

[2022] 9 S.C.R. 239

BIKRAM CHATTERJI & ORS.

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v.

UNION OF INDIA & ORS.

[I.A. Nos. 8259 of 2019, 74385 of 2020, 90985 of 2020
and 90986 of 2020]

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In

(Writ Petition (Civil) No. 940 of 2017)

NOVEMBER 07, 2022

[UDAY UMESH LALIT, CJI AND BELA M. TRIVEDI, J.]

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Property – Attachment of – Real Estate Project-Amrapali Group of companies – Applicant has filed I.A challenging the proceedings/order passed by DRT-III – Applicant had entered into agreement with the Amrapali Group for developing a colony on partnership basis – As per the agreement an entitlement of 40% of the share in the favour of the applicant in the inventory was agreed – In terms of this understanding, he was able to aggregate about 160 acres of land though actual development in terms of construction was never undertaken – He held 40% of the ‘yellow’ area in the concerned colony of Indore with all rights of selling – The applicant was informed that his presence was required before the DRT-III, New Delhi to explain the details with regard to the project in pursuance of the writ petition filed against Amrapali Group – DRT-III by its order, directed the registry to issue a request letter which is to be placed before Supreme Court for granting permission to sell the said area – The main contention of the applicant is that his liability stands confirmed only to the extent of Rs.4.79 crores and as such, there would be no justification to continue with the attachment of all the assets – It is in pursuance of the above proceedings that the matter is before Supreme Court – Held: There are two divergent views – According to the forensic auditors, the liability of applicant is to the tune of Rs.10.26 crores and also in the additional sum of Rs.2.31 crores; whereas, according to the ED, the extent of funds siphoned off were to the tune of Rs.4,79,76,180 only – At least Rs.21 crores were invested by Amrapali Group for purchase of these lands – Bulk of investment was made by them – Merely because the extent of money which was siphoned

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- A *off has been put at the level of Rs.4.79 crores would not mean that lands beyond this value ought to be released in favour of applicant – The prayer made by applicant for releasing attachment of all the assets in question, cannot be granted at this stage.*

Rejecting the prayer for release of attachment, the Court

- B **HELD:** 1. There are two divergent views which are emanating from the record. According to the forensic auditors, the liability of applicant is to the tune of Rs.10.26 crores and also in the additional sum of Rs.2.31 crores; whereas, according to the ED, the extent of funds siphoned off by applicant were to the tune of Rs.4,79,76,180 only. But at the root of the entire controversy is the question whether applicant has any claim or title with respect to the property which is subject matter of attachment. The documents on which reliance has been placed in I.A. Nos. 8259 of 2019 and 74385 of 2020 are not registered documents nor have these I.As. been finally disposed of. Going by the tenor of I.A. No. 8259 of 2019, it is directed against the proceedings dated 11.12.2018, where the matter was not gone into by the DRT-III, New Delhi because of pendency of proceedings in this Court. There is thus no concrete and final determination with regard to the rights of applicant to the property which was subject matter of arrangements between the parties.
- E Even at this stage, going by the *prima facie* view, at least Rs.21 crores were invested by Amrapali Group of Companies for purchase of these lands. By any standard, even without expressing any opinion on merits of the matter, the bulk of the investment has come from Amrapali Group of Companies towards purchase of these properties. Merely because the extent of money which was siphoned off has been put at the level of Rs.4.79 crores would not mean that lands beyond this value ought to be released in favour of applicant. His entitlement is yet to be pronounced upon. In the circumstances, the prayer made by applicant for releasing attachment of all the assets in question, cannot be granted at this stage. In essence, the matter has to be considered along with I.A. Nos. 8259 of 2019 and 74385 of 2020. This Court, therefore, reject the prayer for release of attachment. [Paras 11 & 12][253-E-H; 254-A-C]

H *Bikram Chatterji & Ors. v. Union of India & Ors. (2019)*
9 SCC 161 – referred to.

CIVIL ORIGINAL JURISDICTION: I.A. Nos. 8259 of 2019, A
74385, 90985, 90986 of 2020 in Writ Petition (Civil) No. 940 of 2017.

