ITEM NO.301 Court 4 SECTION X
(HEARING THROUGH VIDEO CONFERENCING)

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)

WITH

W.P.(C) No.947/2017 (X)
W.P.(C) No.971/2017 (X)
W.P.(C) No.942/2017 (PIL-W)
SLP(C) No.1879/2018 (XVII)
W.P.(C) No.1041/2017 (X)
W.P.(C) No.1018/2017 (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.91/2018 (X)
W.P.(C) No.56/2018 (X)
W.P.(C) No.57/2018 (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)
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W.P.(C) No.226/2018 (X)

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

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

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

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

W.P.(C) No.246/2018 (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(Crl) No.4/2018 (XVII)

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

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

Diary No(s).36392/2019 (X)

MA 1107/2020 in W.P.(C) No.866/2018 (X)

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

Date : 13-10-2020 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

W.P.(C) NO. 940/2017

I – INTERLOCUTORY APPLICATIONS

In keeping with the directions issued on the last occasion, the Registry has compiled pending Interlocutory Applications under Five Categories:

I. FOR REFUND & SWAPPING: 3 Applications;

II. FOR IMPLEADMENT/INTERVENTION: 15 Applications;

III. APPLICATIONS WHICH HAVE BECOME INFRUCTUOUS OR IRRELEVANT IN VIEW OF ORDERS PASSED BY THIS COURT FROM TIME TO TIME: 65 Applications;

IV. APPLICATION FILED BY OTHER BUILDERS IN VIEW OF ORDERS DATED 10.06.2020 & 10.07.2020; 3 Applications; and

V. APPLICATIONS WHICH MAY REQUIRE HEARING: 20 Applications.

Except Interlocutory Applications in Categories I and V, all the Interlocutory Applications mentioned in Categories II, III and IV being covered by the directions issued on the earlier occasions, stand dismissed.

II – CONCERNING ACTION PLAN FOR SALE OF PROPERTIES BY MSTC

The learned Receiver in his Note dated 12.10.2020 has emphasized the need for fresh valuation and suggested modalities to undertake fresh valuation as well as Plan of Action for auctioning of the properties. The proposed Schedule for e-Auction and Valuation starting from October 2020 till last week of March 2021

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has also been placed on record.

The learned Receiver has however submitted that the entire process of valuation in respect of the properties located at various places will be undertaken immediately and shall be concluded by the end of November 2020. It is further submitted that after due valuation, the properties will be put to auction and the process of auction shall be completed within three months, that is to say, by January 2021.

We accept the submissions made by the learned Receiver and request him to file revised Schedule for e-Auction and Valuation before the next date of hearing.

We permit MSTC to go ahead with the process of valuation and e-Auction, as suggested. According to the plan, four properties are to be put to auction in the month of October, 2020. Let the auction be carried out as stated in the Schedule.

We direct that the Reports regarding Valuation as well as Conduct of Auction shall be submitted in this Court in Sealed Cover.

The Reports shall also indicate the earlier Valuation of the properties and the difference between two sets of Valuation.

The learned Receiver in his Note has also indicated:

> **"The Court may permit the Receiver and the Committee to reach out to the respective State Governments and local authorities including local development authorities for the purposes of any assistance required in the course of proceedings by MSTC."**

The permission sought for by the learned Receiver is granted.

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III – MATTERS CONCERNING FUNDING BY BANKS

A. DIRECTIONS TO RESERVE BANK OF INDIA

In the order dated 21.09.2020 passed by this Court, the correspondence exchanged between the learned Receiver and the Reserve Bank of India was adverted to, whereafter certain suggestions were made.

Mr. Ramesh Babu M.R., learned Advocate appearing for the Reserve Bank of India has since then placed on record Affidavit on behalf of the Reserve Bank of India, which *inter alia* states as under:

