

APPEARANCE CORRECTED*

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
R E C O R D O F P R O C E E D I N G S

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 : 29-10-2020 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

I.A. No.109438 OF 2020 IN W.P. (Civil) No.940 of 2017

This Interlocutory Application has been moved on behalf of Mr. Krishan Kumar Sharma and others.

Mr. Anuj Bhandari, learned Advocate for the applicants submits that they had booked plots in the Hi-Tech City, Jaipur and those plots were subject matter of e-Auction Sale Notice dated 02.04.2019 issued by the Registrar, Debt Recovery Tribunal-III, Delhi. He, therefore, prays that said e-Auction Sale Notice dated 02.04.2019 be set-aside.

It may be mentioned that going by the records submitted by Amrapali Group of Companies about certain unsold properties or inventories, the matter concerning Sangam Colonizers Private Limited was gone into by the Forensic Auditors in Volume-II of their Report and at page 307, it was observed that said Company had

not provided complete database reflecting number of plots, names of buyers, amounts received and amounts outstanding. Based on the Report of the Forensic Auditors, this Court in its order dated 23.07.2019 (at page 163-164) had dealt with the inventories pertaining to Sangam Colonizers Private Limited.

We issue Notice on this Interlocutory Application, returnable on 16.11.2020.

The Learned Receiver may seek instructions from the Forensic Auditors and present his views before the next date of hearing.

Pending further consideration, the Plots Nos.162, 168 and 258 of Hi-Tech City, Jaipur shall not be auctioned.

PART - II

LA-RESIDENTIA PROJECT

Mr. Gopal Sankaranaryanan, learned Senior Advocate submits that La-Residentia Project stands on footing similar to Heart Beat-1 and Heart Beart-2 Projects; that La-Residentia Project must be considered to be one of the Amrapali Projects; and that the assets of La-Residentia be considered to be the assets of Amrapali Group of Companies and dealt with accordingly.

He submits that the matter was considered by this Court in its order dated 14.10.2019 whereafter I.A. No.109882 of 2020 has been filed highlighting the factual situation. He also relies upon the reply filed by the concerned Company.

Mr. M.L. Lahoti, learned Advocate, in turn submits that I.A. No.168186 of 2018 claiming similar relief is also pending consideration of this Court.

At this stage, Mr. Rakesh Kumar Khanna, learned Senior Advocate submits that I.A. No.153341 of 2019 pertains to same issue and, as such, said application be considered with above applications.

The issue whether the project La-Residentia is an Amrapali Project or not will therefore be gone into on 16.11.2020.

I.A. No.109882 of 2020, I.A. No.168186 of 2018 and I.A. No.153341 of 2019 shall be taken up for consideration on that day. The reply filed by the concerned Company shall also be gone into.

PART - III

NOTE SUBMITTED BY THE COURT RECEIVER

Mr. R. Venkataramani, learned Receiver in his Note has dealt with following issues.

A. FOLLOW UP ACTION REGARDING BANK FUNDING

It is stated that in a meeting organized by the Reserve Bank of India with Member Banks of the Indian Banks Association that took place on 28th October 2020, a detailed Project Profile was presented. It is further stated that the Meeting concluded on the Note that before the next date of hearing, a tentative set of proposals would be made available to the Receiver and that the Banks would take appropriate decisions. The Note states that after exchange of necessary information and data, the progress towards

Bank funding will be shared with the Court before the next date of hearing.

B. ENGAGEMENT OF NBCC IN SALE OF UNSOLD INVENTORIES AND FARs

The list of unsold inventories has been placed on record through Annexures A & A-1. The Note prepared by the NBCC for engagement of its services for effecting sale of unsold inventories and FARs is also enclosed. The Timelines indicated in Annexure-B contemplate that sale of inventories will be completed by January 2023.

The learned Receiver agrees that these Timelines need modulation and a finalized version will be placed for consideration of the Court before 16.11.2020. Insofar as the unsold inventories mentioned in Annexures-A & A1 are concerned, they co-relate with the findings and conclusions arrived at in the Reports of the Forensic Auditors.

We, therefore, grant requisite permission to the NBCC to effectuate sale of unsold inventories and FARs mentioned in Annexure-A & A1 under the supervision of the learned Receiver.

However, as ordered above in I.A. No.109438 OF 2020 IN W.P. (Civil) No.940 of 2017, Plots Nos.162, 168 and 258 of Hi-Tech City, Jaipur shall not be auctioned.

C. FORMATION OF A COMPANY UNDER SECTION 8 OF THE COMPANIES ACT

It is stated that the Receiver and the Committee will soon be approaching the Registrar of Companies for registration of the Company and the developments in that behalf may be placed for perusal of the Court before the next date of hearing.

D. CONCERNING ACTION PLAN FOR SALE OF ASSETS BY MSTC

The Receiver prays that permission be granted to place the Revised Schedule of e-Auction and Valuation before the next date of hearing.

The Note also states that the MSTC has advertised four properties for auction which is scheduled to be held on 31st October 2020 and that the outcome of the e-Auction proceedings will also be placed for consideration of this Court on the next date of hearing.

The permission as sought for is granted.

This issue will be considered on 16.11.2020.

E. OUTSTANDING ISSUES REGARDING HOME LOANS

As observed in the order dated 13.10.2020, standard Memorandum of Understanding has been exchanged with the concerned Banks and Financial Institutions. The Note suggests that the entire exercise will be completed in November 2020.

Let the development in the matter be placed on record soon after the exercise is over.

F. SUBVENTION LOAN ISSUE

The learned Receiver in his Note has set-out paragraphs 2, 3 and 10 of the Memorandum of Understanding entered into with Amrapali Group of Companies to extend the facility of Subvention Loan.

It is suggested that on account of defaults committed by Amrapali Group of Companies, the home-buyers should not be put to prejudice and, therefore, appropriate directions be issued for restructure of the entire arrangement. It is further suggested that all pending proceedings initiated by the Banks in any Forum against the home-buyers should not be allowed to be pursued further.

The relevant portion of the Note is as under:

2) Amrapali launched their subvention scheme with a view to persuade banks to sanction loans upfront, namely to the extent of 70-90% of sale value of units. In case of subvention agreements, the value of units were considerably higher in comparison with units of the same area or category. Large number of home buyers entered into Memorandum of Understanding with Amrapali for the purpose of grant of said loans. Home buyers entered into such agreements lured by the assurances in the MOU, as set out in paras 2, 4 & 10 of the MOU.

"2. That in consideration of price agreed to be paid by the buyer, the company has agreed to allot the above said flat at total price of Rs 3,500/- per Sq Ft in the said project under "No Pre EMI till 36 months or till the date of intimation of possession whichever is earlier" scheme. The said price is exclusive of all applicable taxes. It is hereby agreed by the buyer that they will execute the booking form, flat buyer agreement and other documents as may be necessary to effectuate the said booking.

4. That the tenure of this subvention scheme, as approved by concerned bank/financial institution is 36 months. The developer expects to offer possession of the booked unit to the buyer by that time. However if due to any reason, the possession offer of the booked units gets delayed, then the developer undertakes to pay the EMI only to the buyer even after 36 months. The payment of EMI shall continue till offer of possession with regard to the booked flat is issued to the buyer.

10. That the Company hereby agrees to pay Pre-EMI installment/interest directly to the bank through customer loan savings account against mortgaged flat of customer from the date when this Pre EMI installment first becomes due till the date of ending of this scheme. The Company further agrees that if it fails to pay any of the due Pre EMI installments on time, it shall pay the interest/penalty levied upon it along with due Pre EMI installments. After ending of this scheme, it shall be the liability of the customer to make the timely payments of its installments (principal amount + interest) directly to the bank/financial institution and if it defaults in making payment of installment, the company shall have the right to forfeit its earnest money along with interest from the disbursed amount and refund the remaining amount directly to the bank/financial institution may thereafter take recourse against the buyer for recover of remaining amount."

3) Banks be directed to complete all loan disbursement cases before 30th November 2020 to facilitate further planning by the receiver.

4) However contrary to the above said condition Amrapali defaulted heavily in the discharge of this obligation after March-May 2017. Neither construction commenced in these projects and Amrapali did not make any arrangements regarding payment of EMI obligation.