Under Article 32 of The Constitution of India

Sanjay Jain, Ms. Aishwarya Bhati, ASGs, Ms. Garima Prasad, AAG, Ravindra Kumar, Siddhartha Dave, Ms. V. Mohana, P.N. Mishra, Rakesh K. Khanna, Kavin Gulati, S.K. Gangele, Ms. Garima Prashad, Brijender Chahar, Surendra Kumar, Vijay Kumar, Sr. Advs., Avinash Kumar, Rajeev Gupta, M. L. Lahoty, Paban K. Sharma, Anchit Sripath, Himanshu Shekhar, Pranab Kumar Nayak, Kumar Mihir, Binay Kumar Das, Ms. Priyanka Das, Ms. Neha Das, Ms. Saloni Sharan, Gudipati G. Kashyap, Ms. Apoorva Pandey, Ms. T. Archana, Manoj Singh, Sanjay Kumar Visen, Ms. Ritu Rastogi, Ms. Mohini Kumari, Sunil Kumar Ojha, Gurmeet Singh, Aman, Arkaj Kumar, Madhav Singhal, Mukesh Kumar Maroria, Mukul Singh, Ms. Preeti Rani, Mohd. Akhil, Prashant Singh, Sughosh Subramnyam, Vikrant Yadav, R.R. Rajesh, Raj Bahadur Yadav, Gurmeet Singh Makker, Nachiketa Joshi, Arvind Kumar Sharma, Niraj Gupta, Ms. Anshu Gupta, Fuzail Khan, Ashutosh Srivastava, Ms. Ramya Khanna, Ashish J., Alok Kr. Aggarwal, Ms. Anushruti, Ms. Simran Arora, Ms. Anubha Agrawal, A. P. Mohanty, Prathvi Raj Chauhan, Ms. Priya Sharma, Ms. Ruchira Goel, Abhitosh Pratap Singh, Ms. Rita Bhandari, Rajeev Kumar Dubey, Ashiwan Mishra, Ms. Vaidruti Mishra, Kamlendra Mishra, Ms. Jyoti Chahar, Karan Chahar, Ms. Pooja Chahar, Shashi Bhushan, Vinay Garg, M. T. George, Ms. Susy Abraham, Johns George, Rajiv Kumar, Kishlay Shukla, Ms. Purnima Jain, Sanjeev Gupta, Rishi K. Awasthi, Prashant Kumar, Ms. Ritu Arora, Piyush Vatsa, Santosh Kumar-I, H.S. Parihar, Kuldeep S. Parihar, Ms. Ikshita Parihar, Dr. Suman Bharadwaj, Vedant Bharadwaj, Ms. Mridula Ray Bharadwaj, Rakesh Kailash Sharma, Ajay Bansal, Gaurav Yadava, Ms. Beena Bansal, Saurav Jindal, Kuldip Singh, G. N. Reddy, Alok Kumar, Ms. Garima Soni, Ms. Neetu Rashi, Rohit Pandit, Ms. Nandita Jha, Vivek Kumar Pandey, Krishna Kant Dubey, Ms. Shuchi Singh, Sanjay Kumar Dubey, Jainendra Kumar, Aman Kumar, Binod Kumar Singh, Kirshna Vani Sharma, Hitesh Kumar Sharma, S.K. Rajora, Akhileshwar Jha, Ms. Yamini Sharma, Narendra Pal Sharma, Ms. Sandhya Sharma, Ranjit Kumar Sharma, Ms. Richa Kapoor, Kunal Anand, Ms. Shivani Sharma, Sanjay Kapur, Ms. Megha Karnwal, Arjun Bhatia, Ms. Akshata Joshi, Ms. Shubhra Kapur, Pradeep Misra, Daleep Dhyani, Manoj Kumar Sharma, Suraj Singh, Saket Singh, Ms. Sangeeta Singh, Ms. Niranjana

