ITEM No. 1A Court No. 3 SECTION XIIA
(For Judgment)

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

I.A. No. 8-9 and 10-12 in Contempt Petition © No. 412 of 2012 in Civil Appeal No(s). 9813/2011

SECURITIES & EXCH.BOARD OF INDIA & ANR Appellant(s)

VERSUS

SAHARA INDIA REAL ESTATE CORP.LTD.& ORS Respondent(s)

with

I.A. Nos. 8-9 and 10-12 in Contempt Petition © No. 413 of 2012 in Civil Appeal No. 9833 of 2011

I.A. Nos. 10-12 in Contempt Petition © No. 260 of 2013 in Civil Appeal No. 8643 of 2012.

Date : 22/07/2014 These Applications were called on for judgment today.

For Appellant(s) **Mr. Arvind P.Datar, Sr. Adv.**
Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Ms. Meenakshi Chauhan, Adv.
Mr. P.K.Jha, Adv.
Mr. Anuj Sarma, Adv.
Mr. Gaurav Nair, Adv.
M/s. K.J.John and Co.

For Respondent(s) **Mr. Vishwa Pal Singh, Adv.**

Ms. Shally Bhasin Maheshwari, Adv.

Dr. Rajeev Dhavan, Sr. Adv.
Mr. Gaurav Kejriwal, Adv.
Mr. Keshav Mohan, Adv.
Mr. Gaurav Chaudhary, Adv.

Mr.Gautam Awasthi, Adv.

Signature Not Verified
Digitally signed by Shashi Sareen
Date: 2014.07.22 11:11:33 ATMT
Reason:

Hon'ble Mr. Justice T.S.Thakur pronounced Judgment of the Bench comprising His Lordship, Hon'ble Mr. Justice Anil R.Dave and and Hon'ble Mr. Justice A.K.Sikri.

1. I.As. No.8-9 of 2014 in Contempt Petitions (C) No.412 and 413 of 2012 are dismissed.

2. I.As. No.10-12 of 2014 in Contempt Petitions (C) No.412 of 2012, 413 of 2012 and 260 of 2013 are allowed to the extent that three offshore hotel properties owned by Saharas are allowed to be transferred, sold or encumbered subject to the condition that the entire sale consideration received by the Saharas after repayment of the loan outstanding towards the Bank of China is deposited with SEBI towards compliance with the directions contained in the conditional bail order dated 26.3.2014 passed by this Court. The excess amount, if any, shall be deposited by the Saharas in a separate account to await orders from this Court regarding their utilisation. The sale of the offshore properties shall not be at a price lesser than the value estimated by CBRE and JLL for the said properties reduced at the most by 5% of such value.

3. We clarify that sale of remainder of the properties which Saharas have been allowed to transfer, sell or encumber in terms of our order dated 4th June, 2014 shall not be at a price less than the estimated value of the said properties reduced at the most by 5% of such estimate

4. ….. we request Shri Shekhar Naphade, Senior Advocate, to assist the Court in the case as an Amicus Curiae. The

terms and conditions of Shri Naphade's appointment shall, however, remain the same as were stipulated for Shri Nariman.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master

(Signed reportable judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NOS. 8-9 & 10-12 OF 2014

IN

CONTEMPT PETITION (C) NO.412 OF 2012

IN

CIVIL APPEAL NO. 9813 OF 2011

S.E.B.I. …Appellant

Versus

Sahara India Real Estate Corporation Ltd.
& Ors. …Respondents

WITH

I.A. NOS. 8-9 & 10-12 OF 2014

IN
CONTEMPT PETITION (C) NO.413 OF 2012
IN
CIVIL APPEAL NO. 9833 OF 2011

AND

I.A. NOS. 10-12 OF 2014

IN

CONTEMPT PETITION (C) NO.260 OF 2013
IN
CIVIL APPEAL NO. 8643 OF 2012

J U D G M E N T

T.S. Thakur, J.

