ITEM NO.302+303 COURT NO.1 SECTION XVII

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

CONMT.PET.(C) Nos.1820-1822/2017
In
CONMT.PET.(C) Nos.412 and 413/2012
In
C.A. Nos.9813 and 9833/2011

SECURITIES AND EXCHANGE BOARD OF INDIA Petitioner(s)

VERSUS

SUBRATA ROY SAHARA & ORS. Respondent(s)

With I.A. No.88721/2017
(With appln.(s) for appropriate orders/directions)

WITH M.A. Nos.1364-1365/2017 in C.A. No.9813/2011
(With appln.(s) for appropriate orders/directions)

Date : 23-11-2017 These petitions were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE A.K. SIKRI

Mr. Shekhar Naphade, Sr. Adv. (A.C.)

For Petitioner(s) **Mr. Arvind P. Datar, Sr. Adv.**
Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Mr. Purushottam Kumar Jha, Adv.
Mr. Anuj Sarma, Adv.
Ms. Niharika, Adv.
Mr. Aman Shukla, Adv.
Ms. Kanika Kalaiyarasan, Adv.
M/s. K J John And Co.

For Respondent(s) **Mr. Mukul Rohatgi, Sr. Adv.**
Mr. Narendra Hooda, Sr. Adv.
Mr. Gautam Awasthi, AOR
Mr. Ayush Choudhary, Adv.
Mr. Rahul Tripathi, Adv.
Mr. Vijay Kumar, Adv.
Mr. Ram Sajan Yadav, Adv.

Signature Not Verified
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Date: 2017.11.23 17:45:54 IST
Reason:

Mr. Shyam Divan, Sr. Adv.
Mr. Sunil Fernandes, Adv.
Ms. Astha Sharma, Adv.
Mr. Prakash Shinde, Adv.

Mr. Jayanth Muthraj, Adv.
Mr. Saiby Jose, Adv.
Ms. Sumi P.S., Adv.
Mr. C.K. Sasi, Adv.

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

Mr. D.L. Chidananda, Adv.
Ms. Sadhna Sandhu, Adv.
Mr. A.K. Shrivastava, Adv.
Mr. B.K. Shrivastava, Adv.
Mrs. Anil Katiyar, Adv.
Mr. M.K. Maroria, Adv.
Mr. B.K. Prasad, Adv.

Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Ashish Bhan, Adv.
Ms. Padmaja Kaul, Adv.
Ms. Richa Kaushal, Adv.
Ms. Ananya Ghosh, Adv.
Mr. Devanshu, Adv.
Mr. Sanyat Lodha, Adv.

Ms. Vijayalakshmi Menon, Adv.
Ms. Vidhi goel, Adv.
Mr. Vinod K., Adv.

UPON hearing the counsel the Court made the following

O R D E R

On 12th October, 2017, this Court had passed the following order:-

> **"It is submitted by Mr. Arvind P. Datar, learned senior counsel being assisted by Mr. Pratap Venugopal, learned counsel appearing for the S.E.B.I. that because of the communication dated 28th September, 2017 made by the respondent-contemnor, the holding of auction has not been fructified. Mr. Datar has taken us through the letter which has been sent by the respondent-contemnor to the Superintendent of Police, Pune Rural, Pune. The few paragraphs of the said communication need to be reproduced. They are:-**

"Though in business, we have been truly following the spirit of a Pariwar, from our very beginning, in our establishment, in its true spirit, as like our parent Company – i.e. Sahara India Pariwar and have been striving hard during last few years to pay salary to all our karyakartas. Needless to mention, we have been making our all endeavours to ensure welfare of all our employees and workers with the available resources.

However, the business revenue of the company has been constantly going down to an unbearable extent after the Hon'ble Supreme Court restrained all Sahara Group of Companies; vide its order dated 21st November 2013, from parting with their movable and immovable properties.

With this kind of restrictions imposed by the Hon'ble Apex Court, the real estate business of the Company has been badly affected (and we have not been able to fulfill our commitments with our esteemed customers) in all our area of business operation, with the result that not only the further sale has stopped but there has been no revenue generation from this business.

Many commitments and bookings for Aamby Valley hospitality services, which have been a major source of revenue, have been cancelled in the past and many of them are being frequently cancelled. In the prevailing situation, even we are not sure as to whether we would be able to deliver our services to our esteemed customers, on due date, with respect to such bookings. Business to the extent of sustaining the Company is not forthcoming and is significantly low.

On 19th June, 2017, the Hon'ble Court directed the registry to place on record, the original terms and conditions of sale notice. Vide its order dated 5th July, 2017, the Hon'ble Supreme Court allowed the terms and conditions of sale as also the draft

proclamation for the auction of Aamby Valley. The Hon'ble Supreme Court vide its order dated 25th July, 2017 directed the Official Liquidator to take first two steps from the sale of Aamby Valley project and accordingly directed the Official Liquidator to publish the sale notice on 14th August, 2017. The steps required to be taken for the publication of the sale notice was also allowed by the Hon'ble Court and the amount required for publication was directed to be released from SEBI-Sahara Account. Vide its order dated 11th September, 2017, the Hon'ble Supreme Court further directed that the auction of the said property shall be held as per the schedule submitted by the Official Liquidator before the Court. The Official Liquidator was directed to carry out the auction, as per the procedure and during the auction the Registrar General of the High Court of Bombay – designated as Supreme Court appointee, was directed to remain personally present to oversee the physical auction at the auction venue at Mumbai.

Since, Aamby Valley Ltd. And its subsidiaries/associates have the lone business of Real Estate and the Hospitality, which are both intrinsically related with the project of Aamby Valley and the subject property of Aamby Valley Project has already been put in the process of auction, it has become practically impossible for us to sustain business. There is no other financial resource available to take care of even the day to day expenses of business.

In view of the above it is feared that, there is a strong possibility of deteriorating law and order situation in Aamby Valley City. Therefore, it is requested to take urgent and most suitable measures by deploying adequate Police Force at Aamby Valley City. We foresee threat and harm to human lives and destruction of property situated at Aamby Valley which is currently attached to the Hon'ble Supreme Court and hence requires adequate protection and security of this asset valued at Rs.One Lakh Crores by Knight Frank and Rs.Forty Three Thousand Crores by the Official Liquidator appointed by the

Hon'ble Supreme Court of India.

It is also pertinent to adequately inform that,a boarding school by the name of International School Aamby (I.S.A.) has 70 no.of students, out of which many are from foreign lands such as U.S.A./Korea/Thailand/Bangaladesh and are resident student accommodated within the city of Aamby Valley City. Due to foreign nationality of students the subject gains international significance and importance."

In our considered opinion, the respondent-contemnor could not have entered into correspondence with the Superintendent of Police when this Court had directed for auction of Aamby Valley.

It is submitted by Mr. Datar that as a consequence of the communication, the police has taken custody of the property. If it is so, we direct the Director General of Police, Maharashtra, to see to it that the property is handed over to the Official Liquidator within forty-eight hours. The Official Liquidator shall proceed with the auction under the direct supervision of the Company Judge. That apart, the Official Liquidator shall also take guidance from Justice A.S. Oka, a sitting Judge of the Bombay High Court. The Company Judge and Justice A.S. Oka shall make joint endeavour so that the auction process which is to commence from a particular stage, shall continue and be over. If any impediment is created by anyone, he shall be liable for contempt of this Court and may be sent to jail.

The concerned police shall render requisite assistance in the holding of auction as and when directed by the learned Company Judge in consultation with Justice A.S. Oka.

List the matter at 3.00 p.m. on 23rd November, 2017."

However, the matter was also mentioned on 14th November, 2017 by Mr. Pratap Venugopal, learned counsel appearing for the SEBI.

In the course of hearing, Mr. Arvind P. Datar, learned senior counsel appearing for the SEBI has filed certain compliance/status report. The essence of the report is that the learned Judges of the High Court of Bombay intend to have certain directions from this Court to proceed with the auction.

Having heard Mr. Arvind P. Datar, learned senior counsel along with Mr. Pratap Venugopal, learned counsel for the SEBI, Mr. Shekhar Naphade, learned senior counsel, who has been appointed as Amicus Curiae and Mr. Vinod Sharma, the Official Liquidator, we think it appropriate to state that the learned Judges of the High Court are at liberty to adopt the procedure which will facilitate the auction and the mode of auction as suggested by the Official Liquidator shall be considered by the learned Company Judge in consultation with Justice A.S. Oka.

Additionally, as sought by Mr. Datar, a sum of Rs.84,00,000/- (Rupees eighty four lakhs only) be released in favour of the Official Liquidator so that he can do the needful required for publication/advertisement. If more expenses are required, the same can be requisitioned by the Bombay High Court from the SEBI-Sahara account.

At this juncture, Mr. Shekhar Naphade submitted that there is possibility that the area in question is likely to be encroached. The same concern has been echoed by Mr. Datar and Mr. Venugopal.

In view of the aforesaid, we appoint the Official Receiver of the Bombay High Court as Receiver in respect of the Ambey Valley city. The said arrangement shall remain in force till the auction is over. The duty of the Official Receiver is also to see that the property is properly

maintained and no encroachment takes place so that valuation does not reduce and auction takes place in peaceful manner. The Receiver is at liberty to take instructions from the learned Company Judge and Justice A.S. Oka, who are requested to work in harmony.

If any coordination is necessary to be done, it may be done by the Official Liquidator with Mr. Pratap Venugopal, learned counsel who is assisting Mr. Arvind P. Datar, learned senior counsel for the SEBI.

Let the matter be listed in the first week of February, 2018.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Assistant Registrar