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- A Singh, Ashok Kumar Singh, Shantwanu Singh, Ms. Pragya Singh, Ms. Akshay Singh, Dr. Ritu Bhardwaj, Sachin Mittal, Rachit Mittal, Parish Kumar, Ms. Pooja Kapur, Sudhir Naagar, Pai Amit, Ms. Komal Mundhra, Saurabh Agrawal, Shantanu Singh, Amitesh Chandra Mishra, Ankit Chaturvedi, Niteen Kumar Sinha, Ms. Reetu Saipawar, Ms. Pratibha Yadav, Ram Naresh for ACM Legal, Devendra Kumar Singh, Karunakar Mahalik, Arpit Rai, Aviral Kashyap, Anil Gaur, Ms. Neha Chaudhary, Dr. Sunil K. Khattri, Ambrish Kumar Rai, Badri Prasad Singh, Vikas Jain, Aviral Saxena, Manjeet Singh Rathor, Digant Mishra, G.A. Sundram, Raj Kamal, Aseem Atwal, Zafar Inayat, Satyajit Desai, Siddharth Gautam, Satya Kam Sharma, Ms. Deb Deepa Majumdar, Ms. Gajanan Tirthkar, Ms. Anagha S. Desai, Mohit Chaudhary, Ms. Pooja Sharma, Kunal Sachdeva, Chowdhary Zulfikar Ali, M/s. Kings & Alliance LLP, Sanveer Mehlwal, Ms. Geetanjali Mehlwal, Ms. Shradha Agrawal, Ms. Kamakshi S. Mehlwal, Ms. Arti Singh, Akashdeep Singh Roda, Basant Pal Singh, Ms. Pooja Singh, Kaushal Yadav, Nandlal Kumar Mishra, Arjun Raghuvanshi, Pramod Kumar, Vivekanand Rana, Ms. Yashoda Katiyar, Ms. Apeksha Rai, Ms. Akansha Rai, Abhijit Sengupta, Rohit Jaiswal, Ms. Kuheli Mitra, Shiv Singh Yadav, Karan Singh Chhabra, Ms. Sujata Kurdukar, Ms. Tanuj Bagga Sharma, Ashutosh Shukla, Dr. M. K. Ravi, Raj Kamal, Kartavya Batra, Anurag Chandra, Siddharth Acharya, Ms. Sonali Agarwal, Ms. Mithu Jain, Rajul Shrivastav, Ms. Monisha Handa, Mohit D. Ram, Anubhav Sharma, Janender Kumar Chumbak, Ms. Radhika, Ms. Amita Singh Kalkal, Sureshan P., Ms. Roma Singh, Utkarsh Singh, Gautam Das, Tarun Kant Samantray, Dhirendra Kumar Jha, Ms. Sanjana Akhilesh Singh, Ms. Gitanjali Tripathi, Ms. Jasmine Damkewala, Ms. Vaishali Sharma, Ms. Lovely Gargi, Bhupendra Kumar Singh, Devendra Kumar Shukla, Amit Kumar, Abhishek Kumar Suman, Ramesh Babu M. R., Ms. Manisha Singh, Ms. Tanya Chowdhary, Ms. Shobha Gupta, Ms. Pooja Tripathi, Rohit Kumar Singh, Rohit Khurana, Ms. Jahnavi Warah, Krishnam Mishra, Param Kumar Mishra, Ms. Anisha Upadhyay, Ms. Nisha Thakur, Brijesh Kumar Tamber, Yashu Rustagi, Ashutosh, M/s. V. Maheshwari & Co., Rohit Amit Stalekar, Avi Tandon, Rajeev Lochan, Prithvi Pal, Rinki Singh, Anand Nandan, Amit Pawan, Dr. Ritu Bhardwaj, Naresh Kumar, Kaushal Kishore, Devendra Singh, Parul Dhurve, Omanakuttan K.K., Mohd. Moonis Abbasi, Shakil Ahmad Syed, Ms. Smita Pandey, Narendra Kr. Verma, Aditya Nayyar, Ms. Farhat Jahan Rehmani, Suman Tripathy, Rameshwar Prasad Goyal, Ms. Indrani Mukherjee, Ms. Tatini Basu, Alok Kumar,
- H

