

ITEM NO.301

Court 3 (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(s)(Civil) No(s). 940/2017

BIKRAM CHATTERJI & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 50370/2020 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 1023/2020 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 189314/2019 - COMPLIANCE OF COURTS ORDER
 IA No. 3573/2020 - INTERVENTION/IMPLEADMENT
 IA No. 60700/2020 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES
 IA No. 127787/2019 - RECALLING THE COURTS ORDER
 IA No. 127793/2019 - RECALLING THE COURTS ORDER)

WITH

W.P.(C) No. 160/2018 (X)
 (FOR [PERM TO FILE SUBSEQUENT EVENTS ON RECORD] ON IA 56300/2018
 FOR EXEMPTION FROM FILING O.T. ON IA 56301/2018
 FOR MODIFICATION ON IA 92782/2018
 FOR CLARIFICATION/DIRECTION ON IA 146516/2018
 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 52923/2020
 FOR CLARIFICATION/DIRECTION ON IA 56110/2020
 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 56111/2020
 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 60826/2020
 IA No. 56110/2020 - CLARIFICATION/DIRECTION
 IA No. 146516/2018 - CLARIFICATION/DIRECTION
 IA No. 60826/2020 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 56111/2020 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 52923/2020 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 56301/2018 - EXEMPTION FROM FILING O.T.
 IA No. 92782/2018 - MODIFICATION
 IA No. 56300/2018 - PERM TO FILE SUBSEQUENT EVENTS ON RECORD)
 W.P.(C) No. 288/2018 (X)
 (FOR
 FOR impleading party ON IA 72685/2018
 FOR INTERVENTION/IMPLEADMENT ON IA 72685/2018
 FOR CLARIFICATION/DIRECTION ON IA 72686/2018
 FOR impleading party ON IA 73759/2018
 FOR INTERVENTION/IMPLEADMENT ON IA 73759/2018
 FOR INTERVENTION APPLICATION ON IA 119574/2018
 FOR impleading party ON IA 5585/2019
 FOR INTERVENTION/IMPLEADMENT ON IA 5585/2019
 FOR CLARIFICATION/DIRECTION ON IA 5615/2019
 FOR impleading party ON IA 13161/2019
 FOR INTERVENTION/IMPLEADMENT ON IA 13161/2019

FOR CLARIFICATION/DIRECTION ON IA 13163/2019
 FOR impleading party ON IA 22094/2019
 FOR INTERVENTION/IMPLEADMENT ON IA 22094/2019
 FOR impleading party ON IA 39338/2019
 FOR INTERVENTION/IMPLEADMENT ON IA 39338/2019
 FOR INTERVENTION APPLICATION ON IA 69145/2019
 FOR CLARIFICATION/DIRECTION ON IA 69146/2019
 FOR CLARIFICATION/DIRECTION ON IA 152298/2019
 IA No. 13163/2019 - CLARIFICATION/DIRECTION
 IA No. 5615/2019 - CLARIFICATION/DIRECTION
 IA No. 152298/2019 - CLARIFICATION/DIRECTION
 IA No. 69146/2019 - CLARIFICATION/DIRECTION
 IA No. 72686/2018 - CLARIFICATION/DIRECTION
 IA No. 119574/2018 - INTERVENTION APPLICATION
 IA No. 69145/2019 - INTERVENTION APPLICATION
 IA No. 72685/2018 - INTERVENTION/IMPLEADMENT
 IA No. 22094/2019 - INTERVENTION/IMPLEADMENT
 IA No. 13161/2019 - INTERVENTION/IMPLEADMENT
 IA No. 5585/2019 - INTERVENTION/IMPLEADMENT
 IA No. 73759/2018 - INTERVENTION/IMPLEADMENT
 IA No. 39338/2019 - INTERVENTION/IMPLEADMENT)

Date : 28-07-2020 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

The operative part of the order is extracted hereunder:-

"... 28. The payment of dues of NOIDA Authority has to be made as per agreement by M/s. Mahagun Real Estate Private Limited to NOIDA, out of sale consideration. The rate of interest on dues to be paid, concerning the plot in question, as per order passed on 10th June 2020 as modified on 10th July 2020. On deposit of dues of NOIDA out of sale consideration, the cancellation of lease shall stand withdrawn and it shall grant time of 7 years to complete the project which is granted to a new lessee. We direct Baseline Infradevelopers Private Limited, as per the MoU, to execute a sale deed. However, as per MoU, out of the total sale consideration, Rs.20 Crores has been paid, and the balance amount is Rs.1917979798/-. The agreement was entered into way back on 09.10.2017. The amount ought to have been paid within a reasonable time, and by now, approximately 02 years 09 months have passed. Therefore, it would be equitable to direct M/s. Mahagun Real Estate Private Limited to make payment of Rs.240 Crores in addition as outstanding amount would have earned the

interest at a rate of 9% to 9.25%.

29. To do complete justice, it would be appropriate to quantify the outstanding amount be paid at Rs.240 Crores, in addition to the sum of Rs.20 Crores that has been paid as earnest money. The dues of the NOIDA to be paid first at first priority, and the remaining amount, which is payable to Baseline Infradevelopers Private Limited shall be retained in the account of the Registry of this Court, to be used for the completion of unfinished projects of Amrapali Group. Thus, in the process at least some money would be generated for completion of projects.

30. It was submitted by Shri M. L. Lahoty, learned counsel and Shri Gopal Shankarnarayan, learned senior counsel, that in the brochure which was issued by Amrapali Group, the health club was shown in the project of Phase III, whereas now in the fresh plan, it has been shown in the area of HBC 1 and HBC 2 itself. The builder should be held bound by the brochure, which was published. Shri M.L. Lahoty, learned counsel, has drawn our attention to Sections 12, and 14 of the RERA and Section 5(3) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act. However, on a specific query made to Shri Lahoty, he was unable to show that application for registration was filed along with the map showing the area of the health club in Phase-III of the project. Out of Phase-III of the Project, 20000 sq.m. has already been sold to another person. Remaining 40000 sqm. was agreed to be sold to M/s. Mahagun Real Estate Private Limited and the lease of plot itself has been canceled, and it appears that an application was filed indicating the location of health club within HBC 1 and HBC 2. In the circumstances, we find that brochure cannot hold the field, particularly when the allotment of the plot itself had been canceled due to non-payment of the lease rent and interest. Considering the stand taken by the NOIDA in its reply, we find that no justification in the prayer based on the brochure, to hold that health club to be located at the place which is not available. When health club will be provided within the project of HBC 1 and HBC 2, it cannot be said that any prejudice is to be caused to the home

buyers. They are going to have the same facility which was promised to be provided. Thus, we find no hesitation to reject the aforesaid prayer made on behalf of the home buyers.

Let sale deed be executed on payment of Rs.240 Crores (Rupees Two Hundred and Forty Crores only) out of that firstly the dues of NOIDA are to be cleared. Let the amount of Rs.240 crores (Rupees Two Hundred and Forty Crores only) be deposited by M/s. Mahagun Real Estate Private Ltd. in the Registry of this Court within six weeks from this date. NOIDA shall indicate its dues within 15 days. 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. A copy of the Sale Deed be filed in the Registry of this Court, whereafter the Registry shall remit the amount representing dues of NOIDA, and the balance shall be retained and utilized for completion of projects."

(NARENDRA PRASAD)
ASTT. REGISTRAR-cum-PS

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.940/2017

BIKRAM CHATTERJI & ORS.

..PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

..RESPONDENT(S)

WITH
WRIT PETITION (C) NO.160/2018

WRIT PETITION (C) NO.288/2018

O R D E R

1. We have heard the Forensic Auditor as well as the learned counsel appearing for the parties at length. The first question arises whether the Heartbeat City Projects are of Amrapali Group, and the second question is as to the agreement entered into by M/s. Mahagun Real Estate Private Limited with M/s. Baseline Infradevelopers Private Limited.

2. It is apparent that Heartbeat City Projects were launched in the name of the 'Amrapali Heartbeat' project in 2011-2012 with Mr. M. S. Dhoni, the Brand Ambassador. The Home Buyers' agreement was entered into in the name style of Amrapali Group with the assurance that flats will be delivered within 36 months. Most of the buyers paid their dues on time, but the construction was delayed.

3. Heartbeat City Projects comprise Heartbeat City 1 (for short, HBC 1) and Heartbeat City 2 (for short, HBC 2) and Hanging Gardens in Noida.

The land for the respective projects was allotted in the name of Three Platinum Softech Private Limited, Pebbles Prolease Private Limited, and Baseline Infradevelopers Private Limited. The projects were launched and advertised in the name of the Amrapali Group. Phase 3 project was started in 2011-2012 in the name of Hanging Garden; however, later on, Hanging Garden project was scrapped, and the home buyers were admittedly shifted to HBC 1 and HBC 2 or refunded the amount.

4. HBC 1 comprises 759 units, and HBC 2 consists of 1217 units + shops, but construction could not progress for one reason or the other.

5. In the Audit Report, it has been found that the land in Baseline was part and parcel of HBC 1 and HBC 2 projects and in general, under the control of the Directors of HBC 1 and HBC 2 and was purchased from the funds of the customers of HBC 1 and HBC 2 and, is an integral part of HBC 1 and HBC 2 and, therefore, customers of HBC 1 and HBC 2 have the first and the full right over the land rights and on the proceeds to be received from the sale of the land can be utilised for the construction of HBC 1 and HBC 2 projects. HBC 1 has nine towers and 785 units, of which, 675 units were sold and Rs. 147 crores recoverable from sold units. HBC 2 has 12 towers and 1282 units, out of which, 936 units were sold and Rs. 301 crores recoverable from sold units. The cost to complete HBC 1 is approximately Rs. 167.19 crores and HBC 2 is Rs. 375.64 crores, which is recoverable from unsold units.

6. Mr. Amit Wadhwa, Director of Amrapali Homes, has 25% shareholding. Mr. Akhil Kumar Surekha, who is the Director of Bihariji

Ispat Udyog Ltd. and JST Engineering Services Limited, has 13% and 12% shareholding respectively, total 25%. Mr. Vaibhav Jain and Mr. Pankaj Jain, Directors, are holding 10% and 15%, total 25% of the shareholding, whereas Cozi Habitat Builders Private Limited, Maa Sharda Holding Private Limited, through its Director Mr. Sankalp Shukla is also holding 25% shares. Similarly, in HBC Phase II, the shareholding pattern is similar to 25% of the group mentioned above of Mr. Amit Wadhwa, Mr. Akhil Kumar Surekha Vaibhav Jain, Mr. Pankaj Jain, and Mr. Sankalp Shukla.

7. In Baseline Infradevelopers Pvt. Ltd., it is stated that shareholding of Mr. Amresh Kumar is 8.25%, Bihariji Ispat Udyog Limited through Mr. Akhil Kumar Surekha is 8.25%, B2C Realtors Pvt. Ltd. through Mr. Vaibhav Jain and Ms. Swati Jain is 8.25%, Cozy Habitat Builders Pvt. Ltd. through Mr. Sankalp Shukla is 8.25%. Mr. Nishant Choubey and Mr. Santosh Choubey are holding 34% and 33% respectively. Mr. Nishant Choubey and Mr. Santosh Choubey did not provide documents to the Forensic Auditors; however, they possess 67% shares.

8. The following findings were recorded concerning Heartbeat City in our Judgment and Order dated 23.7.2019:-

“35. Heartbeat City Developers Private Limited

The project is in the name of 3 companies namely Pebbles Prolease Private Limited, Three Platinum Softech Private Limited and Baseline Infradevelopers Private Limited. The project is an Amrapali group's project which was carved out from Amrapali Group of companies while case was pending before Honorable Supreme Court. Funds were invested in the project from Amrapali Group through Mr. Amit Wadhwa, Mr. Amit Wadhwa was a partner of 25% each in Pebbles Prolease Private Limited and Three Platinum Softech Private Limited. Amrapali Group launched and advertised the project as

Amrapali Group project and the project was named as Amrapali Heartbeat City Developers Private Limited in the agreements. Corporate office was having the same address as Amrapali Corporate Tower in Sector 62, Noida. The purpose of carving out the project from Amrapali is not known. It is informed that Mr. Vaibhav Jain and Mr. Sankalp Shukla are the key managerial persons. In the absence of accounting records we could not proceed further on the issue.”

9. Mr. Vaibhav Jain admittedly was the architect of Amrapali Group who was holding 25% shares. Mr. Akhil Kumar Surekha was also holding 25% shares in each of the projects.

10. Concerning Surekha Group, in our Judgment and Order dated 23.7.2019, the following facts have been mentioned :-

“22. Sureka group

Amrapali and Sureka's have a very long and intricate association starting officially with the partnership venture 'Amrapali Homes' in 2006 wherein Ultra Home Construction Private Limited and Mauria Udyog Limited is partner and developed project in name of Amrapali Homes in Indirapuram then Amrapali Grand wherein Ultra Home Construction Private Limited and Bihariji Ispat Udyog Limited were partners, though the land was allotted to Bihariji Ispat Udyog Limited. Initially Amrapali Group ventured like these types of association as he was independently not able to meet the net worth, turnover and other eligibility criteria for land allotment by Noida authorities. They then next associated in Sapphire Project wherein Sureka's family participated as shareholders and directors in the Company. Every Joint Venture used to have an unexecuted profit sharing and investment arrangement. Since the company didn't declared dividend ever, the profits were drawn by Sureka family in the nature of advances which has majorly been squared off against billing from Mauria Udyog Limited, Jotindra Steel and their other related companies. Some of the amount is still lying as advance in the books of accounts of Amrapali Group. In 2012 Amrapali Group invested in 25% stake in Sureka family's three projects Heart Beat City, Pebbles Prolease, Three Platinum Softech. Apart from subscribing to share capital, the further investment was made directly as advance or billing from Amrapali Group to these companies and some through shell companies as well.

Further they did a project in Ultra Home Construction Private Limited with Mozambique. This project was planned, coordinated and managed by Mr Navneet Sureka in the name of Ultra Home Construction Private Limited and whatever advance was sanctioned and disbursed by the Government of Mozambique through EXIM bank to Ultra Home Construction Private Limited was eventually diverted to Sureka family through billing from Jotindra Steel and Tubes Limited, Mauria Udyog

Limited, etc. A separate bank account of Ultra Home Construction Private Limited was opened in State Bank of Patiala, Faridabad branch where signatory was Mr Akhil Sureka who used to operate the account from there. The entire transactions of LC and EXIM bank was routed from that account. Navneet Sureka visited more in the period of contract finalization to Mozambique

Partner in the following projects:

- Amrapali Sapphire Developers Pvt. Ltd. – 10.52% of shareholding Bihariji Ispat Udyog Limited
- Amrapali Smart City Pvt Ltd – 10% shareholding held by Mauria Udyog Ltd
- Amrapali Homes – 5% - Mauria Udyog Ltd (Rs.20 crore given as an advance before 2008 and is recoverable)
- Amrapali grand – 10% Bihariji Ispat Udyog Limited –We were informed that the land was allotted in the name of Bihariji Ispat Udyog Ltd and construction and development work was done by Amrapali group.

