

ITEM NO.303

COURT NO.4
(HEARING THROUGH VIDEO CONFERENCING)

SECTION X

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) Mr. Prem Mishra of Indore and Surekha family, (II) the Directors/CFO Chander Wadhwa and others; (iii) Royal Golf Link City Project Pvt. Ltd. and (iv) ACE Infracity Developers Pvt. Ltd.; IA No.67992/2020 - FOR APPLICATION FOR PERMISSION; IA No.74385/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.50370/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.94047/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.90985/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.1023/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.95273/2018 - FOR CLARIFICATION/DIRECTION; IA No.180011/2019 - FOR CLARIFICATION/DIRECTION; IA No.89379/2020 - FOR CLARIFICATION/DIRECTION; IA No.114496/2019 - FOR CLARIFICATION/DIRECTION; IA No.189314/2019 - FOR COMPLIANCE OF COURTS ORDER; IA No.94049/2020 - FOR EXEMPTION FROM FILING AFFIDAVIT; IA No.89380/2020 - FOR EXEMPTION FROM FILING O.T.; IA No.15119/2020 - FOR EXTENSION OF TIME; IA No.8259/2019 - FOR INTERVENTION APPLICATION; IA No.114490/2019 - FOR INTERVENTION APPLICATION; IA No.3573/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.182673/2019 - FOR MODIFICATION; IA No.182079/2019 - FOR MODIFICATION; IA No.182077/2019 - FOR MODIFICATION; IA No.77651/2020 - FOR MODIFICATION OF COURT ORDER; IA No.60700/2020 - FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES; IA No.127793/2019 - FOR RECALLING THE COURTS ORDER; and, IA No.127787/2019 - FOR RECALLING THE COURTS 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)

MA No.1107/2020 in W.P.(C) No.866/2018 (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)

Date : 02-11-2020 These matters were called on for hearing today.

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HON'BLE MR. JUSTICE ASHOK BHUSHAN

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

PART-I

ENGAGEMENT OF NBCC IN SALE OF UNSOLD INVENTORIES AND FARs

While considering this matter under Part-III(B) of our order dated 29.10.2020, we had recorded that the Revised Timelines for sale of unsold inventories and FARs by NBCC would be placed on record by the learned Receiver.

Accordingly, the learned Receiver has submitted Draft Scheme for Sale of Unsold Inventories (Amrapali Projects) by NBCC. Under the caption "Strategy for Sale", the information provided in tabulated form is as under:

STRATEGY FOR SALE

SALE OF READY TO MOVE IN FLATS (refer Annexure-A):

| NOIDA | |
|--------------------------------|---------------------|
| Schedule of Sale Launch | No. of Flats |
| December-20 | 23 |
| March-21 | 25 |
| Total | 48 |

| GR. NOIDA | |
|--------------------------------|---------------------|
| Schedule of Sale Launch | No. of Flats |
| March-21 | 04 |
| Total | 04 |

For ready to move-in flats, 20% amount to be paid at the time of booking and balance amount will be paid at the time of possession i.e. with in 3 months from the date of booking.

The flat will be handed over within 03 months of booking.

SALE OF CONSTRUCTION LINKED FLATS: (refer Annexure-B)

| NOIDA | |
|--------------------------------|---------------------|
| Schedule of Sale Launch | No. of Flats |
| December-20 | 03 |
| March-21 | 03 |
| June-21 | 03 |
| September-21 | 01 |
| December-21 | 13 |
| March-22 | 110 |
| June-22 | 166 |
| September-22 | 346 |
| Total | 645 |

For construction linked flats, 20% amount to be paid at the time of booking and balance amount will be paid in 3 installments in 3 upcoming quarters at the rate of 30%, 35% and 15% respectively.

The flat will be handed over within 12 months of booking.

GR. NOIDA

| Schedule of Sale Launch | No. of Flats |
|--------------------------------|---------------------|
| December-20 | 03 |
| March-21 | 09 |
| June-21 | 60 |
| September-21 | 07 |
| December-21 | 370 |
| March-22 | 614 |
| June-22 | 785 |
| September-22 | 54 |
| December-22 | 2623 |
| Total | 4525 |

For construction linked flats, 20% amount to be paid at the time of booking and balance amount will be paid in 3 installments in 3 upcoming quarters at the rate of 30%, 35% and 15% respectively.

The flat will be handed over within 12 months of booking.

It is submitted that the unsold inventories referred to in the Draft Scheme are in consonance with the Report of the Forensic Auditors.

We accept the Draft Scheme and permit the NBCC to go ahead and take appropriate steps in terms of the Draft Scheme. We may, however, observe that the Timelines indicated therein are the outer limits and we hope that the NBCC will be able to discharge all the obligations ahead of the Schedule.

