ITEM NO.301 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

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: 11/09/2017 These applications 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 Napahade, Sr. Adv. (A.C.) (N/P)

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.

Signature Not Verified
Digitally signed by CHETAN KUMAR
Date: 2017.09.11 19:02:14 IST
Reason:

for M/s. K. J. John & Co.

For Respondent(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Narender Hooda, Sr. Adv.
Mr. Gautam Awasthi, AOR
Mr. Arohi Bhalla, Adv.
Mr. Ayush Choudhary, Adv.
Mr. Nizam Pasha, Adv.
Mr. Tushar Gupta, Adv.
Mr. Simaranjeet Singh, Adv.
Mr. Rahul Tripathi, Adv.
Mr. Gautam Talukdar, Adv.
Mr. Ram Sajan Yadav, Adv.
Mr. Vijay Kumar, Adv.
Ms. Neha Gupta, Adv.
Mr. Sarthak Nayak, Adv.
Mr. Aviral Dhirendra, Adv.

Mr. Prashant Kumar, AOR

Mr. Ramesh Babu M. R., AOR
Ms. Swati Setia, 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. Akash Tyagi, Adv.
Ms. Sharmila Upadhyay, AOR

Mr. C.K. Sasi, AOR

Mr. G. Sivabalamurugan, AOR

Ms. Vandana Sehgal, AOR

Mr. Tushar Mehta, ASG
Mr. Rana Mukherjee, Sr. Adv.
Mr. D.L. Chidananda, Adv.
Ms. Sadhana Sandhu, Adv.
Mr. M.K. Maroria, Adv.
Mr. B.K. Prasad, AOR
Mr. A.K. Srivastava, Adv.

Mrs. Anil Katiyar, 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. Sunil Fernandes, AOR
Ms. Astha Sharma, Adv.
Ms. Nupur Kumar, Adv.

Mr. Vikas Singh, Sr. Adv.
Mr. Yunus Malik, Adv.
Mr. Anis Maheshwari, Adv.
Mr. Zain Khan, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Contempt Petition (C) No.412/2012

The present proceedings for contempt have a chequered history, but unfortunately like some litigation which have the chequered history due to no fault of the parties but because of circumstances, the present proceedings have such a history which is, if we permit ourselves to say so, the ingenious brain child of the respondent-contemnor. Many an order came to be passed in the contempt proceedings due to the recalcitrant proclivity of the respondent-contemnor who possibly has harboured an adroit idea that he can test the patience of this Court. It has been said long back that the patience itself has its own patience and is not without limitations. The purpose of saying so relates to liberty granted on number of occasions

to the respondent-contemnor, Mr. Subrata Roy, to pay the amount by depositing the same in SEBI-Sahara account. Except hyperbolic arguments and rhetoric statements, the amount in entirety has not been paid.

Mr. Kapil Sibal, learned senior counsel appearing for the respondent-contemnor would submit with all the vehemence as well as humility at his command, that it is the first case where a contemnor has paid the substantial amount which may go up to Rs.16,000 crores, and though approximately Rs.8651 crores is due, that should not be held against him. The submission on a first blush may look attractive, but the proceeding that has been recorded by this Court from time to time will compel one to repel the submission and extinguish the impression gathered on the first blush.

Having said this, we intend to sit on a time machine, but not for long. Suffice it to refer to some orders which we have passed in the recent past. On 27th April, 2017, this Court, taking note of order dated 17th April, 2017, had passed the following order:-

> "At this juncture, Mr. Kapil Sibal, learned senior counsel submitted that the petitioner may be granted liberty to send Rs.1500,00,00,000/- (Rupees one thousand five hundred crores only) in the accounts of SEBI Sahara Refund Account through RTGS on or before 15.6.2017. Mr. Arvind Datar, learned senior counsel appearing for the SEBI submitted that he has no objection. If the amount comes to the account by electronic transaction, SEBI shall return the cheque amounting to Rs.1500,00,00,000/- (Rupees one thousand five hundred crore only).
>
> "Regard being had to the submissions of the official liquidator and the affidavit that has been filed by the contemnor, we direct that the reserved price for the purpose of auction be fixed at Rs.37,392 Crores. The Official Liquidator shall proceed in accordance with the

