

ITEM NO.35 Court 3 (Video Conferencing)

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 940/2017

BIKRAM CHATTERJI & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 108703/2020 - APPLICATION FOR PERMISSION
IA No. 108681/2020 - APPLICATION FOR PERMISSION
IA No. 1023/2020 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 45439/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 115383/2020 - CLARIFICATION/DIRECTION
IA No. 3573/2020 - INTERVENTION/IMPLEADMENT
IA No. 77651/2020 - MODIFICATION OF COURT ORDER
IA No. 108696/2020 - RECALLING THE COURTS ORDER
IA No. 108670/2020 - RECALLING THE COURTS ORDER)

WITH

SLP(C) No. 1879/2018

W.P.(C) No. 378/2018

W.P.(C) No. 245/2018

W.P.(C) No. 306/2018

SMC(Cr1) No. 4/2018

W.P.(C) No. 502/2019

T.P.(Cr1.) No. 280/2021

(FOR ADMISSION and I.R. and IA No.84179/2021-EX-PARTE STAY and IA
No.84176/2021-EXEMPTION FROM FILING PROOF OF SURRENDER)

CONMT.PET.(C) No. 483/2020 in W.P.(C) No. 940/2017

W.P.(C) No. 288/2018

W.P.(C) No. 1397/2018

Diary No(s). 36392/2019

W.P.(C) No. 298/2018

W.P.(C) No. 246/2018

W.P. (C) No. 1018/2017

W.P. (C) No. 134/2018

W.P. (C) No. 131/2018

W.P. (C) No. 164/2018

W.P. (C) No. 199/2018

W.P. (C) No. 226/2018

W.P. (C) No. 267/2018

W.P. (C) No. 460/2018

W.P. (C) No. 353/2018

W.P. (C) No. 742/2018

W.P. (C) No. 829/2018

W.P. (C) No. 1206/2017

W.P. (C) No. 281/2018

W.P. (C) No. 1116/2017

W.P. (C) No. 947/2017

W.P. (C) No. 971/2017

W.P. (C) No. 1041/2017

W.P. (C) No. 1144/2017

W.P. (C) No. 1156/2017

W.P. (C) No. 8/2018

W.P. (C) No. 1242/2017

W.P. (C) No. 58/2018

W.P. (C) No. 21/2018

W.P. (C) No. 52/2018

W.P. (C) No. 56/2018

W.P. (C) No. 91/2018

W.P.(C) No. 74/2018

W.P.(C) No. 160/2018

W.P.(C) No. 182/2018

W.P.(C) No. 942/2017

W.P.(C) No. 57/2018

Date : 02-08-2021 These matters were called on for hearing today.

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Upon hearing the counsel the Court made the following
O R D E R

PART-I

NOTE SUBMITTED BY MR. R. VENKATARAMANI, COURT RECEIVER

I) CONCERNING SWAMIAH FUND

It is submitted that after having extensive rounds of meetings with the officials and representatives of Swamiah Fund which meetings were attended by the representatives of the National Buildings Construction Corporation (India) Ltd. ("NBCC" for short), the instant Note deals with disbursement of finance under the

arrangements to be entered into with Swamiah Fund.

The Note has two Appendices. Appendix-1 is regarding Loan documents prepared by the Committee, while Appendix-2 is captioned - "Swamiah Fund-a note of SBI Cap in W.P. (C) No.940/2017".

Appendix-2 states: The SC Order dated July 23, 2019 be modified to provide the following:

"6.1.1 The Court Receiver be authorised to undertake all acts necessary to fulfil its obligations under the Transaction Documents including creation of mortgage over the properties of the Projects and hypothecation over the Existing Project Account to the extent of the cash flows from the Projects. All compliances towards any terms undertaken by the Court Receiver and/or Aspire under the Transaction Documents shall abide by directions that may be solicited from and issued by this Court.

6.1.2 The memorandum of entry recording such deposit of title deeds for the purpose of mortgage is hereby recognized and affirmed as a valid and enforceable mortgage in favour of the Debenture Trustee. Further, the other security(ies) created in respect of the NCDs are also affirmed and approved.

6.1.3 The Court Receiver shall have the authority to cancel the allotment of such units where the homebuyer fails to honour payments as per the Collection Milestones (stipulated in the Project Plan prepared by Aspire in consultation with NBCC and SWAMIAH), within 3 months from the day such payment became due. Refund on any cancellation of units sold shall be made only after the respective Project(s) are completed and upon the sale of the cancelled unit. The refund to be made to the homebuyer would be made after reducing the outstanding receivable on that unit, as per the data provided for in the forensic report(s) of the Project(s) as approved by the Supreme Court .

6.1.4 Cash flows from the Projects shall be used

solely (i) making payments to NBCC; (ii) for meeting expenses of ASPIRE; (iii) on going expenses in relation to the Debentures; and (iv) repayment of the NCDs.

- 6.1.5 Court Receiver shall transfer (without any further orders from the Hon'ble Supreme Court) all cash flows received in the Existing Project Account in respect of the Projects to the Pooling Account every week after reconciliation of the amounts based on the information recorded in the MIS software.
- 6.1.6 Registration under the Real Estate (Regulation and Development) Act, 2016 ("RERA") shall not be required for the Project(s), including for sales and marketing.
- 6.2 ASPIRE, which is a distinct legal entity with 99.99% equity shares held by the Court Receiver, shall operate under the supervision of the Supreme Court till the redemption of all NCDs.
- 6.3 ASPIRE shall be ring-fenced from:
- 6.3.1 Any liabilities/ claims/ obligations/ litigations/ penalties (including penalties under RERA)/ petitions/ complaints existing or future, concerning and/ or against any of the Project SPVs as well as other real estate projects of the Amrapali Group.
- 6.3.2 Any corporate, company, taxation, accounting, environmental, anti-corruption, anti-money laundering, foreign exchange, legal compliances, and other statutory / regulatory requirements and attendant liabilities / penalties/ complaints/claims (past or future), concerning the Projects or Project SPVs (identified in the table above) and other real estate projects being developed by the Amrapali Group.
- 6.3.3 Any adverse orders in respect of the Project SPVs or the promoter(s) or directors(s) of the Project SPVs, which may give rise to any liability of ASPIRE, or which may in any manner impact the Projects, and the Proposed Transaction including the Security.
- 6.3.4 Any attachment or any orders of any regulator/authority/Court/Tribunal which may have an adverse effect on ASPIRE's cash flows, assets, Pooling Account, Existing Project Account or any other bank account(s) maintained by the Court Receiver for the

Projects.

- 6.3.5 Any claims or adverse orders which may adversely affect the ability of SWAMIAH/Debenture Trustee to enforce the Security provided under the Transaction Documents.
- 6.4 The Data provided by Forensic Auditors, Receiver and NBCC to SWAMIAH includes *inter alia* total site area, area sold, area unsold, sold units, unsold units, sold receivables, attached units, unused sanctioned FAR, unused purchasable FAR (Part D of Schedule 2 of the Debenture Trust Deed) and cost to be incurred to complete construction of the Project(s) (Part F of Schedule 2 of the Debenture Trust Deed) ("Data"). SWAMIAH has not verified the authenticity / accuracy of the said Data from any authority or through other sources. The Project(s) shall be constructed on the basis of this Data and the NCDs shall be subscribed and redeemed on the basis of the said Data. These figures shall not change to the detriment of SWAMIAH.
- 6.5 Cost of construction for the Project (s) as calculated by NBCC includes all costs to construct, complete, and deliver the Project(s) to the respective home buyers including but not limited to cost of all third party, approval costs and other related costs for amenities, facilities, infrastructure to supervise, manage, construct complete and deliver the Project(s). This cost also includes the commission of 8% payable to NBCC. This cost shall be fixed and shall not change except in case of force majeure events only or as otherwise directed by the Hon'ble Supreme Court .
- 6.6 The Security created shall be valid and subsisting till such time amounts remain due and payable under the Transaction Documents. Upon the occurrence of any Event of Default under the Transaction Documents, SWAMIAH/Debenture Trustee shall be free to enforce the Security. Given that the Proposed Transaction is entered into under the directions of the Hon'ble Supreme Court, Parties shall approach the Hon'ble Supreme Court for seeking appropriate directions in the event of any dispute in relation to the Transaction Documents or if required, for the enforcement of the Security.
- 6.7 In case of conflict between the provisions of the Transaction Documents and its annexures/

schedules with any other agreement, understanding, terms of reference, arrangement, tender applicable in respect of services being provided by NBCC and/or the executants appointed by NBCC, whether prior or post the approval of the Transaction Documents, terms of the Transaction Documents shall prevail. In case of any doubts in this regard, parties are at liberty to approach this Court.

- 6.8 SWAMIAH and ASPIRE and their respective directors, employees, agents, representatives shall not be liable for any liabilities, criminal or civil, arising from the construction and sale of the Project(s)."

One of the assertions made in Appendix-1 is:- "To protect aspire, we need following direction from the Court". Below such assertion, following four points are indicated:

- "6.1 The Transaction documents and terms mentioned therein shall be subject to orders of the court.
- 6.2 The Cost and expenses wherever mentioned in the transaction documents shall be considered after the executed documents are placed before the Court.
- 6.3 Being Court monitored project, SWAMIAH or Debenture Trustee shall not declare any Event of Default without the leave of the Court.
- 6.4 The Company/ Court receiver will have the liberty to seek suitable direction in case of difficulties faced in the compliance of any terms of the Transaction Documents, pending which no adverse action shall be initiated by SWAMIAH or parties to the transaction documents."

Learned Court Receiver has submitted that (a) Para 6.1.6 of Appendix-2 is reflection of directions issued by this Court in its order dated 23.07.2019; and (b) Para 6.2 of Appendix -1 is the agreed understanding between the Court Receiver and the Swamiah

Fund.

It is also submitted that all these arrangements were agreed upon in the meetings attended by representatives of NBCC and as such there should be no difficulty on part of NBCC.

Mr. M.L. Lahoti, learned Advocate submits that since the project requires immediate and extensive funding, the home-buyers agree to the proposed course of conduct and the terms suggested by the learned Receiver.

Consequently, it is directed:-

- (a) The order dated 23.07.2019 passed by this Court shall stand modified and paragraphs 6.1.1 to 6.8 of Appendix-2 as quoted hereinabove shall stand added to the directions in the order dated 23.07.2019, insofar as arrangements to be entered with Swamiah fund are concerned. .
- (b) Paragraphs 6.1 to 6.4 indicated in Appendix-1 as stated above shall also stand incorporated immediately after Condition No.6.8 as quoted above and shall be re-numbered as 6.9 to 6.12.

According to the learned Receiver, the ground will now be clear for the appropriate documentation to be entered into, whereafter the disbursal of funds can take place.

We appreciate all the work done by various agencies including the Receiver and the Committee assisting him and by the representatives of Swamiah Fund and the NBCC.

II) The next part of the Note deals with Banks and it has

suggested that certain directions be issued. Before we take up this matter, in our view, let there be a joint meeting of the representatives of following banks:

- a) State Bank of India
- b) Punjab National Bank
- c) Bank of Baroda
- d) Union Bank of India
- e) UCO Bank
- f) Bank of India
- g) Other private banks like, Axix Bank and HDFC Bank.

alongwith their lawyers and representatives with the Court Receiver. The outcome of such meeting can there be presented by way of a Note.

Let the exercise be undertaken by 07.08.2021 and a Note be presented latest by 08.08.2021.

List as part-heard on 12.08.2021.

P A R T - II

On 12.08.2021, the matter pertaining to Mahagun shall be taken as first Item to be followed by the I.As. filed by Advance Constructions and the matter regarding "Bank funds" of the Note of the Court Receiver. Subject to availability of time, the matters concerning interim applications moved on behalf of Noida/Greater Noida shall be taken up thereafter.

(INDU MARWAH)
COURT MASTER (SH)

(VIRENDER SINGH)
BRANCH OFFICER