

ITEM NO.3

COURT NO.6

SECTION XVII

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

Civil Appeal No. 20971/2017

ANANT KAJARE

Appellant(s)

VERSUS

EKNATH AHER & ANR.

Respondent(s)

(IA 82438/2018, 82439/2018, 87012/2018, 87018/2018, 90754/2018, 90757/2018, 104112/2018, 104115/2018, 107702/2018, 107705/2018, 107708/2018, 109447/2018, 113400/2018, 118401/2018, 119126/2018, 120217/2018, 121069/2018, 121073/2018, 129326/2018, 129328/2018, 129933/2018, 131254/2018, 137386/2018, 137389/2018, 138910/2018, 178970/2018, 447/2019, 8425/2019)

WITH

SLP(C) No. 3384/2018 (IX)

C.A. No. 20991/2017 (XVII)  
(With IA No. 55252/2018)

SLP(C) No. 3374/2018 (IX)  
(With IA 61846/2018 and IA 130265/2018)

SLP(C) No. 3386/2018 (IX)

SLP(C) No. 3385/2018 (IX)  
(With IA 40946/2018, IA 57076/2018, IA 57078/2018, IA 105835/2018, IA 108721/2018, IA 140448/2018, IA 140462/2018, IA 177565/2018 and IA 20070/2019)

Date : 12-02-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE NAVIN SINHA

For parties

Mr. Shyam Divan, Sr. Adv.  
Mr. Kapil Joshi, Adv.  
Mr. Rahul Gaikwad, Adv.  
Mr. Vinayak Bhandari, Adv.  
M/S. KNC, AOR

Ms. Manju Jetley, AOR

Mr. Shekhar Naphade, Sr. Adv.

Mr. C. U. Singh, Sr. Adv.  
Mr. Nirav Shah, Adv.  
Mr. Nitin Mishra, Adv.  
Ms. Mitali Gupta, Adv.  
Mr. Rajat Sehgal, Adv.

Mr. C. U. Singh, Sr. Adv.  
Mr. Rabin Majumder, AOR  
Mr. Sanjay Bhatt, Adv.  
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Mr. Raunak Jain, Adv.  
Ms. Stuti Krishan, Adv.

Mr. Sanjay Hegde, Sr. Adv.  
Mr. Aditya Dewan, Adv.  
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Mr. Gaurav Pachnanda, Sr. Adv.  
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Ms. Eshna Kumar, Adv.  
Ms. Udit Singh, Adv.

Mr. Nitin Mishra, Adv.  
Mr. Rajat Sehgal, Adv.

Mr. Nitin S. Tambwekar, Adv.  
Mr. Seshatalpa Sai Bandaru, Adv.

Ms. Pinky Anand, ASG.  
Ms. Aakanksha Kaul, Adv.  
Ms. Snidha Mehra, Adv.  
Ms. Kirti Dua, Adv.  
Mr. A. K. Sharma, Adv.  
Mr. Rajesh Ranjan, Adv.

Mr. Neeraj Kishan Kaul, Sr. Adv.  
Mr. Pranaya Goyal, Adv.  
Mr. Aman Raj Gandhi, AOR  
Mr. Dharav Shah, Adv.  
Mr. Yash Badkur, Adv.  
Mr. Akash Lambha, Adv.

Mr. Guru Krishna Kumar, Sr. Adv.  
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Mr. Aman Raj Gandhi, Adv.  
Mr. Abhirath Thakur, Adv.

Ms. Praveena Gautam, Adv.

Mr. Jitesh P. Gupta, Adv.  
Mr. Pawan Shukla, Adv.

Mr. Jayant Bhushan, Sr. Adv.  
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Mr. Tushar Mehta, SG  
Mr. Bhargava V. Desai, Adv.  
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Ms. Meenakshi Arora, Sr. Adv.  
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Mr. Janender Kr. Chumbak, Adv.  
Ms. Amita singh Kalkal, Adv.  
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Mr. C. A. Sundaram, Sr. Adv.  
Mr. Satyendra Kumar, Adv.  
Mr. Atif Inam, Adv.  
Mr. D. K. Devesh, Adv.