Chandan Kumar, M/s. Dharmaprabhas Law Associates, Abhigya
 Kushwah, Divyakant Lahoti, Rajesh P., Nirmal Kumar Ambastha, Deepak
 Prakash, Dharmendra Kumar Sinha, Tushar Singh, M/s. Cyril Amarchand
 Mangaldas, Shovan Mishra, Kumar Dushyant Singh, Aditya Jain-1,
 Ms. E. R. Sumathy, Ashok Mathur, Vivek Narayan Sharma, Satish
 Pandey, Abhinav Shrivastava, Dheeraj Nair, Balaji Srinivasan, Ms. Charu
 Ambwani, Dr. Sarvam Ritam Khare, Malak Manish Bhatt, Sanchit Garg,
 Prateek K Chadha, Udita Singh, Amrish Kumar, M/s. Devasa & Co.,
 M/s. PBA Legal, Sanjeev Gupta, Divyesh Pratap Singh, Sumit Kumar,
 Ms. Taruna Singh Gohil, Deepak Goel, Sonal Jain, Vivek Sharma, Jasmeet
 Singh, Shubham Bhalla, Kanhaiya Singhal, Arup Banerjee, Anuj Kapoor,
 Ms. Charu Mathur, Abhinav Agrawal, Ms. Sangeeta Singh, Ms. Sayaree
 Basu Mallik, Shishir Pinaki, G. Balaji, B. K. Satija, Ms. Pallavi Pratap,
 Manish Kumar Saran, Sukant Vikram, Gopal Jha, Shadan Farasat,
 Kailash Prashad Pandey, Abdul Azeem Kalebudde, Mohammed Sadique
 T.A., Gaurav Goel, Akhilesh Kumar Pandey, Ms. Rakhi Ray, Ms. Tulika
 Mukherjee, Rabin Majumder, Rajesh Kumar Gupta, Praveen Chaturvedi,
 Siddhartha Jha, Ms. Preerna Mehta, Umesh Kumar Khaitan, Ms. Sneha
 Kalita, Jay Kishor Singh, Ms. Mayuri Raghuvanshi, Somesh Chandra
 Jha, Awanish Sinha, Somiran Sharma, Ms. Astha Sharma, Pramod Dayal,
 Alok Tripathi, Ms. Vandana Sehgal, Ms. Anannya Ghosh, Sanjai Kumar
 Pathak, Aakarshan Aditya, Pawanshree Agrawal, Syed Mehdi Imam,
 K. Paari Vendhan, Ashwarya Sinha, Ms. Kirti Renu Mishra,
 M/s. Karanjawala & Co., Kumar Sudeep, Ms. Dharity Phookan, Gaurav,
 Ms. Manisha Ambwani, Ms. Chandan Ramamurthi, Ms. Mona K.
 Rajvanshi, Mishra Saurabh, Christopher D'souza, Ms. Divya Roy, Kabir
 Dixit, S. K. Verma, Somanatha Padhan, Ms. Anindita Pujari, Rajat Mittal,
 Rahul Joshi, Vipin Kumar Jai, Ravindra Sadanand Chingale, Sumit Sinha,
 T. Mahipal, Ms. Shilpa Liza George, M/s. D.S.K. Legal, Vishnu Sharma,
 Ritesh Agrawal, Ms. Indra Sawhney, Aneesh Mittal, Vishal Gupta, Aman
 Gupta, Chandra Prakash, Bhuwan Raj, E. C. Vidya Sagar, Uddyam
 Mukherjee, Anil Kumar Mishra-I, Kaushik Choudhury, Anas Tanvir,
 Ejaz Maqbool, Ms. Swarupama Chaturvedi, Rishi Matoliya, Tahir Ashraf
 Siddiqui, Ms. Bharti Tyagi, Anoop Prakash Awasthi, Kedar Nath Tripathy,
 Ms. Rashmi Singh, Sunil Fernandes, Ms. Rajkumari Banju, Ajit Sharma,
 Ms. Aruna Gupta, Advs. for the appearing parties.

R. Venkataramani, Court Receiver, Ravinder Bhatia, Pavan
 Aggarwal, Forensic Auditors.

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A The Judgment of the Court was delivered by
UDAY UMESH LALIT, CJI
I.A. No. 8259 of 2019

1. This Interlocutory Application has been filed by Mr. Prem B Mishra¹, challenging the proceedings/order dated 11.12.2018 passed by the Presiding Officer, Debt Recovery Tribunal (DRT)-III, New Delhi and for issuance of directions to the DRT to proceed strictly in terms of the order dated 12.9.2018 in respect of 12 lakh square feet offered in the affidavit of Mr. Anil Kumar Sharma, Chairman and Managing Director, C Amrapali Group of Companies, without involving the area earmarked in 'yellow' in terms of Memorandum of Understanding (MoU) and authorisations in favour of the applicant.
2. According to the applicant, Mr. Anil Kumar Sharma met the applicant some times in June, 2006 and a business plan was proposed for developing a colony on partnership basis as an Amrapali Group project D with its brand name. The applicant was to invest his time, resources, experience and contacts apart from providing other services and expertise necessary for undertaking the development of the land. Essentially, the work to be undertaken by the applicant was in the nature of securing land from local farmers, getting titles searched, getting layout of the colony E made, getting user changed from agricultural to residential, obtaining requisite information including No Objection Certificates from the concerned departments, making necessary advertisement(s) and in the nature of aggregating the land bank for the purposes of development by Amrapali Group of Companies. This was done primarily because Amrapali Group of Companies had no footprint in Indore and it was trying to F expand its business in Indore. According to the applicant, in terms of agreement dated 18.1.2017, an entitlement of 40% share in favour of the applicant in the inventory was agreed.
3. According to the applicant, in terms of this understanding, he G was able to aggregate an extent of about 160 acres of land though actual development in terms of construction was never undertaken. According to the applicant, in terms of the aforesaid agreement dated 18.1.2017, the land shown in 'yellow' colour would come to the share of the applicant while the land marked in orange colour was booked by the customers. It is asserted that after the matters pertaining to Amrapali Group of H ¹ "the applicant"

