

Sushant Muttreja vs Serious Fraud Investigation Office on 23 December, 2024

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Date of order: 23rd December
+ BAIL APPLN. 1287/2023, CRL.M.A. 16403/2024, CRL.M.A. 20964/2024, CRL.M.(BAIL) 1850/2024

SUSHANT MUTTREJAP
Through: Mr. Trideep Pais, Senior Ad
with Ms. Sanya Kumar and Ms
Saloni Ambastha, Advocates.

versus

SERIOUS FRAUD INVESTIGATION OFFICERespondent
Through: Mr. Amit Tiwari, CGSC, Mr. Piyush
Kumar, Senior Prosecutor, Mr.
Devender Pal(Dy. Dir.), Mr. Vibhav
Singh, Mr. Divyanshu Bharadwaj,
Mr. Abhishek Pratap Singh
Advocates along with Mr Vedansh
Anand GP for UoI.

+ BAIL APPLN. 1289/2023, CRL.M.A. 16405/2024, CRL.M.A. 20849/2024 & CRL.M.(BAIL) 1847/2024

NISHANT MUTTREJA
Through: Ms. Tara Narula, Mr. Harshv
Jain and Mr. Anirudh Ramana
Advocates.

versus

SERIOUS FRAUD INVESTIGATION OFFICERespondent
Through: Mr. Amit Tiwari, CGSC, Mr. Piyush
Kumar, Senior Prosecutor, Mr.

Signature Not Verified

BAIL APPLN. 1287/2023 & BAIL APPLN. 1289/2023

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Devender Pal(Dy. Dir.)
Singh, Mr. Divyanshu Bha

Mr. Abhishek Prata
Advocates along with Mr
Anand GP for UoI.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant applications under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] has been filed on behalf of the applicants/petitioners seeking regular bail in complaint bearing no. CC/1313/2021 titled as „Serious fraud Investigation Office v. Cosmic Structures Ltd. & Ors. , filed under Sections 129, 134, 143, 144, 147, 447, 448 of the Companies Act, 2013 and Sections 77 (2), 77(4), 211, 217, 227, 233, 628 of the Companies Act, 1956.

2. At the outset, it is pertinent to state that both the captioned bail applications arise out of the same complaint wherein both the applicants have been named as accused and have been assigned similar roles in the aforesaid complaint. Since both the applications contain similar grounds of bail and the same have been opposed by the State on similar grounds, this Court deems it appropriate to adjudicate the captioned applications by way of the instant common order.

3. For the sake of convenience, this Court has culled out the facts, grounds, reply, rejoinder, written submissions and compilations from the BAIL APPLN. 1287/2023, titled as „Sushant Mutreja v. Serious fraud Investigation Office .

4. The relevant facts that led to the filing of the instant application are as follows:

a. It is stated by the applicant that he is the ex-promoter/ex-director of M/s Cosmic Structures Ltd. (hereinafter "CSL") which was primarily incorporated for establishing business of real estate development.

b. The CSL launched six projects between the years 2012 and 2014 which were of residential as well as commercial nature and started the construction works/booking units in the said projects, whereby, certain „payment plans were offered including but not limited to „construction linked plan, flexi payment plans, down payment plans . The names of the said six projects are as under:

i. Cosmic Corporate Park - I ii. Cosmic Corporate Park - II iii. Urban Young iv. Cosmetic Masterpiece/ CCP - III v. Cosmic Business Centre vi. Cosmic Cruise c. It is stated that under some of the above-mentioned payment plans certain assured returns were also offered to the buyers/ allottees/customers of the units on the basis of the amount invested by such buyers/allottees for the allotment of their respective units. Such assured returns were payable by the Company from the date of booking

till the offer of possession of their respective units. d. With regard to the above-mentioned payment plans and the scheme for assured returns, it is stated that the CSL only received payments against respective units being booked in the projects by the investors/customers. Around 50% of the investors opted for assured return plans, and as such, the assured returns were undeniably given to all the eligible customers from April, 2012 to March, 2015. e. It is stated that due to the global recession and real estate slump, the CSL was unable to make the payment of assured returns beyond March, 2015. Thereafter, the CSL offered additional spaces in lieu of past/future assured returns which was accepted by more than 35% customers and a revised Memorandum of Understanding was signed. f. In the meanwhile, the investors of CSL moved a petition for initiation of winding up proceedings against the CSL in company petition no. 152/2016 titled as „Rajni Anand v. Cosmic Structures Ltd. and vide order dated 29th May, 2018, by the Coordinate Bench of this Court, the Serious Fraud Investigation Office (hereinafter "SFIO") was directed to conduct an investigation into the affairs of the CSL. g. In compliance of the order dated 29th May, 2018, the Ministry of Corporate Affairs (hereinafter "MCA") directed SFIO to investigate into the affairs of CSL. The investigation of the SFIO was complete and the investigation report dated 8th October, 2021 was submitted to the MCA on the basis of which the MCA directed the SFIO to file a complaint against the CSL and other accused persons in the complaint case bearing no. CC/1313/2021 before the learned Additional Sessions Judge-03 & Special Judge (Companies Act), Dwarka Courts, South West, New Delhi under Sections 129, 134, 143, 144, 147, 447, 447, 448 of the Companies Act, 2013 and Sections 77 (2), 77(4), 211, 217, 227, 233, 628 of the Companies Act, 1956. h. It is alleged in the said complaint that the CSL is a company incorporated on 20th October, 2011 and that the CSL deals in the business of real estate & infrastructure projects including consultancy & construction of housing & commercial spaces. In the said Complaint, it is also alleged that the applicants, i.e. Sushant Muttreja (accused no. 6) and the Nishant Muttreja (accused no. 7) are the „actual controlling mind and will of CSL.