5) In all such cases of subvention agreements, proceedings were initiated by banks against home buyers before DRT. Since the nonpayment of EMI obligation by Amrapali was considered and treated by banks as home buyer's defaults (wrongly), the CIBIL score of home buyer also got eroded. As a result their ability to secure loan further has been adversely affected.

6) It is submitted that the upfront disbursement by banks under subvention schemes were in contravention of several advisories and circulars issued by RBI.

7) In the meanwhile large number of home buyers started paying the EMIs, which Amrapali should have paid. These are home buyers whose units till recently were yet to be brought into the construction schedule.

8) In the above circumstances, since home buyers were under no obligation to pay any EMI till the completion of the project in question and the liability of the home buyer commences only after the completion of the projects, demands made by banks to home buyers to

discharge the Amrapali obligations was not proper. During the last 3 years or more, ever since Amrapali defaulted under subvention scheme amounts paid by the home buyer were not actually due from them.

9) It is suggested that the amounts paid by home buyer during the default period be adjusted by banks suitably towards the principal amount sanctioned by the banks and the interest penalty levied or calculated by banks during the Amrapali period, shall not be treated as the liability of buyers.

10) All proceedings pending against home buyers, initiated by banks before any forum, shall not be pursued and the CIBIL score of home buyers shall not be affected by reason of any of the proceedings initiated by banks against home buyers."

Before we take any decision in the matter, we issue Notices to (i) Bank of Maharashtra, (ii) Union Bank (erstwhile Corporation Bank and Andhra Bank, which have since then merged in the Union Bank), and (iii) Canara Bank, which had extended the concerned facility and entered into Subvention Agreements.

The concerned Banks may file their objections and/or submissions before 16.11.2020 so that the Subvention Loan issue can be taken up for consideration.

G. HEART BEAT-1 AND HEART BEAT-2 PROJECTS

The learned Receiver has suggested that the Receiver and the Committee be permitted to go ahead with the Tender Proposals of NBCC for Heart Beart-1 and Heart Beat-2 Projects and that there is no need to pursue the matter any further with Engineering Projects (India) Ltd. The learned Receiver has also submitted:-

"4. As regards some issues in regard to the extent of area for club house or the link Road required for Hear Beat Projects, NBCC may proceed to take final technical views and necessary sanctions may also be issued by Greater Noida Authority."

We accept the suggestion. Let the technical views and necessary sanctions be obtained and the progress in that behalf be placed on record for our consideration.

PART - IV

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

By order dated 10.06.2020, this Court had recorded that a sum of Rs.48.52 Crores was received from the Royalgolf Link City Projects Pvt. Ltd. (hereinafter referred to as "the Company") and that the Company was required to pay interest @ 12% per annum.

This Interlocutory Application has been filed on behalf of the Company and statement at page no.109 indicates that the interest liability according to the Company is to the tune of 21.52 Crores.

Mr. Saurabh Mishra, learned counsel appearing for the Company invited our attention to the "Expression of Interest" on the part of the RDB Reality & Infrastructure Limited in its communication dated 20.07.2020 which has expressed the willingness to buy 23 Villas out of 30 Villas at the rate of Rs.1,08,69,566/- per Villa.

It is, therefore, prayed that the injunction in respect of 23 Villas out of 30 Villas be lifted and the Company be allowed to enter into transaction with RDB Reality & Infrastructure Limited in respect of 23 Villas, the proceeds of which "shall be exclusively utilized to pay the interest of Rs.21.52 crores with the Registry of this Hon'ble Court".

The prayer made by the Company is accepted, subject to following conditions:

- a. The entire transaction be completed on or before 31.03.2021;
- b. The entire proceedings shall be deposited in the Registry of this Court till the amount towards "Interest" liability is discharged; and
- c. 23 Villas will be permitted to be transferred only after the entire amount of interest is received in the Registry of this Court.

According to Mr. M.L. Lahoty, learned Advocate, the interest element ought to be Rs.32.29 Crores and not Rs.21.52 Crores, as suggested by the Company.

Mr. Lahoty is at liberty to place on record relevant documents and material to support his submission.

The matter in that behalf shall be considered on 16.11.2020.

PART - V

Mr. Lahoty was on his legs when the Court rose for the day.

For further hearing, list these matters on 02.11.2020 at 2.00 p.m.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER