

ITEM NO.301

COURT NO.2

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

BIKRAM CHATTERJI & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 110402/2020 - APPLICATION FOR TAKING ON RECORD
 IA No. 110027/2020 - APPLICATION FOR TAKING ON RECORD
 IA No. 61654/2022 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 33118/2022 - CLARIFICATION/DIRECTION
 IA No. 170313/2021 - CLARIFICATION/DIRECTION
 IA No. 57576/2022 - CLARIFICATION/DIRECTION
 IA No. 189314/2019 - COMPLIANCE OF COURTS ORDER
 IA No. 61655/2022 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 57672/2022 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 138752/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 170314/2021 - EXEMPTION FROM FILINGgas O.T.
 IA No. 61652/2022 - INTERVENTION APPLICATION
 IA No. 170312/2021 - INTERVENTION APPLICATION
 IA No. 138750/2021 - INTERVENTION APPLICATION
 IA No. 57575/2022 - INTERVENTION APPLICATION
 IA No. 47162/2022 - INTERVENTION/IMPLEADMENT
 IA No. 47165/2022 - PERMISSION TO APPEAR AND ARGUE IN PERSON
 IA No. 60700/2020 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES
 IA No. 127793/2019 - RECALLING THE COURTS ORDER
 IA No. 127787/2019 - RECALLING THE COURTS ORDER)

WITH

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

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

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

Diary No(s). 36392/2019 (X)

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

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

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

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

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

W.P. (C) No. 288/2018 (X)
W.P. (C) No. 1397/2018 (X)
W.P. (C) No. 246/2018 (X)
W.P. (C) No. 226/2018 (X)
W.P. (C) No. 267/2018 (X)
W.P. (C) No. 1018/2017 (X)
W.P. (C) No. 353/2018 (X)
W.P. (C) No. 460/2018 (X)
W.P. (C) No. 829/2018 (X)
W.P. (C) No. 742/2018 (X)
W.P. (C) No. 199/2018 (X)
W.P. (C) No. 134/2018 (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. 56/2018 (X)
W.P. (C) No. 57/2018 (X)
W.P. (C) No. 74/2018 (X)
W.P. (C) No. 131/2018 (X)
W.P. (C) No. 182/2018 (X)

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

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)

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

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

Date : 17-05-2022 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**

Considering the large number of interim applications which are still lying undecided, this Bench will make itself available on 11.07.2022 to 13.07.2022 at 2.00 P.M. so that most of the I.As. can be listed and taken up.

PART-I

Re.: MATTERS CONCERNING SUREKHA FAMILY

[IA No127787 of 2019 - For Recall of Order dated 23.07.2019 (Vol. No.I-85); IA No.127793 of 2019 - For Recall of Order dated 23.07.2019 (Vol. No.I-86); IA No.189314 of 2019 - Application on behalf of Surekha Family (Vol. No.I-103); IA No.60700 of 2020 - For placing on record documents on behalf of Surekha Family (Vol. No.I-119); , IA No.110027 of 2020 - For placing on record affidavit dated 02.05.2019; (Vol. No.I-149); IA No.110402 of 2020 - For placing on record additional document (Vol. No.I-150); and, Document Vol. No.R-64 - Reply on behalf of Surekha Family to IA No.50370 of 2020; Document Vol No.R-71 -Objection on behalf of Surekha Group; Document Vol No.R-101 - Convenience Note-I; Document Vol No.R-102 - Convenience Note-2; Document Vol No.R- 143 - Convenience Note Vol.-I dated 04.01.2021; Document Vol No.R-144 - Convenience Note Vol.-2 dated 04.01.2021; and, Document Vol No.R-170 - Affidavit on behalf of Surekha Group]

Matters concerning Surekha family which were listed for disposal on 09.05.2022, could not be taken up on that date.

After hearing learned counsel, we list these matters for disposal on 11.07.2022 at 2.00 P.M. as first item on Board.

Mr. Sanjay Jain, learned ASG appearing for Enforcement Directorate prays for and is granted time to place on record Status Report in connection with all Surekha Family matters. Let the report be sent in a sealed cover.

