

ITEM NO.301

COURT NO.2

SECTION XVII

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

I.A. 47-49/2015 in CONMT.PET.(C) No. 412/2012 & 413/2012 In C.A.
No. 9813/2011 & 9833/2011 & C.P.(C) No. 260/2013 in C.A. No.
8643/2012

S.E.B.I.

Petitioner(s)

VERSUS

SAHARA INDIA REAL ESTATE CORPN.LTD.&ORS.

Respondent(s)

(For extension of time and office report)

Date : 23/03/2015 These applications were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE ANIL R.DAVE

HON'BLE MR. JUSTICE A.K.SIKRI

For Petitioner(s) Mr. Arvind Datar, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Mr. Gaurav Nair, Adv.
Ms. Niharika, Adv.
M/s. K. J. John & Co., Adv.

For Respondent(s) Mr. Gaurav Kejriwal, Adv.

Mr. Kapil Sibal, Sr. Adv.
Dr. Rajeev Dhawan, Sr. Adv.
Mr. S.Ganesh, Sr. Adv.
Mr. Gautam Awasthi, Adv.
Mr. Nijam Pasha, Adv.
Mr. Simranjeet Singh, adv.
Mr. Gautam Talukdar, Adv.
Mr. Sandeep Bajaj, Adv.
Mr. Ayush Chaudhary, Adv.
Mr. Abhinav Tripathi, Adv.
Mr. Aditya Chopra, Adv.
Mr. Jitesh Sriavastava, Adv.
Mr. R.S.Yadav, Adv.

Mr. Shekhar Napahade ,Adv. (A.C.)
Ms. Shubhangi Tuli, Adv.
Mr. Vikram Sobti, Adv.

Mr.Ramesh Bau, Adv.
Ms. Swati Setia, Adv,.

Mr. P.Chidambaram, Sr. Adv.
Mr.Aman Lekhi, Sr. Adv.
Mr.Ankur Sehgal, Adv.
Mr.Gurpreet Singh, Adv.
Mr.Ashwarya Sinha, Adv.
MS. Priyanka Sinha, Adv.

Mr.Arjit Prasad, Adv.
Ms. Anil Katiyar, Adv.

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

By our Order dated 13.03.2015 we had granted to the Saharas an opportunity to place on record broad features of the deal which they propose to strike in respect of their off-shore properties comprising three hotels two out of which are situate in the United States of America and the third in London. Since the outline of the proposed deal was not shared by the Saharas with counsel appearing for SEBI and Mr. Shekhar Naphade learned Amicus Curiae, Mr. Kapil Sibal, learned senior counsel appearing for the Saharas had agreed to do so. The whole purpose behind that exercise was to prima facie satisfy ourselves whether the Saharas are indeed making a serious effort to raise funds for compliance with the directions issued by this Court. We had also by the same order extended to the respondents-contemnors the concession of communication with the outside world for 5 hours a day besides allowing them use of two laptops computers.

When the matter came up today before us Mr. Sibal filed what is described as "Confidential Note On Proposals Now Being Negotiated and Finalised By Saharas For Complying With Supreme Court Order dated 26.03.2014" In particular Mr. Sibal drew our attention to a communication dated 09.03.2015 from Head of Corporate and Investment Banking Madrid at BBVA to Nouam Limited whereby BBVA Investment Bank has confirmed with full bank responsibility the authenticity and validity of the cash funds to the tune of EUR 900 Million in an account mentioned in the said communication and held by the Nouam Limited represented by Mr. Karan Judge. The letter confirmed legal responsibility that Nouam Limited represented by Mr. Karan Judge has full custody over the said funds in his account and that the said funds shall remain under his instruction. Not only that the communication further states that the funds are legal, good, clean, clear, unencumbered and legitimately earned cash funds of non-criminal origin consisting of 100% cash and that the same are freely available for investment. Mr. Sibal submitted that if permitted by this Court, Saharas can go ahead with the proposal under consideration whereunder Nouam Limited will take over the loan outstanding towards Bank of China. He submitted that the loan/ credit being negotiated will not only pay off the Bank of China but generate an additional 120 million dollars equivalent roughly to Rs. 650 crores in indian rupee. Mr. Sibal urged that although Saharas have a few other proposals also on the anvil yet the proposal mooted by Nouam Limited for the take over of the Bank of China

loan and for payment of an additional amount of \$160 million dollars appears to be the most serious presently under consideration.

In an attempt to show that the proposals under consideration with Saharas are serious, Mr. Sibal also placed reliance upon another letter dated 18.03.2015 addressed by HSBC to M/s. Aambey Valley confirming a Bank guarantee for a sum of \$820 million equivalent to INR 5000 crores in favour of Aambey Valley Limited, Sahara Star Domestic Airport, Bombay. The Bank guarantee is according to the said communication irrevocable, divisible and transferable to any supplier of M/s. Aambey Valley Limited. Mr. Sibal submitted that although the communication offers the bank guarantee to Aambey Valley Limited, steps will be taken to ensure that the bank guarantee of Rs. 5,000/- crores is furnished in the name of SEBI in compliance with the orders of this Court.