i. In the said Complaint, it is further alleged that the money invested by the homebuyers/investors was spent recklessly and diverted for reasons which were not in consonance with the purpose for which it was received. It is further alleged that owing to the alleged illegal acts/omissions on the part of the CSL and its directors, the construction of the projects launched by the CSL have remained uncompleted.

j. It is alleged in the said Complaint that the applicants were engaged in siphoning off/diversion of funds from the funds of the CSL through subsidiaries, directors owned companies, purchase of properties in the name of directors and huge cash withdrawals. It is further alleged that the applicants have committed fraud as defined under Section 447 of the Companies Act, 2013. It is also alleged that the applicants have availed bogus long term capital gain and have falsified books of accounts of the CSL.

k. It is stated that the learned ASJ, vide order dated 16th August, 2021, directed SFIO to take the applicant into judicial custody. l. In the meanwhile, both the applicants moved applications seeking regular bail before the learned ASJ, however, the said applications were dismissed vide order dated 6th March, 2023. Being aggrieved by the same, the applicants have approached this Court seeking grant of regular bail.

m. It is pertinent to mention here that the applicants were enlarged on interim bail vide order dated 22nd November, 2023 and the same has been extended from time to time.

5. Mr. Trideep Pais, learned senior counsel appearing on behalf of the applicant submitted that apart from the instant case filed by the SFIO, there are total 12 FIRs that have been registered against the applicant. Significantly though, apart from the present complaint, the applicant has been granted bail in all the rest of the FIRs. The said details are as under:

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6. It is submitted that the applicant was first arrested in the FIRs alleging the same allegations arising out of similar facts and circumstances as of the present complaint on 31st July, 2016, thus, total period of incarcerations of the applicant as on 24th November, 2023 is 7 years 1 month and 26 days. Further, in the present complaint, the applicant was arrested on 16th August, 2021 and thereby, he was in custody for 2 years 3 months and 8 days as on 24th November, 2023 in the present complaint.

7. It is submitted that significantly the applicant is being prosecuted on the same facts by two different prosecuting agencies, which becomes clear from the Economic Offences Wing's (hereinafter "EOW") status reports. This is also clear from the nature of the allegations in the SFIO's complaint and the investigation report.

8. It is submitted that in the matter titled as Tejinder Singh @ Teja vs State Of Punjab, CRM-M-21934-2015 (O&M), the Punjab and Haryana High Court, vide an order dated 17th March, 2016 held that when multiple proceedings are pending against the accused, the period of custody shall be calculated from the date when the accused was first taken into custody.

9. It is submitted that the respondent has failed to take into account the fact that cash was required for day to day expenses, making payments to house-keeping, casual labours, miscellaneous expense & refreshments. Such cash payments were supported by cash vouchers and requisite documents, the record of which was duly stored in the servers seized by the respondent. However, as per the respondent's investigation report, at the time of seizure of the servers on 11th February, 2019, the servers were in dilapidated condition due to water logging in the main server room and the Computer Forensic and Data Mining Lab was unable to extract any data from the storage devices. As such, the money spent in cash in operations of business could not be ascertained. It is further submitted that the applicant cannot be penalized for the respondent's failure to examine the servers.

10. It is submitted that despite having access to the bank statements of CSL, the respondent has failed to note that substantial cash deposits were also made into the account of the company during this period, thus falsifying the allegation of withdrawals of Rs. 26.39 Crores. It is evident from the chargesheet documents itself that between the period of April, 2013 to May, 2016, an amount of Rs. 18.50 Crores was deposited in the account of CSL. It is not out of place to mention that total cash deposits in the account would be a bigger amount as cash deposits between 2011 - March, 2013 have not been taken into account.

11. It is submitted that after considering the charge-sheet filed by the respondent, the Coordinate Bench of this Court had granted bail to the applicant in the six FIRs vide order dated 16th December, 2022, .

12. It is also submitted that the Coordinate Bench of this Court, in the aforesaid order, observed in paragraph no. 24 that "the chargesheet has since been filed; the trial has not yet begin; there are numerous witnesses to be examined and it would take years to examine them; there is no possibility of dropping of evidence; the petitioners are not at flight risk as their passports have since been surrendered; they were earlier released on interim bail and did not misuse their liberty...". The Court further observed in paragraph no. 13 that "thus, whatever was received, it is alleged maximum was spent on the construction. The Petitioners are still inclined to co-operate with the investors and time and again are giving various schemes to revive the projects".