> **"5. That it is submitted that in response to the aforesaid reply dated September 16, 2020, the learned Receiver, vide letter dated September 17, 2020, informed that the major concern pertaining to reluctance of banks to extend project loans for completion of Amrapali projects (and not home loans) still persists. Further, the learned Receiver suggested that a clear advisory and instruction from RBI will give necessary impetus and ensure flow of funds to the Amrapali Group Projects. A true copy of letter dated September 17, 2020 sent by Receiver is filed herewith as Annexure R-C to the present Affidavit. It is submitted that the fact remains that the extant RBI guidelines permit necessary flexibility to the banks to provide finance to the Amrapali projects. Further, in a deregulated environment, it will be prudent that banks take credit decisions as per their commercial judgement rather than on the basis of a regulatory mandate. Nevertheless, to address the concerns raised by the learned Receiver, the RBI has, vide letter dated September 24, 2020, written to Indian Banks Association to advise their member banks to expedite their credit decisions in the captioned case as per their board approved policies and broad regulatory guidelines. A true copy of the letter dated September 24, 2020 sent by RBI to Indian Banks' Association is enclosed herewith as Annexure R-D to the present Affidavit. The action taken has also been communicated to the learned Receiver, vide letter dated September 24, 2020. A true copy of letter dated September 24, 2020 sent by the RBI to Receiver is filed herewith as Annexure R-E to the present Affidavit.**

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> **6. That it is respectfully submitted that in view of the above, the issues raised by the learned Receiver have already been addressed by the RBI in the letter dated September 16, 2020 addressed to him as well as in the letters dated September 24, 2020 sent to the Indian Banks Association and the Receiver. Hence, it may not be necessary for RBI to further intervene in the matter. It is submitted accordingly."**

The affidavit has also enclosed a copy of the communication sent by the Reserve Bank of India to the Chief Executive of Indian Banks Association. The communication *inter alia* states:-

> **"It is advised that since credit related issues are mostly deregulated, banks are free to take credit decisions as per their commercial judgment within their Board-approved policies and broad regulatory guidelines. However, it has been informed by the Court Receiver appointed by the Hon. Supreme Court that responses by the banks have been quite lackadaisical. Therefore, IBA is required to advise its member banks having exposure to Amrapali Group projects to expedite their credit decisions in respect of funding the project(s) as per their respective Board-approved policies and broad regulatory guidelines."**

It is stated by the learned Receiver that he has written to the Indian Banks Association on 25.09.2020 but no response has yet been received.

The learned Receiver in his Note has submitted:

> **"3. It appears that a further direction is required to be issued by this Honorable Court that RBI be called upon to issue a clear directive to the banks that they shall draw up a project funding proposal within such limit as they deem fit on the basis of information already shared with them, within a span of one month. RBI be further directed to gather all such proceedings by banks and submit the same before the Honorable Court, with a workable road map towards funding.**
>
> **4. It is understood that under the able guidance and leadership of RBI this task can be achieved expeditiously without the further need for engagement of the Receiver in the above task."**

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The learned Receiver has submitted that with the active participation of the Reserve Bank of India, the process will get expedited and the meetings with the relevant Banks can be arranged so that appropriate decisions can be taken at an early date.

It is suggested that the final decisions will ultimately rest with the individual banks which decisions will naturally be taken by the concerned banks on commercial parameters and settled norms as is suggested by the Reserve Bank of India; however with active participation on the part of the Reserve Bank of India, the process will certainly be expedited and time being essence, the entire exercise will provide solace to the home-buyers.

Mr. Ramesh Babu M.R., learned Advocate appearing for the Reserve Bank of India, in turn has assured us that appropriate steps in that behalf shall be undertaken by the Reserve Bank of India.

In the circumstances, we request the Reserve Bank of India to depute responsible officers, who can be in touch with the learned Receiver and organize meetings with some of the Members of the Indian Banks Association in the shortest possible time.

B. <u>PERMISSION TO APPROACH HOUSING AND URBAN DEVELOPMENT CORPORATION (HUDCO) FOR FUNDING/FINANCING</u>

The learned Receiver in his Note has submitted:-

> **"In addition to the banks the Receiver be also given the liberty to approach Housing and Urban Development Corporation (HUDCO) for the purposes of funding/financing the ongoing projects. HUDCO may be directed to respond to the application that may be made by the Receiver and submit their proposals before the next date of hearing. The Receiver will be at liberty to organize meetings with HUDCO for the above proposal."**

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The Receiver is at liberty to explore the possibility of getting funding/financing for the ongoing projects from the Housing and Urban Development Corporation (HUDCO).

C. OTHER ISSUES REGARDING FUNDING/LOANS FOR INDIVIDUALS

In para 30 of the Order dated 10.06.2020 passed by this Court, directions were issued to the Banks and Financial Institutions to release the loans to home-buyers wherever loans were sanctioned and to consider re-structure of the loans.