Companies were being considered by this Court in Writ Petitions (Civil) No. 940 of 2017 and other connected matters, attempts were made to locate and get the details of the projects undertaken by the Amrapali Group of Companies throughout the country. In that light, the applicant was informed by Mr. Anil Kumar Sharma, Chairman and Managing Director, Amrapali Group of Companies that his presence was required before the DRT-III, New Delhi to explain the details with regard to the project. In pursuance thereof, the applicant appeared before the DRT-III on 27.10.2018 and he became aware of orders dated 4.9.2018, 6.9.2018 and 12.9.2018 passed by this Court. After the applicant had presented his view point, the proceedings dated 11.12.2018 with regard to which the principal prayer has been made, took place before the DRT-III, New Delhi.

4. Said proceedings dated 11.12.2018 indicate as under: -

“Heard. Record has thoroughly been perused. In the present matter, Shri Prem Mishra, Objector has relied upon the agreement of mutual consent and claiming that he has developed approximately 160 acres land which was purchased with the consent of the first party and entire dues of the Amrapali has been recovered and further it is now being consented that in case of profit of more than 100 crores then 30% of the profit will be given to him and the period of two years granted to Prem Mishra on 14.10.2009. Already 4-5 years have been elapsed, hence it is agreed that the 40% of the aforesaid colony project will be given to the second party i.e. Prem Mishra and rest of the 60% shall be kept by Amrapali builders.

Apparently, the applicant i.e. Prem Mishra herein is relying upon the Memorandum of Understanding between the parties. It is well settled proposition of the law that there is a difference between Memorandum of Understanding as well as agreement, as the MOU is a written document which describe the terms as an agreement and the element of MOU as offer, acceptance and intention and consideration. Apparently, the present MOU was executed between Prem Mishra and Amrapali on 18.01.2017, whereas it is so mentioned that the Prem Mishra has been working with the project for the last 4-5 years and at that moment no such agreement was executed between the parties, which clearly indicates that the present agreement has been executed just to

- A avoid the liability accrued against the Amrapali Homes Project Pvt. Ltd. there is nothing on the record exists. The agreement to sell placed on record executed by Prem Mishra and the private seller of the property, that no such services were continuously been provided by Prem Mishra in the project. Had there been such mutual understanding, he would be entitled to share the 30% of the profit then such like agreement has to be executed and entered into between the parties at the time of launching of the project. Apparently, the project was launched way back in year 2006. The past services rendered by Prem Mishra are not voluntarily rather he was specifically authorized and worked as attorney of Amrapali.
- C Hence, no substantive right, title and interest stand created in favour of Prem Mishra.
- D On behalf of Amrapali, it is clearly mentioned that Prem Mishra was merely authorized to purchase the agricultural land and make payment for purchase of the property, buy stamp papers and make negotiation with prospective sellers for and on behalf of the company. Further, Prem Mishra was authorized to execute sale deed for and on behalf of the company, therefore, he was merely authorized to do these types of work. Though a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do. No doubt for the thing voluntarily done by a person for their promisor, he can be compensated, but here in the present matter this is not a case as Shri Prem Mishra was merely authorized to do certain things on behalf of the company i.e. purchasing of land and executing the sale deed etc.
- E and for the purpose the entire chunk of land consisting of 40% of 100 acres approx. cannot be deemed to be transferred in the favour of Prem Mishra. No doubt, the area which has been disclosed before the Hon'ble Supreme Court as 12 Lacs sq. mtrs. As shown in 'Green' colour in the map, but apart that, the area shown in 'Yellow' colour, which stated to come in the share of Prem Mishra, on the basis of things done by him in the previous, cannot be deemed to be transferred and apparently, there is active connivance between Prem Mishra as well as Amrapali Builders and this fact has also been suppressed from the Hon'ble Supreme Court of India. Thus, the objections of the Prem Mishra, merely on the basis of said MOU are not sustainable and he cannot be
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presumed become owner of the said property and no substantive right, title, and interest, in the said portion is created in his favour. Therefore, the said area shown in ‘Yellow’ colour i.e. measuring about 5,66,799sq. ft. still exists in the name of Amrapali.

In this regard, necessary permission has to be sought from the Hon’ble Supreme Court of India to sell the said area as well. Accordingly, a request letter be placed before the Hon’ble Supreme Court, for granting permission to sell the said area. Registry is directed to issue letters accordingly. Mere MOU does not create any substantive right in favour of Prem Mishra to be the owner with respect to the said property shown in ‘Yellow’ colour in the site map.”

