

ITEM NO.7

COURT NO.8

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).13301/2015

SUBRATA BHATTACHARYA

Appellant(s)

VERSUS

SECURITIES AND EXCHANGE BOARD OF INDIA & ORS.

Respondent(s)

(ONLY OBJECTIONS IN CIVIL APPEAL NOS. 13301 OF 2015, 13394 OF 2015
AND 13410 OF 2015 AS PER COURTS ORDER DATED 17.12.2019)

WITH

C.A. No. 13394/2015 (XVII)

C.A. No. 13410/2015 (XVII)

Date : 23-01-2020 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s) Mr. E. C. Agrawala, AOR

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Mr. Wajeeh Shafiq, AOR

Mr. Somiran Sharma, AOR

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Mr. Sidharth Arora, Adv.

Mr. Raghu Mannu Taneja, Adv.

Mr. Harshit Goel, Adv.

Mr. Sameer Srivastava, Adv.

For Respondent(s) Mr. Pratap Venugopal, Adv.

SEBI Ms. Surekha Raman, Adv.

Ms. Ayushi Gaur, Adv.

Mr. Akhil Abraham Roy, Adv.

Mr. Vijay Valsan, Adv.

For M/S. K J John And Co

Mr. Dushyant Dave, Sr. Adv.

Mr. P.S. Patwalia, Sr. Adv.

Mr. Gagan Gupta, AOR

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Mr. Sajid Mohamed, Adv.

Mr. Chetan Sharma, Sr. Adv.
Mr. Anil Nag, Adv.

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Mr. Paban K. Sharma, Adv.
Mr. Anchit Sripat, Adv.
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Mr. Manish Kumar Tirthpuria, Adv.
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Mr. Deepak Bansal, Adv.
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Mr. Davendra Sharma, Adv.
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Mr. Kunal Anand, Adv.
Ms. Shivani Sharma, Adv.
Ms. Sukriti Bhardwaj, Adv.
Ms. Shalya Agarwal, Adv.

Mr. Manoj Nayak, Adv.
Mr. Vijay Kumar, Adv.

Mr. Rajesh Tyagi, Adv.
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Mrs. Shubhangi Tuli, AOR
Ms. Jasmine Damkewala, AOR
Ms. Manju Jetley, AOR
Mr. Shree Pal Singh, AOR
Mr. Rajeev Kumar Bansal, AOR
Mr. Avadh Bihari Kaushik, AOR
Ms. Christi Jain, AOR
Mr. Gopal Jha, AOR
Mr. Prakash Kumar Singh, AOR
Mr. Mohit D. Ram, AOR
Ms. Anuradha Mutatkar, AOR
Mr. Md. Shahid Anwar, AOR
Mr. Yadav Narender Singh, AOR

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

The Committee chaired by Justice R M Lodha¹, former Chief Justice of India issued a public notice on 23 August 2019 inviting Expressions Of Interest (EOIs) from prospective buyers for the properties of PACL, its group entities and related parties. The properties were divided into four zones. A total of 28,974 properties were put up for sale as part of the public notice. EOIs from prospective buyers had to indicate the list of properties from each zone, the circle rate, offer amount and other relevant details. Proposals could be submitted for properties in one or more zones. The condition which appears to have been imposed by the Committee was that the aggregate value of an offer should be at least Rs 1,000 crores.

The report which has been submitted to this Court on 14 November 2019 indicates that the Committee received seventeen EOIs in response to the public notice. Five of them failed to meet the eligibility criteria of a minimum offer size of Rs 1,000 crores. The report states that twelve proposals met the minimum offer size. These twelve properties were from the following entities:

- "i. Assets Reconstruction Company (India) Limited.

1 "Committee"

- ii. Prudent AMC/Telecare Network India Pvt. Ltd., Delhi.
- iii. Brij Gopal Construction Company Pvt. Ltd., Delhi.
- iv. Meera Cleanfuels Limited, Mumbai
- v. Trends Infra Organization, Bangalore
- vi. Pixie Consulting Solutions Limited, Karnal, Haryana
- vii. Next-Gen Advisors, Goa
- viii. Riz United Infratech Pvt. Ltd. Mumbai
- ix. M G Global (Grain Merchants & Commission Agents), New Delhi
- x. SLF Realty, New Delhi
- xi. Peacock Shipping Private Limited (PSPL) along with consortium partners M/s. Asia Trade Consortium LLP (ATC) and their investors
- xii. Shri Ashok Jain (submitted proposals from 25 entities)."

The Committee held discussions with each of the offerors. Eventually it shortlisted two offers namely, those of

- (i) Prudent ARC/Telecare Network India Pvt. Ltd., Delhi²;
- (ii) Assets Reconstruction Company (India) Limited³.

Both Prudent and ARCIL are to act merely as facilitators. The report states that Prudent has indicated the names of ultimate purchasers, together with

2 "Prudent"

3 "ARCIL"

their financials and has submitted a cheque of Rs 100 crores as a security deposit to establish its *bona fides*. Prudent has indicated that it would charge a commission of 0.5% which, however, can be waived. The time frame for the completion of the sale process has been fixed at four months. The report of the Committee indicates that if the proposal by Prudent is accepted, an amount of Rs 1,122.34 crores will be realized.

The Committee notes that the proposal of ARCIL has not disclosed the names of ultimate purchasers or their financials. In its conclusions, the report states that ARCIL has indicated a timeframe of four months for completion of the sale. A commission of 3% is to be charged on successful sale. The Committee has found the proposed commission to be on the higher side. The Committee has noted that the proposal of ARCIL could be considered only for those properties which have not been bid by Prudent. An additional amount of Rs 892.34 crores is stated to be realizable, should the offer of ARCIL be accepted.

Besides the above two entities, the Committee has indicated in its conclusions that it is not inclined to recommend the proposal of Indo-UK Health Institute⁴, a private sector entity which is engaged in developing eleven Medicities across India which is being facilitated

4 "IUIH"

by the Department of Health and Family Welfare. The reason why the proposal of IUIH had not been recommended is that it had indicated a time frame of 33 months initially for effecting complete payment and had included properties which the Committee had not offered for sale.

The report of the Committee was deliberated upon before this Court on 17 December 2019. An order was passed by the Court requiring SEBI to consider the objections which were received to the report and to submit a response on behalf of the Committee dealing with the main heads of objections. The Court observed that:

"The Committee may also explore whether in the interests of broadening the field of competition, it would be desirable to furnish one more opportunity to intending offerors to submit offers, while at the same time also allowing those who have submitted offers in the initial process to revise their offers for further consideration. This would be without prejudice to the rights and contentions of the shortlisted offers which have been adverted to in the Report submitted by the Committee."

In pursuance of the above directions, a reply has been filed on behalf of SEBI dealing with the main heads of objections.

During the course of the hearing, the Court has heard submissions on behalf of Prudent (represented by Mr Dushyant Dave and Mr P S Patwalia, senior counsel), ARCIL

(represented by Mr Divyanshu Rai), IUIH (represented by Mr Huzefa A Ahmadi, senior counsel) and SEBI (represented by Mr Pratap Venugopal). Several other parties have appeared through senior counsel/counsel as indicated below:

Entity	Represented by
Sunland Properties Pvt Ltd	Mr Jaideep Gupta, senior counsel
Trends Infra Organisation	Mr M L Lahoty, senior counsel
Janlok Pratisthan	Dr Manish Singhvi, senior counsel with Mr D K Devesh
PACL	Ms Anubha Agrawal
Meera Cleanfuels Limited, Mumbai	Mr Ashok Arora with Ms Richa Kapoor
Mahadev Plantation and Parks Pvt Ltd	Mr R S Hegde with Ms Farhat Jahan Rehmani
Elara Capital	Mr Avishkar Singhvi
Nanda Papat Jagatop	Mr Manoj Nayak

Mr Dushyant Dave and Mr P S Patwalia, learned senior counsel appearing on behalf of Prudent submitted that since the Committee has followed a copious process, it is

appropriate that the proposal is sanctioned in favour of the recommended entities. It has been urged that a delay in the conclusion of the court mandated process is likely to result in the value of the properties being reduced as a result of progressive encroachments.

On the other hand, we have heard objections from several entities, including, amongst them, the entities which were initially shortlisted by the Committee. The Court has been apprised of the fact that by its earlier orders dated 8 January 2019, 12 February 2019 and 30 July 2019, the Court had indicated that the field of competition could be broadened to include Asset Reconstruction Companies⁵, Non-Banking Financial Companies⁶ and property consultants of repute. By the order of this Court dated 30 July 2019, the Court had left it open to the Committee to receive further offers and to explore them after duly publishing a notice on its website. The Committee was authorized to negotiate with the ARCs or, as the case may be, NBFCs and property consultants as referred to in the report of the Committee.