Directors in the following companies

- Amrapali Leisure Valley Pvt Ltd – Akhil Sureka

Cheque signatories in the following companies

- Amrapali Leisure Valley Pvt Ltd
- Amrapali Dream Valley Pvt Ltd
- Amrapali Leisure Valley Developers pvt Ltd
- Amrapali centurian Park Pvt Ltd

From the above, it is clear that Sureka group directors namely Vishnu Sureka, Navneet Sureka and Akhil sureka were promoters in amrapali group. They were in equal control of affairs with other promoters (Anil Sharma Shiv Priya, etc.). They not only invested as a promoter heavy amount but also provided the land allotted to Bihariji Ispat a sureka group company. But the amount invested was withdrawn in a very short period by other associate companies in the form of interest, supplies, provision of services etc. it was found out that there were many other suppliers who never interacted with any of the directors/staff but supplied material to Amrapali through Akhil and Navneet Sureka. In our opinion, this was nothing but accommodation bills and a form of withdrawing funds from the group. None of the employess/ directors of the sureka companies knew that Sureka group has supplied ,material to Amrapali group. Though sureka group has a policy and procedure wthat for any item above Rs,. 5,000/- a purchase order would be issued but it was not followed in the case of supplies to Amrapali. Surprising all the transactions worth more than 500 crore has been handled single handedly by Navneet and akhil sureka without involving any of the directors and employees. All the cheques were also signed by Usreka family and not by any other directors.

It is pertinent to note that the amount paid for FSI purchased by Suraka group companies was taken back on the same day by routing through a number of companies.All such cheques for money laundering were signed by Akhil Sureka Furthermore, it is found that the amount so paid ie Rs. 80 crore was also received from suppliers of the Amrapali group.

Therefore in our opinion, not only FSI should be canceled but the amount of Rs. 80 crore is recoverable from them.

They adopted the same methodology. Formed various business entities, appointed small time employees the directors in these companies and routed funds of 100s of crores and it may be in the range of 1000s crores.. None of the directors were knowing about any of the business transactions. Further more most of the directors never attended any board meetings, knew about nature of business the company does, name of other directors in the company and so on. We are not sure who was teaching the fraudulent practices to whom, whether Sureka to Amrapali or vice versa.

It was observed Rs.13.44 crore paid to Sureka Public Charitable Trust were transferred to donation account subsequently. It is submitted that Sureka Public Charitable Trust is a group institution of Jotindra Steels & Tubes Limited, which is also under the forensic audit. This should be recovered from the Jotindra Steels & Tubes Limited.

Sureka group used several companies to route funds from Amrapali group to Sureka group, an example being in the case of Amrapali Infrastructure Pvt Ltd, where the company received Rs.3.23 crore from "Synergy Freightways Private Limited" from 26th March 2015 to 30th March 2015. On 31st March 2015 an amount of Rs.4.18 crore was paid to the said party through 16 separate transactions and thereby leading to a debit balance recoverable from the party amounting to Rs.0.9,5 crore as on 31st March 2015. This amount should be recovered from the Sureka Group.

It is worthwhile to mention here that M/s Synergy Freightways Private Limited is an associate Company of M/s Jotindra Steel and Tubes Limited. Further, there are no business transactions with the said party except routing of funds.

Another example being in the case of Shriv Buildmat Private Limited where one of the directors is common with Mauria Udyog Limited. On scrutiny of ledger accounts of Shriv Buildmat, it was observed that during FY 2014-15 and 2015-16, the said company had almost 100% sales to Amrapali group of companies. It was also observed that one flat was allotted to Mr. Atul Kumar, Director of Shriv Buildmat Private Limited in Verona Heights, against the amount due to the said company. This adjustment is not genuine and the relevant amount should be recovered from Mr. Atul Kumar or his flat may be attached. As per ledger account advance to Amrapali for flat, a sum of INR 34.05 lakhs has been shown as recoverable as on 31st March, 2015. There is no name of the Company to which such advance has been given in the books of the Amrapali Group of Companies. Thus, this amount of INR 34.05 Lakhs is shown as recoverable is not genuine.

A sum of INR 53.21 Lakhs has been debited to Labour Charges Contractors on account of bill no. SBPL/Noida/010 dated 13/3/2013 has been recorded in the books of Amrapali Infrastructure Private Limited on 16/03/2015.

RN Traders

During the financial year 2016-17 and 2017-18, a sum of **INR 17.63 crores** has been debited to this party and standing recoverable as per Raw Tally Data, till date as per details given below:

Date	Particulars	Amount in lakhs	Remarks
30-11-2016	Bank Payment	0.02	Payment made without any narration on the voucher
13-12-2016	Bank Payment	750	Payment made without any narration on the voucher
19-04-2017	Transfer entry through MauriaUdhyog Limited	1,004	Being Amount transfer as per letter signed by Mr. Anil Sharma
19-04-2017	Transfer entry through Sarvomme Infrastructure Private Limited	960	Being Amount transfer as per letter signed by Mr. Anil Sharma
Total		2,714.02	

Further, there is no Name, Pan or Address available in the records of M/s RN Traders. It was further observed that there are no business transactions with M/s RN Traders. It is possible that this amount of **INR 2,714.02 Lakhs** has been withdrawn by the management for their own personal use and should be recovered from the management.

BiharijiIspat Udyog Limited being one of the partners of Amrapali Grand always had negative capital. They withdrew much more than what they brought into the business. There is no substance in them being called as capital contributors to the business of Amrapali Grand. As on 1st April 2008 they had withdrawn INR 12 crore and invested a capital contribution of INR 1.5 crore. As on 31st July 2018, they have debit balance of INR 1.67 crore and negative capital of INR 30,380. They always withdrew homebuyers funds for misusing for their own agendas apart from the business.

Out of INR 12 crore given to BiharijiIspat Udyog Limited, they returned INR 6.45 crore through bank and the balance amount was adjusted against receivables from Ultra Home Construction Pvt Ltd and against capital contribution by BiharijiIspat Udyog Ltd.

Amrapali Grand gave loans and advances to below parties, which are recoverable as on 31st July 2018 amounting to INR 25.73 crore as per Tally data.

S. No.	Name of the Company/Person	Amount	Date of transaction
1	Anil Kumar Sharma	10,03,55,900	20.11.2007 to 25.07.2018
2	Shiv Priya	7,10,50,000	20.04.2007 to 22.09.2010
3	Madan Mohan Sharma	2,01,00,000	20.11.2007 to 5.12.2007
4	Ajay Kumar	2,74,68,000	23.06.2007 to 31.03.2011
5	Bihariji Ispat Udyog Limited	1,67,00,000	5.04.2006 to 31.07.2018
6	Amrapali Homes	54,01,519	15.09.2006 to 07.12.2013
7	SuvashChander Kumar	47,11,000	3.01.2008 to 01.12.2009
8	Shiv Priya -Imprest	35,70,480	1.04.2008 to 24.12.2009
9	Amrapali Zodiac Developers Private Limited	19,20,000	27.06.2017 to 13.07.2017
10	Jhamb Finance and Leasing Private Limited	19,00,000	5.11.2015
11	Amresh Kumar	16,86,000	1.04.2007 to 15.09.2008
12	GK International	10,00,000	21.01.2007
13	Pallavi Mishra	6,07,080	12.07.2018
14	Mohit Gupta	5,80,000	25.06.2007 to 11.04.2008
15	P K Choubey	1,50,000	2.08.2007
16	Amrapali Foundation	1,00,000	24.11.2015
17	Suraj pur Sales & Service	1,00,000	1.11.2010
	Total	25,73,99,979	

It has been observed that amounts paid to parties above were mostly routed to Quality Synthetics Pvt Ltd which primarily belongs Sureka family. For example:

- Payment of Rs 2,74,68,000/- has been made to Mr Ajay Kumar from 2007-08 to 2010-11 as advance recoverable. Out of this, Rs 77,00,000 was paid by him for purchase of property located at Jaypee Greens, Noida & Rs 50,00,000 was paid by him to Quality Synthetics Industries Limited.
- Payment of Rs 10,03,55,900 has been made to Mr Anil Kumar Sharma from 2007-08 to July, 2018. Out of this, Rs 3,00,00,000 was paid to Quality Synthetics Industries Limited.
- Payment of Rs 7,10,50,000 has been made to Mr Shiv Priya from 2007-08 to September 2010. Out of this, Rs 1,00,00,000 was paid to Quality Synthetics Industries Limited.