13. It is further submitted that the aforesaid order was challenged by the Cosmic Victim Association by filing a SLP bearing SLP (Criminal) No. 20728/2023 before the Hon ble Supreme Court which was dismissed after admitting the SLP vide Order dated 3rd January, 2024.

14. It is vehemently submitted that the applicant has been making constant efforts towards revival of the CSL so that the pending projects may be completed. It is submitted that the applicant has no malicious intent to defraud the investors/home buyers and the projects remained uncompleted only because of the real estate slump and recession in the financial market. Therefore, the applicant has been making consistent efforts to show his bona fide. It is further submitted that the applicant is seeking grant for regular bail so that he may be allowed to explore revival schemes in order to protect the interests of the investors.

15. It is submitted that the Company Court, vide order dated 24th August, 2023 deemed fit to consider schemes for the revival of the CSL in the interest of allottees and creditors and allowed the applicant to file the scheme.

16. It is also submitted that pursuant to their release on interim bail, the applicant along with his brother Nishant Muttreja, filed a scheme for revival of the company before the concerned Company Court in Co. Pet. No. 152/2016 vide Co. App (M) 3/2023, which was taken on record vide order dated 21st December, 2023.

17. It is submitted that schemes have also been proposed by other parties, including the scheme by Cosmic Victim Association/Alpha Corp, scheme by Cosmic Promoters, Scheme of Members of Asset

Revival Society (MARS) and also the scheme of Mega Nirman and Industries Ltd (Vinayaja Group). Thus, in view of the differences in the schemes on different parameters, the applicant prepared a comparative chart highlighting the difference between the four schemes which was filed vide Co. App. No. 52/2024.

18. It is submitted that the applicant and his brother (Nishant Muttreja) are making efforts with the help of co-developers towards the revival of the scheme and its implementation once the scheme gets approved by the concerned Company Court.

19. It is also submitted that the applicant has filed a comparison chart of the Revival Scheme placed by the applicant with the schemes placed by other parties before the concerned Company Court. A copy of the updated Comparison Chart is annexed with the present application which is available on record. Moreover, the applicant has already placed the revival scheme along with all the relevant documents, relevant affidavits duly sworn by the co-developers pertaining to all the six projects before the concerned Company Court as well as this Court.

20. It is submitted that the last date of hearing before the learned ASJ was 5th August, 2024 and the next date of hearing is 17th December, 2024 for the purpose of appearance of the Official Liquidator, scrutiny of documents and further proceedings. Therefore, even after filing the present criminal complaint on 14th October, 2021, the trial of the matter has not yet started and the matter is still at the stage of summoning and scrutiny of documents.

21. It is also submitted that from the above facts, it is likely that the conclusion of the trial of the said complaint will be delayed, owing to which the applicant will be in judicial custody for an undetermined period of time.

22. It is further submitted that the applicant has already served a period of more than 2 years in judicial custody in connection with the said complaint and more than 7 years in judicial custody in connection with other FIRs containing similar allegations arising out of similar facts and circumstances. It is submitted that the delay in conclusion of trial of the said complaint will result in violation of fundamental rights guaranteed under the Constitution of India.

23. It is submitted that in the matter titled Jainam Rathod vs State of Haryana, CrL. A. 640/2022 and Sujay U Desai vs SFIO, CrL. A. 1023/2023, the Hon'ble Supreme Court has held that despite the mandatory twin conditions laid down in Section 212(6) of the Companies Act, 2013, in absence of fair likelihood of the trial being completed within a reasonable time period, the Court must be mindful of the need to protect the personal liberty of the accused in face of delay in conclusion of the trial.

24. It is further submitted that the applicant was released on interim bail granted by the Predecessor Bench of this Court vide order dated 24th November, 2023, which was extended vide order dated 20th December, 2023 and subsequently on 8th January, 2024.

25. It is further submitted that the applicant had filed an application bearing Crl M. (Bail) 164/2024 seeking extension of the interim bail, in which notice was issued vide order dated 30 th January, 2024. The interim bail granted to the applicant expired on 30th January, 2024, and the applicant duly surrendered to show his bona fides in compliance with the directions of the Predecessor Bench of this Court and the regular bail application was heard on merits on 6th February, 2024, 9th February, 2024 and 27th February, 2024.

26. It is also submitted that vide order dated 27th February, 2024, the Predecessor Bench of this Court was pleased to release the applicant on interim bail for a period of three weeks subject to certain conditions, which the applicant duly complied with. The interim bail granted to the applicant has been extended on each date of hearing, keeping in view their attempts to revive the company and work to complete pending projects.