5. It is in pursuance of the concluding part of the above proceedings that the matter is before us.

I.A. No. 74385 of 2020

6. This Interlocutory Application has been filed by the same applicant seeking following directions: -

- a. “Kindly direct the Ld. Officer of DRT-III, Delhi to make necessary changes in the area of green color area which wrongly included area received for development of colony (i.e. 12.71 bigha of farmer land and 7125 sq.ft. of additional land)
- b. Provide all rights of ownership of the yellow color area i.e. 40% (6,10,649 sq.ft.) in favour of the applicant.
- c. Kindly direct the Ld. DRT-III to provide 40% of the profit share to the applicant.”

7. According to the applicant, he holds 40% of the ‘yellow’ area in the concerned colony of Indore with all rights of selling, receiving amounts and right to execute the appropriate deeds of conveyance. The applicant adverts to certain transactions entered into with respect to said project at Indore and then submits as under:

“15. That in a case registered against the Amrapali Group i.e. Bikram Chatterji & Ors. vs. Union of India & Ors. This Hon’ble Court vide its order dated 12.09.2018 had directed the Debts Recovery Tribunal – III, Delhi to auction the properties of only Amrapali Groups and had marked 12,00,000 sq.ft. approximately

- A belonging to Amrapali Homes Projects Pvt. Ltd. at Indore. This Hon'ble Court had also forwarded the map provided by the Amrapali to this Hon'ble Court to the Officer of DRT- III, Delhi wherein the property of Amrapali admeasuring 12,00,000 sq.ft. was shown in green color and property of the applicant admeasuring 6,10,649 sq.ft. area was shown in yellow color. A true copy of the order dated 12.09.2018 passed by this Hon'ble Court in Writ Petition (C)No.940/2017 is annexed herewith and marked as Annexure A/5 (page 33 to 45).
- B 16. That thereafter the applicant moved I.A. No. 4/2018 dated 27.10.2018 before the DRT-III, Delhi to attach only the green area, measuring 12,00,000 sq.ft (including the M Red Area in the map measuring 3,34,455 sq.ft.) which the Amrapali owned as part of 60% profit sharing.
- C 17. That the Officer of DRT-III, Delhi failed to comply with the directions passed by this Hon'ble Court vide order dated 12.09.2018 and erroneously included the property of the applicant admeasuring 6,10,649 sq.ft. for the purpose of selling out assets of the group.
- D 18. That the tribunal vide its order dated 11.12.2018 dismissed the applicant's request to attach only the area in green, which was the property of Amrapali, as per the direction of this Hon'ble Court.
- E The applicant's submission that the area shown in yellow rightfully belongs to the applicant as per MOU signed between the applicant and the Directors of M/s.. Amrapali Homes Pvt. Ltd. dated 14.10.2009 and 18.01.2017 was disregarded and the Tribunal on erroneous findings attached both the yellow area and green area.
- F It is most respectfully submitted that the Tribunal in doing so clearly went beyond its jurisdiction adding the yellow area of the applicant measuring 6,10,649 sq.ft. to the green area measuring 12,00,000 sq.ft. whereas this Hon'ble Court in its order dated 12.09.2018 had mentioned only 12,00,000 sq.ft. as per the property of Amrapali Group. A true copy of the order dated 11.12.2018 made by Presiding Officer, DRT-III, Delhi is annexed herewith and marked as Annexure A/6.
- G 19. That being aggrieved with the order dated 11.12.2018 applicant approached this Hon'ble Court and filed I.A. No. 8260/2019 dated 14.01.2019 and the same is still pending for the kind consideration
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of this Hon'ble Court. A true copy of the I.A. No. 8260/2019 dated 14.01.2019 made by the applicant before this Hon'ble Court is annexed herewith and marked as Annexure A/7.

20. That in furtherance after receiving the information or intimation about the auction of Amrapali part area of Indore colony by the Ld. DRT Officer some of the residents/buyers of Indore Colony filed I.A. No.3/2019 to I.A.No.41/2019 before Ld. DRT Tribunal. In fact, the residents and buyers were having interest and as they have purchased their residential units in Amrapali Project situated at Indore, they have taken huge sums of money in shape of home loan, they were also under dire financial stress, therefore, they have prayed before the Tribunal to allow the intervention application and further sought the relief to appoint a capable developer for completion of the entire remaining work of the project.”

8. The applicant then submits that the DRT officer had put said property to auction having distress value of Rs.95 crores. According to the applicant, all rights of ownership in the area mentioned in ‘yellow’ admeasuring about 6,10,649 square feet constituting 40% must be provided in favour of the applicant.