PART-II

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

1. RECOVERY OF MONEY FROM ROYALGOLF LINK CITY PROJECTS PVT. LTD.

I.A. No.99854 of 2020 (Vol. No.I-145)

In view of the directions issued in Part-IV of our order dated 29.10.2020, Mr. M.L. Lahoty, learned Advocate submits that the information in support of his submission that the interest element ought to be Rs.32.29 Crores and not Rs.21.52 Crores, shall be furnished within three days from today.

Learned counsel for the applicant will respond to the submission of Mr. Lahoty within next three days.

This matter shall be taken up for further consideration on 16.11.2020.

2. RECOVERY OF Rs.7.23 CRORES FROM ACE INFRACITY DEVELOPERS PVT. LTD.

Mr. M.L. Lahoty, learned Advocate, submits that Rs.7.23 Crores are due from ACE Infracity Developers Pvt. Ltd. ("the Company", for short).

Mr. Keshav Mohan, learned Advocate appearing for the Company has submitted a Note accepting that balance amount payable by the Company was in the sum of Rs.7,21,21,097/-. It is further submitted that a Memorandum of Settlement was arrived at on 14.11.2017 and a sum of Rs.5,00,00,000/- from and out of the aforesaid sum stood adjusted against four apartments, details of which are given in the Note.

Mr. Keshav Mohan, learned Advocate however submitted that his clients shall deposit Rs.7,21,21,097/- in the Registry of this Court in the following manner:

- I) Rs.2,21,21,097/- shall be deposited on or before 06.11.2020; and
- II) The balance sum of Rs.5,00,00,000/- shall be deposited on or before 31.12.2020.

The submission of Mr. Keshav Mohan, learned Advocate regarding deposit of the aforestated amount in installments is accepted. Insofar as the issues arising from the Settlement referred to above are concerned, the same will be considered after the deposit is made.

List the matter for further consideration in the first sitting in January 2021.

3. RECOVERIES FROM MR. PREM MISHRA (INDORE)

The relevant assertions made in the Note of Mr. M.L. Lahoty, learned Advocate, are reproduced as under:

- "i. The Supplementary Report-II of the Forensic Audit (Pages 2961-2978) reveals misdeeds and misappropriation of Crores of Rupees by Prem Mishra who even during the pendency of proceedings before this Hon'ble Court has continued to sell the Plots and received huge payment. According to the Report, the Companies were created for diversion of funds from NOIDA Projects and therefore the unsold inventory as also the Bank accounts need to be attached by this Hon'ble Court and necessary recoveries be directed. The Projects indicated in the Report are as under:
- ii. Amrapali Homes Project Private Limited: The first Project namely, Amrapali House Modern City Projects in Mhow (District Indore) was launched by Anil Kumar Sharma and Shiv Priya in partnership with Prem Mishra with Mahendra Singh Dhoni as Brand Ambassador. According to the Report, a total area of 49,500 sq. ft. was allotted to the family members of Prem Mishra without receipt of any funds. Further, units admeasuring 1,295 sq. ft. units with Registry Value of Rs.84.55 Crores (approx.) were sold and 302 plots were mortgaged to the Government. That apart there are unsold units admeasuring total area of 15,77,870 sq. ft.
- iii. Nipunj Infrastructure Private Limited: The Project Maa Vindhya wasini Township is situated in Gram Bhaktkedi (District Indore) and was launched as Amrapali Group Project with Mahendra Singh Dhoni as brand Ambassador. There are total 138 plots out of which 97 plots are sold and 41 plots are unsold. This company has also mortgaged five residential cum commercial plots to the Government.

- iv. Vindhyawasini Developers (India) Pvt. Ltd.: The Project Maa Vindhyawasini Township at Manawar (District Indore) was launched as Amrapali Group Project with Mahendra Singh Dhoni as Brand Ambassador and out of a total of 266 plots, 131 plots were sold and 135 plots are unsold. Further the company has also mortgaged 102 plots to the Municipal Corporation Manawar.
- v. Maa Vindhyawasini Dream City: This Project was also launched as Amrapali Group Project with Mahendra Singh Dhoni as Brand Ambassador at Ratlam. There are a total of 1,192 plots out of which 263 plots are sold while 929 plots remain unsold. That apart 265 plots have been mortgaged to the Government.
- vi. Mishra & Mishra Realty Pvt. Ltd. - As per the Report, no details have been made available of this Project to the forensic Auditors, though there are Two Directors and Promotor Shreholders having equal percentage of shares namely, (i) Prem Mishra, and (ii) Mayank Mishra.
- vii. So far as Prem Mishra is concerned, this Hon'ble Court has already recorded that an amount of Rs.10 Crores is recoverable from him. (Judgment pages 87 & 193 as also the Supplementary Forensic Audit Report page 2966)."