27. It is submitted by the learned senior counsel, on instructions, that the applicant is an innocent person and a law abiding citizen and undertakes that the he shall abide by any conditions imposed by this Court while granting bail. The address of the applicant has already been verified by the respondent and found to be true and correct. Hence, it is prayed that the applicant may be released on bail.

28. Per Contra, learned CGSC appearing on behalf of the SFIO vehemently opposed the bail application and submitted that the present applicant is involved in heinous crime of siphoning of funds of the investors/homebuyers/allottees and falsifying books of accounts with the intention to dispute its innocent investors. Therefore, he is not entitled to the concession of bail and if released on the bail he may influence the trial.

29. It is submitted that the CSL had taken advances from more than 6,000 customers totaling to Rs. 524.16 Crores and had shown the WIP of all the projects at Rs. 422.85 Crores as on 31st March, 2015 inclusive of assured return given to the home buyers/investors at Rs. 76.74 Crores. Funds were collected by the CSL under aforementioned three schemes launched by the CSL at the beginning of the construction projects.

30. It is submitted that in order to attract customers, the CSL promised to give an assured return on the mobilized advances at the rate of 10% to 12% per annum payable monthly. Apart from assured return the CSL paid brokerage/commission ranging between from 10-12% of the basic selling price to the brokers or channel partners. An amount of Rs. 76.74 Crores and Rs. 55.18 Crores were paid to the home buyers/investors as assured return and the brokers/channel partners as commission respectively up to 31 st March, 2015. It is submitted that the source of these payments was nothing but the funds received from subsequent home buyers/investors.

31. It is submitted that the homebuyers/investors funds amounting to Rs. 31.73 Crores meant to be used for construction activities were diverted in various subsidiary companies namely M/s Bluebelt Infra Developers and M/s Realtors Pvt. Ltd., M/s 51 Rohini Infradevelopers Pvt. Ltd., M/s Cosmick Eagle Realtors Pvt. Ltd., M/s Cosmic Yojana Infratech Pvt. Ltd. and used to purchase properties in the names of the subsidiaries.

32. It is further submitted that a perusal of the complaint would also show that apart from the above, the applicant, also diverted/siphoned off money received by the CSL to various other entities, family members and relatives/friends etc. It is also submitted that the applicant also made huge cash withdrawals, without any commensurate requirement

33. It is submitted that pertinently the criminal complaint filed bearing no CC/1313/2021 by the answering respondent is pending for adjudication before the learned ASJ and charges have not been framed and trial has not yet started.

34. It is submitted that the applicant being arrayed as accused no. 6 is the director of the CSL and has sufficient means and resources, thus, there are high probabilities of him influencing the prime witnesses in this case.

35. It is further submitted that applicant is in a dominant position as most of the other accused are directly linked to him and exerts dominance over the other accused persons. Hence, there is a high probability of the applicant influencing the other witness on account of his strong economic position, the fact of him being the director of the CSL and him being the mind and will of the whole fraud. Therefore, it is submitted that when the case is in the nascent stage, his plea of regular bail should be rejected.

36. It is submitted that it is a settled law that twin conditions, under Section 212(6) of the Companies Act, 213 are mandatory to be satisfied for such accused persons who are arrested in connection with the offence punishable under section 447 of the Companies Act, 2013 (hereinafter "Companies Act") and a fair consideration of the material against the accused as provided in the criminal complaint would establish that twin conditions have not been satisfied.

37. It is further submitted that in the present case, the investigation has thoroughly established that the accused-applicants, Muttreja Brothers, were the „mind and will and in direct control of the affairs of the CSL at such time when the homebuyers and investors were lured to invest their money in projects launched by the CSL.

38. It is submitted that the investigation has revealed sufficient incriminating material as duly available on record, to establish both the key ingredients under Section 447 of the Companies Act. Therefore, the applicant-accused s claim that the learned ASJ failed to appreciate that the applicant-accused fulfilled the twin conditions under Section 212(6) of the Companies Act are ill-founded and only misleading, without any sufficient basis or explanation.

39. Therefore, in view of the foregoing submissions, it is prayed that the instant application may be dismissed.

40. Heard learned counsel for the parties and perused the record. This Court has meticulously examined the contentions made in the complaint, instant application, reply, rejoinder, status report, written submissions, compilations of judgments and the Lower s Court Record of complaint bearing no. CC/1313/2021 etc.

41. Upon perusal of the entire material on record, the surmise of the entire facts is that the CSL launched its various projects in the year 2012 but the real estate sector was hit by market downturn in 2014 - 2015, due to which the applicants faced a huge financial slump and projects could not be completed. Thereafter, during 2016 - 2018, various complaints were lodged by several investors, culminating into registration of multiple FIRs against the applicants. Following the same, in the year 2016, investors of the CSL moved this Court by filing a winding up petition being Company Petition No. 152/2016.

42. In the year 2021, the respondent herein, i.e., the SFIO filed a complaint against the CSL and other accused including the applicants under various provisions of the Companies Act bearing complaint no. CC/1313/2021 in which regular bail was denied to the applicants by order dated 6th March, 2023.