PART - II

Re.: I.A. No.45439 of 2021 - For Directions (Vol. No.I-169); and, Document Vol. No.R-165 (concerning M/s. Mahagun Real Estate Pvt. Ltd.) - [Disposed of matter]

Mr. Parag Tripathi and Mr. Joy Basu, learned Senior Advocates appearing for M/s. Mahagun Real Estate Pvt. Ltd. have reiterated

their submissions which were recorded in the order dated 25.04.2022.

Learned Court Receiver submits that consortium of banks having advanced sizeable amount of money to NBCC, the immediate requirements of NBCC are taken care of. He further submits that from the available finances, the money can now be made over to NOIDA.

He submits that substantial amount of money has also been recovered, as a result of sale of certain properties and by the time Court reopens after Summer Vacation, some part of the outstanding will certainly be made over to NOIDA.

Mr. Tripathi submits that the lease deed has already been executed on 08.10.2021 but NOIDA has not been issuing "no dues" certificate, since the dues of NOIDA are not made over by the Registry of this Court.

Since the assurance has been given by learned Court Receiver, we direct NOIDA Authority to issue appropriate 'No dues' certificate so that next stages in the development can be undertaken.

PART - III

SALE OF UNUSED FAR OF PRINCELY ESTATE

The matter was considered on 18.04.2022 and learned Court Receiver was requested to place his submissions with regard to the

subject.

In his Note dated 08.05.2022, learned Court Receiver has submitted that after the order dated 18.04.2022, no response has been received from NOIDA. In Annexure A-2 to the Note dated 17.04.2022, the matter was placed as under:

"111. In view of the above mentioned issued two options were explored during the several rounds of talks & meetings with regard to the approval of plans/layouts of the purchase FAR.

1. Revision of Existing layout plan of Princely Estate with the auctioned FAR.

2. Separation of Plot with auctioned FAR.

During the meetings it was discussed that if we proceed with option 01 i.e., Revision of Existing layout plan of Princely Estate with the auctioned FAR, the challenges mentioned above at points (a) to (f) will exist. After multiple discussions, the problems could not be resolved.

In the recent meeting held on 06th April, 2022 in the process of CEO and other officials of NOIDA Authority, my Office, NBCC and Solid Properties Pvt. Ltd. it was mutually agreed to go with option 02 i.e., Separation of Plot with auctioned FAR."

Learned Court Receiver submits that the matter was discussed with office bearers and option No.2 i.e., separation of plot with auctioned FAR was found to be the appropriate modality.

Mr. Ravindra Kumar, learned Senior Advocate appearing for NOIDA prays for some time to place the version of NOIDA on record, whereas learned Court Receiver submits that the matter was already discussed with office bearers. He however submits that if at all,

there can be one more round of discussion whereafter the matter can be placed before this Court.

In the circumstances, we adjourn this issue for the present.

PART IV

Re.: I.A. No. 12572 OF 2022 (Vol. No.I-185) and I.A. No.31467 of 2022 (Vol. No.Z-386) - Applications on behalf of M/s. La Residentia Developers Private Limited.

At the request of the learned counsel for the parties, list for consideration on 20.05.2022 at 2.00 P.M.

PART V

Re.: IA Nos.109596 & 109599 of 2020 (Vol. Nos.Z-301 & R-116); I.A. No.109573 of 2020 (Vol.No. Z-302); I.A. No.111339 of 2020 (Vol.No. Z-313); I.A. No.111515 of 2020 (Vol.No.Z-312); and Document Vol. No.R-141)

Mr. P.N. Misra, learned Senior Advocate submits that these matters were taken up on 05.03.2021 and have not been listed thereafter. He submits that the entire issue can be looked into by the Forensic Auditors.

Mr. Pavan Aggarwal, learned Forensic Auditor has accepted to go into the issues and to submit an appropriate Report.

Mr. Manoj Singh, learned Advocate appearing for Amrapali Group of Companies submits that he be given an opportunity to place submissions in writing before the learned Forensic Auditors so that most of the factual issues can be sorted out.

It is open to the learned Forensic Auditors to associate Mr. Manoj Singh, learned Advocate with the exercise.

List for consideration on 18.07.2022. Let copy of the report submitted by the Forensic Auditors be given to the concerned parties.

PART VI

(MOVIE HALL MEERUT), OLD CINEMA HALL, MENKA CINEMA, NEAR GHANTAGHAR, MEERUT, U.P.

According to the Note submitted by learned Court Receiver, the response received from the District Magistrate, Meerut discloses that there would be no problem in taking over possession of said property. But the report further states that there is likelihood of some law-and-order issues if possession is taken over.

Ms. Garima Prashad, learned Senior Advocate who appears for the State of U.P. has agreed that every possible assistance shall be rendered in taking over of possession.

The Receiver may send a communication to the District Magistrate and the District Superintendent of Police, whereafter all possible assistance shall be extended to the team of Court Receiver and possession of old Cinema Hall, Menka Cinema, Near Ghantaghar, Meerut shall be given to the Court Receiver.

List for compliance on 11.07.2022.

PART VII

SALE OF RESORT LAND AT UDAIPUR

This matter was adjourned on last few occasions. Learned Court Receiver in his Note has submitted that the Committee appointed by

the Receiver has gone into the matter and has decided to clear the dues of Urban Improvement Trust, Udaipur ('UIT', for short) to the tune of Rs.4,82,81,509/- by June, 2022. The Statement is recorded.

After the clearance of the dues, the requisite steps shall be undertaken by UIT, Udaipur.

PART VIII

I.A. FILED ON BEHALF OF MOONBUILDTECH PVT. LTD.

Mr. Anchit Sripat, learned Advocate appearing for Moonbuildtech Pvt. Ltd. ('Moonbuildtech', for short) submits that Mr. Lahoty has left the Court for some personal reasons. At his request, we adjourn the matter on 13.07.2022.

Mr. Manoj Singh, learned Advocate appearing for M/s. Amrapali Group of Companies submits that as against the dues of Rs.5.77 crores, M/s. Amrapali Group of Companies have already made over a sum of Rs.6.5 crores to M/s. Moonbuildtech.

Learned Court Receiver to look into the matter and submit a report on the next occasion.

List for consideration on 13.07.2022.

PART IX

Re: NOTE ON VARIOUS COSTS AND EXPENSES CLAIMED BY SWAMIAH FUND

Learned Court Receiver submits that as against the sanctioned sum of Rs.650 crores, SBI CAP through Swamiah Fund has already released a sum of Rs.195 crores. However, SBI caps (Swamiah Fund)

has claimed certain costs and expenses for services rendered by some of the parties towards consultancy, advisory and professional court appearance charges and legal services which aggregate to a sum of Rs.4.2 crores which together with GST element will amount to Rs.4.96 crores.

Since these are professional charges claimed by certain entities - professionals, we give liberty to learned Court Receiver to request SBI Caps (Swamiah Fund), to scale down the charges, so that the burden on the flat buyers would get reduced.

PART X

Certain additional directions have been sought by learned Court Receiver in his Note dated 08.05.2022, one of them being for sufficient protection and insulation against the standard clauses and terms insisted upon while extending financial accommodation/loans.

It is prayed that following directions be passed by this Court with regard to funding arrangements entered into with the Consortium of seven banks:

2.1.1 The transaction documents with Consortium Banks for obtaining term loan and terms mentioned therein, shall be subject to orders of the Hon'ble Court. The Court Receiver/ASPIRE will have 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 taken by the lender banks, Lead Bank of other parties to the transaction documents. All compliances under the Transaction Documents shall abide by directions that may be solicited from and issued by this Hon'ble Court.

2.1.2 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 lenders. Further, the other security(ies) created in respect of the Term Loans are also affirmed and approved.

2.1.3 Court Receiver shall have the authority to cancel the allotment of such units, where the homebuyers fails to honour payments, as per the Collection Milestones (stipulated and posted on the website of the Court Receiver), within three months or any such grace period as decided by the Committee 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 will be the amount which has been deposited as per the Forensic Auditors report without any interest against that unit subject to submission of proof of payment.

2.1.4 Registration under the Real Estate (Regulation and Development) Act, 2016 ("RERA") shall not be required for these funded Project(s), including for sales and marketing."

Similarly, certain directions with respect to ASPIRE, the Directors and Office of the Court Receiver have also been prayed for "3.1 to7":

"3.1 Any liabilities/ claims/ obligations/ litigations/ penalties (including penalties under RERA)/ petitions/ complaints existing or future, concerning and/or against any of the Projects as well as other real estate projects of the erstwhile Amrapali Group.