While reviewing the books of accounts of Amrapali Infrastructure Private Limited and M/s Jotindra Steel and Tubes Limited, it has been observed that Amrapali Infrastructure has made purchases from M/s Jotindra Steel against Letter of Credit. The letter of credit has been discounted by M/s Jotindra Steel with the banks. The discounting charges of INR 1.30 Crores have been debited by M/s Jotindra Steel to M/s Amrapali Infrastructure. We fail to understand the reason for this treatment. In normal course of business, the supplier is the person who bears the discounting charges in respect of the transactions as the margin when sold on Letter of Credit are generally higher. This amount of **INR 1.30 Crores** on account of discounting charges of Letter of Credit Should be recovered from M/s Jotindra Steel and Tubes Limited.

- i. It has also been observed that M/s Jotindra Steel and Tubes Limited has issued service invoices for erection, shifting and transportation charges amounting to **INR 96 lakhs** approximately during the financial year 2014-15 as per details given below:

Date	Bill number	Name of the Party	Gross Amount	Tax	Total	Nature of the Service
6/6/2014	JST/FBD/SG/0001	Jotindra Steels & Tubes	5,000,000	618,000	5,618,000	Erection Charges
6/6/2014	JST/FBD/SG/0002	Jotindra Steels & Tubes	2,532,000	78,239	2,610,239	Transportation Charges
12/1/2014	Bill not available	Jotindra Steels & Tubes	247,500	7,648	255,148	Transportation Charges
12/1/2014	Bill not available	Jotindra Steels & Tubes	365,000	11,279	376,279	Transportation Charges
2/1/2015	Bill not available	Jotindra Steels & Tubes	221,400	6,841	228,241	Transportation Charges
2/1/2015	Bill not available	Jotindra Steels & Tubes	182,700	5,646	188,346	Transportation Charges
3/31/2015	Bill not available	Jotindra Steels & Tubes	164,700	5,089	169,789	Transportation Charges
3/31/2015	Bill not available	Jotindra Steels & Tubes	216,000	6,675	222,675	Transportation Charges
Total					9,668,717	

Further, on scrutiny of the invoices issued by the JSTB it appears that the invoices raised for the above services are completely different from the invoices issued regularly and are prima facie non-genuine. Hence, the same should be recovered from JSTB or the Company Management as both the parties have been partnering in various projects.

ii. It is further observed that purchases amounting to INR 7.09 Crores, INR 59.53 Crores and INR 47.04 Crores has been made from this party in M/s Amrapali Infrastructure Private Limited during the financial year 2013-14, 2014-15 and 2015-16 respectively. While sample checking of the purchase bills, it was noted that the goods consignment notes enclosed with the purchase bill are issued by M/s Synergy Freightways Private Limited which is also a group Company of Jotindra Steel and Tubes Limited. Goods consignment note enclosed with the purchase bills don't seem to be genuine in view of the undermentioned observations:

1. We sent a letter to M/s Synergy Freightways Private Limited as per address on record which has been received back as undelivered.
2. Statement of Mr. Akhil Sureka, Managing Director of M/s Jotindra Steel and Tubes Limited was recorded and it was confirmed by him that most of the purchase/ sales transactions are back to back i.e. all such consignments are sent directly from their supplier to Amrapali Group of Companies. In these circumstances it is not understood by us that how the consignment notes of M/s Synergy Freightways Private Limited have been enclosed with most of the purchase bills, if the transactions were back to back for their supplies.
3. **On scrutiny of the tally data/documents of Amrapali Infrastructure Private Limited and JST, it has been observed that no freight has been paid to M/s Synergy Freightways Private Limited either by Amrapali Infrastructure Private Limited or by JST.**

This clearly establishes that all the GRs issued by M/s Synergy Freightways Private Limited are not genuine. Further, most of the purchase invoices of JST have been shown as sale on the same date with similar particulars/ quantity by raising the invoice on Amrapali Infrastructure Private Limited.

We are of the view that these sales invoices raised by JST are also not genuine and are mere accommodation entries only.

Sample details of such transactions for 2 days are enclosed below:

Sr. No.	Date of the bill	Bill No.	Amt. of Bill (In Rs.)	Date of the GR	GR No.	Time In	Time Out
1	07.02.2015	698	1,652,641	07.02.2015	698	15:48	18:12
2	07.02.2015	699	1,462,037	07.02.2015	699	16:22	17:31
3	07.02.2015	701	1,136,176	07.02.2015	701	15:52	17:49
4	07.02.2015	703	1,143,610	08.02.2015	703	16:02	12:19
5	07.02.2015	704	1,138,241	08.02.2015	704	10:09	11:57
6	07.02.2015	705	1,138,241	08.02.2015	705	10:54	14:58
7	07.02.2015	706	1,382,740	08.02.2015	706	14:43	18:04

8	08.02.2015	713	892,503	09.02.2015	713	9:20	14:29
9	08.02.2015	715	952,167	09.02.2015	715	14:28	17:23
1	08.02.2015	716	948,647	09.02.2015	716	14:23	17:22
11	08.02.2015	717	890,025	09.02.2015	717	9:45	14:40
12	08.02.2015	718	1,032,512	09.02.2015	718	9:52	14:43
13	08.02.2015	719	368,446	09.02.2015	718	9:52	14:43
14	08.02.2015	720	1,383,566	09.02.2015	720	10:27	16:08
15	08.02.2015	722	1,136,176	09.02.2015	722	10:09	17:11
16	08.02.2015	726	1,087,502	09.02.2015	-	-	-
17	08.02.2015	727	223,673	09.02.2015	726,727	11:47	17:13
18	08.02.2015	728	1,135,763	09.02.2015	728	14:15	18:50

4. It has been further observed that there have been unaccounted cash transactions between the Amrapali Group of Companies and JSTB group of Companies as per documents seized during Income Tax Search in the premises of JSTB Group of Companies which are not accounted for in the Amrapali Group of Companies. Complete Copy of the Order of CIT (Appeals) where the observations regarding unaccounted cash were discussed is enclosed herewith as **Annexure 34-C**.

II. M/s Mauria Udyog Limited Ghaziabad

While scrutinizing the ledger of this party it was observed as follows:

- During the month of December 2015 there were 7 purchase invoices from this party amounting to **INR 0.65 Crores** all dated 18/12/15.
- While scrutinizing the data called from M/s Mauria Udyog Limited it was noted that they have purchased these goods vide 7 purchase invoices dated 17/12/15 for **INR 0.63 Crores**.
- There is no other purchase/Sale by M/s Mauria Udyog Limited.
- Similarly, in other months also 100% of the sale is made to Amrapali Group of Companies. Since M/s Mauria Udyog Limited is a group company of Jotindra Steels & Tubes Limited, there is very high possibility of accommodation bills being issued and all their purchases being Non-Genuine amounting to **INR 5.28 Crores** for financial year 2015-16.
- It is further observed that all the payments against these purchases' bills have been made by issuing letter of credit. It seems that the Company is getting the LC's discounted from the bank against these non-genuine bills.