The terms and conditions on which offers were required to be submitted were not spelt out in the public notice issued by the Committee. The revised public

5 ARCs

6 NBFCs

notice indicated that EOIs could be furnished with a minimum offer of Rs 1,000 crores in respect of the properties in any of the four zones that were listed out in the notice. No specific conditions were imposed for ensuring the *bona fides* of the intending offerors or the ultimate purchasers. The notice did not stipulate a requirement of furnishing an earnest money deposit so as to ensure that bids were received only from serious bidders. Moreover, no consequence has been envisaged where an entity which has submitted an offer resiles from it. Prudent submitted a cheque of Rs. 100 crores, of its own accord. No other offeror appears to have done so. The public notice does not contain specific terms and conditions for governing the norms of eligibility, disclosure of financials, time frames and other material conditions. All offerors must have a level playing field. Absent a specification of the terms and conditions, the process will lack transparency.

We, however, appreciate that the work of the Committee is complicated for the reasons which have been indicated in the reply filed by SEBI during the course of this proceeding. This includes the unavailability of land records in respect of several properties and valid agreements in respect of many others. Be that as it may, we are of the view that a level playing field should be allowed for genuine offerors to come forth with their

offers. Before the process is opened up, it would be necessary to lay down and stipulate essential requirements. These, in our view, should include the following:

(i) Any EOI, in order to be entertained, must be accompanied by an earnest money deposit in the form of a demand draft of Rs 150 crores of a nationalized bank, which must be furnished to the Committee and/or to the nodal officer of the Committee;

(ii) Intending offerors must be placed on notice that if the offeror resiles from the offer after having submitted the EOI, this would result in a forfeiture of the earnest money deposit;

(iii) Offers should be submitted within two weeks of this public notice being put up on the website of SEBI;

(iv) The time schedule for the completion of the sale should be fixed at four months from the date of acceptance of the offer;

(v) It would be open to an offeror to submit a bid of at least Rs 1000 crores covering properties referred to in the revised public notice dated 23 August 2019 in one or more zones;

(vi) The offers must be expressly made on an "as is,

where is, whatever is basis”;

(vii) The intending offeror must, together with the EOI, furnish a financial statement containing such details, as may be notified by the Committee; and

(viii) Offers may be submitted by any of the twelve bidders that were shortlisted by the Committee as well as by other ARCs or, as the case may be, NBFCs or prospective purchasers.

We would request the Committee to formulate terms and conditions incorporating the above features which have been set out in the present order as well as other requirements which the Committee may consider necessary to spell out.

During the course of the hearing, Mr Pratap Venugopal, learned counsel appearing on behalf of SEBI, has suggested that the Committee may adopt the modified Swiss Challenge Procedure. He has indicated the modalities for the procedure in the following terms:

"Sl. No.	Particulars
1.	Sale to be effected only through ARCs on a "as is, where is, whatever there is" basis.
2.	Base Price: Original Offer
3.	Original Offer to be submitted with 25% of entire offer price to be deposited.
4.	Original Offer to be uploaded on

	website.
5.	Counter Offer (not less than 25% to 30% of original offer) together with 25% of entire counter offer to be deposited not later than 2 working days after original offer is uploaded.
6.	Original Offeror may match counter offer failing which counter offer would be accepted.
7.	Payment to be made on T+2 basis failing which 25% deposited would be forfeited.
8.	Fees payable to ARCs 0.5% of total sale consideration."

Mr Venugopal submitted that this procedure has been recognised by the Reserve Bank of India in its circular dated 1 September 2016 to all scheduled commercial banks.

Neither the report of the Committee nor the affidavit of SEBI contains a request enabling the Committee to follow the Swiss challenge procedure. When we queried Mr Pratap Venugopal, counsel for SEBI on this during the hearing, he stated that this was a submission of counsel on a matter of law. This is not a pure issue of law since accepting the suggestion will lead to a right of first refusal to Prudent and ARCIL. Absent a specific proposal on this aspect by the Committee, it is not necessary for the Court to make any finding or observation on the submission, particularly since we are inclined to allow all intending offerors to have an equal opportunity.

We would request the Committee to finalize the terms and conditions and to notify them on the website of SEBI within a period of two weeks from today. The Committee may also consider an additional mode of publication to give the process wide publicity. The period for the submission of EOIs in response to the notice that would be placed by SEBI on its website would be a further period of two weeks thereafter.

All the twelve offerors who have submitted EOIs to the Committee are also at liberty to submit any revised offers. They would each have to furnish demand drafts of Rs 150 crores in accordance with the above terms and conditions in order that their offers are considered, within the period which is allowed to other offerors. Prudent and ARCIL who were shortlisted by the Committee will also be at liberty to submit revised offers together with the earnest money in the form of demand drafts for Rs 150 crores. IUIH is at liberty to do so, in terms of the liberty granted to all other offerors.

The Committee will submit its Report after the conclusion of the above process.

List after six weeks on receipt of the Report of the Committee.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER