

ITEM NO.43

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)

(IA No.45439/2021 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.100361/2020 - FOR INTERVENTION; IA No.100361/2020 - FOR INTERVENTION; IA No.108703/2020 - FOR PERMISSION; IA No.108681/2020 - FOR PERMISSION; IA No.1023/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.100367/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.115383/2020 - FOR CLARIFICATION/DIRECTION; IA No.3573/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.77651/2020 - FOR MODIFICATION OF COURT'S ORDER; IA No.108696/2020 - FOR RECALLING THE COURT'S ORDER; and, IA No.108670/2020 - FOR RECALLING THE COURT'S ORDER)

WITH

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

W.P.(C) No.1018/2017 (X)

W.P.(C) No.226/2018 (X)

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

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

W.P.(C) No.246/2018 (X)

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

W.P.(C) No.267/2018 (X)

W.P.(C) No.288/2018 (X)

W.P.(C) No.460/2018 (X)

W.P.(C) No.353/2018 (X)

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

W.P.(C) No.742/2018 (X)

W.P.(C) No.829/2018 (X)

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

W.P.(C) No.1397/2018 (X)

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

Diary No.36392/2019 (X)

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

T.P.(Cr1.) No.280/2021 (XVI-A)
(FOR ADMISSION and I.R.; IA No.84179/2021 - FOR EX-PARTE STAY; and,
IA No.84176/2021 - FOR EXEMPTION FROM FILING PROOF OF SURRENDER)

W.P.(C) No.947/2017 (X)

W.P.(C) No.971/2017 (X)

W.P.(C) No.1041/2017 (X)

W.P.(C) No.1116/2017 (X)

W.P.(C) No.1144/2017 (X)

W.P.(C) No.1156/2017 (X)

W.P.(C) No.1206/2017 (X)

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.56/2018 (X)

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

W.P.(C) No.74/2018 (X)

W.P.(C) No.134/2018 (X)

W.P.(C) No.131/2018 (X)

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

W.P.(C) No.164/2018 (X)

W.P.(C) No.182/2018 (X)

W.P.(C) No.199/2018 (X)

W.P.(C) No.281/2018 (X)

W.P.(C) Nos.942/2017 (PIL-W)

W.P.(C) No.57/2018 (X)

Date : 13-08-2021 These matters were called on for hearing today.

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HON'BLE MR. JUSTICE AJAY RASTOGI

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

PART-I

Re.: STATUS REPORT SUBMITTED BY ENFORCEMENT DIRECTORATE

The matter concerning Prem Mishra and others was mentioned by Mr. P. S. Narasimha, learned Senior Advocate.

It may be stated that Status Report dated 06.08.2021 has been filed by the Enforcement Directorate in a Sealed Cover. The Report indicates that the matter regarding cognizance is presently pending before the Special Judge, PMLA, Lucknow.

Mr. Narasimha is at liberty to mention the matter after due notice to Mr. Sanjay Jain, learned Additional Solicitor General, who appears for the Enforcement Directorate, once the issue whether cognizance needs to be taken or not is gone into by the Special Judge, PMLA, Lucknow.

The Report submitted by the Enforcement Directorate be re-sealed and kept in a sealed cover till further orders.

PART-II

**RE.: I.A. NO.45439 OF 2021 (VOL. NO.I-169); AND,
DOCUMENT VOL. NO.R-165 (CONCERNING M/s. MAHAGUN
REAL ESTATE PVT. LTD.)**

This matter was initially dealt with by this Court in its order dated 28.07.2020, particularly in paragraphs 24 to 30. Paragraphs 28, 29 and 30 of the order show that upon deposit of Rs.240 Crores by M/s. Mahagun Real Estate Pvt. Ltd. (“M/s. Mahagun” for short) in the Registry of this Court, the dues of NOIDA were to be paid out as first priority and the remaining amount was to be retained in the Registry of this Court to be used for completion of unfinished projects of Amrapali Group. The concluding part of paragraph 30 stated as under:

“ ... After the amount as aforesaid is deposited, the Sale Deed be executed by NOIDA and M/s. Baseline Infradevelopers Private Limited in favour of M/s. Mahagun Real Estates Private Ltd. ...”

The matter was thereafter dealt with by this Court in its order dated 07.09.2020, where the benefit of installments was granted to M/s. Mahagun, subject to certain conditions stipulated in the order. The order also directed as under:

“As indicated in the concluding part of paragraph 30 of the order dated 28.07.2020, NOIDA shall indicate its dues within fifteen days from the date of this order.

We must state that the first prayer in the application is accepted and the expression “Sale Deed” in paragraphs 28 and 29 of the order be read as “Lease Deed”.

By subsequent order dated 04.03.2021, the application¹ preferred by M/s. Mahagun was allowed and NOIDA was directed to act in terms of the second prayer made in the application.