Ms. Kamini Jaiswal, Adv.  
Mr. Rohit Kumar Singh, AOR  
Mr. Raghavendra P. Singh, Adv.

Mr. Viraj Kadam, Adv.  
Mr. D. M. Nargolkar, Adv.

Mr. Praveen Chaturvedi, AOR  
Ms. Jyoti Chaturvedi, Adv.  
Ms. Addya Mishra, Adv.

Mr. G. Prakash, Adv.  
Mr. Jishnu M.L., Adv.  
Ms. Priyanka Prakash, Adv.  
Ms. Beena Prakash, Adv.  
Ms. Leelawati, Adv.

Mr. E. C. Agrawala, AOR  
Ms. Purnima Bhat, AOR  
Mr. Nishe Rajen Shonker, AOR  
Mr. Bhargava V. Desai, AOR

UPON hearing the counsel the Court made the following  
O R D E R

IA NO. 104710/2018

By our Order dated 23<sup>rd</sup> October, 2018, the project at

Nagpur was allowed to proceed subject to Directors of three companies filing affidavits stating that any differential amount pursuant to forensic audit have to be deposited by them. Accordingly, the Directors of Luxora Infrastructure Pvt. Ltd., Aanya Properties Ltd. and Access Investments India have filed the necessary affidavits. Until the forensic audit is complete, no further orders on this Interlocutory Application.

IA NO.113400/2018 AND 119126/2018

Shri C.U. Singh, learned senior counsel appearing these two I.As. at present will take instructions on whether his clients will buyout shares held by the two Goenkas and their associate companies.

Adjourned by two weeks.

IA NO.88181/2018

Adjourned.

IA NOS. 90754/2018 AND 90757/2018 (Intervention/Directions)

Shri Neeraj Kishan Kaul, learned senior counsel appearing in these I.As has pointed out an interim forensic report of Deloitte dated 10<sup>th</sup> December, 2018 in which prima facie circular trading has been found to the extent of 25 crores out of 232 crores. Shri Kaul says that affidavits by way of undertakings will be filed by Director, IDFC Real

Estates Yield Fund, on behalf of IDFC Real Estates Yield Fund, in which it is made clear that any amount that is ultimately found by this Court to be linked to any of the companies and associate companies and sister companies of the two Goenkas Om Parkash Goenka and his son, upto 232 crores will be paid over to this Court. The money that may be realised on sale of flats may further be used by IDFC subject to this undertaking. The attachment of this project will be lifted.

IA NOS.107708/2018 AND 121073/2018

Adjourned.

IAs by Banks (IA NOS.86815/2018, 88185/2018, 87012/2018, 87018/2018, 138910/2018 AND 20912/2019

All IAs by Cosmos Bank are adjourned.

All IAs by Bank of Baroda are also adjourned.

IA NOS.129326/2018, 129328/2018 AND 447/2019

The properties mortgaged in favour of SVC Co-operative Bank Ltd. being office premise at Lower Parel, Mumbai may be sold by the SMC set up by this Court and the sale proceeds deposited in this Court in short term fixed deposit subject to further orders of this Court.

IA NO.105835/2018 AND 137389 OF 2017

The proposal to buyout the shares of the Mirah Group/Goenka Family and Shetty Group may be allowed on the applicant filing an undertaking that the investment made by the applicant is not traced back to any person/company, forming part of the larger Mirah Group. The applicant will further submit an undertaking that it will not alineate/transfer/create third party rights in such shares without leave of this Court. The forensic audit that is to continue by Deloitte may continue with respect to this company as well. This will take place on the basis of a valuation report by Android Technical Services within a period of four weeks from today. The sale proceeds may be deposited in this Court in a short term fixed deposit subject to further orders of this Court.

IA NO.130265/2018

Await Forensic Audit Report by Deloitte.