When we questioned Mr. Navneet Sureka who approached Amrapali group from trust side and who was approached in Amrapali group. He answered "he is not able to recollect".

He didn't cooperate otherwise how it is possible that such a huge amount donated by Amrapali group companies and he is not able to remember the basic question. We recommend the amount donated

should be recovered from the Sureka group.

We are of the opinion that the supplies and services provided by Jotindra Steel & Tubes Limited (Rs 321 crore) and Mauria Udyog Limited (Rs 128 crore) are prima facie bogus in nature.

1. The 2 directors namely Mr. Akhil Sureka and Mr. Navneet Sureka are equally responsible for companies having shareholding/capital/profitsharing and should be held responsible for shortfall in cost of construction and land dues to Noida authorities. **(Refer annexure S-11 page 2960 Supplementary report)**

2. Mr. Akhil Sureka opened bank account in SBI, Patiala, Faridabad in the name of Amrapali group companies and became a signatory. Amrapali did not have any base at Faridabad but Akhil sureka operates from Faridabad.

3. Jotindra Steel and Tubes Limited agreed to buy used construction equipments from Amrapali Infrastructure Private Limited and paid Rs 8 crore on 13th December, 2016 and immediately transferred that funds to group companies of Sureka group namely Jotindra Steel and Tubes Limited and others by routing the funds from Amrapali Infrastructure Private Limited to Ultra Home Construction Private Limited.

4. The FSI's bought by Sureka group (details given in Chart D) without making any payment. The modus operandi was funds were paid from one company and on the same day were transferred to other Sureka group company by routing in 2-3 Amrapali Group companies. This would not have been possible without active involvement of Mr. Akhil Sureka, who is bank signatory. We found on sample basis that the amount of Rs. 80 crore so routed was originally started from Amrapali. The amount so claimed of Rs 80 crore has been routed through various companies. this amount has been paid out of Amrapali group against purchases and payment made to various vendors namely Bhagirathi Tubes (Prop Mr. Shiv Kumar)etc. It was confirmed by supplier that he did not have any knowledge of any of the transactions and stated that all transactions were carried out in good faith under the advice & instruction of Mr. Akhil Sureka. He further submitted that he never visited any of the Amrapali group office, he or his staff including employees has never visited any of the offices or site of Amrapali group. When questioned on supplies of scaffolding material and steel to and purchase sales reconciliation of supplies along with purchase orders and sales orders, he confirmed that it is not available. The amount so paid should be recovered from the **SUREKA group companies**. It was further confirmed that funds movement were also on behalf of Akhil Sureka carried out under good faith.

5. An amount of Rs 55 crore was received from EXIM bank under line of credit for a project was to be done in Mozambique. The group submitted **a bogus bank guarantee for the said advance to Mozambique client from a bank namely International Trade Bank Limited**. Out of the funds of RS 55crore, major amount was transferred to Companies of Sureka group.

On enquiry from the Amrapali Group we came to know that the bank

guarantee was made available by Mr. Navneet Sureka, Managing Director of Mauria Udyog Limited **and that no bank exist/existed by the name International Trade Bank Limited.** It was also informed that the project was under direct control and supervision of Mr. Navneet Sureka. It shows active involvement of Mr. Navneet Sureka in the project. Mr. Prashant Kumar and Mr. Ram Kumar are the persons who were travelling to Mozambique and know about the project but we could not get the contact details of these 2 persons

6. Quality Synthetics (Sureka Group) had given a loan to Amrapali Sapphire of RS 3 crore in March, 2009 at the rate of interest of 14% p.a. The company kept on paying to Quality Synthetics when it was having no funds for construction. The Amrapali Group was giving advances to various vendors/parties interest free and taking loan from Quality Synthetics, at the rate of 14% p.a. **It is pertinent to note that the said amount of RS 3 crore along with all interest due totaling to RS 3,86 crore was repaid in March, 2018 when there were no funds available for construction of flat and the case was pending before Honorable Supreme Court. The amount should be recovered immediately.** It is pertinent to note that the company is not doing any business and are used just for the purpose of money laundering.

7. **Sureka group was a promoter and was providing the net worth certificate at the time of allotment of land to Noida/ Greater Noida authorities. At the time of making payment to the authorities for land funds were arranged by them.**

8. The directors other than the family have come and informed that they were not knowing about the operations of the company and not attended any board meeting and papers were send to their residence for signatures.

9. There are many other high value transactions which we are in process of examination.

10. Further to our supplementary report dated 30th April 2019. The directors of four companies of Sureka Group appeared before us from 9th May 2019 to 18th May 2019, the directors gave their statement On the basis of interaction in the statement given by them. We found as follows.

The four companies which bought FSI for the sham companies created for the purpose of money laundering. Neither the shareholders nor the directors of the companies were aware of any transactions carried out by these companies. It is worthwhile to note that Mr. Vishnu Sureka, Mr. Navneet Sureka and Mr. Akhil Sureka were neither the shareholders nor the directors as well didn't attend any board meeting including AGM/EGM. However, out of three who were signatory to the bank in all the companies. Directors were not aware of who have been the signatories. When questioned . Vishnu, navneet and akhil Sureka could not reply why they were the signatories when they were neither shareholders, directors, employees.

Mauria Udyog Limited

It was submitted in affidavit of Mauria Udyog Limited that Mauria Udyog Limited is a manufacturer and traders. *It is stated that in addition, to*

manufacturing of LPG Cylinders, MUL also manufactures world class "Terry Towel" and "Apparels". Further MUL also trades internationally & domestically in Steel Products in addition to Ferrous & Non Ferrous metals. MUL also deals in agro commodities such as soya bean, refined oil & deoiled cake used as fodder for the cattle feed/poultry industry.(from affidavit of MUL para 5 page 2) **We scrutinized the annual accounts of Mauria Udyog Limited and found that the product that is TMT bars are supplied only to Amrapali Group companies and a very minuscule quantity to other companies.**

In the 2010-11, TMT bar supplied for Rs. 52.97 crore and the payment received Rs 29 crore and that is also a major part of the payment of Rs 16.5 crore was received in March.

Similarly, in the year 2012-13, supplies were made of TMT bar and the payment was received in the month of March 2012 just before closing of the year.

Suddenly in the year 2012-13, trend is changed and Ultra Home Construction Pvt Ltd gave an advance of Rs 33 crore on various dates which was returned subsequently in the month of February and March.

The above transactions are dubious in nature because we scrutinized the supply bills of Mauria Udyog Limited and found that Mauria Udyog Limited has supplied TMT bars only to Amrapali group of companies. It is not an item in which Mauria Udyog Limited has dealt with any other party except a miniscule quantity of 2-3 customers who in turn has also supplied to Amrapali group. There was no purchase order from Amrapali group to Mauria Udyog Limited **even the size of TMT bar was not mentioned on the invoice of Mauria Udyog Limited. The rate charged by Mauria Udyog Limited are higher in the range of 15-20% then the market rate for which no satisfactory explanation was provided to us.** In year 2013-14, Ultra Home Construction Pvt Ltd gave Rs 2.45 crore to Mauria Udyog Ltd which was returned on 29th March. **It is surprising to find out that in the year 2014-15 in the month of May and June, Ultra Home Construction Pvt Ltd has accepted LCs from banks without booking of any purchase of material.** The company's bank account is used for accommodation bills and Mauria Udyog Ltd was paid an excess of Rs 1.16 crore over and above an accommodation bill. In the year 2015-16, **in the month of May Amrapali group started supplying TMT bars to Mauria Udyog Ltd, the purpose of supplies of TMT bars by Ultra Home Construction Pvt Ltd was not explained to us.** In the year 2015-16, total supplies are to the extent of Rs 15.79 crore and in the year 2016-17 amounting to Rs 5.36 crore. In the year 2015-16, payments were made to Mauria Udyog Ltd on behalf of Shri Satguru Metalloys Pvt Ltd and Bhagirathi Tubes of Rs 8 crore and Rs 6.50 crore respectively. We were not explained any reasons for making such payments.

