

\

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 13301 of 2015

IN THE MATTER OF:

Subrata Bhattacharya ... Petitioner

Versus

Securities and Exchange Board of India ... Respondent

And

In the matter of :

Elara Capital Plc. Applicant

Objections of Elara Capital Plc.

Elara Group is a global Asset Management and Investment Banking Franchise with headquarter in London, U.K. and presence in Singapore, Dubai, US (New York), Mauritius and India (Mumbai, Delhi and Ahmedabad).

Elara's net worth is INR 3.3 billion (GBP 37.4 million) based on the provisional 2018-19 figures (INR 2.7 billion / GBP 30.9 million in FY 2017-18).

Elara Capital in furtherance of its intention for early and fast disposal /sale/auction of properties of PACL as desired by this Hon'ble Court had submitted a scheme to the Committee on 26.7.2019, 12.8.2019 and 20.8.2019 in which the PACL lands will be sold in a time bound manner of 1-2 years for low cost housing **PMAY(U) Scheme of the Prime Minister** and the sale proceeds will be deposited with the Committee.

The applicant, Elara Capital had filed application (IA No. 107488/2019) for directing the Committee to consider its proposal and this Hon'ble Court vide order dated 30.7.2019 had disposed of application and directed the Committee to take decision on the offers made. The relevant part of order dt 30.7.2019 is as under:

"We leave it open to the Committee to receive any further offers and to explore them after duly publishing a further notice on the website. The interveners in the present proceedings, would be at liberty to submit their expressions on Interest to the Justice Lodha Committee for evaluation. We clarify that we have not expressed any opinion on the viability or the genuineness of the offers which are purportedly being placed on behalf of the interveners and leave it to the Committee to take a decision in the matter."

2

The committee has not considered and adverted to the offer of Capital in the report submitted to the Hon'ble Court.

The land banks of PACL identified by Elara is as under:

Sl No.	Particulars	Total Land	Total Area
(i)	Total lands available with PACL (Suitable and Nonsuitable for PMAY (U) Scheme)	14513	41717.01 Hectares
(ii)	Lands suitable for PMAY(U) Scheme	6138	32862.24 Hectares
(iii)	Lands of smaller size non suitable for PMAY(U) Scheme	8375	8854.77 Hectares
(iv)	Built up properties (Non-land)	356	19.41 Hectares

EWS Housing and Low cost housing is the priority project under the aegis of the Hon'ble Prime Minister of India, and with the associated government support, Elara Capital offered to dispose of assets of the PACL Company to developers for development of Low Cost Housing and make payment to the Committee. As per Elara's assessment approximately 70 Lakh low cost houses can be built. The brief details of the lands are as follows;

Sl. No.	Name of the State/ UT	TOTAL PROPOSED PROJECTS	Total land area in hectares suitable for PMAY (URBAN)	Proposed EWS Units/Plots	Houses Sanctioned till now(Nos)
1	Andhra Pradesh	317	1950.72	97531	1247998
2	Assam	1	0.05	7	80855
3	Chandigarh	5	0.47	31	251
4	Delhi	49	124.78	19966	14288
5	Goa	10	1.95	240	661
6	Gujarat	161	640.96	71225	554551
7	Haryana	491	844.45	250404	264387
8	Himachal Pradesh	11	24.42	3014	8640
9	Karnataka	597	701.48	224498	582580
10	Madhya Pradesh	1174	10506.17	5042964	689878

3

11	Maharashtra	110	1672.96	398678	996115
12	Odisha	522	1243.27	501201	142037
13	Punjab	522	3508.97	624320	56852
14	Rajasthan	327	3535.83	978582	187971
15	Tamil Nadu	861	5755.58	1151122	648848
16	Telangana	673	1683.43	84198	211021
17	Uttar Pradesh	141	482.61	143110	1350334
18	Uttarakhand	163	133.86	107089	34656
19	West Bengal	3	50.29	2350	378012
	Grand Total	6138	32862.24	9700530	7449935

Time : Entire exercise will be completed within a period of 24 months.

Cost: The cost of entire exercise carried out by the applicant will be @ 2% of agreement value of property sold plus out of pocket expenses, which is anytime better offer than that of three shortlisted and selected by the Committee.

There will be no delay as entire project is under aegis of Hon'ble Prime Minister of India.

Beneficiary: EWS people. Low Cost Housing project of the Hon'ble Prime Minister of India.

Objections as to selection of Prudent ARC :

1. The relation between the Committee and the Prospective Buyers shall be seller and purchaser and Prudent ARC shall be acting as a facilitator / agent of buyer as well seller.

Prudent ARC in letter dt 25.9.2019 has stated that Prudent ARC limited is acting as a facilitator and/or Service Provider only to undertake the work relating to sale of Properties of PACL limited on behalf of the 'Justice (Retd) RM Lodha Committee(in the matter of PACL limited) and would not invite any pecuniary liability in the process.

2. Since Prudent ARC Limited does not incur any liability on its part on account of failure on the part of prospective buyer to honour any and /or all their commitments in the said process prospectively or retrospectively, therefore its net worth cannot be added to Telecare for purpose of being shortlisted.

Telecare Network India Private Limited is a Private incorporated on 8.4.2003. It is classified as Non-govt company and is registered at Registrar of Companies, Delhi.

Its authorized share capital is Rs. 450,000,000 and its paid up capital

4

is Rs. 344,770,080.

It is involved in Telecommunications i.e. Production of radio and television programme and not real estate.

3. The networth Certificate shows net worth of Rs 67.17 Crore. The Income Tax Return 2018-2019 confirm Gross Income of 2.32 Crore Rs and Tax Payable of Rs 77.85 Lac. Such ARC/ JV is making offer of Rs 1112.34 crores properties with Net Worth and PAT of the investor. The bid amount is 100s of times more than its net worth.

4. **Prudent ready to waive it's commission of 0.5 %, which shows that it is acting as front of someone else and there is much more which is being hidden. Why an ARC will act without any revenue?**

As far as ARCIL is concerned, firstly it does not meet the limit of Rs 1,000 crores bid as final allocation deem fit by the committee is only for Rs 892.34 Crores. Secondly, it is not a firm bid. Thirdly, it has not disclosed its investor and its financial strength without which it is not possible for anyone to assess the viability of the bid. In essence, it is a proposal of selling the properties on commission bases on best effort basis, like earlier proposals from five other ARCs and SBI Cap

Date: 13.12.2019

Place : Delhi

P.N. PURI
ADVOCATE FOR APPLICANT

5

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 13301 of 2015

IN THE MATTER OF:

Subrata Bhattacharya ... Petitioner

Versus

Securities and Exchange Board of India ... Respondent

And

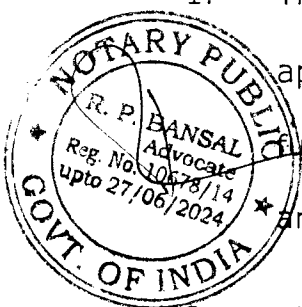
In the matter of :

Elara Capital Plc. Applicant

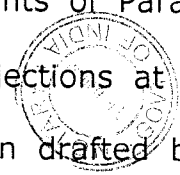
AFFIDAVIT

I, Sandeep Jadon, S/o Rajinder Singh, Aged about of 34 years, R/o 11/3A, Telco Colony, Kanpur (U.P) -208001, presently at Delhi, do hereby state on solemn affirmation as under :

1. That I am the director/authorised representative of the applicant company in the above noted case and as such I am fully conversant with the facts and circumstances of the case and duly competent to swear and affirm the present affidavit.

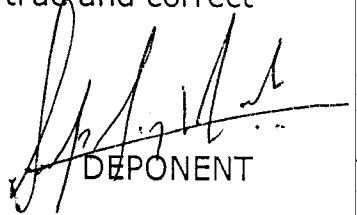


2. That I have read and understood the contents of Para 1 to and pages 1 to 2 of the accompanying objections at pages 1 to 6. The objections has been drafted by my counsel at my instructions and I admit the contents thereof as true and correct to my knowledge and belief.



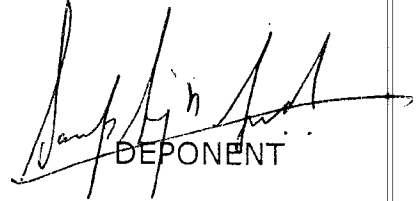
6

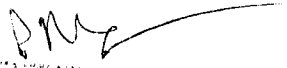
3. That the Annexures filed with the objections are true and correct copies of the originals.

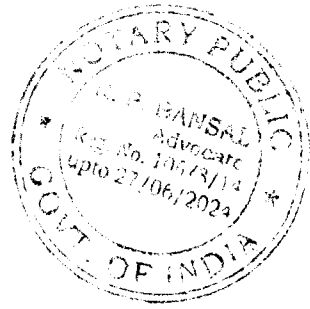

DEPONENT


VERIFICATION:

Verified at New Delhi on this 13th day of December 2019 that the contents of the above affidavit are true and correct to my knowledge and belief. No part of it is false and nothing has been concealed therefrom.


DEPONENT


IDENTIFIED BY




ATTESTED
Notary Public, Delhi
(As Presented)
13/12/19

ITEM NO.26

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 13301/2015

SUBRATA BHATTACHARYA

Appellant(s)

VERSUS

SECURITIES AND EXCHANGE BOARD OF INDIA & ORS.

Respondent(s)

([LIST ON 30.07.2019 FOR CONSIDERATION OF THE REPORT SUBMITTED BY
THE HON. MR. JUSTICE R.M. LODHA COMMITTEE]
IA No. 107488/2019 - CLARIFICATION/DIRECTION)

Date : 30-07-2019 This matter was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Appellant(s) Mr. Jai A. Dehadrai, adv.
Ms. Srishti Kumar, Adv.
Mr. Siddharth Arora, Adv.
Mr. Prashant V., Adv.
Mr. Sameer Shrivastava, AOR

For Respondent(s) Mr. Gopal Sankaranarayanan, Sr. Adv.
Mr. Shrutanjay Bhardwaj, Adv.
Mr. E.C. Agarwala, Adv.

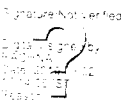
Mr. Aman Lekhi, Ld. ASG
Mr. R. Balasubramanian, Sr. Adv.
Mr. Pranay Ranjan, Adv.
Mr. A.K. Sharma, Adv.

Mr. Chetan Sharma, Sr. Adv.
Mr. Dhiraj, Adv.
Mr. Abhihek Chauhan, Adv.
Mr. Manoj Nayak, Adv.
Mr. Anand Bhagat, Adv.
Mr. Satish Vig, Adv.

Mr. Mukesh Kumar Maroria, AOR

Mr. Ritesh Agrawal, AOR
Mr. S. Rishabh, Adv.
Mr. Teejas Bhatia, Adv.

Mr. Vinod Sharma, AOR
Mrs. Rachana Joshi Issar, AOR



8

Mr. Sanjay Jain, ASG
Mr. Arjit Prasad, Sr. Adv.
Mrs. Anil Katiyar, AOR
Mr. Saurabh Choudhary, Adv.

Mr. Amit Kumar, AOR
Ms. Kamakshi S. Mehlwal, AOR
Mr. Somiran Sharma, AOR
Mr. Aditya Singh, AOR

Mr. Gagan Gupta, AOR
Mr. Vivek Arya, Adv.

Mr. Aviral Kashyap, AOR
M/S. K J John And Co, AOR
Mr. Hetu Arora Sethi, AOR
Ms. Shalu Sharma, AOR
Mr. Rameshwar Prasad Goyal, AOR
Mr. Avadh Bihari Kaushik, AOR

Mr. Rakesh Khanna, Sr. Adv.
Mr. Aman Vachher, Adv.
Mr. Ashutosh Dubey, Adv.
Mrs. Anshu Vachher, Adv.
Mrs. Rajshree Dubey, Adv.
Mrs. Madhurima Mridul, Adv.
Mr. Arun Nagar, Adv.
Mr. P. N. Puri, AOR

Ms. Christi Jain, AOR
Mr. Gopal Jha, AOR

Mr. Mohit D. Ram, AOR
Ms. Anuradha Mutatkar, AOR
Mr. Yadav Narendra Singh, AOR
Ms. Pratibha Jain, AOR
Mr. Atishi Dipankar, AOR
Mr. Abhishek Singh, AOR
Mr. Avijit Mani Tripathi, AOR
Mr. Mohit Paul, AOR
Mr. Shivendra Singh, AOR

Mr. Joseph Aristotle, Adv.
Ms. Priya Aristotle, AOR
Mr. Rijuk Sarkar, Adv.

Mr. Joel, AOR
Mr. Anjani Kumar Mishra, AOR
Mrs. Shubhangi Tuli, AOR
Ms. Jasmine Damkewala, AOR

Mr. Ankur Kumar, Adv.

9

Mr. Siddharth Acharya, Adv.
Mr. Shree Pal Singh, AOR

Mr. M.P.Singh, Adv.
Mr. Rajeev Kumar Bansal, AOR

Mr. Rajinder Kumar Singh, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. S.K.Rajora, Adv.

Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Ms. Viddusshi, Adv.
Mr. Akhil Abaraham Roy, Adv.

Mr. Manoj Prasad, Sr. Adv.
Mr. Prakash K. Singh, Adv.
Ms. Richa Kapoor, AOR
Mr. Kunal Ananad, Adv.
Ms. Ayushi Rajput, Adv.

Ms. Jasmine Damkewala, AOR
Mr. Shaurya Vardhan, Adv.

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

The report of the Committee Chaired by Hon'ble Mr Justice R M Lodha, Former Chief Justice of India, in pursuance of the order of this Court dated 12 February 2019, has been placed before the Court. In pursuance of the earlier directions of this Court the report has been uploaded by SEBI on its website so as to enable all those who may have a valid interest to make submissions before this Court. Diverse viewpoints have been placed before this Court by learned counsel appearing on behalf of prospective bidders as well as on behalf of PACL. We have also heard learned counsel appearing on behalf of SEBI.

At this stage, from the report of the Justice Lodha Committee, it emerges that the Committee has carried out a substantial and

10

comprehensive exercise for the purpose of exploring the possibility of associating Assets Reconstruction Companies¹ in the process of the sale of properties belonging to PACL. The Committee received offers from five ARCs. While evaluating the offers the Committee has noted the terms on which the offers were submitted and found it difficult to objectively compare the offered rate of fee as well as the time periods involved for sale. However, a tentative statement of comparative costs liable to be incurred has been tabulated.

The Committee has also adverted to the prior auction exercises conducted by it when Expressions of Interest were invited for as many as 27,500 properties. The entire exercise has been summarized as follows:

(i) EOIs were invited for a total of twenty seven thousand five hundred (27,500) properties.

(ii) However, EOIs were received for four thousand one hundred and three (4,103) properties; thus, in the case of about 85% of the properties, there was no interest in the market to purchase the same.

(iii) For the properties where EOIs were received, numerous objections were also received, due to which the Committee could not proceed further in conducting sale of such properties.

(iv) About one thousand five hundred and sixty (1560) properties could be allotted to the agencies for undertaking auction process including valuation etc.

(v) Agencies appointed by the Committee, while

¹ ARCs'

11

conducting pre-auction activities like valuation, etc. faced several issues, such as identification of properties title, valuation, marketability etc. Considering the aforesaid issues, one thousand and twenty four (1024) properties could be put up for auction sale.

(vi) Of the properties put for auction buyers showed interest by submitting EMDs with respect to two hundred and fifty (250) properties.

(vii) At the conclusion of the second auction process a total of 113 properties were sold by the Committee realising a sum of Rs. 86.20 crore."

In this backdrop the Committee has now stated that it has received, what is described as 'suo motu Proposals/Expressions of Interest'.

A proposal has been received from Indo-UK Institutes of Health (IUIH) Programme for Acquisition of Land for creation of Medicities. Para 10.1 of the report of the Justice Lodha Committee has adverted to the proposal which in the opinion of the Committee deserves to be followed since substantial areas/properties which could be sold. The IUIH programme is in pursuance of a joint effort of the U.K. and Indian Governments for the creation of Medicities in different parts of India. The Committee has noted that a Task Force has been constituted under the Chairmanship of the Secretary, Department of Health and Family Welfare for setting up 11 institutes across India. Hence the Committee proposes to discuss the matter further with the Department of Health and Family

12

Welfare. We authorize the Committee to take the matter further and to pursue the above line of discussions to explore whether a substantive outcome can be achieved. The Committee will keep this Court apprised of further developments before taking a final decision.

The report of the Committee also states that various State Governments have land pooling policies for the development of lands/infrastructure with the involvement of the private sector. With the involvement of the State Governments/Authorities/Agencies/Government support, their initiatives should be further explored. Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing on behalf of the PACL has submitted before this Court that three development authorities respectively for the areas comprised in (i) Greater Mohali; (ii) Bathinda; and (iii) Greater Ludhiana can be approached for exploring the possibility of the development of land by the State Governments with the involvement of the private sector. In view of the report of the Committee, we authorise the Committee to act in pursuance of the proposed course of action. In the event that the Committee finds that any concrete course of action can be adopted in terms of the policies of the State Governments or development authorities, it would be at liberty to take further steps in that regard.

We also leave it open to the Committee to receive any further offers and to explore them after duly publishing a further notice on the website. The intervenors in the present proceedings, would be at liberty to submit their Expressions of Interest to the Justice Lodha Committee for evaluation. We clarify that we have

13

not expressed any opinion on the 'viability' or the genuineness of the offers which are purportedly being placed on behalf of the intervenors and leave it to the Committee to take a decision in the matter.

The Justice Lodha Committee is further authorised to negotiate with the ARCs or, the case may be, non-banking companies and renowned property consultants, as referred to in its report, to explore any alternative modalities for the sale of the properties.

List the matter after four weeks along with I.A. No. 106299 of 2019 and I.A. No. 106305 of 2019.

I.A. No. 107488/2019

The Interlocutory Application is disposed of.

I.A. No. _____/2019 (Application for Intervention filed by Ms. Richa Kapoor).

Taken on board.

The Interlocutory Application is disposed of.

(POOJA CHOPRA)
COURT MASTER

(SAROJ KUMARI GAUR)
BRANCH OFFICER