
(2014) 12 SC CK 0020

In the Supreme Court Of India

Case No : I.A. Nos. 31-33, 34-36 and 37-39 in Conmt. Pet.(C) Nos. 412, 413/2012 in C.A. Nos. 9813/2011 and 9833/2011 and Conmt. Pet. (C) No. 260/2013 in C.A. No. 8643 of 2012

S.E.B.I.

APPELLANT

Vs

Sahara India Real Estate Corpn Ltd.

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2014) 12 SC CK 0020

Hon'ble Judges : T.S. Thakur, J;Arjan Kumar Sikri, J;Anil R. Dave, J

Bench : Full Bench

Final Decision : Partly Allowed

Judgement

1. Heard. In these applications (I.A. Nos. 37-39) filed by Saharas, the applicants have made the following prayers:

"(a) grant its permission, whether by Oasis or by some other party, of Bank of China's loans to Sahara (including the related securities) and the amendment of the terms and conditions applicable to such loans;

(b) grant its permission for raising of additional "junior" loans of up to US\$650 million and the creation of subordinate charges on the said 3 foreign hotel properties (or on Sahara's shareholding in the relevant hotel owning companies);

(c) grant its permission for the sale of the Chauma for the sale prices and in accordance with the payment scheduled stated in the Table in para 15 hereinabove;

(d) direct that out of the Petitioners' deposit the amount of Rs. 226.96 crores in the Sahara SEBI Refund A/c in terms of para 18 hereinabove and also hand over the cheques issued by the buyers of the domestic immovable properties of an aggregate amount of Rs. 2146.25 crores (net off the transaction costs, taxes, incidental expenses etc.) in terms of para 16 hereinabove; and

(e) pass such further or other orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the present case"

2. M/s. Rajiv Dhawan and S. Ganesh, learned senior counsel appearing for the applicants, submit that the applicants have already negotiated suitable deals for the sale of the properties at Chauma (Gurgaon), Jodhpur, Vasai (Mumbai) and Pune. Agreements to sell in relation to the sale of the said properties have also been executed with the prospective buyers except the Pune property. It is further submitted that in regard to three properties at Chauma, Jodhpur and Vasai, the applicants-sellers have received a down payment of Rs. 184.50 crores while the balance out of the total consideration is payable to the applicants-sellers by May 2015. According to Mr. Ganesh, the purchasers of the properties in-question have already issued post-dated cheques covering the sale consideration less the transaction costs, taxes and incidental expenses. These cheques have been issued in favour of "Sahara SEBI Refund A/c" copies whereof have been enclosed with these applications. It is urged that while the property situated at Jodhpur and Vasai are within 5% margin of the estimated value of the said properties in terms of our previous order dated 4th June, 2014, the property situated at Chauma is about 15% below the estimated value of the property. The sale consideration in regard to all the three properties at the places, indicated above, is however many times more than the circle rates fixed for those areas. It is submitted that this Court could permit the sale of the property at Chauma at the price settled in terms of the agreements to sell in relation to the said property in relaxation of the condition earlier imposed by this Court that the properties shall not be sold at a price below 5% of the estimated value without the permission of this Court.

3. Mr. Arvind P. Datar and Mr. Pratap Venugopal, Learned Counsel appearing for SEBI, have no objection to the sale of the three properties at Chauma, Jodhpur and Vasai on the terms stipulated in the agreements to sell, executed between the sellers-applicants herein and the purchasers of the said properties especially when the purchasers have agreed to furnish undertakings to this Court that the post-dated cheques issued by them pursuant to the said agreements to sell, shall be honoured on the due dates.

4. In the circumstances, therefore, we direct deposit of a sum of Rs. 184.50 crores already received by the sellers-applicants with the "Sahara SEBI Refund A/c". Mr. Ganesh has handed over to Mr. Pratap Venugopal, counsel appearing for the SEBI, in the Court today three demand drafts and a cheque, totalling Rs. 184.50 crores. We direct that the proposed sale of the properties at Chauma, Jodhpur and Vasai shall be subject to the terms of the agreements to sell copies, whereof have been filed by the applicants, and also that the purchasers of the said properties shall file in this Court specific individual undertakings to the effect that the post-dated cheques issued by them shall be honoured on the due dates.

5. As regards to Pune property, Dr. Dhawan and Mr. Ganesh argued that the properties to which the applicants have agreed to sell is for a sum of Rs. 550

crores which is within 5% margins fixed by our order dated 4th June, 2014. They submit that the agreement is being finalised with the purchaser and upon execution of the agreement a down payment of Rs. 50 crores received from the purchasers, shall also be deposited with the SEBI in the "Sahara SEBI Refund A/c" and the balance amount of consideration deposited within six weeks thereafter, subject of course to deduction of transaction costs, taxes and other statutory dues. We, in that view, permit the applicants to proceed with the finalisation of the sale of the Pune property also on the above condition.

6. That leave us with the proposed payment of the Bank of China's outstanding loan amount and substitution of another lender in place of Bank of China and also permission to take additional junior loans to a tune of US \$ 650 million. M/s. Arvind P. Datar and Mr. Shekhar. Naphade, learned amicus, argued that the terms and conditions on which the substitution may take place & the escrow account is being opened and operated as also deductions that may be made on account of junior loans of US \$ 650, million in the second loan, are not very clear from the documents furnished to them by the applicants. They submitted that certain further information in regard to these aspects and other related matters may be required, before the Respondents make their submissions to the proposals now floated by the applicants.

7. M/s. Dhawan and Ganesh have no objection to the requisite information being furnished to counsel opposite. In that view,. we leave it open to M/s. Datar and Naphade to indicate in writing the information they would require from the applicants whereupon the applicants are expected to furnish the same within a period of one week. These applications shall accordingly stand adjourned by two weeks to be listed again on Wednesday, the 17th December, 2014 at 2 P.M.