Mr. Manoj Singh, learned Advocate submits that he is representing Amrapali Homes Project Pvt. Ltd. while entities listed at Serial No.(iii), (iv), (v) and (vi) are being represented by Mr. Prashant Shukla, learned Advocate.

Mr. P. Narasimha, learned Senior Advocate instructed by Mr. Prashant Shukla, learned Advocate-on-Record, appearing for Prem Mishra submits that some of the issues have already been investigated by the Enforcement Directorate.

An appropriate response in a sealed cover shall be filed by the Enforcement Directorate before the next date of hearing. Let intimation in that behalf be sent to the learned Advocate instructing Mr. Sanjay Jain, learned ASG, who has appeared in these matters for the Enforcement Directorate.

We have been apprised that the objections to the observations made by the Forensic Auditors in their Report dated 23.07.2019 and Supplementary Report dated 10.10.2019 have also been placed on record (Vol. No.R-86).

If any objections, in addition to those already preferred, are to be raised, the parties are at liberty to do so.

Let the objections be placed on record on or before 16.11.2020, with advance copies to the learned Receiver and Mr. M.L. Lahoty, Advocate.

This issue will be taken up for consideration on 23.11.2020.

4. RECOVERY OF Rs.760.05 CRORES FROM SUREKHA FAMILY

At the request of Dr. Abhishek Manu Singhvi, learned Senior Advocate representing Surekha Family, this matter is adjourned to 16.11.2020.

5. RECOVERY OF Rs.912.72 CRORES FROM DIRECTORS, CFO CHANDER WADHWA AND OTHERS

Mr. V. Shekhar, learned Senior Advocate instructed by Mr. Abhigya Kushwah, learned Advocate-on-Record, representing Mr. Chander Wadhwa, CFO; and Mr. Manoj Singh, learned Advocate representing Amrapali Group, pray for short time to respond to the Note of Mr. M.L. Lahoty, learned Advocate.

Let a copy of the Note be served upon Mr. Abhigya Kushwah, Advocate; Mr. Manoj Singh, Advocate and upon the learned Advocate instructing Mr. Sanjay Jain, learned ASG, on behalf of the Enforcement Directorate, by 04.11.2020.

Let the responses, if any, be filed on or before 16.11.2020.

List this matter for further consideration on 23.11.2020.

6. RECOVERY OF LEASE/RENTAL AMOUNT FROM ATTACHED PROPERTIES

Mr. M.L. Lahoty, learned Advocate, in his Note, has highlighted certain properties belonging to Amrapali Group which are in the possession of the lessees under arrangements entered into with Amrapali Group.

It is submitted that since the properties are of Amrapali Group, the lease rentals in respect of those properties must be available for the benefit of the Home-buyers. The details of those properties are as under:

"I. Vaishnavi Clarks Inn
Near R.R. Buxi Road, Chowk Road,
Shivganga Muhalla, Deoghar, Jharkhand

Vaishnavi Vahini Mount Life Hospitality Pvt. Ltd.
Dr. B. Bhattacharya Road, Patel Nagar, BSEB
Colony, Patna (Bihar)

Vaishnavi Vahini Mount Life Hospitality Pvt. Ltd./Vaishnavi Clarks Inn is attached as Category-B Property vide page 162 of the Judgment.

II. Commercial Spaces, Ghaziabad

a. Plot No.1/3, Hall No.2, First Floor, Amrapali Green, Indirapuram, Ghaziabad.

b. Plot No.1/3, Hall No.1, Vaibhav Khand, Indirapuram, Ghaziabad.

c. Shop No.17 & 18, Amrapali Village, Makanpur, Ghaziabad.

The said properties are attached with Vide Order dated 28.02.2019. Bank of Maharashtra and Indian Overseas Bank are operational at Plot No.1/3, Amrapali Greens, Indirapuram, Ghaziabad, whereas Shop 17 & 18 are being utilized as rented godown for a supermarket store.

III. Amrapali Hospital Greater Noida.

As per DRT Compliance Report dated 26.06.2020, the management has a due of Rs.11.5 lakhs for the rent of March and April 2020 and another six months rent of Rs.54 lakhs is payable. Therefore, the total rent to be deposited by the Management is Rs.65.5 Lakhs."

We, therefore, issue notices to

(1) Vaishnavi Clarks Inn, Near R.R. Buxi Road, Chowk Road, Shivganga Muhalla, Deoghar, Jharkhand;

- (2) Vaishnavi Vahini Mount Life Hospitality Pvt. Ltd., Dr. B. Bhattacharya Road, Patel Nagar, BSEB Colony, Patna (Bihar);
- (3) Bank of Maharashtra, Plot No.1/3, Hall No.2, First Floor, Amrapali Green, Indirapuram, Ghaziabad;
- (4) Indian Overseas Bankm Plot No.1/3, Hall No.1, Vaibhav Khand, Indirapuram, Ghaziabad;
- (5) The lessee in occupation of Shop Nos.17 and 18, Amrapali Village, Makanpur, Ghaziabad; and
- (6) Amrapali Hospital, Greater Noida, Uttar Prdesh.

