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ITEM NO.302

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

I.A. Nos. 83-85 of 2015, 104-106 of 2015, 131 of 2015, 158-160 of 2016, 180-182 of 2016, 188-189 of 2016, 190-191 of 2016, 194-195 of 2016, 205-207 of 2016, 208 of 2016, 209-210 of 2016, 211 of 2016, 212-214 of 2016, 218-220 of 2016 and 227 of 2016 in CONMT.PET.(C) No. 412 and 413 of 2012 In C.A. No. 9813 and 9833/2011 and C.P. No. 260 of 2013 in C.A. No. 8643 of 2012

S.E.B.I.

Petitioner(s)

VERSUS

SAHARA INDIA REAL ESTATE CORPN.LTD.&ORS.

Respondent(s)

(with appln. (s) for directions, impleadment and intervention, appropriate orders and provisional release and office report)

Date : 21/10/2016 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANIL R.DAVE

HON'BLE MR. JUSTICE A.K.SIKRI

M/s. Shekhar Naphade, Sr. Adv. (A.C.)

For Petitioner(s) Mr. Arvind P.Datar, Sr. Adv.

Mr. Pratap Venugopal, Adv.

Ms. Niharika, Adv.

M/s. K.J.John & CO.

For Respondent(s) Mr. Kapil Sibal, Sr. Adv.

CP 412 & 413/12 Mr. Narendra Hooda, Sr. Adv.

Mr. Gautam Awasthi, Adv.

Mr. Aarohi Bhalla, Adv.

Mr. Ayush Choudhary, Adv.

Mr. Nijam Pasha, Adv.

Mr. Rahul Tripathi, Adv.

Mr. Nikhil Jain, Adv.

Mr. Simranjeet Singh, Adv.

Mr. Salim Inamdar, Adv.

Mr. Gautam Talukdar, Adv.

Mr. Ram Sajan Yadav, Adv.

Mr. Vijay Kumar, Adv.

Mr. Sarthak Nayak, Adv.

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I.A. 232/16 Mr. Salman Khurshid, Sr. Adv.

Mr. Yunus Malik, Adv.

MS. Saroj Bala, Adv.

Mr. Sanjeev Agarwal, Adv.

I.As. 212-214/16 Mr. Nidesh Gupta, Sr. Adv.

Mr. Soayib Qureshi, Adv.

Mr. Rabin Majumdar, Adv.

I.A 188-189 Mr. Bishwajit Bhattacharya, Sr. Adv.

Mr. Pawan Upadhyay, Adv.

Mr. Sarvjit Pratap Singh, Adv.

Ms. Sharmila Upadhyay, Adv.

I.A.231/16 Mr. Vikas Singh, Sr. Adv.

Mr. Anish Maheshwari, Adv.

Ms. Farha Malik, Adv.

M/o Law & Justice Mr. Tushar Mehta, ASG,

Mr. D.L.Chidananda, Adv.

Ms. Sadhna Sandhu, Adv.

Mr. M.K.Maroria, Adv.

Mrs. Anil Katiyar, Adv.

I.A. 211/16 Mr. K.V.Viswanathan, Sr. Adv.

Mr. Amit Singh Chadha, Sr. Adv.

Mr. G.Umapathy, adv.

Mr. S.Vasudevan, Adv.

Mr. Vipin Nair, adv.

Mr. P.B.Suresh, Adv.

Mr. Aditya Singh, Adv.

Mr. R. Mekhala, Adv.
Mr. Rakesh K. Sharma, Adv.
Mr. Abhay Pratap Singh, Adv.
Mr. Prithu Garg, Adv.
I.A 227/16 Mr. Anupam Lal Das, Adv.
Mr. Sahil Monga, Adv.
I.A. 215/16 Mr. Pravin Bahadur, Adv.
Mr. Amit Agarwal, Adv.
Mr. Rajan Narain, Adv.
I.A. 209/10 Mr. Rahul Sharma, Adv.
Mr. P.N.Puri, Adv.
RBI Mr. Ramesh Babu M.R., Adv.
Ms. Swati Setia, Adv.
Mr. Yash Pal Dhingra, Adv.
Mr. Amitabh Chaturvedi, Adv.
Mr. Sumit Kumar Shukla, Adv.

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Ms. Rakhi Ray, Adv.

Mr. Niraj Sharma, Adv.

Mr. C. K. Sasi, Adv.

Mr. Gaurav Agrawal, Adv.
Mr. G.Sivabalamurugan, Adv.
Ms. Anagha S. Desai, Adv.
Mr. Amit Anand Tiwari, Adv.

Mr. P. N. Puri, Adv.

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

I.As No. 188-189 of 2016 :

Issue notice.

Mr. Pratap Venugopal, Adv. accepts notice and shall file his objections to these I.As within four weeks.

Additional affidavit be filed by Ms. Sharmila Upadhyay, Adv. setting out the details of the salary drawn by the applicant explaining the source of amount lying in the Bank.

I.As No. 212-214 of 2016 :

Mr. Arvind Datar, learned senior counsel has drawn our attention to the 18 th

Status report filed by Justice

B.N.Agrawal. From a reading whereof it appears that the sale property situated in Bahriach has since been cancelled. We are

told by Mr. Arvind Datar that this property is now free to be sold

by Saharas themselves. Mr. Nidesh Gupta, learned senior counsel

seeks leave to withdraw these I.As. which are hereby dismissed as withdrawn.

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Mr. Gupta has today handed over a bank draft for a sum of Rs. 4,05,00,000/- representing part of the sale consideration for Bahriach property which Saharas has agreed to sell to Mr. Gupta's client. He submits that the balance amount of Rs. 20,25,00,000/- shall be deposited in SEBI Sahara Account within a period of thirty days from today. That statement is recorded.

I.A. No. 227 of 2016 :

Issue notice to the counsel opposite.

Objections to this I.A. shall be filed before the next date of hearing i.e. 28.11.2016.

I.As. No. 218-220 of 2016 :

Pursuant to our orders passed earlier, SEBI had offered for sale of seven properties situate at different locations in the country. Five of those properties situate at Ajmer, Vellore, Thiruchirapalli, Ujjain and Firozabad appear to have been attached by the Income-Tax authorities under the provisions of Income-Tax Act. Realising that the said properties had been attached, SEBI appear to have denied the sale certificates to the highest bidders

and refunded the amount deposited by them. When the matter was reported to Justice B.N.Agrawal, His Lordship has recommended that the auction in regard to the attached properties recommended that the auction in regard to the attached properties may also be permitted under the orders of this Court in view of the fact that the Income-Tax Department does not oppose the auction but only lays a claim to the sale proceed thereof.

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When the matter came up today before us, it was contended by Mr. Kapil Sibal, learned senior counsel appearing for SEBI that while Ajmer property had fetched Rs.26.51,00,000/- the Saharas have received an offer of Rs. 41,00,00,000/- from one Shri Rajinder Daga which is substantially higher amount than the one at which the SEBI proposes to sell the said property. He submits that in regard to the other attached property also if a fresh sale is ordered, the same would fetch much higher the proposed amount than the one earlier recovered by SEBI. He urged that this Court could direct SEBI to re-auction the said properties on the condition that the higher amount offered for the same in the previous auction shall be taken as the reserve price for the said properties except in the case of property at Ajmer where the reserve price shall be treated to be Rs. 41,00,00,000/- offered by Shri Rajinder Daga. He submits that in order to ensure that only serious purchasers come forward, this Court could stipulate suitable conditions including one for deposit of forfeitable security so that in the event of any person making an offer and later backing out, the amount so furnished could be forfeited.

Mr. Arvind Datar has no serious objection to the SEBI holding a second round of auction for the properties mentioned above on such conditions as may be stipulated by this Court. He urged that the amount so received could be initially deposited in the SEBI Sahara Account subject to such directions as to apportionment/appropriation whereof as this Court may direct at an appropriate stage keeping in view the claim made by the Income-Tax department over the same.

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In the circumstances, therefore, and keeping in view the status report received from Justice Agrawal and the fact that the Income-Tax Department does not oppose the sale of the properties in question provided their rights were suitably protected, we direct that the five properties referred to above shall be offered by SEBI for sale afresh on the following conditions:

1) The price offered by the highest bidder for the five properties except for the property situate at Ajmer shall be the reserve price for the fresh auction to be conducted by SEBI. For the property situate at Ajmer the reserve price shall be taken at Rs. 41,00,00,000/-. We say so because Mr. Vikas Singh, learned senior counsel appearing for the successful bidder for the property at Ajmer submits that he has instruction to match the offer made by Shri Rajinder Daga at Rs. 41,00,00,000/-.

2) In the case of property at Ajmer and so also the four other properties mentioned above, the prospective bidders shall deposit with SEBI forfeitable security equivalent to 25% of the reserve price for the properties mentioned above. The deposit shall be made in the manner stipulated in the notice to be issued by SEBI.

3) Needless to say that in case after deposit of the forfeitable security amount the highest bidder does not make good his offer or does not participate in the auction. The amount so deposited shall be liable to be forfeited.

4) In case any one of the properties, does not attract any bid higher than the one received by SEBI in the first auction, the SEBI shall be free to finalise the sale and to issue the requisite sale Certificate in favour of highest successful bidder in the previous

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auction.

A report on the progress made in the fresh auction shall be

filed in this Court within six weeks.

Mr. Kapil Sibal has today handed over to Mr. Arvind Datar, two Demand Drafts amounting to Rs. 50,00,00,000/- and 20,00,00,000/- apart from Rs. 130,00,00,000/- transferred by RTGS making a total of Rs. 200,00,00,000/- in compliance with the order passed by us on the last date of hearing. He submits that the road map which he had promised to file is being finalised and has already been shared with Mr. Shekhar Naphade, learned Amicus and Mr. Arvind Datar. He submits that there are some dimensions of that road map that require to be discussed with the counsel opposite. He submits that the interim arrangement already made could in the meantime continue till 28.11.2016 by which date the Saharas shall deposit a further amount of Rs. 200 crores of which 15% is today handed over to Mr. Datar in the Court by way of a Bank draft while balance of Rs. 185 crores shall be paid before the next date of hearing.

Post on Monday i.e. 28.11.2016 at 2 P.M. Interim arrangement shall continue subject to the making of the deposit of balance of Rs. 185 crores in the meantime.

(Shashi Sareen)

(Veena Khera)

AR-cum-PS Court Master