Intervention Application No.96580/2018

The State of Maharashtra pursuant to an Intervention Application appears before us today. It has filed an affidavit dated 20<sup>th</sup> September, 2018 in which it has indicated the properties that are attached and proposed to be attached under Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999. It is

made clear that all attachments together with proposed attachments will be subject to attachments that have been made pursuant to our order dated 10<sup>th</sup> May, 2018. Valuation and sale by the Sale Monitoring Committee set up by this Court may be made of such properties.

I.A.No. 82438-39/2018 and I.A. No. 178970/2018

This application is in respect of a certain project at Mamurdi, the tentative valuation of which at present, given by the Resolution Professional, is 632 crores. Ms.Meenakshi Arora, learned senior counsel appearing on behalf of the applicant, disputes this figure and requires a valuation report.

A Registered Valuer may be appointed by Deloitte to value this project and submit a valuation report to this Court within a period of eight weeks from today.

I.A. No.109453/2018

Adjourned by eight weeks

I.A. No. 120217/2018

The applicant wishes to go to the ROC in order to obtain a report upon whether this project is linked with any of the Goenka associates/sister concerns. He may do so and the report of the ROC be submitted to us within a period of eight weeks from today.

The matter stands adjourned by eights weeks.

I.A. Nos. 140462/2018 and I.A. No. 177565/2018

I.As. are permitted to be withdrawn. The I.As. stand dismissed as withdrawn.

However, this will not absolve Shri Omprakash Goenka from making the requisite affidavit as per our orders dated 10.05.2018. Until such affidavit is made before this Court, the bail application which is pending in the High Court shall not be processed any further.

I.A. No. 25273/2019 and I.A. No. 25276/2019

Shri Gurukrishna Kumar, learned senior counsel, appears in these I.As. and submits that the Resolution Professional should not be allowed in the meanwhile to take over the management and the running of hotel. We make it clear that the Resolution Professional is not so allowed to take over the management of this hotel. Deloitte is directed to look into this company and this project as well and submit a report.

Shri Gurukrishna Kumar, learned senior counsel, assures that his client will cooperate fully with the Resolution Professional/SMC/Deloitte.

The I.As. are adjourned by eight weeks.



I.A. No. 104112/2018 and I.A. No. 104115/2018

Adjourned by eight weeks.

I.A. No. 20070/2019

Impleadment allowed.

In the investigations that have been going on, a new association of persons has popped up - M/s. Luxura Mist. M/s.Deloitte may conduct a forensic audit of this association of persons as well.

The Resolution Professional is to create a portal on which all reports that are given from time to time in respect of these group companies are to be uploaded by the Resolution Professional so that all may see these reports.

Impleadment of the Economic Offences Wing, Mumbai and Economic Offences Wing, Nashik is permitted. Shri Shyam Divan's client will serve the aforesaid wings. *Dasti*, in additional, is permitted.

These wings will submit an affidavit to this Court, after service, of properties that have been attached by them.

This order deals with 71 interlocutory applications that are on Board today. Deloitte is directed to complete the entire forensic audit of these and other companies indicated by this order within a period of eight weeks from today. In case this cannot be done, an interim report may be filed indicating the work completed and any further

period required to complete the audit. In this report, Deloitte is directed to identify and enumerate projects where the larger Mirah group have a capital contribution/stake/control (direct or indirect) in separate groups - those having above 50 %; those between 30-50%; those between 15-30% and those less than 15%.

The Resolution Professional is directed to convene a meeting of the Sale-cum-Monitoring Committee atleast once a month. The Resolution Professional is also directed to submit, in consultation with the Sale-cum-Monitoring committee, a forecast within four weeks from today relating to the sale of the properties concerned which are to take place over the next 6-9 months. It is clarified that in selling properties under our aegis, the Sale-cum-Monitoring Committee is to follow the procedure laid down by the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Call these matters after 10 weeks.

Deloitte is also directed to indicate, company wise, its conclusions on the linkage with the larger Mirah group.

(GEETA AHUJA)  
COURT MASTER (SH)

(NIDHI AHUJA)  
COURT MASTER (SH)

(HARI SWAROOP PARASHER)  
ASSISTANT REGISTRAR