

ITEM NO.301

COURT NO.7

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)

(With appln.(s) for directions, exemption from filing O.T.,
permission to assess the portal facility, intervention/
impleadment, vacating stay and modification/clarification)

WITH

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

(With appln.(s) for directions & modification/clarification)

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

(With appln.(s) for appropriate orders/directions, clarification,
intervention/impleadment and appln. on behalf of R.13 seeking
permission to pursue company appln.No.17 (P.B.) of 2018)

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

(With appln.(s) for directions)

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

(With appln.(s) for directions, further directions and for
permission to file addl. documents)

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

(With appln.(s) for directions)

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

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

(With appln.(s) for directions)

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

(With appln.(s) for clarification/direction, intervention/
impleadment)

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

(With appln.(s) for directions)

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

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

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

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

W.P.(C) No.52/2018 (X)
(With appln.(s) for directions)

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

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

W.P.(C) No.57/2018 (X)
(With appln.(s) for clarification/directions)

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

W.P.(C) No.134/2018 (X)
(With appln.(s) for permission to file addl. documents)

W.P.(C) No.131/2018 (X)
(With appln.(s) for stay/directions)

W.P.(C) No.160/2018 (X)
(With appln.(s) for permission to file subsequent events on record)

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

W.P.(C) No.182/2018 (X)
(With appln.(s) for directions)

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

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

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

W.P.(C) No.281/2018 (X)
(With appln.(s) for stay)

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

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

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

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

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

W.P.(C) No.353/2018 (X)
(With appln.(s) for stay)

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

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

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

W.P.(C)No.829/2018 (X)
(With appln. for grant of interim relief)

W.P.(C)No.866/2018 (X)
(with appln. for exemption from filing O.T.)

Date : 26-10-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

Mr. Pawanshree Agrawal, Adv. (A.C.)

For appearing parties :

Amrapali Group

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Mr. Dhruv Mehta, Sr. Adv.
Mr. Alok Kr. Agarwal, Adv.
Mr. Gaurav Bhatia, AOR
Mr. Gaurav Goel, AOR
Mr. Apoorv Rastogi, Adv.
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Mr. Altanish Siddiki, Adv.
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Mr. Karan Nagrath, Adv.

Dr. Abhishek Manu Singhvi, Sr. Adv.
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Mr. Amboj Sinha, Adv.
Mr. Dhruv Gandhi, Adv.

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Mr. Mohit Paul, Adv.

Ms. V. Mohana, Sr. Adv.
 Mr. S.S. Shamsbery, Adv.
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 Mr. Anchit Sripat, Adv.
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Mr. M.L. Lahoty, Adv.
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 Ms. Anupama Sharma, Adv.
 Ms. Rangoli Seth, Adv.
 Mr. Devesh Dubey, Adv.

Bank of Baroda

Mr. Bishwajit Dubey, Adv.
 Ms. Srideepa Bhattacharyya, Adv.
 Mr. Aditya Marwah, Adv.
 Mr. Manpreet Lamba, Adv.
 For M/s. Cyril Amarchand Mangaldas, AOR

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 Mr. Rajiv Kumar Virmani, Adv.
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Mr. Shovan Mishra, AOR
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Mr. Gopal Jha, AOR
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Mr. A.P. Mohanty, AOR

Mr. Abdul Azeem Kalebudde, AOR
 Mr. Kumar Mihir, AOR
 Mr. Ashok Kumar Singh, AOR
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WP(C)164

In-person

WP(C)267

In-person

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Mr. Kapil Kaushik, Adv.

Mr. Abhijit Sen Gupta, Adv.
Mr. Dibyadyuti Banerjee, Adv.
Ms. J. Priyadarshini, Adv.

