

ITEM NO.301

COURT NO.4

SECTION X

(HEARING THROUGH VIDEO CONFERENCING)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No.940/2017

BIKRAM CHATTERJI & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

WITH

(The matters pertaining to (i) Surekha Family and CFO Chander Wadhwa; IA No.74385/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.50370/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.67992/2020 - FOR PERMISSION; IA No.108703/2020 - FOR PERMISSION; IA No.108681/2020 - FOR PERMISSION; IA No.110402/2020 - FOR TAKING ON RECORD; IA No.110027/2020 - FOR TAKING ON RECORD; IA No.100367/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.109440/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.94047/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.109907/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.90985/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.99886/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.109401/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.1023/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.112929/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.109599/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.111395/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.74385/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.180011/2019 - FOR CLARIFICATION/DIRECTIONS; IA No.180011/2019 - FOR CLARIFICATION/DIRECTIONS; IA No.114869/2020 - FOR CLARIFICATION/DIRECTION; IA No.114496/2019 - FOR CLARIFICATION/DIRECTION; IA No.89379/2020 - FOR CLARIFICATION/DIRECTION; IA No.96598/2020 - FOR CLARIFICATION/DIRECTION; IA No.95273/2018 - FOR CLARIFICATION/DIRECTION; IA No.95831/2020 - FOR CLARIFICATION/DIRECTION; IA No.109576/2020 - FOR CLARIFICATION/DIRECTION; IA No.189314/2019 - FOR COMPLIANCE OF COURT'S ORDER; IA No.94049/2020 - FOR EXEMPTION FROM FILING AFFIDAVIT; IA No.89380/2020 - FOR EXEMPTION FROM FILING O.T.; IA No.95828/2020 - FOR INTERVENTION; IA No.100361/2020 - FOR INTERVENTION; IA No.109438/2020 - FOR INTERVENTION; IA No.109903/2020 - FOR INTERVENTION; IA No.109397/2020 - FOR INTERVENTION; IA No.109882/2020 - FOR INTERVENTION; IA No.114490/2019 - FOR INTERVENTION; IA No.8259/2019 - FOR INTERVENTION APPLICATION; IA No.111393/2020 - FOR INTERVENTION; IA No.111314/2020 - FOR INTERVENTION; IA No.109573/2020 - FOR INTERVENTION; IA No.3573/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.99884/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.109596/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.182077/2019 - FOR MODIFICATION; IA No.182673/2019 - FOR MODIFICATION; IA No.182079/2019 - FOR

MODIFICATION; IA No.99854/2020 - FOR MODIFICATION OF COURT ORDER; IA No.77651/2020 - FOR MODIFICATION OF COURT ORDER; IA No.60700/2020 - FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES; IA No.108670/2020 - FOR RECALLING THE COURT'S ORDER; IA No.127793/2019 - FOR RECALLING THE COURTS ORDER; IA No.127787/2019 - FOR RECALLING THE COURTS ORDER; and IA No.108696/2020 - FOR RECALLING THE COURT'S ORDER)

SMC (Cr1) No.4/2018 (XVII)

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

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

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

SLP(C) No.1879/2018 (XVII)

Diary No.36392/2019 (X)

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

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

W.P.(C) No.288/2018 (X)
(IA No.84512/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS)

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

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

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

W.P.(C) No.267/2018 (X)
(IA No.88108/2018 - FOR APPROPRIATE ORDERS/DIRECTIONS)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(IA No.87533/2020 - FOR EXEMPTION FROM FILING AFFIDAVIT; and, IA No.87532/2020 - FOR MODIFICATION OF COURT ORDER)

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

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

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

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

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

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

W.P. (C) No.1209/2020 (X)

(FOR ADMISSION; and, IA No.105970/2020 - FOR CLARIFICATION/DIRECTION)

SLP (C) No.5459/2016 (IV-B)

SLP (C) No.5473/2016 (IV-B)
(IA No.95779/2020 - FOR CLARIFICATION/DIRECTION)

SLP (C) No.5891/2016 (IV-B)

SLP (C) No.5802/2016 (IV-B)

SLP (C) No.5792/2016 (IV-B)

SLP (C) No.5811/2016 (IV-B)

SLP (C) No.6037/2016 (IV-B)

SLP (C) No.5819/2016 (IV-B)

SLP (C) No.5878/2016 (IV-B)

SLP (C) No.5808/2016 (IV-B)

SLP (C) No.6087/2016 (IV-B)

SLP (C) No.6447/2016 (IV-B)

SLP (C) No.6429/2016 (IV-B)

SLP (C) No.6399/2016 (IV-B)*

SLP (C) No.6331/2016 (IV-B)
(IA No.94000/2018 - FOR DIRECTION)

SLP (C) No.6433/2016 (IV-B)*

SLP (C) No.10465/2016 (IV-B)

SLP (C) No.10200/2016 (IV-B)

SLP (C) No.10615/2016 (IV-B)

SLP (C) No.8710/2016 (IV-B)

SLP (C) No.12015/2016 (IV-B)

SLP (C) No.17082/2016 (IV-B)

SLP (C) No.17598/2016 (IV-B)

WP (C) No.1057/2020 (X)
(FOR ADMISSION; and, IA No.92089/2020 - FOR STAY)

WP (C) No.1097/2020 (X)

Date : 23-11-2020 These matters were called on for hearing today.