3.2 Any past corporate, company, taxation, accounting environmental, anti-corruption, anti-money laundering, foreign exchange, legal compliances and other statutory/regulatory requirements and attendant(s), liabilities/ penalties/ complaints/ claims, concerning the Projects funded and other real estate projects being developed by the erstwhile Amrapali Group.

3.3 Any adverse orders in respect of the funded

Projects or the promoter(s) or directors(s) of the erstwhile Amrapali Group of Companies which may give rise to any liability of Court Receiver/ASPIRE, or which may in any manner impact the Projects, and the Proposed Transaction including the Security.

3.4 Any attachment or any orders of any regulator/ authority/ Court/ Tribunal which may have an adverse effect on Court Receiver/ASPIRE's cash flows, assets, Pooling Account, Existing Project Account or any other bank account(s) maintained by the Court Receiver or ASPIRE for the Projects.

4. Court Receiver, Committee members, ASPIRE and their respective directors, employees, agents, representatives shall not be personally liable for any liabilities, criminal or civil, arising from the construction and sale of any of the Project(s).

5. Court Receiver, ASPIRE and their respective directors, employees, agents, representatives shall not be personally liable for any consequences arising out of adverse effects or defaults, if any, under any law, regulations or arising out of any matter, in the course of execution of transaction documents or under such documents in the course of execution of any of the project(s).

6. Court Receiver, Committee members, ASPIRE or their directors shall not be liable for the adverse orders, demands, penalties under the Income Tax laws, erstwhile Service Tax laws, GST laws or any other proceedings pending or arising out of the affairs connected or related with erstwhile Amrapali Group of Companies or their promoters, representatives, if any.

7. The payments made to the accounts of the Court Receiver, ASPIRE, in connection with the duties assigned, out of dues or demands raised from home buyers, commercial allottees, entities or any other persons, firm, body corporate or authority shall be deemed to be payments made under Section 196 of the Income Tax Act and no tax deduction at Source (TDS) shall be made from such sum payable."

Since these issues involve the consortium of seven banks as

well as other stake holders, the matter will be taken up after notice is issued to the concerned, returnable on 18.07.2022.

PART XI

A) Re: I.A. Nos. 27213, 27193 and 27275 of 2022 - Applications on behalf of Paschimanchal Vidhyut Vitran Nigam Ltd. for Directions (Vol. Nos.I-188,189 & 190)

Mr. Pradeep Mishra, learned Advocate appearing for Paschimanchal Vidhyut Vitran Nigam Ltd. ("Paschimanchal Vidhyut" for short) has accepted that part of the dues mentioned in these applications are towards late payment charges. We direct Paschimanchal Vidhyut to file a statement indicating with clarity the actual dues towards consumption of electricity as distinct from other charges including late payment fees, etc.

Learned Court Receiver is requested to look into the matter. List these matters for disposal on 18.07.2022.

B) Learned Court Receiver has stated that because of paucity of space, the office of the Court Receiver and the Committee assisting him need to shift to the corporate office of Amrapali Group of Companies in Section 62, Noida.

Learned Court Receiver, however, submits that earlier outstanding electricity dues are to the tune of Rs.25 lakhs and the Authorities are insisting on clearance of those dues, without which regular electricity supply cannot be restored. At this stage, without going into the question whether the electricity company is entitled to insist on clearance of earlier dues, we direct

Paschimanchal Vidhyut to facilitate shifting of all the offices to such corporate office tower and to see that electricity connection is restored. It is made clear that the charges for re-connection and the current charges for consumption shall be paid as and when due.

PART - XII

Re.: I.A. Nos.97096, 97097, 97093, 100940 and 100945 of 2021 (Vol. No. I-175); and, I.A. No.170191 of 2021 (Vol. No.I-184)

Mr. Ravindra Kumar, learned Senior Advocate prays for and is granted a day's time to file the response with copies to Mr. Joginder Singh, petitioner in person.

List for consideration on 13.07.2022 at the end of the Board.

(INDU MARWAH)
COURT MASTER (SH)

(ANJU KAPOOR)
BRANCH OFFICER