43. In the meanwhile, in order to save the CSL and its projects from winding up and to safeguard the interests of the investors, the applicants in furtherance of their bona fide intentions have time and again proposed a revival scheme of compromise between the CSL and its creditors/investors/homebuyers/allottees for revival of the Company which was however initially rejected by the concerned Company Court vide order dated 6th April, 2023.

44. Subsequently, as per the material available on record, it is noted that vide order dated 26th April, 2022, another scheme propounded by the Cosmic Victims Association for an entity by the name of M/s Alpha Corp. Pvt. Ltd., was also dismissed by the concerned Court on the ground that the scheme did not envisage any upfront payment by the developer. Accordingly, liberty was granted to the Cosmic Victims Association to file a fresh scheme with an upfront deposit of the threshold amount.

45. It is also observed that a third scheme was thereafter propounded again by the CSL with one M/s Good Living Infrastructure Pvt. Ltd., which proposed an infusion of Rs.300 Crores for completion of all the six projects of the CSL. Thereafter, one M/s Renowned Buildtech Pvt. Ltd. agreed to invest Rs. 50 Crores and collaborate with the Company on two projects in furtherance of which the ex-directors (accused herein) of the CSL filed their scheme before the concerned Company Court, thereby, proposing a deposit in the form of a Bank Guarantee of Rs.50 Crores. An affidavit was also filed by the builder stating that it was ready to give upfront Bank Guarantee of Rs.5 Crores in support of the scheme. Therefore, the bona fide of the applicants is prima facie discernible from the said actions which have been duly stated in the captioned bail applications on affidavit.

46. At this stage, it is pertinent to mention here that the investors/homebuyers/allottees are the real entities/individuals who have been actually affected by the failure of the completion of the projects even after they have paid their due share of amount to some extent. Ultimately, it is the investors who have actually suffered by the hands of the culprits.

47. At the stage of deciding this bail application, this Court is not going into the details of the offences and their merits but is primarily concerned for the investors who have invested substantial amount of their money with the applicants, but have not received any unit/return in lieu of the

same.

48. After taking into consideration the entire contents advanced by both the parties, it is observed by this Court that it is a common ground between the CSL and the investors that the liquidation of the Company is not in the interest of the investors as substantial amounts have been invested by them in residential/commercial projects proposed by the CSL and the said fact has been duly noted by the concerned Company Court in its order dated 24 th August, 2023 (which is part of the record). It is pertinent to mention here that the said facts and circumstances were also taken into consideration by the Predecessor Bench of this Court while deciding the grant of interim bail to the applicants.

49. It has been contended on behalf of the applicants that they may be released on bail so that they may explore the possibilities of revival of the company to so that the projects may be completed. Further, they have remained in custody for more than 2 years for the offences for which the maximum punishment is 10 years and the trial will take some time to conclude.

50. With regard to the same, it is an admitted position of fact, which has not been disputed by the learned CGSC, that the applicants have been making serious and constant efforts to revive the Company in order to complete the projects launched by them which have remained pending and which is the real grievance of the investors/homebuyers.

51. At this stage, this Court has referred to the „summary and implementation schedule of the revival scheme which has been filed along with the affidavits of the co-developers which is annexed with the written submissions filed on behalf of the applicant as „Annexures therein. The relevant portion of the summary of revival scheme has been reproduced hereunder for reference:

"...5.The relevant facts in relation to the Revival Scheme are detailed herein. At the outset, it bears mention that there are 6 projects which are the subject matter of the Revival Scheme and the details of these projects are as follows:

Project Name	Address	Approx. Plot Area	Land Use	Co De pe In mz
Cosmic Corporate	Plot 10,	No. 10 Acres	IT/ITES mixed	
Park (CCP-1)	Tech Zone, Yamuna Expressway		land use	Inf LLP.

	Greater Noida				
Cosmic Corporate Park-140 (CCP-2/CCP-140)	Plot No. 5, 5 acres Sector 140, Noida			IT/ITES mixed land use	Lord Kris Infr Pvt. Ltd.
Cosmic Masterpiece (CCP-3/CCP-154)	Plot No. 1, 5 acres Sector 154, Noida			IT/ITES mixed land use	Renowned Buildch Pvt. Ltd.
Cosmic Cruise (CC/KP 5)	Plot No. 10 acres 15, Knowledge Park- V, Greater Noida			IT/ITES mixed land use	Sird Home Pvt. Ltd.
Cosmic Urban Young (UY)	TS 04, 2.5 acres + 2.5 acres Sector 22D, Yamuna Expressway, Greater Noida			Residential	Renowned Buildch Pvt. Ltd.
Cosmic Business Center	Plot No. 1844 5/9, Sector 35, meters			IT/ITES mixed land use	JMS Infr Real
	(CBC/Gurga NH-8, Gurugram)				Pvt. Ltd. ("J Inf

6. Salient Features of the Revival Scheme with respect to Cosmic Masterpiece (CCP3) Project and Cosmic Urban Young Project:

6.1. As per the Scheme, one of the Co-developer namely M/s Renowned Buildtech is taking up the captioned two projects (CCP3 and Cosmic Urban Young) for development.

Renowned Buildtech proposed to make an upfront investment of Rs. 35 crores in an Escrow account and shall be used for the purpose of the construction of the said two projects. Out of 35 crores, 10 crores will remain with this Hon ble Company Court in the form of FD till the period when the existing customers are delivered the booked space. Further the Renowned Buildtech will be infusing 50 crores each year for over 3 years i.e. 150 crores as per the requirement of projects, which makes a total of Rs. 185 crores of investment.

6.2. Renowned Buildtech will take over the entire development of these 2 projects and subsume all liabilities including payment to authorities and settlement of unit allottees of the said two projects as proposed in the Scheme. The Codeveloper further undertakes all further cost of construction to complete these 2 projects and bring them to saleable condition.

6.3. All customers/unit allottees in respect of Cosmic Urban Young shall be refunded the principal amounts invested by them without interest and the said refund shall be processed in 6 months (subject to the Co-developer undertaking) from the date of approval of the revised map from Authority.

6.4. Renowned Buildtech will construct the said 2 projects and deliver to the existing buyers of the said Projects (except for Cosmic Urban Young) and sell the unsold units to the new customers. All the allottees shall be given the units as already sold by the Applicant s Company. The existing allottees shall only pay the balance payment as per the original agreements with buyer. The Co-developer is fully entitled to sell the unsold units at their discretion to recover the cost of Projects and profits.

6.5. Once the Scheme is approved by this Hon ble Company Court, Renowned Buildtech will apply for the relevant approvals within 60 days (subject to the Co-developer undertaking) from the date of sanction of the Scheme and the release of the properties by the Official Liquidator.

6.6. The CCP3 Project will be completed within 4 years from the date of RERA registration, extendable for a period of maximum 6 months.

A duly sworn Affidavit on behalf of M/s Renowned Buildtech Private Limited is annexed to the present Compilation at pg 23-27.

7. Salient Features of the Revival Scheme with respect to Cosmic Corporate Park (CCP-1) Project, Cosmic Corporate Park- 140 (CCP-2), Cosmic Cruise (KP 5) and Cosmic Business Center, Gurgaon (CBC) Projects:

7.1. At the time of filing the Scheme, the Applicant and his brother proposed to partly dispose of other assets of the Applicant s Company as well as their personal assets, from the customer s infusion of funds, from bringing in other co-

developers in order to revive the remaining 4 projects i.e. CCP-1, CCP-2, Cosmic Cruise (KP5) and Cosmic Business Center (CBC) Gurgaon. However, the Applicant and his brother have been making

endeavours to involve the other Co-developers for the revival of remaining 4 projects of the Company and they were successful in involving other Co-developers namely M/s Indihomz Infra LLP for CCP-1 project, M/s Lord Krishna Infracon Pvt. Ltd. for CCP-2 project, Srida Homes Pvt. Ltd. for KP5 project and JMS Infra Realty Pvt. Ltd. (JMS Infra) for CBC project. The duly sworn Affidavits of all the Codevelopers involved in revival of the projects of the Company are already on record before the Hon ble Company Court.

7.2. M/s Indihomz Infra LLP will make an upfront deposit of Rs. 3 crores in an Escrow Account, which will be used for the construction of CCP-1 project as per the requirements. Further, the Co-developer will deploy Rs. 2 crores each month for the completion of the said project. The Codeveloper undertakes to deliver the units booked by the customers in the said project (apart from the Studio Apartments) within 4 years, extendable for a period of 6 months. The Co-developer proposed that they will refund the amount paid by the customers as booking amount for Studio Apartments within 1 year from the date of approval of the Revival Scheme by this Hon ble Company Court or from the date of making an application for refund by the customer, whichever is later. No interest or penalty will be paid on this amount.

7.3. M/s Lord Krishna Infracon Pvt. Ltd. will make an upfront deposit of Rs. 50 crores in an Escrow Account, which will be used for the construction of CCP-2 project as per the requirements. The said Co-developer undertakes to give a Corporate Guarantee of Rs. 20 crores in favour of the Hon ble Company Court towards guarantee of timely completion of project.

7.4. The Co-developer will take over the entire development of CCP-2 and undertakes to infuse funds as estimated from internal accruals receivables from existing customers, sale of balance saleable inventory and other fund-raising mechanisms available to the company and shall complete the development of the Tower-1 of project and settle all customers and creditors of the project within 4 years (extendable for a period of 6 months) subject to timely due payment by the existing customers. The Co-developer will apply for all the relevant approvals/NOCs/RERA Regd. within 90 days from the date of sanction of the Scheme and all expenditure pertaining to getting approvals/NOC/RERA, will be borne by the Codeveloper.