It is pertinent to note that the company is not doing any business and are used just for the purpose of money laundering.

Shri Narayan Rajkumar Merchants Ltd

A group company of Sureka group paid Rs 1 crore to Amrapali Sapphire Developers Pvt Ltd. The entire amount along with interest payment of Rs

1.11 crore was paid to Shri Narayan Rajkumar Merchants Ltd, surprisingly Amrapali group didn't charge any interest on payments made to Sureka group of companies but it had paid without fail interest @ 13.45% to Shri Narayan Rajkumar Merchants Ltd. **Further an amount of Rs 2 crore was paid to Shri Narayan Rajkumar Merchants Ltd on 31st March 2018, when the matter was pending before the Honourable Supreme Court. The amount of Rs 2 crore should immediately be recovered from Shri Narayan Rajkumar Merchants Ltd and Sureka family.**

It is pertinent to note that the company is not doing any business and are used just for the purpose of money laundering.

Conclusion

We are of the opinion that this company floated/formed for the purpose of money laundering and FSI sold to these companies were merely accounting and adjustment entries done by them transferring funds from one account to another as reported earlier in our supplementary report. The modus operandi adopted by Sureka family was the same as adopted by Amrapali Group i.e. they formed the companies, their employees who were paid salaries in the range of Rs 20,000-Rs 60,000 the shareholders and directors in these companies. It is pertinent to note that their signatory to the bank are family members.

Mr. Navneet Sureka and Mr. Akhil Sureka used these companies for the purpose of money laundering of funds of Amrapali Group.

The bank guarantee was bogus and we couldn't find the bank name which issued the bank guarantee, it appears that there was a criminal conspiracy and the bank was not in existence.

Mr. Navneet Sureka was in full control of Amrapali group companies which is very clear and can be understood from the transactions of donation. On the instructions of Mr. Navneet Sureka, GM/DGM accounts Mr. Adhikari was transferring funds to the trust from various group companies of Amrapali as and when desired by him and instructed by him.

None of the directors ever attended a board meeting it was informed that the directors signed the paper under the instructions and directions of Mr. Akhil Sureka. The fact was accepted by Mr. Akhil Sureka. This proves that there was non compliances of holding board meetings and AGM as required u/s 174 of Companies Act, 2013. Further, the bank signatories to the bank are Mr. Vishnu Sureka and Mr. Navneet Sureka as an authorized signatory. In what capacity they were the signatory, they could not explain and it was told by Mr. Akhil Sureka and Mr. Vishnu Sureka that the directors were having full faith upon them therefore authorized them as bank signatory surprisingly, directors were not the signatory this is an unique case which is difficult to found in the corporate history.

When there was a transfer of shares from one shareholder to other in full or part of his/her shareholding there was no transactions for consideration through banking channels."

11. Mr. Navneet Surekha and Mr. Akhil Kumar Surekha used the companies mentioned in the Report for the purpose of money laundering, and they were the authorised signatories also. Mr. Akhil Kumar Surekha opened the bank account of Amrapali. Thus, it is apparent that the investment made by Mr. Akhil Kumar Surekha cannot be treated to be an independent one. Mr. Vaibhav Jain, Architect, along with others, extended helping hand to the management and planning and execution of the scam. The following finding has been recorded in the Forensic Auditors' Report about him:-

“Executives who colluded with directors

The executives of the Group colluded with the management to avoid proper recording of transactions in books of accounts. To avoid the traceability of the transactions, the executives recorded the financial transactions up to March 2015 in Accounting Package tally, then shifted to FARVISION from April 2015 and continued till March 2016, and thereafter partially recorded transaction in tally and a for a few companied in FARVISION. At the time of switchover, even the opening balances were not properly entered, thereby leading to a huge difference in the data provided to us. In November 2016, the Group left Farvision half way and started recording transactions for partial period in tally.

The executives intentionally recorded transactions by switchover of accounting package improperly so that complete trail could not be established. Subsequently, the companies of the group even stopped getting the annual accounts prepared and filing returns to ROC and Income tax.

The Sales and Marketing head Mohit Gupta, CFO Chandar Wadhwa, Accounts head Adhikari Das, Company Secretary Pankaj Mehta and the Architect Vaibhav Jain along with their immediate coterie extended helping hand to the management in planning and execution of the scam.”

12. Mr. Amit Wadhwa is the nephew of Mr. Chander Wadhwa, CFO of Amrapali Group of Companies. The following findings were recorded against Mr. Chander Wadhwa in the judgment:

“Mr. Chander Wadhwa CFO Amrapali Group of Companies

*It has also been observed that a sum of **Rs.5 crores** was transferred by M/s Amrapali Homes Project Private Limited to Mr. Amit Wadhwa, nephew of Mr. Chander Prakash Wadhwa. As per the affidavit filled by Mr. Chander Prakash Wadhwa the said sum was invested by him in M/s Three Platinum Softech Private Limited. The Heartbeat city projects is partly owned by three Platinum and Amrapali group has invested in the projects in the name of Chander Wadhwa.*

*As per Statement of Mr. Sanjeev Kumar Director of La Residentia Developers Private Limited recorded by us, he Informed that a sum of **Rs.4 crores** Approximately, was paid as fees for use of Amrapali Brand Name to Saffron Propmart Private Limited (This Company is controlled by Mr. Chander Wadhwa CFO). No Bills have been provided by him.*

Statutory Auditor CA Anil Mittal and Shri Chander Wadhwa CFO were in connivance with each other and payments were made by Shri Anil Mittal to Chander Wadhwa CFO for sharing fees received from Amrapali group for the work awarded to Anil Mittal Chander Wadhwa is one of the masterminds along with the other promoters directors behind the whole scam. He facilitated movement of funds by creating a web of companies within and outside the group. His relatives were made partner investor in LA Residentia and Heart beat city projects. Funds

were invested in Patel Advance JV (Neo Town project Noida) and Euphoria Sports City.