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Mr. Smarhar Singh, AOR
Mr. Nikilesh Ramachandran, AOR
Mr. B. Krishna Prasad, AOR
Ms. Rajkumari Banju, AOR
Mr. M. T. George, AOR
Mr. Praveen Jain, AOR
Mr. Anil K. Chopra, AOR
Mr. S. R. Setia, AOR
Ms. Kirti Renu Mishra, AOR
Mr. Rajiv Raheja, AOR

M/s. Mitter & Mitter Co., AOR
Mr. Jay Kishor Singh, AOR
Mr. Binay Kumar Das, AOR
Ms. Rooh-e-hina Dua, AOR
Mr. Abdul Azeem Kalebudde, AOR
Mr. A.P. Mohanty, AOR
Mr. Sayaree Basu Mallik, AOR
Mr. Shovan Mishra, AOR
Mr. Bhargava V. Desai, AOR
Mr. Kaushik Poddar, AOR
Mr. E.C. Agrawala, AOR
Ms. Hemantika Wahi, AOR
Mr. A.N. Arora, AOR
Mr. Gaurav Goel, AOR
Mr. Gaurav, AOR

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

PART-I

RE: DE-TAGGING OF ITEM NOS.301.44 TO 301.69

Mr. Kavin Gulati, learned Senior Advocate submits that the instant petitions principally challenge the levy of External Development Charges imposed in respect of development of properties in State of Haryana. One of the submissions urged on behalf of the petitioners was seeking reduction in rate of interest for which purposes reliance was placed on the orders passed by this Court in Amrapali Group of matters.

Mr. Gulati submits that these matters are not connected with Amrapali Group of Matters and the reliance on the orders was only by way of drawing similarity.

Since the matters are totally unconnected with Amrapali Group of Matters, we de-tag these matters. The Registry is directed to list these matters before the appropriate Bench next week.

PART-II

NOTE SUBMITTED BY MR. R. VENKATARAMANI, COURT RECEIVER

A. RE: FUNDING PROPOSALS BY BANKS

Learned Receiver submits that because of acts of commission and omission on part of the erstwhile Management of the Amrapali Projects, some of the Banks are apprehensive and hesitant in lending their funds and that the taint attached to the Amrapali Projects is keeping said Banks away from getting themselves involved in funding and financing transactions.

We make it clear that whatever be the deeds of the erstwhile Amrapali Management, today all the assets of Amrapali Group of Companies vest in Court Receiver who is fully empowered to take appropriate decisions and initiate actions to see that all the stalled projects of Amrapali Group are completed and the flat buyers are given possession of their apartments.

In the circumstances, there is no room for any apprehension or hesitation and the Banks may consider any request or proposal made by learned Receiver for lending finances and funds on its own merits.

Needless to say that the Receiver assisted by the Committee will take all the decisions which will not only reduce the burden on the Group of flat buyers but will ensure completion of all the projects at the earliest.

B. STEPS REGARDING SALE OF SELECT SET OF PROPERTIES

Learned Receiver has given following suggestions:

- "i. It is in the knowledge of the Court that DRT has endeavored to sell various assets of Amrapali.
- ii. Following their engagement, MSTC has not only conducted fresh valuation and also three rounds of sale of properties. Few properties like corporate buildings have been sold as regards properties in the nature of lands, FARs, the responses and yields are not encouraging. With the help of NBCC and other sources engaged by the office of the Receiver, the market and the players in the field, who would be interested in purchasing such properties and have been analysed ,it appears that there is a need of for more realistic approach and combination of strategies. As already brought to the notice of the Court, the office of the Receiver has received proposals from reputed agencies, other than mere outright purchase of FARs. The terms of such proposals have been considered by the Receiver and the Committee. There is an in principle agreement on the need to consider such proposals.
- iii. As regards the FARs in silicon city and Princely estate projects, in addition to the auctions that MSTC may conduct as may be advised by the committee it will be open to the interested parties to send their proposals concerning these two properties to the office of the Receiver, Such proposals may be sent on confidential basis.
- iv. Interested parties can either propose outright purchase of the above said FARs on certain terms or also propose any other mode of transfer of interest in the said properties namely a development agreement or a deferred sale agreement etc.
- v. Interested parties can do so within a period of two weeks from the date of the order.

- vi. The order shall be widely circulated through any media and also communicated through MSTC portals.
- vii. The Receiver and the committee shall evaluate the proposals and the proposal which may be considered beneficial and conducive to the execution of the Amrapali projects shall be submitted to the Court for further direction."

The suggestions made by the learned Receiver are fair and acceptable. If learned Receiver has received any proposals from reputed agencies, such proposals may also be considered in addition to modalities of auction, as suggested. The interested parties can either purchase the FAR on outright basis or propose any other modality which would sub-serve the interest of the home-buyers.

We, therefore, permit learned Receiver to receive any such proposals which may thereafter be evaluated. However, before taking any final decision in the matter, the Court shall be appraised of all the developments in that behalf.

PART-III

RE: STATUS REPORT FILED BY THE ENFORCEMENT DIRECTORATE

Mr. Sanjay Jain, learned Additional Solicitor General appearing for the Enforcement Directorate has submitted Status Report with regard to the investigation in respect of Mr. Prem Mishra and Associated Individuals/Companies/Entities.

The Status Report states that because of COVID-19 Pandemic Situation, some of the Noticees could not participate in the investigation process and, as such, it prays for extension of time by four weeks.

We accept the request and give further time of four weeks to the Enforcement Directorate.

Let the appropriate Status Report be filed on or before the 1st week of January 2021.

The present Status Report shall be re-sealed and kept in sealed cover till further orders.

Since the time for furnishing Status Report regarding Mr. Prem Mishra and Associated Individuals/Companies/Entities has been extended, all the matters concerning Mr. Prem Mishra and Associated Individuals/Companies/Entities stand adjourned to 11.01.2021.

List this matter for further consideration on 11.01.2021.

PART-IV

I.A. Nos.114869 OF 2020 (Vol. Z-321) and 114877 OF 2020 (Vol.Z-326)

These two applications are filed on behalf of the NOIDA Power Company Ltd. ("the Company", for short)

In IA No.114869 (Vol.Z-321), it is submitted that certain dues in respect of Precast Factory are still outstanding. However, the details of those dues are not forthcoming.

IA No.114877 (Vol.Z-326) pertains to various premises/projects of Amrapali Group of Companies situated in Greater NOIDA area.

Mr. Krishnan Venugopal, learned Senior Advocate appearing in support of the applications prays for and is granted a week's time to furnish all the details.

Whatever be the dues recoverable from various Amrapali Group of Companies, the Company shall provide Temporary Electricity Connection to NBCC so that all the construction related works can be undertaken without any difficulty. The NBCC shall be liable to pay for the electricity consumed by them under this temporary arrangement. However, no past dues shall be recovered from NBCC.

The modalities of recovery of past dues shall be considered at the appropriate stage.

PART-V

I.A. No.115285 OF 2020 (Vol.I-151)

This application has been moved on behalf of Mr. Anil Kumar Sharma, Chairman of Amrapali Group of Companies seeking clarification that all FIRs registered with Police Stations of different jurisdictions be transferred to "Economic Offences Wing, Delhi Police".

Since the FIRs have been registered by Ghaziabad/NOIDA/Greater NOIDA Police, let notice be issued to State of Uttar Pradesh, returnable on 18.01.2021.

Liberty is granted to serve the learned Standing Counsel for the State.

PART-VI

I.A. No.113859 OF 2020 (Vol.Z-320)

This application has been filed by Dr. Pradeep Tyagi submitting *inter alia* that he is willing to purchase Promhex Multi-

Speciality Hospital, Greater NOIDA which is being run by Amrapali Group.

In keeping with the directions issued in the earlier part of the order, we permit the applicant to approach learned Court Receiver, who may take appropriate steps in the matter.

PART-VII

PURCHASE OF AMRAPALI CORPORATE TOWER BY MSTC

Mr. Gudipati G. Kashyap, learned Advocate representing MSTC submits that MSTC is interested in purchasing Amrapali Corporate Tower, Sector-62, NOIDA.

MSTC is at liberty to approach learned Receiver and if a proposal is made, learned Receiver shall do the needful in the matter.

PART-VIII

NOTE SUBMITTED BY MR. M.L. LAHOTY, ADVOCATE

A. RECOVERY OF MONEY FROM ROYALGOLF LINK CITY PROJECTS PRIVATE LIMITED (Vol.R-112)

Pursuant to the directions issued on the last occasion, affidavit in response (Vol.R-112) has been filed by M/s. Royalgolf Link City Projects Pvt. Ltd. ("Royalgolf", for short) furnishing certain details. According to the response, in connection with loan of Rs.48.52 crores, Royalgolf had paid interest @ 9% amounting to Rs. Rs.5.95 Crores for the period 2014-15 and 2015-16. Contemporaneously, amount of Rs.65 Lakhs deducted by way of TDS was also deposited with the concerned authority.

Page 115 of the response shows that the liability on part of Royalgolf has been calculated taking into account the interest element @ 12% per annum from 2017 onwards. In terms of said calculation, apart from Rs.48.52 Crores, which is the principal amount and already stands deposited in the Registry of this Court, the interest element amounts to Rs.21.52 Crores in respect of which time has been granted by this Court to Royalgolf upto 31.03.2021.

We have considered the rival submissions and in our view, since the interest element in respect of years 2014-15 and 2015-16 was already paid to M/s. Ultrahome and contemporaneously TDS was also deposited, at this stage, we will restrict the liability of Royalgolf in terms of page 115 of the response (Vol.R-112).

B. RECOVERY FROM SUREKHA FAMILY

Considering the nature of claims as well as the circumstances on record, in our view, assistance of Mr. Pavan Aggarwal, Forensic Auditor will be necessary while considering this issue.

At the request of the learned counsel appearing for Surekha Family, this matter already stands adjourned to 01.12.2020.

We request Mr. Pavan Aggrawal to remain present on the next occasion and assist the Court in resolving this issue.

C. RECOVERY OF Rs.912.72 CRORES FROM DIRECTORS, CFO CHANDER WADHWA & OTHERS

On 16.11.2020, after hearing learned counsel for the parties, following order was passed by this Court:

"At the request of the learned advocate for the concerned persons, time was granted to file responses by 16.11.2020.

Mr. Lahoty submits that no response has been filed.

Mr. Manoj Singh, learned Advocate submits that he was indisposed and could not file any response. He prays for and is granted two days time to file the response.

Mr. Abhigya Kushwaha, learned advocate is also granted time of two days to file response.

If no reply is filed, it shall be taken that the concerned parties have nothing to say in the matter.

List for further consideration on 23.11.2020 as directed earlier."

The matter concerning Mr. Anil Kumar Sharma, Chairman of Amrapali Group of Companies is taken up.

Mr. Manoj Singh, learned counsel invites our attention to the Response (Vol.A-64) filed on behalf of Mr. Anil Kr. Sharma as well as the Objections (Vol.R-117) to the Note submitted by Mr. M.L. Lahoty, Advocate.

We have perused both the responses and do not find any particulars in support of the assertions made in the responses. However, instead of arriving at any conclusion, we direct that the matter regarding Mr. Anil Kr. Sharma and related individuals be considered in the following manner:

- (a) Copies of the Response (Vol.A-64) and the Objections (Vol.R-117) shall be forwarded to the learned Receiver;
- (b) Mr. Anil Kr. Sharma and related persons are entitled to put in additional responses, if any, within three days from today. If no response is filed within three days, it shall be deemed that no additional response is desired to be filed;

- (c) Learned Receiver assisted by the Forensic Auditors may grant personal hearing to Mr. Anil Kr. Sharma, related persons or their representatives on such date as the Receiver deems it appropriate;
- (d) In case the personal presence of Mr. Anil Kr. Sharma is considered necessary, learned Receiver is at liberty to make appropriate request on the next date of hearing to facilitate the presence and participation of said Mr. Anil Kumar Sharma;
- (e) After considering the responses on record or to be submitted hereafter, learned Receiver may make a Preliminary Report for the benefit of the Court whereafter the matter shall be finally considered by the Court.

PART-IX

I.A. Nos.183658, 183660 & 183661 OF 2019 (Vol.Z-247)

Mr. Gaurav Goel, learned Advocate representing Mr. Ajay Kumar submits that he be given liberty to circulate copies of his responses to the learned Receiver. Liberty granted.

Mr. Ajay Kumar shall also have three more days to submit additional responses, if any, on the terms indicated above.

PART-X

RELEASE OF PAYMENT TO THE FORENSIC AUDITORS

Learned Receiver submits that the Forensic Auditors have not been paid any remuneration since February 2020.

In the circumstances, by way of *ad hoc* arrangement, we direct release of Rs.5,00,000/- (Rupees Five Lakhs Only) to each of the Forensic Auditors.

Let the money be transmitted into the accounts of the Forensic Auditors within three days from today from Account No.02070210003121, UCO Bank, Supreme Court Branch.

PART-XI

All the remaining Interlocutory Applications are adjourned for two weeks.

(INDU MARWAH)
COURT MASTER

(MUKESH NASA)
COURT MASTER

(PRADEEP KUMAR)
BRANCH OFFICER