inter alia*, has placed reliance on the decision of the Hon'ble NCLAT in **Cyrus**

Investments Private Limited and Another Versus Tata Sons Limited and Others; 2017 SCC OnLine NCLAT 261.

15. The learned senior counsel appearing for the applicants submitted that in view of the shareholding pattern in Omaxe Limited i.e. respondent No.1 in the instant CA and its holding company i.e. respondent No.12, M/s Guild Builders Private Limited and their role as an initial promoter shareholder of Omaxe Limited, they are entitled for waiver of the requirements under Section 244 of the Companies Act. The learned senior counsel further submitted that the applicants fulfilled all the parameters as observed by the Hon'ble NCLAT in Cyrus Investments' case (supra).

16. Per contra the learned senior counsel appearing for the respondents submit that the applicants miserably failed to show any valid reason for granting waiver under Section 244 of the Companies Act, 2013 and the judgment of the Hon'ble NCLAT in Cyrus Investments' case (supra) is not applicable to the petitioners' case.

17. Before discussing the judgment in the matter of Cyrus Investments' case (supra), it would be appropriate to refer to Section 244 of the Companies Act, 2013, which is as under:-

244- Right to apply under section 241.—

(1) The following members of a company shall have the right to apply under section 241, namely:—

- (a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;*
- (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:*

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation — For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

18. The relevant paragraphs regarding waiver, in Cyrus Investment's case (supra) are as under:-

8. *The question for determination in these appeals are:-(a) whether the petition preferred by appellants under Sections 241 and 242 of the Companies Act is maintainable? In other words, whether the appellants qualify the condition of holding minimum 1/10th of the 'Issued Share Capital' of the 1st Respondent Company, and (b) In case the 1st question is decided in negative against the appellants, then whether the appellants have made out a case of waiver of all or any or the requirements specified in Clause 1(a) of Section 244 so as to enable the appellants (the members) to apply under Section 241.*

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87. *From the aforesaid discussion, while we hold that the expression "Issued Share Capital" as mentioned in Section 244(1) of the Companies Act, 2013 only refer to both 'Equity Share' and "Preferential Share Capital" of the company and similar finding having given by the Tribunal, we uphold the order dated 16th March, 2017.*

88. *As admittedly, the Appellants have less than 1/10th of the "Issued Share Capital of the company" (2.17%), we hold that the Appellants do not qualify under Section 244(1) to file a petition under Section 241 of the Companies Act, 2013 and the petition without waiver, at their instance is not maintainable.*

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145. *For the reasons aforesaid, we hold that the Tribunal cannot deliberate on the merit of a (proposed) application under Section 241, while deciding an application for 'waiver' under proviso to sub-section (1) of Section 244.*

The factors dependent on merit

(i) Prima facie case:

Whether a prima facie case is made out or not is dependent on merit of the case as may pleaded in the (proposed) application under Section 241. As it is dependent on merit of the case, we are of the view that the Tribunal cannot decide the question as to whether a prima facie case has been made out or not while deciding an application for 'waiver'.

(ii) Limitation:

The question whether an application under Section 241 is barred by limitation is a mixed question of law and facts. The same is also dependent on the cause of action and continuous cause of action, if any. As the merit of the case cannot be deliberated in an application for 'waiver' the Tribunal cannot decide the question whether (proposed) application under Section 241 is barred by limitation or not while deciding the application for 'waiver'.

(iii) Allegation pertains to affairs of another Company

This is a complicated issue dependent on facts of each case. The allegation of 'oppression and mismanagement' pertains to the related company or a third company is dependent on the facts of the case.

For example, on bare perusal of the application, if it appears that the allegation relates to a third company then it is a different issue, but in some cases even third company's issue may have direct relation to the company of which 'oppression and mismanagement' has been alleged. For example, Company 'A' which has substantial shareholding say 50% in another Company 'B', as shareholder and the Company 'A' takes part in the Board's meeting or Extraordinary General Meeting of Company 'B' and takes decisions, which is against the interest of Company 'A'. In such case, any aggrieved member of the Company 'A' can allege 'oppression and mismanagement' qua Company 'A', if its interest is compromised in favour of another Company 'B'. In such case, it cannot be stated that the matter pertains to another Company 'B' and therefore, member(s) of Company 'A' have no right to allege 'oppression and mismanagement'. In fact, it is a case of 'oppression and mismanagement' qua Company 'A', if the right of the Company 'A' is compromised. As the aforesaid disputed question is dependent on facts and merit of a case, it cannot be decided nor can be taken into consideration while deciding an application for 'waiver'.

(iv) Arbitration:

The question of referring a matter under Section 8 or 45 of the Arbitration and Conciliation Act, 1996 does not arise during the stage of decision of an application for 'waiver'. If the Tribunal, after perusal of proposed application under Section 241, without deciding the merit of the case forms opinion that the allegation relates to 'oppression and mismanagement' of the company, the question of referring the matter to the arbitrator does not arise.

Similarly, if the Tribunal refuse to grant 'waiver' on the ground the (proposed) application do not merit waiver, the question of referring the case to arbitrator does not arise.