9. Some of the developments which occurred during the pendency of these applications must now be adverted to.

A. On 23.7.2019, this Court delivered its judgment reported in *Bikram Chatterji & Ors. v. Union of India & Ors.*² The matter pertaining to Indore project was considered by this Court at page 248 of SCC report and in paragraph 155 it was stated that in view of the findings rendered by the forensic auditors, the Enforcement Directorate (ED) and other authorities should investigate and fix liability on persons responsible for violation. Soon thereafter, a supplementary report dated 10.10.2019 was filed by the forensic auditors which summed up that Rs.10.26 crores were recoverable from Mr. Prem Mishra with respect to his concern in the Amrapali Colony project at Indore.

B. On 15.9.2020, Mr. Prem Mishra raised objections against the findings of this Court dated 23.7.2019.

² (2019) 9 SCC 161

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- A C. Based on the forensic auditors' report, Mr. M.L. Lahoty, learned counsel representing the cause of homebuyers, in his note dated 29.10.2020, submitted as under: -
- “i. The Supplementary Report-II of the Forensic Audit (Pages 2961-2978) reveals misdeeds and misappropriation of Crores of Rupees by Prem Mishra who even during the pendency of proceedings before this Hon’ble Court has continued to sell the Plots and received huge payment. According to the Report, the Companies were created for diversion of funds from NOIDA Projects and therefore the unsold inventory as also the Bank accounts need to be attached by this Hon’ble Court and necessary recoveries be directed. The Projects indicated in the Report are as under:
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- ii. Amrapali Homes Project Private Limited: The first Project namely, Amrapali House Modern City Projects in Mhow (District Indore) was launched by Anil Kumar Sharma and Shiv Priya in partnership with Prem Mishra with Mahendra Singh Dhoni as Brand Ambassador. According to the Report, a total area of 49,500 sq. ft. was allotted to the family members of Prem Mishra without receipt of any funds. Further, units admeasuring 1,295 sq. ft. units with Registry Value of Rs.84.55 Crores (approx.) were sold and 302 plots were mortgaged to the Government. That apart there are unsold units admeasuring total area of 15,77,870 sq. ft.
- iii. Nipunj Infrastructure Private Limited: The Project Maa Vindhyanwasini Township is situated in Gram Bhaktkedi (District Indore) and was launched as Amrapali Group Project with Mahendra Singh Dhoni as brand Ambassador. There are total 138 plots out of which 97 plots are sold and 41 plots are unsold. This company has also mortgaged five residential cum commercial plots to the Government.
- iv. Vindhyanwasini Developers (India) Pvt. Ltd.: The Project Maa Vindhyanwasini Township at Manawar (District Indore) was launched as Amrapali Group Project with Mahendra Singh Dhoni as Brand Ambassador and

out of a total of 266 plots, 131 plots were sold and 135 plots are unsold. Further the company has also mortgaged 102 plots to the Municipal Corporation Manawar. A

v. Maa Vindhya wasini Dream City: This Project was also launched as Amrapali Group Project with Mahendra Singh Dhoni as Brand Ambassador at Ratlam. There are a total of 1,192 plots out of which 263 plots are sold while 929 plots remain unsold. That apart 265 plots have been mortgaged to the Government. B

vi. Mishra & Mishra Realty Pvt. Ltd. - As per the Report, no details have been made available of this Project to the Forensic Auditors, though there are Two Directors and Promotor Shareholders having equal percentage of shares namely, (i) Prem Mishra, and (ii) Mayank Mishra. C

vii. So far as Prem Mishra is concerned, this Hon'ble Court has already recorded that an amount of Rs.10 Crores is recoverable from him. (Judgment pages 87 & 193 as also the Supplementary Forensic Audit Report page 2966)." D

D. After perusal of the note and considering submissions made on behalf of Mr. Prem Mishra, this Court by its order dated 2.11.2020, directed the ED to file an appropriate response since by that time the investigation had commenced against Mr. Prem Mishra. Accordingly, status report dated 18.11.2020 was submitted by the ED stating *inter alia*; that initial investment in the Indore project made by Mr. Prem Mishra was to the tune of Rs.3.5 crores while Rs.21 crores were invested by Amrapali Group of Companies for purchase of lands and that total money received from the homebuyers for Indore project was in the sum of Rs.18.95 crores. E F

E. Subsequently, a further status report was filed by the ED on 4.1.2021. The learned counsel appearing for Mr.Prem Mishra sought time to respond to said status report. In the meantime, the matter was adjourned for six weeks to enable the ED to complete the investigation with following directions vide order dated 11.1.2021 passed by this Court: - G H