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

1. The Forensic Auditors have submitted interim report. It has been pointed out by M/s. Bhatia & Bhatia in the report that telly data for 23 companies allocated to M/s. Bhatia's firm has been received. However, it has been pointed out that the list of companies reserves and surplus figure as appearing in the tally data does not reconcile with the reserves and surplus as appearing in the last signed financials. This is still to be clarified from the company officials/statutory auditors, namely, Mr. Anil Mittal, CA of Anil Ajay & Co. The difference has also been pointed out in the tabular form. Major objections indicate that there are several advances, investments, utilizations, advances made to suppliers and payments made to Anil Sharma and Shiv Priya, the Directors of the Company, of professional charges, etc., as detailed out in paragraph 5, are required to be verified including the refund that has been made in excess to certain incumbents.

2. Shri Pavan K. Aggarwal, Chartered Accountant (Forensic Auditor), in the section of the report has also pointed out that there is mismatch in tally data with the accounts. Even after repeated reminders, groupings have not been supplied. Grouping is a process between the stage of Trial Balance, Balance Sheet and Profit & Loss Accounts. All files have not been handed over and yesterday Shri Anil Mittal, statutory auditor, has sent

one file late in the evening. That in our opinion amounts to detaining the file in contravention of the order passed by this Court. However, it is assured by Shri Anil Mittal, C.A. and Ms. Sonia Mathur, learned senior counsel appearing for M/s. S.N. Dhawan & Co., C.A. and Mr. Ravi Kapoor, C.A., that whatever files and documents are there in their possession on the basis of which they have done the audit, shall be handed over within three days from today. We request the police to collect the documents from these auditors. M/s. S.N. Dhawan & Co., M/s. Ajay Mittal & Co. and Mr. Ravi Kapoor. It is made clear that now in case the documents are not handed over, it shall be viewed seriously and we will have to punish the incumbents for not handing over the documents in their possession after obtaining appropriate explanation. But this is the last opportunity given by this Court to the aforesaid auditors to completely hand over the requisite documents to the forensic auditors. No remiss in this regard will be tolerated.

3. It is also pointed out by Shri Pavan K. Aggarwal that there are several documents which have not been handed over. They are detailed at pages 5 and 6 of the draft status report submitted by the forensic auditors, which are as follows :

"Permanent Audit file

1. Communication with previous auditor
2. Copy of MOA and AOA

3. Organizational structure and detailed information about business of the company.
4. Major policies related to purchase and sale
5. Assessment of risk and risk management
6. Details of sister concerns
7. Details of bankers
8. System and data security policies
9. Business continuity plans

Current Audit File

1. Audit planning memorandum-Business knowledge and Risk.
2. Pre-audit briefing -execution, supervising, monitoring
3. Independence policy and declarations by audit staff
4. Code of conduct.
5. Audit engagement letter
6. Audit programme for review of books of accounts
7. Checklist of compliance with accounting standards
8. Checklist of compliance with auditing and assurance standards
9. Checklist on compliance with Guidance notes
10. Determination of overall materiality and performance materiality
11. Schedules of Balance sheet items and Revenue and Expenses
12. Copy of audited financial statements of previous year
13. Extracts or copies of important legal documents, agreements and minutes relevant to the audit.
14. A record of the study and evaluation of the internal controls related to the accounting system
15. Significant Audit issues for current year
16. Issue Resolution/Disposal mechanisms
17. Closing conference with clients
18. Client communication
19. Communication with experts
20. Significant audit observations of previous year and replies by management
21. Analysis of significant ratios and trends
22. Procedures that may be performed in an engagement to review Financial statements
23. Management representation letter
24. Communication with those charged with Governance
25. Signed audited financial statements

26. Audit Report issued."

4. Let the statutory auditors comply with the requisition made by the forensic auditors and supply to them the documents detailed from Item Nos.1 to 26, extracted above. In case they are not in possession, they have to submit their written explanations item-wise to the Forensic auditors.