The order dated 05.04.2021 recorded the statement of Mr. Ravindra Kumar, learned Advocate for NOIDA that ‘Statement of Dues’ of NOIDA as on 31.03.2021 would be placed on record by way of an affidavit. Accordingly, compliance affidavit (Vol. No.R-165) sworn by Mr. Rajesh Kumar son of Late Shri K.N. Singh, Officer on Special Duty, NOIDA, has been filed indicating the outstanding amounts in Tabular Chart as under:

Sl. No.	Method of Calculation of Interest	Dues against the Plot (31-03-2021 Till)
1.	As per prevailing policy of the authority @ 11% interest/14% penal interest is charged accordingly.	(i) Installment plus interest - Rs. 1,39,33,89,945/- (ii) 64.7% Additional compensation Rs.1,77,99,763/- (iii) Outstanding Lease Rent & Interest Rs. 20,88,63,993/- (iv) Transfer Charges Rs.16,29,20,000/- (v) Time Extension Charges Rs. 18,84,96,000/- Total: Rs.1,97,14,69,701/-

2.	As per Hon'ble Court's order dated 10.06.2020 and 10.07.2020, MCLR rates as and when applicable.	(i) Installment plus interest Rs. 1,19,76,70,032/- (ii) 64.7% Additional compensation Rs.1,39,27,841/- (iii) Outstanding Lease Rent & Interest Rs. 14,26,47,587/- (iv) Transfer Charges Rs.16,29,20,000/- (v) Time Extension Charges Rs. 18,84,96,000/- Total: Rs.1,70,56,61,460/-
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The first tabulation proceeds on the footing that NOIDA would be entitled to charge 11% interest to 14% penal interest while the second tabulation is on the premise that dues of NOIDA would be in terms of the orders dated 10.06.2020 and 10.07.2020 passed by this Court.

It may be stated here that the applications² preferred by NOIDA and Greater NOIDA seeking recall of certain directions issued by this Court in its orders dated 10.06.2020 and 10.07.2020 are still pending consideration.

At this stage, it is, therefore, directed:

- a) M/s. Mahagun Infratech Private Limited shall take appropriate steps within two weeks from today and keep the documentation ready so that appropriate Lease Deed can be executed.**
- b) M/s. Mahagun Infratech Private Limited shall be responsible to make arrangements for appropriate Stamp Duty/Registration Charges payable to the State Government.**
- c) The documents shall be executed by a competent official from NOIDA on behalf of NOIDA as well as on behalf of M/s. Baseline Infradevelopers Private Limited.**
- d) The execution of such documents shall confer appropriate interest and benefit in favour of M/s. Mahagun Infratech Private Limited, which shall then be entitled to develop the property in accordance with law.**
- e) Upon execution of such documents, the copies thereof shall be filed within 15 days of the execution, in the Registry of this Court.**
- f) Thereafter, the amount of Rs.1,70,56,61,460/- shall be released in favour of NOIDA by the Registry of this Court immediately.**
- g) The difference between the aggregate amounts mentioned in two Tabulation Charts shall be payable to NOIDA, in case their applications seeking variation/recall of orders dated 10.06.2017 and 10.07.2020 are decided in faour of NOIDA/Greater NOIDA.**

The applications filed by M/s. Mahagun stand disposed of accordingly.

PART-III

NOTE SUBMITTED BY **MR. R. VENKATARAMANI, COURT RECEIVER**

A) Re.: FUNDING FROM SWAMIH

It is submitted by the Learned Receiver that “Special Window for Affordable and Mid-Income Housing” (SWAMIH) Fund Authorities have executed fund related documents and all banking formalities have been completed. It is also submitted that the Sanctioning Authority of SWAMIH has also approved the transaction and the First Token Release in the sum of Rs.10 Crores has been transferred to NBCC.

The learned Receiver submits that officers of the SWAMIH Fund Authority have extended great help and cooperation, specially the officers, namely, Irfan A. Kazi, CIO SWAMIH Investment Fund, Mr. Vivek Agarwal and Mr. Varun Kedia of SBI Caps Ventures Limited.

We record our appreciation for the efforts put in by said officers in particular and by SWAMIH Fund Authority in general, in ensuring that the funding arrangements fructify and the project receives funding from SWAMIH Fund Authority.

B) Re.: FUNDING BY BANKS

It is submitted that the learned Receiver had extensive meetings with officers from following 10 Banks:

- 1. State Bank of India**
- 2. Punjab National Bank**
- 3. Bank of Baroda**
- 4. Union Bank of India**
- 5. UCO Bank**
- 6. Bank of India**
- 7. Axis Bank**
- 8. HDFC Bank**
- 9. Canara Bank**
- 10. Bank of Maharashtra**

It is submitted that the matters were discussed threadbare and after considering various issues, following suggestions are made by the learned Receiver:

- A. That in the event of any default or delay in the repayment obligation of ASPIRE, then the income Recognition and assets Classification status of ASPIRE shall remain standard without any additional provisioning, and shall not be designated or treated as NPA. The leave of the court will be sought for considering resolution of any matter arising out of this direction.**

- B. Housing being a priority sector for lending by banks through viz-a-viz home buyers, the Amrapali projects, being executed under the order of the Court and through the instrumentality of NBCC, funding to Amrapali projects through ASPIRE, shall be declared as Priority Funding Sector and consequently the respective capital charge shall not be that which is applicable to commercial real estate but shall be that which is applicable to the Priority Sector Funding (For example, extent of 20% as the capital charge rate relevant to priority sector funding).**
- C. Having regard to the valuations of all categories of Amrapali assets already done by the Forensic Auditors and the view taken by the Court that the projects are economically viable, no external rating of the Amrapali Project, or of ASPIRE need to be undertaken now and the same shall be dispensed with.“**

It is submitted that suggestions under ‘B’ are in conformity with Chapter-II of the RBI Master Directions Priority Sector Lending as on 11.06.2021.