7.5. M/s Srida Homes Pvt. Ltd. will make an upfront deposit of Rs. 10 crores in an Escrow Account, which will be used for the construction of KP5 project as per the requirements. The Co-developer undertakes to infuse Rs. 3 crores per month for the development of this project. It undertakes to further infuse funds as per the requirements from internal accruals receivables from existing customers, sale of balance saleable inventory and other fund-raising mechanisms available to the company.

7.6. The said Co-developer undertakes to complete the phasewise development of the project and settle all the existing customers and creditors of the project within 4 years extendable for a period of 6 months subject to receipt of timely due payments from the existing customers.

7.7. M/s JMS Infra Realty Pvt. Ltd. (JMS Infra) proposes to invest upto Rs. 10 crores over a period of 2 years as per requirement of the Cosmic Business Center, Gurgaon (CBC) project. It undertakes

to complete the said project within a period of 2 years post receipt of requisite approvals from the Concerned Authorities and HARERA. The Co-developer is willing to submit a security deposit in the form of FD of Rs. 2 crores within 7 days of approval of the said scheme and the same shall be subsequently allowed to be utilized towards Project development and construction.

A duly sworn Affidavit on behalf of M/s Indihomz Infra LLP is annexed to the present Compilation at pg. 33-35.

A duly sworn Affidavit on behalf of M/s Lord Krishna Infracon Pvt. Ltd is annexed to the present Compilation at pg. 28-32.

A duly sworn Affidavit on behalf of M/s Srida Homes Pvt. Ltd. is annexed to the present Compilation at pg. 36-38.

A duly sworn Affidavit on behalf of M/s JMS Infra Realty Pvt. Ltd. (JMS Infra) is annexed to the present Compilation at pg. 39-42.

8. Common/General features of the Revival Scheme with respect to all 6 projects and their implementation schedule:

8.1. Sincere endeavours will be made to obtain NOCs/approvals within the maximum period of 6 months except where the Co-developer undertakes to obtain it within a period of less than 6 months.

8.2. Projects will be completed within a period of 4 years extendable by a maximum period of 6 months from the date of receipt of revised NOCs/approvals or RERA registration, except where the Co-developer undertakes to complete the project within a period of less than 4 years. In case of delay from the aforesaid period due to some unforeseen reasons, delay charges will be paid as per RERA rules. 8.3. 1200 Psft will be charged upon approval of scheme as Customer Infusion Fund which will be adjusted in their balance payments. Customers don't have to pay anything over and above the agreed price. As per the Revival Scheme, Cosmic will take all the pending liabilities, be it statutory or towards the Authorities or land owning Company etc. 8.4. As per the Revival Scheme, Cosmic will take all the pending liabilities, be it statutory or towards the Authorities or land owning Company etc. 8.5. New Co-developers shall not be liable for payment of any past or future assured return, any delay charges or interest/penalty in any form in respect of any of the project, however, extra space in lieu of AR already signed with customers will be honoured. Further all costs pertaining to any change in building/layout plan of the project to comply with the applicable laws will be borne by Cosmic or Codevelopers.

8.6. Any and all buy-back agreements, subvention schemes or similar arrangements shall stand automatically terminated on and from the date of the sanction of the Scheme.

8.7. The entire process from application for sanction to funding, construction, development or Escrow Account shall be continuously under the supervision of Monitoring Committee as appointed by this Hon ble Company Court.

The said committee may comprise of two promoters, one person from customers and one retired judicial officer appointed by this Hon ble Company Court or such committee may be formed in any other way as decided by this Hon ble Company Court.

9. The Applicant has already placed the Revival Scheme along with all the relevant documents, relevant Affidavits duly sworn by the Co-developers pertaining to all the six projects before the Hon ble Company Court.

10. It may not be out of place to state that other parties have also filed Schemes before the Hon ble Company Court. The Applicant has filed a comparison chart of the Revival Scheme placed by the Applicant with the Schemes placed by other parties before the Hon ble Company Court. A copy of the updated Comparison Chart is annexed to the present Compilation at pg. 94-99...."

52. Perusal of the aforesaid extracts show that the applicants and the other promoters of the CSL have submitted a scheme of settlement, compromise and arrangement between the CSL and its members, creditors and customers which is prima facie with the objective of ensuring maximization of assets of the unit allottees of the Company and reviving and rehabilitating all six projects to the maximum extent possible before the concerned Company Court. Although this Court is unaware of the current status of the revival scheme, however, the same is showing the bona fide of the applicants.

53. Here, reliance may be placed on the judgment of the Hon ble Supreme Court passed in SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 5 SCC 429, wherein, the Hon ble Court dealt with a significant issue involving the recovery of money raised by the Sahara entities from investors through optionally fully convertible debentures etc., which deemed to have violated regulatory norms under the Securities and Exchange Board of India Act, 1992.

54. The Hon ble Court was dealing with a similar factual and legal consideration, wherein, it had previously ordered Sahara entities and its chairman to deposit the collected funds with the SEBI for repayment to the investors. Subsequently, Subrata Roy Sahara, the Chairman of the Sahara Group, was taken into custody for non-compliance with these directions.