5. It has also been pointed out by Shri Pawan K. Aggarwal in his report that so far with respect to four companies, namely, Gaurisuta Infrastructure Pvt. Ltd., Vidhyashree Buildcon Pvt. Ltd., Mannat Buildcraft Pvt. Ltd. And Jhamb Finance & Leasing Pvt. Ltd., only it has been noticed that a sum of Rs.242.38 crores have been handed over to them and in most of these firms Shri Ashish Jain and Shri Vivek Mittal are the Directors. Beside, it was stated before us by Shri Anil Mittal, statutory auditor, that his nephew-Vivek Mittal joined as a Director on the request made by Shri Chander Wadhwa, CFO, to create a company and he has in turn asked Shri Ashish Jain, an employee of his client, to join as another Director of at least 10 companies, created at the request of the CFO and Amrapali Group of Companies. It is shocking state of affairs that the statutory auditor himself was responsible for creation of companies in aforesaid manner. Shri Anil Mittal has also stated before us that he was aware that the money was flowing to the said companies through bank

statements. However, on a specific query made by this Court to him, he has admitted that this fact of flow of money was not reflected in the audit report, which was signed by him in the audited Balance Sheet, inspite of knowing the fact that money has flown out of the accounts of the Amrapali group of Companies to aforesaid companies.

6. We regretfully also note the conduct of the CFO, who is personally present before us today. His questions and answers have been placed on record by Shri Pavan K. Aggarwal, Forensic Auditor, along with his report and today we find that Shri Chander Wadhwa has contradicted his version which he had made to the Forensic Auditor. He has apologized for making wrong statements to the Forensic Auditor and has assured us that in future he will render all cooperation to the Forensic Auditors rightly, honestly and diligently. He has admitted today that there was appointment order as CFO and there was an authorization in writing issued to him for dealing with the banks. He has virtually contradicted the entire statement which he had made and has feigned ignorance to the Forensic Auditors. Be that as it may. We give him last opportunity to come out clean and live up to the reputation of a profession of a Chartered Accountant. Let him cooperate with the Forensic Auditors, supply entire information correctly, truly and diligently. In case any remiss is found, it is made clear not only to him but also to the statutory/internal auditors that we will be compelled to

take appropriate action as against them in the aforesaid factual situation, including the one for the professional misconduct.

7. Shri Pavan K. Aggarwal has also pointed out to us that there are 23 group of companies to whom the money has been diverted and these companies have been created. Let the names of the companies be disclosed to the Amrapali Group of Companies and we direct the police to seize all the documents of these 23 companies to which money has been diverted and be handed over to the Forensic Auditors.

8. It was pointed out by Shri M.L. Lahoty, learned counsel, that at paragraph 9 of the compliance report filed by the Amrapali Group of Companies, the following statement has been made :

"9. That in pursuance of the order dated 26.09.2018 passed by this Hon'ble Court, the Amrapali Group vide communication dated 28.09.2018, once against requested all such 92 Directors to provide their details in terms of order of this Hon'ble Court, but in spite of the request made by the Amrapali group, no such details or details have been provided to the Amrapali Group."

Shri Lahoti, learned counsel has submitted that though it has been averred that there are 92 Directors, however, in the list that has been filed as Annexure A/2, only 86 names have been disclosed. There is a discrepancy. The bank accounts statements of all the Directors as also the details of the assets held by him, have also not been filed. In the circumstances, we direct

all the Directors contained in the list of Annexure A/2, to file on affidavit the statements of their assets and their bank account numbers and statements. They should also disclose the details by way of affidavits as to how much money had been received by them from Amrapali Group of Companies and for what purpose, details thereof, and how that money had been utilized or invested by them.

9. We also direct the Directors of other 23 companies, which have been identified so far by the Forensic Auditors, to file their detailed affidavits in this Court, disclosing the amount received by them, dates of receipt, for what purpose and how it is utilized and invested by them.

10. Bank statements shall also to be filed by all the Directors for the period for 2008 till date. In case any money has also been handed over to the nominees Directors, let them explain to that extent as to how much money had been received by them and what they have done with it and how they have invested/utilized it.

