

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.Nos.31-33, 34-36 & 37-39 in CONMT.PET.(C) No. 412/2012 & 413/2012 in C.A. No. 9813/2011 and 9833/2011 and Conmt. Pet. © No.260/2013 in In C.A. No. 8643 of 2012

S.E.B.I.

Petitioner(s)

VERSUS

SAHARA INDIA REAL ESTATE CORPN.LTD.&ORS.

Respondent(s)

(For appropriate directions and modification/relaxation and Directions and office report)

Date: 17/12/2014 These matters 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

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

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

For Applicant (s) Dr. Rajiv Dhawan, Sr. Adv.
Mr. S. Ganesh, Sr. Adv.
Mr. Gautam Awasthi, Adv.
Mr. Keshav Mohan, Adv.
Mr. Aarohi Bhalla, Adv.
Mr. Jitesh Shrivastava, Adv.
Mr. Ayush Chaudhary, Adv.
Mr. Gaurav Kejriwal, Adv.
Ms. Amrita Narayan, Adv.
Mr. Sujit Keshrail, Adv.
Mr. Prashant Kumar Sharma, Adv.
MR. Aditya Chopra, Adv.

For Respondent(s) Mr. Rahul Kaushik, Adv.
Ms. Anil Katiyara, Adv.
Mr. Arijit Prasad, Adv.

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

Heard.

Mr. S. Ganesh, learned senior counsel appearing for the contemnors has handed over to Mr. P. Venugopal, learned counsel for the SEBI, a cheque for a sum of Rs.77.80 crores representing the entire balance purchase price of the Jodhpur property. In addition, he has also handed over to Mr. Venugopal 21 post-dated cheques payable between 15th January and 22nd June, 2015 for a total amount of Rs.1884.96 crores. Mr. Ganesh submits that each one of the purchasers who has issued the post-dated cheques aforementioned has also filed an individual undertaking on affidavit in this Court in terms of the previous order of this Court dated 2nd December, 2014. He contended that this Court could in the light of the payments already made to SEBI grant permission to Saharas for work on the transfer of the loan outstanding towards Bank of China to Oasis Light Ltd. and suitable amendments of the terms and conditions applicable to those loans. He submitted that permission could also be granted to Saharas to raise a junior loan to the tune of US \$ 650 million by creating against the three foreign hotel properties and share-holdings relating thereto. It was urged by Mr. Ganesh, that as suggested by Mr. Shekhar Naphade, learned Amicus appointed by this Court, the Saharas had agreed to shift the escrow account from Nation

Wide to Bank of America which has extensive banking operation even in India but any deposit by the junior lenders will be possible only when the Bank of China exits and Oasis is allowed to take over the charge. He urged that this Court could in order to facilitate the deposit in the escrow account by the junior lenders as a first step permit Saharas to allow the Bank of China to exit and Oasis to enter into the proposed arrangement.

M/s. Arvind P. Datar, learned senior counsel appearing for the SEBI and Mr. Shekhar Naphade, learned Amicus, on the other hand submitted that certain aspects of the proposed arrangement between Oasis and Bank of China as also the arrangement between the Mirach and Saharas still need to be verified and examined especially as to the amount that will actually become available to SEBI, should the proposed arrangement be sanctioned by this Court. It is also submitted that there may be certain legal impediments in the transfer of the money to be deposited in the escrow account on account of the provisions of FEMA and that the loan proposed to be raised by the Saharas in the manner indicated above may require sanction/permission from the competent authority under the said Act. They submitted that additional queries have to be made to counsel opposite in writing to which Mr. Ganesh offered to send a suitable reply without delay.

In the circumstances, therefore, we do not consider it necessary at present to issue any direction on the above subject. We may consider all these aspects only after the queries raised by

M/s. Datar and Naphade are satisfactorily answered by Mr. Ganesh in writing. We may only mention in passing that according to Mr. Ganesh ECB regulation to which a brief reference was made by Mr. Datar, does not have any application to the transaction. We do not however propose to make any observation regarding the merits of the rival contentions at this stage. M/s. Datar and Naphade are permitted to seek any further clarification on any issues or aspect considered relevant by them to which Mr. Ganesh may present a suitable reply within a week from the date he receives such queries.

Mr. Datar at this stage submitted that the SEBI has out of the deposited amount disbursed a sum of Rs. 2,00,00,000/- (Rupees Two Crores only) but it has also sought permission in IAs. No. 92 and 93 of 2014 to pay up multiple deposits made by several others who have claimed such deposits some of which have been found to be genuine on verification. He urged that at one stage of these proceedings this Court had not allowed the reimbursement to multiple depositors. It was urged by Mr. Datar that the SEBI has verified as at present 2781 applications from multiple deposit holders and the reimbursement if permitted would led an outflow of Rs. 28.1 crores only. He submits that the Income-Tax Authorities could be left free to take such action as may be permissible in law against the depositors or Saharas who have received such multiple deposits. But there is no reason why the multiple depositors who have made their deposits which depositors

have been found to be genuine on verification should not be reimbursed.

Mr. Ganesh, learned counsel submits that there should be no difficulty in permitting the SEBI to reimburse the depositors whether multiple or otherwise.

We accordingly allow these IAs No. 37-39 and permit SEBI to reimburse the amount of deposit with interest accrued on the same to all such depositors as have made multiple deposits upon due and proper verification about the genuineness of the deposits.

Post on 09.01.2015 at 2.00 P.M along with I.As No. 90-91 and I.A. No.... of 2014 (Appln. for direction) filed by Mr. Niraj Sharma, Adv.

Appeals No. 42 of 2013, 48 of 2013, 49 of 2013, 50 and 2013 and W.P. © No. 2088 of 2013 shall also be listed on 09.01.2015 which has been transferred from the High Court of Judicature at Allahabad vide this Court's order dated 17.07.2013.

(Shashi Sareen)
COURT MASTER

(VEENA KHERA)
COURT MASTER