> **Rules of procedure and prepare a draft terms and conditions and sale notice and the same shall be filed for our approval on 19.6.2017. The terms and conditions for the auction shall be finalised by Mr. Vinod Sharma, the Official Liquidator in consultation with Mr. Justice B.N. Agarwal, formerly a Judge of this Court. The official liquidator will be at liberty to avail the expertise of an expert for drafting the terms and conditions. The official liquidator shall remain personally present with his team, on the next date of hearing.**
>
> **List the matter at 10.30 a.m. on 19.6.2017. Be it clarified that the matter is directed to e listed on that day to scrutinise the action/steps taken in pursuance of the order passed today.**

We may hasten to add that on the basis of this order, the Court assembled in summer vacation and as the matter was required to be verified only for the limited purpose, the two-Judge Bench combination met.

On 19th June, 2017, the Court dealt with I.A. No.47681 of 2017, which was filed seeking extension of 10 working days for complying with the undertaking dated 27th April, 2017, and further to permit the respondent-contemnor for sale of Grosvenor House Hotel, i.e. by transfer of shares of the company to the buyer and to enter into the agreement for refinancing facility in respect of the Plaza Hotel and the Dreams Downtown Hotel, New York. That apart, further reliefs were sought to sell the lands at the price less than 90% of the circle rate, since that was the permissible rate fixed by this Court and to accept the properties of Saharas as security for the balance principal amount instead of cash deposit.

It is interesting to note that a prayer was made to

vacate the order dated 21st November, 2013, lifting the embargoes on the Sahara Group of Companies so that Saharas can raise money out of their assets and run, promote their businesses in the interest of justice, equity and fair play. After noting the prayers, the Court proceeded to pass the following order:-

> **"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. Sibal, learned senior counsel that there is a property situate 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.**

On that day, the matter stood adjourned to 5th July, 2017 and on the adjourned date, after taking note of 19th June, 2017 order, a submission was advanced by the learned senior counsel for the respondent-contemnor that a sum of Rs.710.22 crores has already been deposited in SEBI-Sahara account and thereby the commitment given on 19th June, 2017, as regards the first cheque stood satisfied. A prayer was made for grant of time till 15th August, 2017, for encashment of the cheque amounting to Rs.552.21 crores. The Court on that day, expressing its disinclination, passed the following order:-

> **"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."

On 25th July, 2017, the Court referred to the order dated 5th July, 2017, and, thereafter noted that the respondent-contemnor had deposited a sum of Rs.247 crores and a submission was advanced that the balance amount i.e. Rs.305.21 crores shall be deposited by 12th August, 2017. Mr. Pratap Venugoal, learned counsel appearing for SEBI had raised serious objection to the same. Thereafter, the Court observed thus:-

> **"At this Stage, Mr. Sibal earnestly urged that when the property has been attached and the valuation of the same is more than Rs.34,000 crores, this Court should grant time to deposit the amount and the reasonable time would be 18 months. Whether 18 month is reasonable or lesser time than that has to be debated. The issue, as presently perceived, is the bona fides of the respondent-contemnor and that can be spelt out or translated by action and the action is deposit of the dues in SEBI-Sahara account.**
>
> **Having heard learned counsel for the parties at length, it is directed that the respondent-contemnor shall deposit Rs.1500 crores (Rupees fifteen hundred crores only) which would include the balance amount of Rs.305.21 Crores by 7.9.2017. After due consideration, we have granted time till 7.9.2017, though Mr. Sibal, with all humility at his command, prayed for fixing the date some time in October, 2017. Though we appreciate the humble submission but we are not in a position to accede to the same. The grant of time, without any steps taken by the Court, would tantamount to giving indulgence. Indulgence has the propensity to give rise to procrastination which is the murderer of justice. Therefore, we are disposed to think that the first two steps for sale of Ambey Vally Project shall be undertaken within this time and for the same we approve the draft sale notice submitted by the Official Liquidator and direct him that he shall take first two steps by updating the dates.**

> **The official liquidator shall publish the sale notice as given by him and the notice shall be published on 14.8.2017. The steps which are required to be taken for the publication of the sale notice are allowed. The amount that is required for publication shall be given from the SEBI Sahara Account. Mr. Pratap Venugopal shall see that the moment the official liquidator produce a letter, the amount shall be released to the official liquidator."**

At this juncture, it is essential to state that some imposters came in the proceedings and wanted to pay the amount. As they could not, the representative of the said ambitious imposters were sent to custody.

On 10th August, 2017, an application was filed with the following prayers:-

> **"(i) Allow Sahara Group Company, namely, Aamby Valley Ltd., to enter into the agreement with M/s. Royal Partners Investment Fund Ltd., for investment of US$ 1.67 Billion;**
>
> **(ii) Stop the auction and lift the attachment on the Aamby Valley City; and**
>
> **(iii) pass such further orders as may be deemed just, necessary and appropriate, in the facts and circumstances of the case."**

The Court opined that it was not inclined to entertain the prayers made in the interlocutory application. However, it was observed that if the contemnor enter into any negotiations and deposits the amount before this Court, appropriate order shall be passed on the next date of hearing. Be it noted, the said interlocutory application was taken up upon being mentioned before this Court.

At this juncture, it is apposite to state that the matter was adjourned to 11th September, 2017, as per the order

passed on the earlier occasion, that is, 25th July, 2017, and the respondent-contemnor was required to deposit Rs.1500 crores which would include the balance amount of Rs.305.21 crores. On that day itself, the Court had directed the Official Liquidator to take first two steps for sale of Ambey Valley project.

Today, when the matter was taken up, Mr. Kapil Sibal, learned senior counsel appearing for the respondent-contemnor filed a chart as to how the respondent-contemnor intends to comply with the order dated 25th July, 2017. We think it seemly to reproduce the said chart:-

"

S.No.	Date	Particulars	Amount
1.	July to September	By RTGS/NEFT/DDs against Porbandar and Pune Property	Rs.23.20 Crores
2.	11.09.2017	By 10 Demand Drafts against Madurai Property	Rs.10.00 Crores
3.	11.09.2017	By 5 Demand Drafts against Mortgage Loan	Rs.500.00 Crores
4.	11.11.2017	By Post Dated Cheques	Rs.966.80 Crores
	Total	(Rs.FIFTEEN HUNDRED CRORES ONLY)	Rs.1500.00 Crores

"

Mr. Sibal would urge that tremendous efforts have been made by the respondent-contemnor to comply with the order of this Court and if the prayer made by him is not accepted, the principle of reasonableness would be defeated. That apart, he would submit that the Official Liquidator has only been able to get two KYC forms from the prospective bidders.

Mr. Arvind P. Datar, learned senior counsel along with Mr. Pratap Venugopal, learned counsel appearing for the SEBI would contend that the auction has to proceed and this kind of "drama of procrastination" must stop.

On being asked, Mr. Shekhar Naphade, learned Amicus Curiae appointed in the case echoing the same argument advanced by Mr. Datar urged that the conception "enough is enough" should be adopted by this Court and there is no reason why long rope should be given to the respondent-contemnor to play truancy and seek indulgence.