11. It was also pointed out by Shri Lahoty that there is gross discrepancy with respect to the area of the plot as per Amrapali Group, area of plot as per NOIDA and area of plot as per lease deed. That difference has been pointed out in I.A.No.154749/2018 showing the discrepancies, which reads as follows :

"Chart of five projects showing the said discrepancy

Project name	Area of plot (sqm) as per Amrapali	Area of Plot (sqm) as per Gnoida Authority	Area of plot (sqm) as per Lease Deed	Area (sqm) further sub-leased/sold out by Amrapali	Discrepancy
Smart City (Gold Homes)	2,38,870/-	245441.96/-	245441.96/-	Details not available	Discrepancy of 6571.96 sqm. As per site inspection this has been sold & a nursing home by Augusta Arcade is under construction
Dream Valley	2,60,307	2,60,307	3,54,298	93991	-
Leisure Park	1,00,000	1,06,196	1,06,196	Details not available	6196 sqm (might have sold)
Leisure Valley	3,96,300	3,86,605	4,19,519.2	Details not available	31,914.2 sqm (might have sold)
Centurian Park	2,28,646	2,72,916	2,72,916	44270	

12. Let reply to the aforesaid I.A. be filed and point-wise discrepancy be explained and each and every averment made in the application be answered specifically before we take a call on it.

13. Let Shri Chander Wadhwa, CFO, file his affidavit in this Court placing the appointment order; authorization made to him from time to time; his authorization letters; details of attendance, if any, at the Board meetings; authority to sign any voucher; and his entire role which he has performed in the organization. Beside, it was also stated by Shri Chander Wadhwa, CFO, that he was one of the

Directors of the Amrapali Development UK Ltd. and Saffron LLP, Delhi. Let the details of the Articles of Association of these companies be placed on record and the present composition of the Directors and the entire transactions be disclosed on affidavit, along with the documents of these companies and returns, if any, which have been filed, be also handed over to the Forensic Auditors and affidavit be filed in this Court in this regard.

14. It was also stated by Shri Chander Wadhwa that his nephew is one of the Directors in M/s. Rinku Computech, one of the shareholder of the Amrapali Biotech India Pvt. Ltd. His disclosure on affidavit be also made by Shri Chander Wadhwa.

15. Let Shri Anil Mittal, the statutory auditor, also file an affidavit in this Court as to how many companies his nephew-Vivek Mittal and Ashish Jain-his client's employee are Directors. We specifically direct that beside the affidavit, the bank statement of Shri Vivek Mittal and Ashish Jain be filed in this Court as to the aforesaid aspects.

16. We direct the Registrar to take appropriate steps to transmit a sum of Rs.25 lakhs (Rupees Twenty Five Lakhs), as directed by the Debt Recovery Tribunal by its order dated 12.9.2018, from the bank account mentioned in the said order.

17. We further direct Amrapali Group of Companies that all the laptops and computers from 2008 till date shall be handed over to the Forensic Auditors, as they are finding the statements to be incomplete and the tally account is not tallying with the audited accounts. It would be necessary for the purpose of Forensic Audit to have these computers and laptops which had been used by Amrapali Group of Companies from till 2008 till date and they shall be handed over to the Forensic Auditors, within three days from today.

18. We also direct the aforesaid three statutory auditors, namely, Shri Anil Mittal, Shri Ravi Kapoor and M/s. S.N. Dhawan & Co., to hand over whatever material they have with them in the hard-disc of their computers/laptops to the Forensic Auditors.

19. The list of 23 companies shall be supplied by Forensic Auditor Shri Pavan K. Aggarwal, C.A., to the Amrapali Group of Companies today itself, as assured by him. We appreciate his gesture.

20. We direct the bank account details of all 46 companies as well as their Directors be furnished by the concerned Banks by 30.10.2018. The appropriate application shall be filed by 29.10.2018, as assured by Shri Gaurav Bhatia. The detailed bank statements shall be handed over to the Forensic Auditors by 30.10.2018.

21. The current electricity bills shall be paid by the inhabitants directly to the electricity company/companies.

22. List on 31.10.2018, at 2.00 p.m.

(Jagdish Chander)
Branch Officer

(Sarita Purohit)
AR-cum-PS