- A “a. The properties of all the aforesaid Corporate entities and those of Mr. Indra Bahadur Mishra and Mr. Arvind Mishra and of Mr. prem Mishra, are kept under attachment and these Corporate entities as well as the individuals names hereinabove are restrained from dealing with or disposing of their properties, both movable and immovable.
- B b. This ad-interim order shall not however preclude these Corporate entities and the individuals from defraying expenses for normal day to day affairs and necessary statutory dues.”
- C F. On 22.2.2021, a provisional attachment order under Section 5(1) of the Prevention of Money Laundering Act, 2002³ was passed by the ED holding that Mr. Prem Mishra and his brother had siphoned off an amount of Rs.4,79,76,180 out of which Rs.79,52,500 pertained to his brothers and Mr. Indra Bhushan Mishra and Mr. Arvind Mishra while remaining Rs.4,00,23,680 pertained to Mr. Prem Mishra. On or about 28.8.2021, cognizance was taken by the Special Judge in the matter.
- D G. In its order dated 13.9.2021, this Court recorded the submissions of the learned counsel appearing for Mr. Prem Mishra as under: -
- E “Mr. Vikas Singh, learned Senior Advocate submits *inter alia*:
- F a. Provisional Attachment Order No.01/2021 dated 22.02.2021 passed by the Enforcement Directorate has quantified the liability of Prem Mishra to the tune of Rs.4,79,76,180/. This provisional order has now been confirmed by the Prescribed Authority. Therefore, the attachment effected in terms of the Order dated 11.01.2021 passed by this Court may suitably be modified.
- G b. Considering the nature of circumstances, the entire exercise be undertaken in this Court rather than relegating Mr. Prem Mishra to the proceedings before the PMLA Authorities.”

H ³ “PML Act”, for short

The Court also directed the forensic auditors to submit report on or before 20.9.2021. According to the report submitted by the forensic auditors, apart from sum of Rs.10.26 crores, a further additional sum of Rs.2.31 crores was due on certain counts.

H. The note prepared by forensic auditors was directed to be circulated to all parties vide order dated 20.9.2021 passed by this Court. In its response pursuant to said order dated 20.9.2021, it was submitted on behalf of ED that permission be granted to the ED to have further attachment in respect of an amount of Rs. 70,51,063 lakhs from the properties of Mr. Prem Mishra. The supplementary note was thereafter filed by the ED on 28.10.2021. The adjudicating authority passed final order on 28.12.2021 confirming the provisional attachment order dated 22.2.2021 and observed that the extent of funds siphoned off were to the tune of Rs.4,79,76,180.

10. In these circumstances, what is presently submitted on behalf of Mr. Prem Mishra is that his liability stands confirmed only to the extent of Rs.4.79 crores and as such, there would be no justification to continue with the attachment of all the assets of Mr. Prem Mishra and his brothers.

11. There are two divergent views which are emanating from the record. According to the forensic auditors, the liability of Mr. Prem Mishra is to the tune of Rs.10.26 crores and also in the additional sum of Rs.2.31 crores; whereas, according to the ED, the extent of funds siphoned off by Mr. Prem Mishra were to the tune of Rs.4,79,76,180 only. But at the root of the entire controversy is the question whether Mr. Prem Mishra has any claim or title with respect to the property which is subject matter of attachment. The documents on which reliance has been placed in I.A. Nos. 8259 of 2019 and 74385 of 2020 are not registered documents nor have these I.As. been finally disposed of. Going by the tenor of I.A. No. 8259 of 2019, it is directed against the proceedings dated 11.12.2018, where the matter was not gone into by the DRT-III, New Delhi because of pendency of proceedings in this Court. There is thus no concrete and final determination with regard to the rights of Mr. Prem Mishra to the property which was subject matter of arrangements between the parties. Even at this stage, going by the *prima facie* view, at least Rs.21 crores were invested by Amrapali Group of Companies for purchase of these

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- A lands. By any standard, even without expressing any opinion on merits of the matter, the bulk of the investment has come from Amrapali Group of Companies towards purchase of these properties. Merely because the extent of money which was siphoned off has been put at the level of Rs.4.79 crores would not mean that lands beyond this value ought to be released in favour of Mr. Prem Mishra. His entitlement is yet to be pronounced upon.
- B
- C 12. In the circumstances, the prayer made by Mr. Prem Mishra for releasing attachment of all the assets in question, cannot be granted at this stage. In essence, the matter has to be considered along with I.A. Nos. 8259 of 2019 and 74385 of 2020. We, therefore, reject the prayer for release of attachment as mentioned above and direct that these two Interlocutory Applications be listed and considered at an early date.

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Directions issued.