Furthermore, it is observed that the Company Management as well as Statutory Auditors and CFO have failed in their duty to follow the Accounting Standards relating to recording the valuation of Work in Progress as per ICAI guidelines applicable to Real Estate Companies. It is also pointed out that the CFO has not signed any Audited Financial Statements for reasons best known to them. But according to the statement recorded by us of various employees and suppliers as well as home buyers, we are informed that he was the main person handling Finance and every meeting was held with him only. (page no 209 Volume 1)”

13. With respect to Mr. Pankaj Jain and Mr. Vaibhav Jain, Directors of Vidhya Shree Buildcon Private Limited, the following findings have been recorded in the Judgment:

“20. On 24.10.2018 the forensic auditors were present. They have disclosed as to diversion of funds of more than Rs.100 crores to a firm known as GauriSuta Infrastructures Pvt. Ltd. in which Ashish Jain and Vivek Mittal were the Directors. They are stated to be the relatives of the Statutory Auditors. We directed the personal presence of Chander Wadhwa, CFO of Amrapali group of companies on the next date. On 26.10.2018 the Forensic Auditors submitted an interim report. It was pointed out that the tally data of 23 companies, reserves and surplus figures as appearing

in the tally data does not reconcile with the reserves and surplus as appearing in the last signed financials. The difference has also been pointed out in a tabular form. There were several advances, investments, utilisations, advances made to suppliers and payments made to Mr. Anil Sharma and Mr. Shiv Priya, Directors of the company for professional charges, etc. It was also pointed out that in spite of repeated reminders, groupings have not been supplied. Grouping is a process to indicate the process between the stage of trial balance, balance sheet, and profit and loss account. All files had not been handed over and Mr. Anil Mittal, the Statutory Auditor had sent one file late in the evening. This Court ordered that in case documents were not handed over, the same shall be viewed seriously and the incumbents punished suitably. The last opportunity was granted to hand over the requisite documents to the Forensic Auditors. We directed Statutory Auditors to comply with the requisition made by the Forensic Auditors. It was also noted by this Court that a sum of Rs.242.38 crores had been handed over to Gaurisuta Infrastructure Private Ltd., Vidhyashree Buildcon Private Ltd., Mannat Buildcraft Private Ltd. This Court observed in para 5 thus :

“5. It has also been pointed out by Shri Pawan K. Aggarwal in his report that so far with respect to four companies, namely, Gaurisuta Infrastructure Pvt. Ltd., Vidhyashree Buildcon Pvt. Ltd., Mannat Buildcraft Pvt. Ltd. And Jhamb Finance & Leasing Pvt. Ltd., only it has been noticed that a sum of Rs.242.38 crores has been handed over to them and in most of these firms Shri Ashish Jain and Shri Vivek Mittal are the Directors. Beside, it was stated before us by Shri Anil Mittal, statutory auditor, that his nephew-Vivek Mittal joined as a Director on the request made by Shri Chander

Wadhwa, CFO, to create a company and he has in turn asked Shri Ashish Jain, an employee of his client, to join as another Director of at least 10 companies, created at the request of the CFO and Amrapali Group of Companies. It is a shocking state of affairs that the statutory auditor himself was responsible for the creation of companies in an aforesaid manner. Shri Anil Mittal has also stated before us that he was aware that the money was flowing to the said companies through bank statements. However, on a specific query made by this Court to him, he has admitted that this fact of flow of money was not reflected in the audit report, which was signed by him in the audited Balance Sheet, in spite of knowing the fact that money has flown out of the accounts of the Amrapali Group of Companies to aforesaid companies."

About the creation of companies consisting of his nephew as Director on the request made by Mr. Chander Wadhwa, CFO for asking Ashish Jain, an employee of his client, to join as another Director. The Company agreed at the request of the CFO and Amrapali group of companies."

XXXXXXXXXX

"We also directed details of unsold apartments and flats of the projects to be submitted in this Court. It was also pointed out that the methodology has been adopted by creating sub-leases as a mode of siphoning off the amount of the buyers. This Court noted the following facts and issued the requisite directions:

"8. Mr. Lahoty, the learned counsel, also pointed out that the methodology which has been adopted for creating the subleases was, by and large, a mode of siphoning the amount. He has given the following details as Annexure E, which is extracted below:-

“CREATION OF SUB-LEASES

I. Amrapali Centurian Park: (Current Status: 228646 Sq. Mts.)

As per the lease deed, Lessor here is Greater Noida Authority

1. Lessee here is Amrapali Centurian Park Pvt Ltd (Total Area – 2,72,916 Sq Mts)

2. Sub- Lessee of Amrapali Centurian Park here are:

o Hawelia Builders Pvt. Ltd (Hawelia Valenova Park – 14920 Sq Mts)

o DSD Homes Pvt Ltd (Novena Green – 14760 Sq Mts)

• In DSD Homes, Mr. Nishant Mukul (brother in law of Chairman Mr. Anil Sharma) Ex-Director of Amrapali Group was also a director.

o Elegant Infracon Pvt Ltd (Elegant Villa Phase I, III, & IV - 14590 Sq Mts)

• In the Elegant Infracon following are consortium partners with shareholding:

Vidhyashree Buildcon Pvt Ltd (26%)

Nishant Creation Pvt Ltd (19%)

Anjali Buildcon Pvt Ltd (20%)

Agrawal Associates (Promoters) Ltd (5%)

Elegant Infracon Pvt Ltd (19%)

Stunning Construction Pvt Ltd (11%)

Vidhyashree Buildcon is one of the companies as mentioned in an order dated 26.10.2018 page 13, point 5, to whom sum of Rs.242.38 crores has been handed over. Mr. Pankaj Jain (current director of Amrapali Group) was also a director in Vidhyashree Buildcon Pvt Ltd.

(emphasis supplied)

14. With respect to Vidhya Shree Buildcon Private Limited, Rs. 4,00,00,000/- (Rupees Four Crores) is the debit balance in the books of accounts of the Amrapali Group.

15. It is apparent that a sum of Rs. 242.38 crores was handed over to Mr. Pankaj Jain (current Director of Amrapali Group & brother of Mr. Vaibhav Jain), the Director of Vidhya Shree Buildcon Pvt. Ltd.

16. Because of the exchange of money between Mr. Shiv Priya and Mr. Sankalp Shukla, it is apparent that a huge exchange of money was made to divert the money of home buyers of Amrapali Group and HBC 1 and HBC 2 are to be treated as Amrapali Projects.

17. Mr. Nishant Choubey and Mr. Santosh Choubey did not hand over the documents as they would not have supported them. It is apparent from the findings recorded by Forensic Auditors in their Report, and various circumstances pointed out that the Baseline land is to be treated as that of Amrapali Group.

18. The project was launched in the name of Amrapali Heartbeat City, and the agreement was entered into with the Amrapali Group by the home buyers. Cheques were issued in the name of Amrapali Heartbeat City. Letterheads of Amrapali were used for the Builder-Buyer Agreement, and the project was mentioned as Amrapali Heartbeat City. It is true canvass to suggest that the project was an independent project. We are unable to accept the aforesaid findings recorded in the Report of the Forensic Auditors. Probably, it was due to the fact that certain accounts were not made available, however, in view of the findings recorded earlier with respect to relationship and inter se transactions of the groups and parties, there is no iota of doubt that HBC 1 and HBC 2 are to be treated as the projects of Amrapali Group only and not independent projects. As per the

finding, the land was agreed to be sold by Baseline as per the findings recorded in the Forensic Auditors' Report itself. The same is out of the money generated by HBC 1, and HBC 2 projects and Baseline Infradevelopers Pvt. Ltd. is part and parcel of HBC 1, and HBC 2 projects and the buyers have the rights over the land and on the proceeds to be received from the sale of the land. We accept the said finding recorded in the Forensic Auditors Report.

19. Phase III comprises 60,000 sq.m, out of which 20,000 sq.m was already sold to some other group, and the remaining 40,000 sq.m had been agreed to be sold to M/s. Mahagun Real Estate Private Limited on 09.10.2017, with respect to which NCLT has passed an order in the Company Petition No. 141 of 2012.

20. The payments due to NOIDA to be paid by the purchasers are mentioned in Clause 1.2 of the MoU. The same is reproduced hereunder:-

“1.2 All payments due to NOIDA Authority in respect of the Said Plot till date, as per the revised schedule of payments to be issued by NOIDA Pursuant to reschedulement at the request of the Sellter, a stated in clause 2-2 hereinafter including lease premium, lease rent and interest, penal interest, pratikar and other dues related to the Said Plot to be paid by Purchaser to NOIDA and the balance after payment of all dues to the Seller. The mode and manner of payments is specified in ANNEXURE ‘B’ to this MOU. The Seller shall furnish a preliminary statement of dues and payable as per his records to the Purchaser, giving the following information/particulars in respect of the Said Plot on Pro-rata basis for 40,000 sq. Mtrs.

