

ITEM NO.3 + 4 + 20

COURT NO.10

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.13301/2015

SUBRATA BHATTACHARYA

Appellant(s)

VERSUS

SECURITIES AND EXCHANGE BOARD OF INDIA & ORS.

Respondent(s)

IA No.132600/2017-APPLICATION ON BEHALF OF THE SEBI
IA No.79973/2017-APPROPRIATE ORDERS/DIRECTIONS
IA No.26147/2018-APPROPRIATE ORDERS/DIRECTIONS
IA No.119302/2018-APPROPRIATE ORDERS/DIRECTIONS
IA No.20915/2018-APPROPRIATE ORDERS/DIRECTIONS
IA No.105085/2018-APPROPRIATE ORDERS/DIRECTIONS
IA No.64555/2017-APPROPRIATE ORDERS/DIRECTIONS
IA No.38646/2018-APPROPRIATE ORDERS/DIRECTIONS
IA No.69580/2018- CLARIFICATION/DIRECTIONS
IA No.15874/2018- CLARIFICATION/DIRECTIONS

IA No.132726/2017-CLARIFICATION/DIRECTIONS

IA No.66973/2018- CLARIFICATION/DIRECTIONS
IA No.101040/2018- CLARIFICATION/DIRECTIONS
IA No.138756/2017- CLARIFICATION/DIRECTIONS
IA No.50068/2018- CLARIFICATION/DIRECTIONS
IA No.94381/2018- CLARIFICATION/DIRECTIONS
IA No.117057/2017- CLARIFICATION/DIRECTIONS
IA No.83071/2018- CLARIFICATION/DIRECTIONS
IA No.136095/2017- CLARIFICATION/DIRECTIONS
IA No.80826/2018- CLARIFICATION/DIRECTIONS
IA No.128401/2018 CLARIFICATION/DIRECTIONS
IA No.14/2016-Directions
IA No.10/2016-Directions
IA No.21/2016-Exemption filing official translation in IA no.20
IA No.19713/2017-IA for Stay
IA No.16558/2017-IA FOR DIRECTION
IA No.4/2016-Impleadment
IA No.20/2016-Impleadment
IA No.9/2016-Impleadment
IA No.7/2016-Impleadment
IA No.6/2016-Impleadment
IA No.19/2016-Intervention Application
IA No.12/2016-Intervention Application
IA No.132717/2017-Intervention Application
IA No.22/2017-Intervention Application
IA No.136075/2017-Intervention/Impleadment
IA No.80824/2018-Intervention/Impleadment

IA No.119292/2018-Intervention/Impleadment
 IA No.134999/2017-Intervention/Impleadment
 IA No.20912/2018-Intervention/Impleadment
 IA No.69574/2018-Intervention/Impleadment
 IA No.15872/2018-Intervention/Impleadment
 IA No.94385/2018-Intervention/Impleadment
 IA No.138753/2017-Intervention/Impleadment
 IA No.50063/2018-Intervention/Impleadment
 IA No.75361/2017-Modification of Court Order
 IA No.101649/2017-Permission to file additional
 documents/Facts/Annexures
 IA No.135012/2017-Permission to file application for direction
 IA No.65030/2017-Permission to file application for direction
 IA No.50070/2018-Stay Application

WITH

C.A. No. 13319/2015 (XVII)
 (IA No.5/2016)

C.A. No. 13394/2015 (XVII)
 (FOR [Impleadment] ON IA 3/2015
 FOR INTERVENTION APPLICATION ON IA 5/2016
 FOR [directions] ON IA 14/2016
 FOR impleading party ON IA 13587/2018
 FOR INTERVENTION APPLICATION ON IA 24482/2018
 FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 24485/2018
 FOR STAY APPLICATION ON IA 24487/2018
 FOR INTERVENTION APPLICATION ON IA 67399/2018
 FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 67404/2018
 FOR INTERVENTION/IMPLEADMENT ON IA 88984/2018
 FOR CLARIFICATION/DIRECTION ON IA 88986/2018
 FOR APPLICATION FOR PERMISSION ON IA 140928/2018)

C.A. No. 13410/2015 (XVII)
 (IA No.131617/2017-CLARIFICATION/DIRECTION

W.P.(C) No. 640/2016 (X)
 (IA No.102672/2017-CLARIFICATION/DIRECTION

W.P.(C) No. 1330/2018 (X)

SLP(C) No. 31791/2018 (XVI)

T.C. (Cr1.) No.1/2016
 IA No.1/2019-CLARIFICATION/DIRECTION
 IA NO.184288/2018-CLARIFICATION/DIRECTION

SLP (C) No.31585/2018
 IA No.171780/2018-Exemption from filing C/C of the impugned

Judgment**IA No.184155/2018-INTERVENTION/IMPLEADMENT]****Date : 08-01-2019 These matters were called on for hearing today.****CORAM :****HON'BLE DR. JUSTICE D.Y. CHANDRACHUD****HON'BLE MR. JUSTICE HEMANT GUPTA****For Parties (s)**

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 Mr. Pranay Ranjan, Adv.
 Mrs. Anil Katiyar, AOR

Mr. Aman Lekhi, ASG
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 Ms. Shivangini Gupta, Adv.
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Mr. Shiv Ram Pandey, Adv.

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Mr. Pratap Venugopal, Adv.
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Mr. Purushottam Kumar Jha, Adv.
Ms. Remya Raj, Adv.

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Mr. Rishi Maheshwari, Adv.
Ms. Anne Mathew, Adv.
Mr. Bharat Sood, Adv.
Ms. Shruti Jose, Adv.

