

ITEM NO.301

COURT NO.2
(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 MATTERS RELATING TO FUNDING BY BANKS; SALE OF RESORT LAND, UIT, UDAIPUR; AND MATTER CONCERNING MR. PREM MISHRA AND RELATED PERSONS; IA No. 74385/2020 - APPROPRIATE ORDERS/DIRECTIONS; IA No.12572/2022 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.90985/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.33118/2022 - FOR CLARIFICATION/DIRECTION; IA No.138752/2021 - FOR EXEMPTION FROM FILING AFFIDAVIT; IA No.90986/2020 - FOR EXEMPTION FROM FILING AFFIDAVIT; IA No.74386/2020 - FOR EXEMPTION FROM FILING AFFIDAVIT; IA No.8259/2019 - FOR INTERVENTION; IA No.138750/2021 - FOR INTERVENTION; and, IA No.31467/2022 - FOR INTERVENTION/IMPLEADMENT)

WITH

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

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

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

Diary No.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 : 28-03-2022 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

PART – I

NOTE

SUBMITTED BY MR. R. VENKATARAMANI, COURT RECEIVER

A) Re.: FUNDING BY BANKS

AND

**B) Re: I.A. NO.33118 OF 2022 (VOL. NO.I-191)
(APPLICATION FOR CLARIFICATION)**

Out of seven members of the Consortium, six Banks have already given their final approval. The in-principle approval by the Indian Bank has also been given on 18.12.2021 and the final approval is expected today by 4.00 p.m.

The application (Vol.I-191) moved on behalf of the Reserve Bank of India has sought certain clarifications/modifications particularly with regard to directions 'A to C' in the order dated 13.08.2021.

On the last occasion, this Court directed the concerned parties including the Members of the Consortium, the Reserve Bank of India and learned Receiver to have discussions on the point and come with an agreed understanding or suggestions which could be taken into account by this Court while passing directions.

Learned Receiver in his Note dated 27.03.2022 has annexed a copy of the communication dated 25.03.2022 written by Mr. Vaibhav Chaturvedi, General Manager, Reserve Bank of India.

With regard to paragraphs 'A to C' in the order dated 13.08.2021, the communication stated as under:

"2. Based on the deliberations held during the meeting, our humble submissions suggesting modifications in the Order dated August 13, 2021 are given below:

a) As regards Part A of the Order regarding funding by banks, the prudential deviations may not be specified in the Order, rather an opening may be provided for the banks to approach RBI in case any relaxations are required in case of future defaults. Considering the specific circumstances surrounding the Amrapali case and the monitoring/orders issued by the Hon'ble Supreme Court, RBI is willing to assure the Hon'ble Supreme Court that it will provide necessary forbearance as and when banks approach it if any recovery issue arises in future leading to defaults by ASPIRE. Accordingly, Part A on page 21 of the Order *ibid* may kindly be amended as below:

- A. That in the event of any default or delay in the repayment obligation of ASPIRE the banks may approach the Reserve Bank of India which shall consider the requests for necessary forbearance from the prudential norms.
- B. As regards Part B of the Order, it is respectfully submitted that the extant norms of RBI do not prescribe any specific risk weight for loans falling under the priority sector lending category. Hence, the order seems to be premised on certain incorrect assumptions related to RBI guidelines. It is, therefore, submitted that Part 'B' may be considered for deletion.
- C. As regards Part C of the Order, the extant regulations do not envisage any mandatory external rating of borrowers. It is left to the banks to decide whether a borrower has to be rated or otherwise. Hence, we do not have any specific objection to this."

As is evident from the communication, the Reserve Bank of India has no difficulty with regard to Paragraph 'C' of the order whereas it is seeking deletion of

Paragraph 'B'. With regard to Paragraph 'A', according to the Reserve Bank of India, in the event of any default or delay in the repayment obligation of ASPIRE, the Banks must approach the Reserve Bank of India, which may then consider the request.

Mr. K.V. Viswanathan, learned Senior Advocate submits that the Reserve Bank of India may first consider the case whereafter the matter in terms of Paragraph 'A' can be looked into by the Court. He then referred to sub-paragraphs (i) to (iii) of Paragraph IV and to Paragraph V of the Note of the Receiver, which paragraphs are:

“IV. In view of the above and the satisfaction factor emerging in the RBI communication, the Court may be pleased to make the following observations:

- (i) That the directions contained in the order dated 13.08.2021 have been drawn keeping in mind the issues arising out of execution of the Amrapali projects under orders of the Court, the special need to provide an impetus and a comfort zone for funding agencies and therefore they shall be exclusively applicable to and confined only to ASPIRE, acting as an instrumentality of the Court and not to be treated as precedent in any circumstance.
- (ii) That in the event of any default or delay in the repayment obligation of ASPIRE, the banks may approach the Supreme Court which shall pass necessary orders. (This provision is part of the terms of agreement with the Banks). Forbearance if any from the prudential norms in future, will then be considered by the Court taking into account the circumstances then obtaining, and the inputs from RBI. Suitable arrangements be made by the Court so as to protect the interest of the Banks, all stakeholders including Home Buyers and completion of the projects.
- (iii) The funding sanctions (Annexure C) already issued by the Banks shall be given effect to and necessary disbursements shall be made immediately so as to complete the disbursement process on or before 31.03.2022 in order that payments can be released to NBCC without delay.

V. As regards the concerns of RBI in relation to Para 'B' regarding "Priority sector lending", its consideration may be deferred. The Committee would like to place its response in this regard. The disbursal of funds directed to take place, shall proceed without being affected by the future consideration of Para 'B'."

Mr. Venkataramani, learned Court Receiver and Mr. Alok Kumar, learned Advocate appearing for the Consortium submit that Paragraphs 'A to C' of the order dated 13.08.2021 were finalized after lot of deliberations and in the peculiar facts and circumstances of the case. It is submitted that Amrapali Projects and the execution of the construction needed impetus and a comfort zone to be afforded to the agencies. Therefore, the special dispensation was provided for in Paragraph 'A' of the Order dated 13.8.2021.

We see force in the submissions made by learned Court Receiver and Mr. Alok Kumar, learned Advocate.

We therefore do not deem it appropriate to modify or change the terms of Paragraph 'A' of the order dated 13.08.2021. We may however observe that if an occasion arises, this Court will certainly look into the matter after taking appropriate inputs from the Reserve Bank of India. This itself may provide adequate protection and take care of the apprehensions expressed by the Reserve Bank of India.

The submissions made by the learned Receiver in sub-paragraph (i) and (ii) of Paragraph IV quoted above shall be taken as the spirit with which Paragraph 'A' of the Order dated 13.8.2021 was accepted by this Court.

Since there is no opposition to Paragraph 'C', said Paragraph 'C' is retained as it is. With regard to Paragraph 'B', we may observe that having considered the matter and the Note submitted by the learned Court Receiver, the consideration with regard to Paragraph 'B', at this stage, is deferred.

Having dealt with the apprehensions expressed by the Reserve Bank of India, the directions in terms of Paragraph IV (iii) of the Note of the learned Receiver are now called for.

We, therefore, direct all the Members of the Consortium to effectuate funding by 29.03.2022 so that the NBCC can be put in funds by way of appropriate disbursal on or before 31.03.2022.

C) Re.: SALE OF RESORT LAND AT UDAIPUR

At the request of learned Court Receiver, we adjourn this matter to 04.04.2022.

PART - II

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

Mr. Amit Pai, learned counsel appearing for UP RERA seeks short accommodation. At his request, the matter is adjourned to 04.04.2022.

In the meantime, the response of UP RERA be placed on record.

Mr. V. Giri, learned Senior Advocate prays for and is granted 3 days' time to put in rejoinder to the affidavits in reply which have already been placed on record.

PART-III

**Re.: MATTERS CONCERNING MR. PREM MISHRA,
RELATED PERSONS AND OTHER ENTITIES**

[IA No.8259/2019 – For Intervention/Direction (Vol. No.Z-88); IA No.74385/2020 - For Direction (Vol. No.I-131), IA Nos.90985 and 90986 of 2020 – For Direction and for Exemption from Filing Attested Affidavit (Vol. No.I-141); Affidavit in Compliance of Order dated 07.12.2020 (Vol. No.R-138); Provisional Attachment Order No.01/2021 dated 22.02.2021 passed by the Enforcement Directorate (Vol. No.R-173), and, Objection to the observations made against the applicant by Forensic Auditor in Reports dated 23.07.20219 and 10.10.2019 (Vol. No.R-86)]

The submissions have been advanced by Mr. M.L. Lahoty and Mr. Kumar Mihir, learned Advocates.

The submissions of Mr. Vikas Singh, learned Senior Advocate are yet to be completed.

For further hearing, list the matter on 04.04.2022.

PART – IV

All the remaining Interlocutory Applications on Board are adjourned to 04.04.2022 at 2.00 p.m.

**(MUKESH NASA)
COURT MASTER**

**(VIRENDER SINGH)
BRANCH OFFICER**