(emphasis supplied)

21. The Memorandum of Understanding (MoU) was submitted before the National Company Law Tribunal (NCLT) in the Company Petition No.141/2012. The NCLT has passed the following order on 29.11.2017:-

“Amended Memo of Parties is taken on record. Pursuant to the notice to Respondents 19-24, all except one are present.

CA.232/2017 has been filed by the parties to the lis as well as by the other newly impleaded respondents who are being confirmed as Respondent 19-24. The MOS and its addendum is on record. The same is Exhibit C1 (Colly). All except Respondent No.19 are present in court. Additional affidavit of Respondent No.19 has been filed confirming the MOS. The statement of the parties has been recorded in the court. They confirm their signatures and undertake to be bound by the terms. The MOS Exhibit C-1 (Colly) shall form part of this order.

The respondents 20-24 confirm having signed the MOS at point A, B,C,D,E in Court. All parties are bound by the terms of the Compromise Exhinit C1 (Colly).

Company Petition is disposed off in terms of MOS.”

22. It is conceded at the Bar that the aforesaid order of NCLT has not been questioned in any of the proceedings and order based on the MoU entered into between Baseline Infradevelopers Private Limited and M/s. Mahagun Real Estate Private Limited has attained finality.

23. It appears that a Writ Petition (C) No.940/2017 (Bikram Chatterjee & Ors. V. Union of India and Ors.) was filed concerning the Amrapali Centurian Park located at Greater Noida, in which notice was issued on 06.10.2017, which was not connected with the said plot i.e., Plot No.GH-01/A (Alpha), Sector 107, Noida, which was the subject matter of MoU between Baseline Infradevelopers Private Limited, and M/s. Mahagun Real Estate Private Limited

24. On 09.10.2017, the MoU was executed between Baseline Infradevelopers Private Limited and M/s. Mahagun Real Estate Private Limited for the transfer of the aforesaid land. On 26.03.2018, W.P.(c) No.288/2018 was filed by Heartbeat City Homebuyers Welfare Association concerning Plot No.GH-01/C, D, and Phase 3 Plot, which is relatable to GH-01/A/(Alpha), the plot in dispute. On 10.05.2018, this Court directed the promoters and builders not to make any transaction and alienation without permission from this Court. Thus, the agreement cannot be said to be malafide.

25. NOIDA canceled the lease deed on 07.09.2019; the press release/office order was issued by the NOIDA stating that on account of overdue interest and lease rent due from the Baseline Infradevelopers Private Limited, the allotment of the plot in dispute had been canceled. The NOIDA issued the cancellation after becoming aware that Baseline Infradevelopers Private Limited sought to transfer the plot to M/s. Mahagun Real Estate Private Limited, as per the order passed by the NCLT in November 2017.

26. M/s. Mahagun Real Estate Private Limited has filed an application No. 1023 of 2020 that plot be transferred to NOIDA as a fresh allottee. It was ready to make the payment/deposit on balance price consideration, which is Rs.191,79,79,798/-, and the dues of the NOIDA may be directed to be paid in installments. The amount payable towards completion of Heartbeat City be directed to be paid within the time stipulated by this Court. Stamp duty will be paid by M/s. Mahagun Real Estate Private Limited. Since there was no failure on the part of M/s. Mahagun Real Estate Private Limited, it should not be made liable to make the payment of overdue interest and other charges for the period. Other reliefs have also been prayed. The main relief pressed is with respect to the cancellation to be set aside due to the non-payment of the overdue interest and the lease rent and permitting the purchase of the property.

27. Shri Mukul Rohtagi, learned senior counsel appearing on behalf of the NOIDA, fairly submitted that if NOIDA is paid the outstanding amount of lease rent and interest etc., it will restore the lease and has no objection to sale in favour of M/s. Mahagun Real Estate Private Limited.

28. The payment of dues of NOIDA Authority has to be made as per agreement by M/s. Mahagun Real Estate Private Limited to NOIDA, out of sale consideration. The rate of interest on dues to be paid, concerning the plot in question, as per order passed on 10th June 2020 as modified on 10th July 2020. On deposit of dues of NOIDA out of sale consideration, the cancellation of lease shall stand withdrawn and it shall grant time of 7

years to complete the project which is granted to a new lessee. We direct Baseline Infradevelopers Private Limited, as per the MoU, to execute a sale deed. However, as per MoU, out of the total sale consideration, Rs.20 Crores has been paid, and the balance amount is Rs.1917979798/-. The agreement was entered into way back on 09.10.2017. The amount ought to have been paid within a reasonable time, and by now, approximately 02 years 09 months have passed. Therefore, it would be equitable to direct M/s. Mahagun Real Estate Private Limited to make payment of Rs.240 Crores in addition as outstanding amount would have earned the interest at a rate of 9% to 9.25%.

29. To do complete justice, it would be appropriate to quantify the outstanding amount be paid at Rs.240 Crores, in addition to the sum of Rs.20 Crores that has been paid as earnest money. The dues of the NOIDA to be paid first at first priority, and the remaining amount, which is payable to Baseline Infradevelopers Private Limited shall be retained in the account of the Registry of this Court, to be used for the completion of unfinished projects of Amrapali Group. Thus, in the process at least some money would be generated for completion of projects.

30. It was submitted by Shri M. L. Lahoty, learned counsel and Shri Gopal Shankarnarayan, learned senior counsel, that in the brochure which was issued by Amrapali Group, the health club was shown in the project of Phase III, whereas now in the fresh plan, it has been shown in the area of HBC 1 and HBC 2 itself. The builder should be held bound by the

brochure, which was published. Shri M.L. Lahoty, learned counsel, has drawn our attention to Sections 12, and 14 of the RERA and Section 5(3) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act. However, on a specific query made to Shri Lahoty, he was unable to show that application for registration was filed along with the map showing the area of the health club in Phase-III of the project. Out of Phase-III of the Project, 20000 sq.m. has already been sold to another person. Remaining 40000 sqm. was agreed to be sold to M/s. Mahagun Real Estate Private Limited and the lease of plot itself has been canceled, and it appears that an application was filed indicating the location of health club within HBC 1 and HBC 2. In the circumstances, we find that brochure cannot hold the field, particularly when the allotment of the plot itself had been canceled due to non-payment of the lease rent and interest. Considering the stand taken by the NOIDA in its reply, we find that no justification in the prayer based on the brochure, to hold that health club to be located at the place which is not available. When health club will be provided within the project of HBC 1 and HBC 2, it cannot be said that any prejudice is to be caused to the home buyers. They are going to have the same facility which was promised to be provided. Thus, we find no hesitation to reject the aforesaid prayer made on behalf of the home buyers.

Let sale deed be executed on payment of Rs.240 Crores (Rupees Two Hundred and Forty Crores only) out of that firstly the dues of NOIDA are to be cleared. Let the amount of Rs.240 crores (Rupees Two Hundred and

Forty Crores only) be deposited by M/s. Mahagun Real Estate Private Ltd. in the Registry of this Court within six weeks from this date. NOIDA shall indicate its dues within 15 days. 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. A copy of the Sale Deed be filed in the Registry of this Court, whereafter the Registry shall remit the amount representing dues of NOIDA, and the balance shall be retained and utilized for completion of projects.

.....J.
(Arun Mishra)

.....J.
(Uday Umesh Lalit)

July 28, 2020.
New Delhi;