Our attention was also drawn by Mr. Sibal to a Memorandum of Understanding said to have been executed between Nouam Limited and Aambey Valley Limited in connection with the proposed deal referred to above. It was submitted by Mr. Sibal that the availability of funds with Nouam Limited, the assurance regarding the issue of a bank guarantee for a sum of Rs. 5,000/- crores and the execution of a Memo of Understanding between Nouam Limited and Aambey Valley Limited should sufficiently reassure this Court that Saharas are seriously pursuing the finalisation of the deal.

It was in the above context urged that this Court could permit

the Saharas to process the deal to its logical conclusion and to present to this Court a final proposal whereunder the Saharas would deposit the balance of the amount required for the release of the respondents from custody on bail and for the Bank guarantee which is one of the conditions for that release.

On behalf of SEBI Mr. Arvind Datar very fairly stated that Saharas do appear to be taking some steps for finalising the deal and that so long as the deal results in raising funds that would find their way into the SEBI account in compliance with the orders of this Court, SEBI will have no real objection to the process being taken forward.

Mr. Napahde, learned A.C. submitted that even though relevant documents touching the proposed deal were available to him rather late and even though certain matters remain to be clarified, there is no real impediment in allowing Saharas as a last chance to finalise the proposed deal with Nouam Limited.

In the circumstance therefore and keeping in view the steps that Saharas appear to have taken in the matter of finalising their proposed deal with the Nouam Limited we see no reason why a last and final opportunity be not granted to Saharas to do the needful. We have made it clear to learned counsel for the respondents and to others appearing for Saharas that should there be any difficulty in finalising the deal with Nouam Limited, we shall be left with no option but to explore the alternative option of appointing a Receiver for sale of the property to recover the outstanding amount. That being made clear we permit

Saharas to negotiate the proposed deal with Nouam Limited. We make it clear that since this is going to be the last and final opportunity to the Saharas to sell or encumber the properties themselves to raise funds, Saharas shall also have the liberty to negotiate any other deal qua the said three off-shore properties should the deal with Nouam Limited for any reason fail to fructify. Needful shall be done within the outer limit of three months from today. In order to facilitate the finalisation of the proposed deal we permit use of facility to the respondents in terms of our order dated August 1, 2014 for a period from three months today.

Mr. Sibal next argued that out of nine properties situate within the country which this Court had permitted the Saharas to sell, five properties have already been sold while the remaining four properties according to Mr. Sibal can not fetch the required amount within 5% of the estimated value declared by the Saharas. He therefore urged that this Court could modify the order permitting the sale of such properties so as to allow the sale of remaining four items of properties at prices less up to 25 to 40% as indicated in paragraph C at page 5 of his Note (supra).

Alternatively Mr. Sibal argued that this Court could allow the Saharas to sell one or more properties out of the ten properties situate in different parts of the country set out at page 7 of the note with the extent mentioned against each as also the circle rates and the market valuation.

From a perusal of the statement set out at page 7 of the compilation it appears that although the value of the properties set out in the said statement calculated on the Circle rates comes to Rs. 456.46 crores, the land value as per market valuation is said to be more than Rs. 570 crores. We are in that view inclined to allow the alternative prayer made by Mr. Sibal and permit the Saharas to sell one or more properties mentioned at page 7 of the compilation on the same terms and conditions as were stipulated by us in our Order dated 04.06.2014.

At this stage Mr. Sibal submitted that in the event of any shortfall/difficulty in selling the properties in the prices indicated by them or on the conditions set out by us we could also permit Saharas to sell up to 600 acres of the developed buildable land area in Aambey Valley at a price which shall not be less than Rs. 6.55 crores per acre.

We do not see any reason to decline that prayer either especially when the value of land fixed at Rs. 6.55/- crores per acre is many times in excess of 25 lakhs per acre fixed by the SEBI in its affidavit dated 16.03.2012 filed in I.As No. 6-7 of 2012. We accordingly permit the Saharas to sell up to 600 acres of land in Aambey Valley @ Rs. 6.50 crores per acre. The details of the extent sold shall be furnished to the Court by Saharas.

Mr. P.Chidamabaram, learned senior counsel appearing for Mirach Capital Group LLC proposes to make an application to make an offer in a sealed cover. He is permitted to do so with copy to learned counsel for the parties.

The note filed by Saharas shall be kept in a sealed cover. These proceedings shall stand over for a period of three months.

At this stage Mr. Arvind Datar submits that some of the purchasers of the Gurgaon property have sought rescheduling of the payments and that the SEBI has received certain cheques as per the new schedule proposed. We permit the SEBI to receive and encash the same. Fresh undertakings filed by the purchasers to abide by the re-scheduled payment are accepted.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master