1. By our order dated 4th June, 2014 we had, while declining the prayer made by the contemnors for modification of the terms on which they were granted interim bail, partially modified order dated 21st November, 2013 passed by this Court and that passed by SEBI on 13th February, 2013 so as to enable Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL) (hereinafter referred to as *'Saharas'* for short) to deposit with SEBI the maturity value/sale consideration of FDs, bonds and securities held by the Saharas. We had also, by the same order, permitted Saharas to sell nine different properties situate in nine different cities in the country and to deposit the sale proceeds thereof with SEBI, to the extent the same was necessary to make a total deposit of Rs.5,000/- crores required in terms of the bail order. We had also permitted Saharas to charge its immovable property situate in Aamby Valley (Pune) for obtaining and furnishing to this Court a bank guarantee for an amount of Rs.5,000/- crores in terms of

the bail order dated 4th June, 2014. As regards Sahara's prayer for permission to sell three hotel properties situate outside the country, we had left the question open to be determined after Saharas furnished the requisite documents/information in terms of our order dated 29th May, 2014 evidencing the approval of Bank of China to the proposed transfer of the stakes held by the Saharas in the said three properties. We were informed that Bank of China had a charge over the three properties and that it had agreed in principle to the sale of the stakes held by Saharas subject to the repayment of the outstanding loan amount for which the said properties were charged. We had also noticed the valuation reports in regard to the three properties mentioned above and a contention urged by Saharas that the same had been prepared by reputed valuers at the instance of the Bank of China in connection with the loan transactions as a part of the ongoing exercise undertaken by the bankers. We had asked Saharas to obtain a confirmation from the Bank of China to the effect that the valuation reports prepared in respect of the three offshore hotel properties by CBRE and JLL have been prepared at the instance of the Bank of China and that the same had been accepted by the bank to be correct. We were of the view that

such a confirmation would lend re-assurance to the Court that the valuation reports represented the true value of the stakes held by the Saharas in the said three properties. This is evident from the following portion of the order passed by us on 29th May, 2014:

> *"Dr. Dhawan submitted, on instructions, that an appropriate communication could subject to the order of this Court be addressed to the Bank of China by the Saharas seeking its approval to the proposed transfer of the stakes held by Saharas in the three properties mentioned above, subject to the repayment of the loan outstanding against those properties. Dr. Dhawan submitted that a copy of the communication addressed to the Bank of China and its response shall be placed on record before this Court along with an affidavit within one week from today. He further submitted that apart from the correspondence that may be exchanged on the subject between Saharas and the Bank of China, the*
> *Bank of China will also be requested to confirm the amount that is outstanding towards the loan advanced by it in regard to each one of the three properties mentioned above to give a clear picture to this Courts to the outstanding liability that remains to be liquidated by the Saharas qua the said properties.*
>
> *Our attention was also drawn to the valuation reports in regard to the three properties mentioned earlier. It was urged that the said valuation reports have been prepared by reputed valuers at the instance of the Bank of China in connection with the loan transactions as a part of on-going annual exercise undertaken by the lending Bank. If that be so, Saharas would do well to obtain a confirmation from the Bank of China to the effect that the valuation reports prepared in respect of the three properties mentioned above by CBRE and JLL, have been prepared at the instance of the Bank of China and that the said valuation reports have been accepted by the Bank to be correct. This could lend re-assurance to the Court that the value/stakes held by Saharas in these properties are sought to be transferred on the basis of the true market value of the said assets. Needful shall be done expeditiously, but not later than one week from today."*

2. Saharas have now made the present applications seeking certain directions. In I.As No. 8-9 of 2014, Shri Subrata Roy Sahara has prayed for temporary/conditional release from judicial custody for a period of 15 days or so to meet his nonagenarian and ailing mother as also for taking steps for compliance with the order of this Court dated 26th March, 2014. The applicant has, *inter alia*, stated that his mother Smt. Chhabi Roy who is aged over 93 years suffers from several ailments which complicate matters in view of her being in a fragile emotional state. The applicant Shri Subrata Roy Sahara is also, according to the averments, not keeping good health requiring medical attention. The application, however, stops short of elaborating the medical condition of the applicant Shri Sahara. More importantly, the application seeks release of Shri Sahara on parole with a view to negotiating deals directly with the purchasers who have shown interest in the purchase of the property being offered for sale by the Saharas.

3. In the accompanying I.As Nos.10, 11 & 12 of 2014 Saharas have prayed for permission to obtain a bank guarantee of Rs.5,000/- crores by leveraging the three overseas hotel

properties by way of sale, mortgage in the light of the Bank of China's consent to such sale or transfer, and certification that the valuation reports were prepared at the instance of the Bank and accepted by it. The Saharas also seek permission for sale, hypothecation, mortgage/leverage the land owned by them and situate in Versova.

4. Appearing for the applicants, Dr. Rajiv Dhavan, learned senior counsel, argued that the applicants had, pursuant to our order dated 29th May, 2014, addressed a joint letter to the Bank of China on 2nd June, 2014 requesting the Bank of China to confirm the information sought for by this Court. The Bank of China had, on receipt of the said communication, consented to the proposed sale of the stakes held by Saharas in the hotel properties subject to the repayment of the amount outstanding against Saharas. It had also confirmed the loan amounts and the valuation reports as required by the Order passed by this Court. Our attention was, in support of that submission, drawn by the learned counsel to letter dated 3rd June, 2014 sent by the Bank of China to the Saharas conveying the Bank's consent to the sale and direct or indirect disposal by the Saharas Group of its interests in the three hotels subject to the condition that the sale

proceeds are sufficient to and the same are applied towards repayment in full of the outstanding principal, interest and other amounts including any applicable prepayment premia, fees, out of pocket costs and expenses of Facility Agents and lenders owned by Sahara Group in connection with the loans obtained from the Bank. The letter sets out the outstanding amount under the Sahara Group loans as on 2nd June, 2014 in the following words:

> ***"2) Amounts outstanding under the Sahara Group Loans as at 02 June 2014***
> *A. Amounts outstanding under the Sahara Group Loans as at 02 June 2014 are:*

As at 02 June 2014	***GHH Loan***	***Plaza/Dream Loan***
Loan outstanding balance	*£289,750,000.0*	*US$427,241,303.00*
Accrued Interest	*£985,469.20*	*US$244,036.67*
Prepayment Fee	*£2,897,500.00*	*$8,544,826.07*
Libor Breakage Costs	*Approximately £11,873,16, final amount to be confirmed at the prepayment date*	*Approximately £9,740.96, final amount to be confirmed at the prepayment date*
Legal Fees	*Approximately £15,000 final amount to be confirmed at the prepayment date*	*Approximately £15,000, final amount to be confirmed at the prepayment date*

> *Please note that the exact amounts required to prepay the*

Sahara Group Loans will depend on when the prepayment is made. Whilst the above numbers are accurate as at 2 June 2014 (Except that the Libor Breakage Costs and Legal fees are estimates), they are subject to change."

5. The Bank of China has also, in the same communication, confirmed that valuation reports were instructed and accepted by the Facility Agents for loan security purposes in regard to the three properties in question. The bank says :

*"**Latest Valuation reports prepared pursuant to the Sahara Group loans***
The following Valuation reports were instructed and accepted by Facility Agent for loan security purposes:

- *Plaza Hotel Valuation Report prepared by CBRE dated 27 Oct 2013 with the Market Value of US$592,000,000;*
- *Dream Downtown Hotel Valuation Report prepared by CBRE dated 29 Oct 2013 with the Market Value of US$252,000,000*
- *Grosvenor House Hotel Valuation Report prepared by Jones Lang LaSalle (JLL) dated 26 February 2014 with the Market Value of £516,000, 000*

We understand that you will share a copy of this letter with the Supreme Court of India."

6. It was in the above context, Dr. Dhavan submitted that (a) Bank of China had no objection to the proposed sales/transfer of the stakes held by the Saharas in the three hotel properties and (b) the valuation reports indicating the value of the assets in question were prepared on the instructions of the Bank of China and had been accepted by it for loan security purposes. Dr. Dhavan argued that the valuation reports had been prepared in the ordinary course of business long before the present

controversy arose and were truly indicative of the market value of the properties. It was also submitted that the reports were prepared by reputed international valuers after a thorough and analytical application of recognised methods of valuation of a going establishment like a hotel. There was, therefore, no basis for any apprehension that the properties proposed to be sold may be sold at a price lesser than the true market value with a view to defrauding the creditors or siphoning away the sale consideration. Dr. Dhavan argued that while the encashment of FDs and sale of bonds and securities had already resulted in the deposit of a substantial amount of over Rs.3,000/- crores in SEBI-Sahara Refund account, sale of the three hotel properties would enable the Saharas to make up the deficit amount of Rs.2000/- crores besides helping Saharas arrange a bank guarantee for another Rs.5,000/- crores, as directed by this Court.

7. Mr. Arvind P. Datar, learned Senior Counsel appearing for SEBI, on the other hand, contended that the prayer made by the contemnors/applicants in I.As. No.8 and 9 for release on parole was not justified on the ground stated. The material on record did not, according to the learned counsel, suggest that Shri

Subrata Roy Sahara had any serious medical problem to justify his release on parole nor can his release on parole be justified on the ground for facilitating negotiations with the prospective purchasers. It was submitted that Saharas had not come forward to disclose the names of the prospective buyers with whom they proposed to hold such negotiations nor was there any concrete proposal at present under their consideration.