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

Interlocutory Application No.132600/2017

The interim application by SEBI has *inter alia* sought directions authorising PACL Ltd. to sell its immovable properties, in terms of the list to be submitted by the Justice (Retd.) R.M. Lodha Committee and to deposit the sale proceeds directly with the Committee. Incidental directions have been sought, including an order for a direction to PACL Ltd. to file an affidavit setting out the road map for the sale of the properties including the initial deposit, time frame for completion of sale and monthly deposit.

The Committee chaired by Justice Lodha has forwarded a report dated 17 August, 2018. From the report, it emerges that on 16 March, 2018, the Committee has addressed a

communication to PACL Ltd. specifying the terms and conditions on which PACL Ltd. could submit a proposal for the sale of the properties for consideration by the Committee. The Committee received a proposal on 14 April, 2018. It, thereafter, placed the copy of the communication dated 16 March, 2018 and of the proposal dated 14 April, 2018 on the website of SEBI and invited counter proposals from prospective bidding entities. A press release was also issued by the Committee. The Committee received nine counter proposals. Following this it decided that the members of the Committee shall meet the representatives of the entities which had offered a price higher than the value of the proposal submitted by PACL Ltd. Thereafter, by a public notice dated 10 July, 2018, a final opportunity was granted to any person or entity including PACL Ltd. to submit a revised proposal by 17 July, 2018. In response, seven proposals have been received.

The Committee found in a meeting held on 19 July, 2018 that only four proposals were received for the entirety of the properties. The Committee has analysed each of the four offers received in paragraph 27 of its Report. The Committee has made a detailed analysis of the proposals, adverted to the deficiencies and has found that none of the offerers including PACL Ltd. have fulfilled the conditions specified in the letter dated 16 March, 2018 addressed by the Committee and approved by this Court by its order dated

15 May, 2018.

In this backdrop, the Committee has requested for the following directions of this Court to protect the interest of the investors:

“(i) for deposit of earnest money of Rs.500 crores by the offerers, within 15 days or such period that this Hon’ble Court may deem appropriate;

(ii) the outer limit of three years within which properties have to be sold and the outer limit of deposit of the entire consideration;

(iii) an undertaking by the offerer company and its directors to this Hon’ble Court to abide by its offer and faithful compliance of all the terms; and

(iv) any other direction which the Hon’ble Court may deem fit in the facts and circumstances of the matter.”

During the course of the hearing, we have heard submissions by learned advocates appearing on behalf of the contesting parties including learned counsel appearing for SEBI, PACL, JanLok Pratishtaan and the intending bidders.

Learned counsel appearing on behalf of SEBI has adverted to the fact that despite earnest efforts by the Committee, it has been unable to sell all the properties of PACL. Learned counsel submitted that the complexity of the transactions between PACL and third parties makes the task of the Committee replete with difficulties.

In this view of the matter, SEBI had initially moved this Court for a direction permitting PACL to bring buyers before the Committee and it was urged that by permitting this course of action, substantial headway could be achieved in conducting the transactions of sale.

During the course of the hearing, learned counsel appearing on behalf of SEBI reiterated that request.

The report of the Justice Lodha Committee indicates that a comprehensive and detailed exercise has been carried out by the Committee with a view to ensure that *bona fide* purchasers come before it with a reliable offer for the sale of all the properties. However, on an analysis of the four offers that were received, it emerges that no bidder was able to fulfill the terms and conditions set out in the letter dated 16 March, 2018.

Hence, at the present stage and particularly in the backdrop of what has emerged from the record, we find ourselves unable to accede to the request of SEBI for assigning PACL Ltd., the exclusive role of bringing buyers before the Committee. PACL has been unable to meet the terms set out by the Committee. We find no reasonable basis to entrust such a task, as sought by SEBI, to PACL Limited.

In our view, it is necessary that the process of conducting the sale of the properties is properly channelized through a specialized agency. During the course

of the hearing, learned counsel appearing on behalf of the diverse parties have suggested that the Committee may consider appointing one or more specialized agencies for the said purpose, with reference to different zones or areas. One of the suggestions which has emerged before this Court is for the appointment of an asset reconstruction company which has the experience and resources to ensure a transparent process of sale. At the present stage, we do not intend to foreclose the discretion of the Justice Lodha Committee and would leave it to the Committee to deliberate upon and suggest to the Court modalities for sale by the appointment of one or more such agencies. If the Committee considers that the appointment of single agency may impose a heavy burden of work and having regard to the locations of the properties, it will be open to the Committee to proceed to appoint more than one agency based on the areas or locations of the properties.

In order to enable the Committee to deliberate on this aspect, we adjourn the hearing of the proceedings for a period of four weeks. We request the Committee to suggest alternate modalities which could be feasible in this regard.

In the meantime, we direct that SEBI shall upload on its website the report which has been submitted to this Court on 17 August, 2018 by the Justice Lodha Committee.

We presently defer the hearing of the pending

applications which have been submitted before this Court during the course of the hearing to the next occasion.

Learned counsel appearing on behalf of SEBI is directed to place on record a tabulated chart setting out the pending Interlocutory Applications and a statement of the reliefs which had been sought.

List the matters on 5 February, 2019.

Interlocutory Application Nos.65030/2017, 101649/2017, 38646/2018 105085/2018, 26147/2018 and 75361/2017

List these applications on 23 January, 2019.

T.C. (Crl.) No.1/2016

Mr. Aman Lekhi, learned Additional Solicitor General seeks two weeks' time to file a reply to the application. Time, prayed for, is granted.

List the matter on 23 January, 2019.

(POOJA ARORA)
COURT MASTER

(SAROJ KUMARI GAUR)
BRANCH OFFICER