It is submitted by the learned Receiver that directions in terms of these three pointers will go a long way in affording necessary assurance to all the Banks.

Mr. Alok Kumar, learned Advocate appearing for UCO Bank as well the consortium of UCO Bank, Bank of Baroda and Bank of India; Mr. Bishwajit Dubey, learned Advocate appearing for Bank of Baroda; and Mr. M.T. George, learned Advocate appearing for Punjab National Bank echo the same sentiments expressed by the learned Receiver and submit that once such assurances are given, there would not be any difficulty for the Banks in extending necessary financial accommodation to the projects of Amrapali Group.

We find substance in the submissions advanced by the learned Receiver and supported by the learned Advocates as aforesaid. We, therefore, proceed to pass the directions in terms of the aforesaid suggestions A, B and C, which shall be taken as part of the orders/directions passed by this Court. The Banks shall now expedite the process of extending financial accommodation to the projects of Amrapali Group.

C) Re.: HOUSING LOAN DISBURSAL

It is submitted by the learned Court Receiver by way of information that Union Bank has informed that approximately 3000 Home Buyers' home loans are being sanctioned and roughly about 300 Crores will be made available.

The Bank has agreed to disburse the said amount, as may be required by the Receiver.

D) Re.: DATA & STATUS OF HOME BUYERS AS ON 17.07.2021

The learned Receiver has submitted:

“The Receiver and the NBCC have made several joint efforts to reach out all Home Buyers to whom units are said to have been sold. As an outcome of this exercise, it has emerged that about 9538 Home Buyers have neither registered so far in the Customer Data maintained by the office of the Receiver, nor have made any payments, subsequent to the judgment of the Court in July-2019. Similarly, 6210 Home Buyers, though now registered in the Customer Data, are not making any payment. A project wise list of both these categories have been compiled. Necessary direction is solicited from the Court in order that the allotments to such defaulting Home Buyers shall be treated as cancelled, after giving one final opportunity for expressing their interest in the allotment and making due payment. This will facilitate

computation of unsold inventory, which then can be shared with the NBCC for the purposes of effecting sale.”

Two categories of Home Buyers are dealt with in this submission:

- I. 9538 Home Buyers who have neither registered so far in the Customer Data nor made any payment after the judgment of this Court in July 2019.**
- II. 6210 Home Buyers who have registered in the Customer Data but have not made any payment since the judgment of this Court in July 2019.**

Mr. Kumar Mihir, learned Advocates appearing for the Home Buyers submits that some of the Home Buyers who had taken the benefit of Subvention Facility are now finding it extremely difficult and their grievances need be addressed separately.

At this stage, we allow the learned Receiver to go ahead and grant a final opportunity to 9538 Home Buyers. Time of two weeks be granted to them to come forward and register themselves, failing which the concerned Apartments/Villas booked by those Home Buyers in the first category shall be treated as unsold inventory and can then be proceeded with for the purposes of effecting appropriate sales.

List this issue for further consideration on 27.08.2021.

E) Re.: TRANSFER OF AMOUNT LYING IN BANKS; and SALE OF AMRAPALI DIRECTOR'S PROPERTIES

The submissions of the learned Receiver on these aspects shall be dealt with on 27.08.2021, as Third Item.

PART-IV

NOTE SUBMITTED BY MR. M.L. LAHOTY, ADVOCATE

The issues raised in the Note submitted by Mr. M.L. Lahoty, learned Advocate, shall be taken up on 27.08.2021, as Second Item.

PART-V

Re: I.A. Nos.108696 & 108703 (Vol. No.I-147); and, I.A. Nos.108670 & 108681 of 2020 (Vol. No.I-148) - Applications by NOIDA/Greater NOIDA for Recalling of Court's Orders

These Interlocutory Applications shall be taken up on 27.08.2021, after consideration of the Notes submitted by Mr. R. Venkataramani, learned Receiver and Mr. M.L. Lahoty, learned Advocate.

PART – VI

Re: I.A. No.99661 of 2021 (Vol. No.I-173) – Application for Directions by NBCC

Mr. Siddharth Dave, learned Senior Advocate representing the NBCC, submits that application filed on behalf of the NBCC raises certain important issues and, therefore, the same may be taken up on priority.

Let the application of NBCC may be listed on 27.08.2021, as First Item.

PART - VII

All the remaining Interlocutory Applications on Board are adjourned to 27.08.2021.

PART-VIII

List the matters on 27.08.2021 at 2.00 p.m. or at the end of the Board of the Regular Bench, whichever is earlier.

**(MUKESH NASA)
COURT MASTER**

**(BEENA JOLLY)
BRANCH OFFICER**