CP (C) 412/2012

ITEM NO.301 COURT NO.2 SECTION XVII

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

I.A. Nos.83-85/2015,104-106/2015, 131/2015, 158-160/2016, 180-182/2016, 190-191/2016, 194-195/2016, 205-207/2016, 208/2016, 209-210/2016, 211/2016,212-214/2016, 218-220/2016, 227/2016, 231/2016, 232/2016, 239/2016, 240/2016, 241/2016, 242/2016, 243/2016 & 244-246/2016, 247/2017, 251-252, 253-255, 256, 257-259, 260-262/2017, 268-270/2017, 273-274/2017, 280-282/2017, 284-286/2017, 47133 & 47681/2017
In
CONMT.PET.(C) Nos.412 & 413/2012
In
C.A. Nos.9813 & 9833/2011
And
C.P.(C) No.260/2013 in C.A. No.8643/2012

S.E.B.I. Petitioner(s)

VERSUS

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

(Appln.(s) for intervention, clarification/direction, permission to place on record subsequent facts and for appropriate orders/directions)

Date: 05/07/2017 These applications were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE A.K. SIKRI

Mr. Shekhar Napahade, Sr. Adv. (A.C.)
Ms. Shubhangi Tuli, Adv.
Mr. Vikram Sabbi, Adv.

For Petitioner(s) Mr. Arvind P. Datar, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Ms. Niharika, Adv.
Ms. Kanika Kalayarasan, Adv.
Mr. Aman Shukla, Adv.
Mr. Purushottam Kumar ha, Adv.
for M/s. K. J. John & Co.

Signature Not Verified
Digitally Signed by GULSHAN KUMAR ARORA
Date: 2017.07.05 17:38:19 IST
Reason:

For Respondent(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Salman Khurshid, Sr. Adv.

Mr. Gautam Awasthi, AOR
Mr. Ayush Choudhary, Adv.
Mr. Tushar Gupta, Adv.
Mr. Simaranjeet Singh, Adv.
Mr. Rahul Tripathi, Adv.
Mr. Gautam Talukdar
Mr. Zafar Khurshid, Adv.
Mr. Ram Sajan Yadav, Adv.
Mr. Vijay Kumar, Adv.
Ms. Geetanjali Kapur, Adv.
Mr. Nizam Pasha, Adv.
Mr. Sakshi Katiyal, Adv.

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Gautam Awasthi, Adv.
Mr. A. Chaudhary, Adv.
Ms. Devanshi Singh, Adv.
Mr.Prashant Kumar, AOR

Mr. Prashant Kumar, AOR

Mr. Ramesh Babu M. R., AOR
Ms. Swati Setia, Adv.

Mr. Maninder singh, ASG
Mr. Rana Mukherjee, Adv.
Mr. D.L. Chidananda, Adv.
Mr. A.K. Srivastava, Adv.
Ms. Sadhana Sandhu, Adv.
Mr. Sushma Manchanda, Adv.
Ms. Nalini Kohli, Adv.
Mr. B.K. Prasad, Adv.
Mrs. Anil Katiyar, AOR

Mr. Rakesh Kr. Sharma, AOR

Mr. Amit Anand Tiwari, AOR

Mr. Yash Pal Dhingra, AOR

Mr. P.N. Puri, AOR

Mr. Biswajeet Bhattachary, Sr. Adv.
Mr. Pawan Upadhyay, Adv.
Mr. S. Pratap Singh, Adv.
Ms. Sharmila Upadhyay, AOR

Mr. C.K. Sasi, AOR

Mr. Mayil Samy K., Adv.
Mr. K.p. Narayanan, Adv.
Mr. Ram Sankar, Adv.
Mr. P. Soma Sundaram, AOR

Mr. Ratnakar Dash, Sr. Adv.
Mr. G. Sivabalamurugan, AOR

Ms. Vandana Sehgal, AOR

Mr. Ankur S. Kulkarni, AOR

Mr. Anupam Lal Das, AOR

Mr. Prashant Choudhary, AOR

Mr. Sanjeev Agarwal, AOR

Mr. Mohit D. Ram, AOR

Mr. Vishwa Pal Singh, AOR

Mrs. Shally Bhasin, AOR

Mr. Kaushik Anand Satpathy, Adv.
Ms. Vidhi Goel, Adv.

Mr. Tushar Mehta, ASG
Mr. Hemantika Wahi, AOR
Mr. Shodhika Sharma, Adv.
Mr. Ajay Chokshi, Adv.

Mr. B.A.S. Jadon, Adv.

Mr. Balbir Singh, Sr. Adv.
Mr. S. Qureshi, Adv.
Mr. R. Haini, Adv.
Mr. Rabin Majumdar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

On 19.6.2017, after noting prayers in I.A. No.47681 of 2017, the following order was passed :

> **"Be it noted, on the previous occasion, i.e. 27th April, 2017, the contemnor had furnished two post-dated cheques, one dated 15th June, 2017, for Rs.1500,00,00,000/- (Rupees fifteen hundred crores only) and the second one dated 15th July, 2017, for a sum of Rs.552,21,00,000/- (Rupees five hundred fifty-two crores and twenty-one lakhs only). An assurance was given by Mr. Kapil Sibal, learned senior counsel**

appearing for the petitioner, as well as by the contemnor, who was present in the Court, that the cheques shall be honoured. It was directed that if there will be a failure, the contemnor may be sent to custody. It is submitted by Mr. Sibal relying on the application filed by the contemnor that till today they have deposited Rs.774 crores in SEBI Sahara Refund Account and today he has handed over eighteen demand drafts amounting to Rs.16,11,95,000/- (Rupees sixteen crores eleven lakhs and ninety-five thousand) in favour of SEBI Sahara Refund Account. The total amount that has been deposited in SEBI Sahara Refund Account comes to Rs.790.18 crores. Thus, the balance sum to be paid is Rs.709.82 crores.

At this juncture, it is submitted by Mr. Kapil Sibal, learned senior counsel that there is a property situated in villages Bahadrabad and Ranipur, Haridwar in the State of Uttarakhand, admeasuring 87.03 acres and he has arranged a buyer, who is prepared to purchase the said property for Rs.109.75 crores. The said amount is 62% of the circle rate and, thereby, less than 38% of the circle rate. Permission is sought to sell the property at that rate. As advised at present, we are not inclined to grant the said permission. We think that the said property shall be put to public auction by S.E.B.I with the assistance of approved agency. In the bid, S.E.B.I. can mention 90% of the circle rate, as some time this Court had permitted at that rate. The auction shall be conducted by the competent authority of S.E.B.I. through the approved agency on or before 5th July, 2017. Needless to say, e-auction can be done in respect of this property.

As the contemnor has deposited Rs.790.18 crores, we are inclined to extend the time by ten working days so that the undertaking can be complied with. The balance amount i.e. Rs.709.82 crores shall be deposited with the SEBI Sahara Refund Account by 4th July, 2017.

The prayer No.(ii) in the interlocutory application relates to grant of permission for sale of Grosvenor House

> Hotel, i.e. by transfer of shares of the company to the buyer i.e. GH Equity U.K. Limited. Mr. Arvind P. Datar, learned senior counsel appearing for the S.E.B.I. has no objection if such permission is granted. The permission is, accordingly, granted."

Today, it is submitted by Mr. Kapil Sibal, learned senior counsel appearing for the contemnor that a sum of Rs.710.22 crore has already been transferred to SEBI Sahara Account. Thus, the total amount that has been received by the SEBI Sahara Account is Rs.1500.40 crores. Thus, the commitment given on 19.6.2017 as regards the first cheque stands satisfied.

Be it stated, a cheque amounting to Rs.552.21 crores only dated 15.7.2017 was given to SEBI. A prayer has been made to extend the time for honouring the same. A submission has been advanced, with all anxiety at the command of Mr. Sibal, that at least time should be granted till 15.8.2017 so that arrangements can be made to pay the amount and prepare a road map.

At this juncture, we are obliged to sit in a time machine and recall what this Court had stated on 27.4.2017. On that day, it was noted that a cheque amounting to Rs.552.21 crores had been deposited and it was to be honoured by 15.7.2017. On 19.6.2017, when the Court assembled in the summer vacation (as the first cheque was to be honoured on 15.6.2017) we noted the development as per the order extracted hereinabove.

On that day, an assurance was given that the cheque for the sum of Rs.552.21 crores shall be honoured on 15.7.2017.

At that juncture, keeping in view the progress with regard to the report of the official liquidator, the Court observed as under :-

> **"It is necessary to note that we had directed the Official Liquidator of the High Court of Bombay to proceed with the drafting of terms and conditions of sale notice for the Amby Valley property. Mr. Vinod Sharma, Official Liquidator submits that the terms and conditions have been scrutinized by Justice B.N. Agarwal, formerly a Judge of this Court, who has been nominated to supervise the refund process. A copy of the terms and conditions be handed over to the learned counsel for the contemnor. The original terms and conditions of the sale notice which have been filed in the Court be taken on record. Be it stated, the said documents have been filed with the report of the Official Liquidator being O.L.R. No.122 of 2017. The prayer for approval of the terms and conditions of sale notice shall be considered on the next date of hearing."**

In view of the aforesaid, we are absolutely disinclined to entertain the prayer for extension of time for encashing the cheque amount for Rs.552.21 crores dated 15.7.2017. SEBI is directed to produce the cheque in the concerned bank in the relevant account. If the cheque is dishonoured, appropriate consequences shall be faced by the contemnor. At this stage, we think it appropriate to accept the terms and conditions and the draft proclamation for the auction of Ambey Vally. Further steps for acution shall be taken if the cheque is not honoured.

At this juncture, it is submitted by Mr. Datar, learned senior counsel appearing for the SEBI that the property situated at Haridwar may require four more weeks to be auctioned as some portions are encumbered. Needless to say, the auction shall take place in respect of the unencumbered part of the Haridwar property and the same shall be adjusted not towards the cheque amount but towards the balance amount. We may hasten to add that though we have approved the terms and conditions and the draft proclamation, we have not directed for auction today as the date of the cheque is 15.7.2017 and if the cheque is honoured, we shall direct for deposit of bigger amount so that the sum due, which is approximately nine thousand crores as on today, shall be expressly realized, for realization is of the money is the principal purpose of the present proceedings.

In pursuance of our earlier order, the contemnor is personally present in the Court today. He shall remain personally present on the next date of hearing.

Let the matter be listed at 3.30 p.m. on 20.07.2017.

Interim order to continue till the next date of hearing.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master