(v) Directorial Complaint

Whether the allegation is in the nature of Directorial Complaint or not can be decided by the Tribunal only at the stage of deciding merit of an application under Section 241 after taking into consideration the reply, if any, and hearing the parties. As it is dependent on merit, we hold that the question as to whether the allegation pertains to Directorial Complaint or not, cannot be decided by Tribunal while deciding an application for 'waiver'

(vi) Conduct of Applicant:

The question of deciding the conduct of an applicants to disentitle them from seeking a relief is also based on merit of each case. Therefore, we hold that such issue cannot be decided by the Tribunal while deciding an application for 'waiver'.

(vii) Acquiescence/Waiver/Estoppel

The question whether (proposed) application under Section 241 is barred by acquiescence or waiver or estoppel is question of fact which can be decided only at the stage of hearing of application under Section 241. Therefore, we are of the view that such question cannot be decided by Tribunal while considering an application for 'waiver'. 145. For the aforesaid reasons we hold that the Tribunal while deciding an application for 'waiver' under proviso to sub-section (1) of Section 244 to enable the members to apply under Section 241 cannot decide the following issues:—

- (i) Merit of the case*
- (ii) Issues dependent on merit based on claim and counter claim, such as:*
 - a. Whether a prima facie case has been made or not*
 - b. Whether the petition is barred by limitation,*
 - c. Whether it is a case of arbitration,*
 - d. Whether allegation relates to/pertains to another company (Third party).*
 - e. Whether the allegations are in the nature of directorial complaint.*
 - f. Whether the applicants' conduct disentitled them from seeking relief.*
 - g. Whether the proposed application under Section 241 is barred by acquiescence or waiver or estoppel.*

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150. *The Tribunal is not required to decide merit of (proposed) application under Section 241, but required to record grounds to suggest that the applicants have made out some exceptional case for waiver of all or of any of the requirements specified in clauses (a) and (b) of sub-section (1) of Section 244. Such opinion required to be formed on the basis of the (proposed) application under Section 241 and to form opinion whether allegation pertains to 'oppression and mismanagement' of the company or its members. The merit cannot be decided till the Tribunal waives the requirement and enable the members to file application under Section 241.*

151. *Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the application merits 'waiver' of all or one or other requirement as specified in clauses (a) and (b) of sub-section (1) Section 244:—*

- (i) Whether the applicants are member(s) of the company in question? If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright. Otherwise, the Tribunal will look into the next factor.*

(ii) Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement'? If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to 'oppression and mismanagement' of the company or its members and/or is frivolous, it will reject the application for 'waiver'. Otherwise, the Tribunal will proceed to notice the other factors.

(iii) Whether similar allegation of 'oppression and mismanagement', was earlier made by any other member and stand decided and concluded?

(iv) Whether there is an exceptional circumstance made out to grant 'waiver', so as to enable members to file application under Section 241 etc.?

152. *The aforesaid factors are not exhaustive. There may be other factors unrelated to the merit of the case which can be taken into consideration by the Tribunal for forming opinion as to whether application merits 'waiver'.*

161. *That means in the context of present case, except that the minority shareholders join together, i.e. either six in numbers or such numbers of members whose joint shareholding will come up to 10% of the issued share capital of the Company, which will be also not less than 3 to 4 members, none of the 49 shareholders can file an application under Section 241 alleging 'oppression and mismanagement'. It will remain only in the hands of major shareholders, namely Mr. Ratan Naval Tata or Mr. Narotam S. Sekhsaria, who only have right and their prerogative to file such application.*

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162. *One or the other minority shareholder cannot be asked or directed to form a group of 10% of the member(s) that means six person(s) in the present case, as it will be dependent on the prerogative of the other member(s).*

163. *We are of the view that this is one of the exceptional and compelling circumstances, which merit the application for 'waiver' subject to the question whether (proposed) application under Section 241 relates to 'oppression and mismanagement'.*

19. In view of the aforesaid clear dicta laid down by the Hon'ble NCLAT what is required to be examined is to whether the applicants have made out some exceptional case of all or any of the requirements specified in clauses (a) and (b) of sub-section (1) of Section 244 of the Companies Act, 2013, but nothing else.

20. It is to be seen that the applicants are the shareholders, promoters and were directors of the respondent No.1-company and also having considerable

shareholding and interest in its holding company i.e. M/s Guild Builders Private Limited. It is also to be seen that none of the members of Omaxe Limited, other than Guild Builders Private Limited, are eligible to file an application under Section 241 of the Companies Act, 2013, individually having less than 10% of the shareholding. Even in case all the minority promoters, shareholders join together, they will not be able to cross the barrier of threshold as provided under Section 244 of the Companies Act, 2013. Therefore, we are of the considered view that the present case is one of the exceptional and compelling circumstances which entitle the applicants for granting of waiver. The various other objections raised by the respondents were sufficiently answered by the Hon'ble NCLAT in Cyrus Investments' case (supra) itself. In this view of the matter, there is no need to delve upon any other submission or decision.

21. In the circumstances and for the aforesaid reasons, the instant CA No.388 of 2019 in CP No.184 of 2018, is allowed. However, it is made clear that the observations, if any, made hereinabove on the merits of the case, shall not have any bearing while deciding the main CP No.184 of 2018, or any other connected cases or applications.

Sd/-
(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

January 12th, 2021
MK