The learned Receiver has submitted that Union Bank of India and UCO Bank have accordingly prepared standard Memorandum of Understanding (MoU) to be signed by the Receiver. It is however submitted that there is no appropriate response from the other Banks as a result of which disbursal of the loans in favour of the individual home-buyers is not being done with promptitude. It is submitted that the MoUs signed by the Receiver with the Union Bank and the UCO Bank be taken as the standard Format.

We accept the submission of the learned Receiver and in cases where the loans are sanctioned by the concerned Banks and Financial Institutions, the appropriate MoU be signed with the Receiver whereafter prompt disbursal of the sanctioned loan amount be undertaken by the concerned Banks/Financial Institutions.

We clarify that it is entirely left to the concerned Banks/Financial Institutions to take appropriate commercial decision whether a particular applicant satisfies the required parameters and is entitled to have the loan sanctioned.

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Mr. Alok Kumar, learned Advocate appearing for UCO Bank and Union Bank of India (erstwhile Corporation Bank and Andhra Bank, which have since then merged with Union Bank of India) has submitted that requests for loan from 3074 home-buyers have been accepted by these Banks and the disbursal of loans will be done at an early date. The appropriate MoU has also been entered into with the learned Receiver.

Mr. Rahul Malhotra, learned counsel representing HDFC Ltd. has stated that on the issue of MoU submitted by the learned Receiver, an appropriate response has been sent by the Bank to the learned Receiver today itself and the requisite process will be initiated at an early date.

IV – <u>ON THE ENGAGEMENT OF NBCC IN SALE OF UNSOLD INVENTORIES AND FARs</u>

It is submitted that after extensive discussion with the officers of the NBCC on one hand and the Members of the Committee on the other, a list of unsold inventories and FARs has been finalized. The learned Receiver has suggested that the services of NBCC be engaged to effectuate sale of unsold inventories and FARs.

To a pointed query by the Court, it was suggested by the learned Receiver that the list so finalized is completely consistent with the Report of the Forensic Auditors and what was found by the Forensic Auditors to be unsold inventories and FARs. The learned Receiver has assured the Court that the list shall be placed on record before the next date of hearing so that appropriate directions with respect to sale of the unsold inventories and FARs can be passed on the next occasion.

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Let the needful be done.

V – SBI CAPS

In its Order dated 01.09.2020, while accepting the proposal with regard to SBI CAPS, it was stated by this Court that the finalization of Form and Format be done as early as possible and preferably within four weeks, so that the funding could be started by SBI CAPS.

The learned Receiver in his Note has suggested:-

> **"1. Both having regard to the requirements of SWAMIH funding and keeping in the mind the relevance and necessities, if any, in case of other funding grants or loans in any form what so ever by any establishment authority or persons it is found desirable that a company under section 8 of the Companies Act be formed and registered.**
>
> **2. Since Housing is now treated as a constitutional right and governments draw Housing policies to meet or discharge several such social obligation. It is considered that the undertaking of the execution and completion of the stalled Amrapali Projectors shall be declared as a "social welfare project" for the purposes of Section-8 of the Companies Act.**
>
> **3. The Committee has deliberated on this issue and is in the process of finalizing the requirements for such formation and registration.**
>
> **4. The court may be pleased to give permission to the Receiver and committee to have such a company formed and registered."**

The learned Receiver has also submitted that this decision was arrived at after several rounds of discussions and since this Court is overseeing the progress and finalization of the projects, it will be appropriate to have necessary declaration for the purposes of Section 8 of the Companies Act.

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We see nothing wrong in the submission of the learned Receiver and grant him permission as prayed for. Let the appropriate steps be taken at an early date and the process be finalized.

VI – <u>SUBMISSIONS OF MR. M.L. LAHOTY, ADVOCATE</u>

Mr. M.L. Lahoty, learned Advocate has invited our attention to Part-VII of the Order dated 21.09.2020, in which Part the Note of Mr. Lahoty was dealt with. It is submitted that in addition to three issues which were adverted to, there are certain other pending interim applications, the disposal of which may result in additional funds being made available.

We, therefore, direct that the matters pertaining to i) Mr. Prem Mishra of Indore and Sureka Family; ii) the Directors/CFO Chander Wadhwa and others; iii) Royal Golf Link City Project Pvt. Ltd.; and, iv) ACE Infracity Developers Pvt. Ltd., shall be taken up on 29.10.2020 at 2:00 p.m.

All the other matters on Board be listed on 29.10.2020 at 2.00 p.m.

(MUKESH NASA)
COURT MASTER

(PRADEEP KUMAR)
BRANCH OFFICER

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