At this juncture, we may state that the Official Liquidator has given a list of important dates with regard to the proceeding of the auction. The said chart read as under:-

"

Step No.	Action	Dates
1.	Publication in newspapers	August 14, 2017
2.	KYC Forms to be submitted by Prospective bidders	August 29 – September 09, 2017
3.	Information of property will be accessible by the qualified intending bidder	September 11–September 20, 2017
4.	Physical Inspection of properties to intending bidder	September 19 - September 20, 2017
5.	Bids to be received in sealed cover by the Official Liquidator along	September 21 - October 03, 2017

	with 15% EMD vide NEFT/RTGS	
6.	Auction Sale at Auction venue as directed by this Hon'ble Court	October 10 - October 11, 2017
7.	Intimation to highest three Intending bidders vide email. Other EMDs to be refunded	October 17, 2017
8.	Successful Bidder to make payment of 50% of the Purchase Price to the designated bank account	October 17 - November 16, 2017
9.	Successful Bidder to make payment of 25% of the Purchase Price to the designated bank account	November 17 - December 16, 2017
10.	Successful Bidder to make balance payment of 25% of the Purchase Price to the designated bank account	December 17 - January 16, 2018
11.	Apex Court to confirm the sale/lease in favour of Purchaser and deliver possession to the Purchaser. The EMDs of other two highest Intending bidders to be refunded with interest	As directed by this Hon'ble Court.
12.	Deed of Conveyance /lease to be executed in favour of the Purchaser(s)	6 months from date of confirmation of sale

13.	In event of failure of successful bidder to pay the entire consideration, to resell the property to the other highest intending bidder in chronological order and complete the sale as per above process.	90 days from date of failure of successful bidder to make the payments.

After hearing the counsel for the parties, we told in the open Court that we will be passing the order in the course of day. At that point of time, Mr. Datar has submitted that there are certain prayers made by the Official Liquidator relating to the auction. The said prayers read as follows:-

> "Appointment of a 'Designated Supreme Court Appointee' to oversee the physical auction on the spot at the Auction Venue.
>
> Permit the Official Liquidator to conduct the Auction at Aamby Valley City, Lonavala Pune or at Hall/Auditorium in Mumbai against payment of rent.
>
> Pass a Vesting order allowing the relaxation(s)/vesting as mentioned in paragraph 10 of OLR No.122 of 2017.
>
> Direct the Owner(s) of the Properties/Aamby Valley Limited/subsidiaries and associate companies of Aamby Valley Limited/individual nominees/employees of Aamby Valley Limited/any other person in possession of the Properties (as may be applicable) to handover vacant, unencumbered and peaceful possession of the Properties to the Purchaser(s) and other formalities of transfer of title etc. as mentioned in paragraph 11 of OLR No.122 of

2017.

Direct the authorities or their representatives as mentioned in paragraph 13 of OLR No.122 of 2017 to remain present at the auction venue during the auction proceedings and finalization of bidding(s).”

Mr. Shekhar Naphade, learned Amicus Curiae would suggest that if this Court is thinking of auction, it should be held in Mumbai.

Having heard learned counsel for the parties, we are of the convinced opinion that grant of further time to the respondent-contemnor and entertaining post-dated cheques which are dated 11th November, 2017, would tantamount to travesty of justice and extending unwarranted sympathy to a person who is indubitably an abuser of the process of law. He, who thinks or for that matter harbours the notion that he can play with law, is under wrong impression. To quote a phrase from Chief Justice Marshal, 'it is not a laboratory where children come to play'. We are constrained to state that the respondent-contemnor in his own way has treated this Court as a laboratory and has made a maladroit effort to play, possibly thinking that he can survive on the ventilator as long as he can. He would have been well advised that a person who goes on a ventilator may not survive for long and, in any case, a time would come when he has to be comatosed. Here comatose takes place as regards the ambitious effort made by the respondent-contemnor. Therefore, we direct without any hesitation that the auction shall be held as per the direction given by this Court and the Official Liquidator is permitted to carry out the auction as per procedure and during the auction the Registrar General of the High Court of Bombay, who is designated as Supreme Court appointee, shall remain personally present to over see the physical auction at the auction venue at Mumbai.

After the auction is held, liberty is granted to the counsel for the parties to mention.

The interim order passed on the earlier occasion as regards to the respondent-contemnor shall remain in force.

(Chetan Kumar)
Court Master

(Shakti Parkash Sharma)
Assistant Registrar