8. As regards sale of the three hotel properties, Mr. Arvind P. Datar, did not deny that though the Bank of China has a substantial charge over the said properties but according to the valuation reports the market value of the property is considerably higher than the outstanding loan amount, thereby accepting the plea of the applicants that if the properties are sold, sufficient surplus would be available even after discharge of the Bank loan that could be utilised for deposit with SEBI and for furnishing a bank guarantee as demanded by this Court. Moreover, the valuation reports prepared by leading and reputed international valuers were not questioned by Mr. Arvind P. Datar nor was it suggested that the reports had been procured only for use in these proceedings.

9. We have considered the matter in the light of the

submissions made at the bar. The contemnors stand committed to jail by the Order of this Court dated 4th March, 2014 on account of their failure to comply with the directions of this Court's Orders dated 31st August, 2012 and 5th December, 2012 and those issued on 25th February, 2013 in I.A. No.67 of 2013 in Civil Appeal No.9813 of 2011 and I.A No.5 in Civil Appeal No.9833 of 2011. Interim bail order passed by this Court on 26th March, 2014 requires them to deposit Rs.10,000/- crores, out of which Rs.5,000/- crores has to be in cash while the balance has to be secured by bank guarantee of a nationalised bank furnished in favour of SEBI. It was with a view to enabling the contemnors to comply with the said direction that this Court had by Order dated 4th June, 2014 lifted the embargo placed upon operation of the bank accounts and sale/transfer of immovable assets held by the Saharas *qua* nine properties referred to in the said order. Saharas have since then deposited an amount of more than Rs.3,000/- crores with SEBI by encashment of FDs, Bonds and securities.

10. Saharas have also out of the nine properties referred to above sold the property situate in Ahmedabad for a sum of Rs.4,11,82,55,138/- (Rupees Four Hundred and Eleven Crores

Eighty Two Lacs Fifty Five Thousand One Hundred and Thirty Eight only). The remaining eight properties, however, remain to be sold or encumbered. We had in the light of the above asked Dr. Dhavan whether the proposed sale/transfer of the offshore hotel properties was essential when no less than eight other properties apart from Aamby Valley (Pune) remained to be sold or encumbered for raising funds necessary for compliance with the order of this Court. Dr. Dhavan argued that it may be easier for the contemnors-Saharas to leverage the overseas hotel properties for deposit of the deficit of around Rs.2000/- crores and arranging a bank guarantee of Rs.5,000/- crores in comparison to sale or transfer of property situate within the country which may take a relatively longer period leading to continued incarceration of the contemnors in jail. It was submitted that so long as it was ensured that the offshore properties are sold for the market value they command, the Saharas should have the liberty to do so.

11. There is, in our opinion, merit in the contention urged by Dr. Dhavan. What is important is that the properties held by the Saharas are sold at their market value and the sale proceeds, subject to any other directions issued by this Court, utilised for

compliance with the terms of the conditional bail order issued by this Court. It is evident that if sale of properties situate within the country is likely to take time, the contemnors may be exposed to a longer period of incarceration on account of their failure to comply with the directions of this Court. On the other hand, quicker the compliance with the directions of the Court's Order for deposit of cash and bank guarantee, the easier would be the way out of jail for them. The anxiety on the part of the Saharas generally and the contemnors in particular to sell the offshore properties is, therefore, understandable especially when such sale and transfer is not only going to help Saharas in liquidating the outstanding loan amount payable to the Bank of China but leave sufficient surplus with the Saharas to not only deposit the balance of Rs.2,000/- crores approximately that needs to be immediately paid by them but also furnish a bank guarantee for a sum of Rs.5,000/- crores, as directed. We, therefore, see no legal impediment in permitting the sale of the offshore properties owned by Saharas. This is particularly so when not only do we have the valuation reports of the said properties on record prepared as they are by internationally reputed valuers but also the concurrence of SEBI for the sale of

such properties at that value subject to the condition that the sale consideration shall as far as possible be at the estimated value of such properties, less, at the most by 5% of such value. We are, mindful of the fact that Saharas have sold the property at Ahmedabad at more than three times the circle rates of such property. No such rates are, however, available or prescribed for offshore properties. We shall, therefore, have to go only by the valuation reports of the valuers as the basis for such proposed sale/transfer subject to a margin of 5% which we have indicated above. In case the offer received is lesser by more than 5%, they will seek prior approval of the Court.

12. We may incidentally mention at this stage that Dr. Dhavan had sought a clarification of our Order dated 4th June, 2014 inasmuch as in the para 23 (iii) (b) of the said order, we had stated that the sale of the properties referred to in the order shall not be for an amount lesser than the circle rate for such properties or the estimated value indicated by the Saharas whereas in the operative portion of the said order we had permitted sale at a price that is not lower than the circle rate prescribed for such properties. Having regard, however, to the experience that Saharas have had with the sale of properties in

Ahmedabad which fetched more than three times the circle rates prescribed for the same, we are of the view that the actual market value of the property held by Saharas is many times more than the circle rates for such property. This is evident not only from the sale transaction relating to Ahmadabad property but also the fact that Saharas have themselves estimated the value of the properties much higher than the circle rates for the same. In the circumstances, we see no difficulty in clarifying that the sale of the remainder of the properties which we have permitted to be sold by our order dated 4th June, 2014 shall not be lesser than the estimated value of the properties given by Saharas less by no more than 5% of such estimated value. In case the offer(s) received is/are less by more than 5%, prior approval of the Court will have to be sought.

13. That brings us to the question whether the contemnors can be granted parole as prayed for in the applications? We regret to say that we do not, for the present, see any justification for us to take a view different from the one taken in our order dated 4th June, 2014. There is nothing before us to show that Shri Subrata Roy Sahara suffers from any serious medical condition. At any rate, we expect the jail doctors to keep a check on his

medical condition and provide necessary medical aid as and when required. The alternative ground urged for the grant of parole also does not stand closer scrutiny. There is, at present, no concrete proposal with Saharas for sale of the properties situate in India or abroad that may call for any negotiation by Shri Subrata Roy Sahara. While it may be true that such negotiations cannot be said to be advisable when properties of such magnitude as in the instant case are sought to be sold, yet it is pre-mature for us to make any arrangement to facilitate any such negotiations either by directing release of Shri Subrata Roy Sahara on parole or otherwise. We may make it clear that if a situation arises in which negotiations become essential, this Court may consider passing orders to facilitate such negotiations. Beyond that we do not consider it necessary or proper to say anything at this stage.

14. In the result :

1. I.As. No.8-9 of 2014 in Contempt Petitions (C) No.412 and 413 of 2012 are dismissed.

2. I.As. No.10-12 of 2014 in Contempt Petitions (C) No.412 of 2012, 413 of 2012 and 260 of 2013 are

allowed to the extent that three offshore hotel properties owned by Saharas are allowed to be transferred, sold or encumbered subject to the condition that the entire sale consideration received by the Saharas after repayment of the loan outstanding towards the Bank of China is deposited with SEBI towards compliance with the directions contained in the conditional bail order dated 26.3.2014 passed by this Court. The excess amount, if any, shall be deposited by the Saharas in a separate account to await orders from this Court regarding their utilisation. The sale of the offshore properties shall not be at a price lesser than the value estimated by CBRE and JLL for the said properties reduced at the most by 5% of such value.

3. We clarify that sale of remainder of the properties which Saharas have been allowed to transfer, sell or encumber in terms of our order dated 4th June, 2014 shall not be at a price less than the estimated value of

the said properties reduced at the most by 5% of such estimate.

4. We had by our order dated 4th June, 2014 requested Shri F.S. Nariman, Senior Advocate, to assist the Court as an Amicus Curiae. We had also permitted Shri Nariman to associate two juniors of his choice to brief him in the matter. Shri Nariman as in terms of a communication dated 5th June, 2014 regretted his inability to assist the Court as he had also appeared for Saharas upto 31st August, 2012 when the main judgment was delivered in the case. That Shri Nariman had appeared on behalf of Saharas had been brought to our notice also but only after we had pronounced the order in the Court on 4th June, 2014 by which he was appointed as Amicus Curiae. It is obvious that having appeared as a counsel on behalf of Saharas Mr. Nariman cannot possibly take up the assignment offered to him. We, therefore, have no option but to modify our order dated 4th June, 2014 to the extent that in place of Shri F.S. Nariman, Senior Advocate, we request Shri Shekhar Naphade, Senior

Advocate, to assist the Court in the case as an Amicus Curiae. The terms and conditions of Shri Naphade's appointment shall, however, remain the same as were stipulated for Shri Nariman.

.....J.
(T.S. THAKUR)

.....J.
(ANIL R. DAVE)

.....J.
(A.K. SIKRI)

New Delhi
July 22, 2014