- and call upon them to furnish complete details as to the arrangements under which they continue to be in occupation as lessees/tenants and full details of the accounts regarding lease rentals paid or payable by them.

Let the notices be made returnable on 16.11.2020.

Mr. Manoj Singh, learned Advocate accepts notice on behalf of the Amrapali Hospital and shall furnish all details within seven days from today.

PART-III

I.A. No.109596 OF 2020 (Vol. No.Z-301)

This Interlocutory Application has been filed by 23 applicants who had booked "Convenience Shops or Spaces" in Amrapali Centurian Park. It is submitted that those units be excluded from the unsold inventories which will be put up for auction.

We have heard Mr. P.N. Mishra, learned Senior Advocate for the applicants.

Issue notice, returnable on 16.11.2020.

Let a copy of this application be served upon the learned Receiver and Mr. M.L. Lahoty, learned Advocate.

PART-IV

I.A. Nos.111515 AND 111339 OF 2020 (Vol. Nos.Z-312 & Z-313)

Let a copy of this Interlocutory Application be served upon Mr. Manoj Singh, learned Advocate representing Amrapali Group. He prays for and is granted a week's time to respond to the Interlocutory Application.

List this matter on 23.11.2020.

PART-V

M.A. No.1107 OF 2020 IN W.P. (C) No.866 OF 2018

Mr. Krishnan Venugopal, learned Senior Advocate, instructed by Mr. Vishal Gupta, learned Advocate-on-Record, appearing for the NOIDA Power Company Limited ("the Power Company", for short) submits that Amrapali Leisure Valley Villas Coordination Committee representing the occupants of 213 Villas entered into an agreement with the Power Company in terms of which dues up to May 2019 were to be paid by individual Villa occupants in terms of an agreed formula and

dues post 2019 were to be paid in actuals by each of those occupants. Additionally, Rs.47000/- towards proportionate infrastructure costs were also to be borne by the occupants.

Mr. Venugopal submits that the dues in respect of period up to May 2019 amount to Rs.47 Lakhs and post May 2019, the dues aggregate to Rs.42 lakhs or thereabout.

Mr. Venugopal submits that the occupants be directed to make the appropriate payments.

If the *inter se* rights and obligations between the parties stand governed by an agreement as stated above and if there be any violation or non-observance of the terms of such Agreement, the Power Company is entitled to take such actions as are open to it in accordance with law.

With the aforesaid observations, this Miscellaneous Application is disposed of.

PART-VI

I.A. No.110167 OF 2020 IN W.P. (C) No.942 OF 2017

This application prays for following principal reliefs:

"I. Pass an order directing the Respondent builder herein to ensure handing over of the possession of 26 flats of the same area in the same project, as were originally agreed between the Respondent Builder and the Applicant in lieu of the 26 flats in Tower G-1, which was never sanctioned to be constructed;

II. In the alternate, pass an order directing the Respondent builder to issue refund of the amount paid by the applicant amounting to approximately Rs.6.60 Cr. for acquiring the 26 flats along with interest @ 18% per annum till realization."

The application states that about 26 Apartments were booked by the applicants with M/s. Moon Buildtech Private Limited in the project named Amrapali Silicon City. The application adverts to the steps taken by the applicants by filing a Claim before the National Company Law Tribunal and the fact that the Claim was admitted by the Insolvency Resolution Professional (IRP).

Since the steps have already been taken by the applicants, we see no reason to interfere in the matter. This application is, therefore, rejected.

However, the applicants are at liberty to take appropriate proceedings in accordance with law.

PART-VII

I.A. No.110188 OF 2020 (Vol. No.Z-310)

Let a copy of this Interlocutory Application be served upon the learned Receiver, who may respond before the next date of hearing.

List this application for further consideration on 23.11.2020.

PART-VIII

I.A. No.77651 of 2020 (Vol. No.I-134)

As per Office Report, an amount of Rs.35 Crores has been deposited on behalf of the applicant, M/s. Mahagun Real Estate Pvt. Ltd., in the Registry of this Court in accordance with directions issued by this Court in its order dated 07.09.2020.

PART-IX

I.A. No.191096/2019 (Vol. No.I-104); I.A. No.141201/2019 (Vol. No.Z-226); I.A. No.109438 OF 2020 (Vol. No.Z-300); I.A. No.111424 OF 2020 (Vol. No.Z-314); I.A. No.111393 OF 2020 (Vol.No.Z-315); and, I.A. No.111314 OF 2020 (Vol. No.Z-317).

List these Interlocutory Applications on 16.11.2020.

(MUKESH NASA)
COURT MASTER

(PRADEEP KUMAR)
BRANCH OFFICER