55. In the said abovementioned judgment, the Hon ble Supreme Court granted conditional bail to Subrata Roy Sahara, recognizing that his liberty could aid in arranging funds to comply with the repayment orders. The Hon ble Court emphasized that ensuring repayment to investors was the ultimate relief in the matter. It held that the grant of bail was not merely a matter of personal liberty but was also aimed at facilitating the recovery process, as arranging money for investors was of paramount importance in achieving justice and upholding investor protection.

56. It is observed by this Court that the aforesaid decision highlights the practical approach which may be taken in balancing judicial accountability with economic justice, prioritizing the interests of the investors over punitive measures for the crime alleged to be committed. The relevant portion of SEBI v. Sahara India Real Estate Corpn. Ltd. (Supra) is as under:

"..Contempt Petition (C) No. 412 of 2012 in Civil Appeal No. 9813 of 2011

1. List on 8-5-2013, immediately after the normal work in the Court comprising Hon'ble Mr Justice Jagdish Singh Khehar is over.

IAs Nos. 72-73 of 2013 in Civil Appeal No. 9813 of 2011

2. Issue notice. The counsel appearing for the respective petitioners (non-applicants) accept notice.

3. List on 8-5-2013, immediately after the normal work in the Court comprising Hon'ble Mr Justice Jagdish Singh Khehar is over.

4. Counter-affidavit, if any, be filed before the next date.

5. We are inclined to stay all further proceedings in Appeals Nos. 42 of 2013 (Subrata Roy Sahara v. SEBI), 48 of 2013 (SHICL v. SEBI), 49 of 2013 (SIRECL v. SEBI) and 50 of 2013 (Ashok Roy Chaudhary v. SEBI) pending before the Securities Appellate Tribunal, Mumbai, and in Writ Petition No. 2088 of 2013 pending before the High Court of Judicature of Allahabad, Lucknow Bench, since we are examining the question, whether the respondents have complied with the various conditions stipulated in our judgment dated 31-8-2012 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 1 SCC 1 : (2013) 1 SCC (Civ) 1 : (2013) 1 SCC (Cri) 257] .

6. Ordered accordingly.

8. Heard the counsel for either side.

9. Due to paucity of time, it would not be possible for us to hear the contempt petition and the same stands adjourned to 17-7-2013 at 2.00 p.m. Parties shall complete pleadings in all IAs/petitions before that date.

10. Mr Arvind Datar, learned Senior Advocate appearing for the petitioner, submits that the money so far deposited by Saharas be permitted to be refunded to the genuine investors, with interest, after verifying the genuineness of the documents. SEBI may do so.

ORDER DATED 8-5-2013 IAs Nos. 68-69 of 2013 in CA No. 9813 of 2011

7. Application praying for filing additional documents is allowed.

8. Heard the counsel for either side.

9. Due to paucity of time, it would not be possible for us to hear the contempt petition and the same stands adjourned to 17-7-2013 at 2.00 p.m. Parties shall complete pleadings in all IAs/petitions before that date.

10. Mr Arvind Datar, learned Senior Advocate appearing for the petitioner, submits that the money so far deposited by Saharas be permitted to be refunded to the genuine investors, with interest, after verifying the genuineness of the documents. SEBI may do so.

11. As far as genuine multiple investors are concerned, the issue be examined on the next date of hearing. Ordered accordingly.

ORDER DATED 1-11-2013 IA No. 4 in Contempt Petition (C) No. 260 of 2013 in Civil

12. We have heard Mr C.A. Sundaram, learned Senior Advocate appearing for the applicants. For the reasons indicated in Para 4 of the application, we make it clear that it is open for the alleged Contemnor No. 5 in Contempt Petitions (Civil) Nos. 412 and 413 of 2012 to go abroad, but, in the event of non-compliance with the directions contained in the order dated 28-10-2013 [SEBI v. Sahara India Real Estate Corpn.

Ltd., (2013) 9 SCC 331 : (2013) 4 SCC (Civ) 456 : (2013) 3 SCC (Cri) 813] , he shall immediately return back and be present in the country before the expiry of the period of three weeks, as indicated in the said order. With the aforesaid observation, IA No. 4 is disposed of.

ORDER DATED 21-11-2013

13. We are convinced that the order dated 28-10-2013 [SEBI v. Sahara India Real Estate Corpn. Ltd., (2013) 9 SCC 331 : (2013) 4 SCC (Civ) 456 : (2013) 3 SCC (Cri) 813] passed by this Court has not been complied with in its letter and spirit. In such circumstances, we direct that Sahara Group of Companies shall not part with any movable and immovable properties until further orders. We further direct that all the alleged contemnors shall not leave the country without the permission of this Court. List on 11-12-2013 at 2.00 p.m. for further arguments.

ORDER DATED 11-12-2013

14. Heard the counsel on either side. Following our orders dated 28-10-2013 [SEBI v. Sahara India Real Estate Corpn. Ltd., (2013) 9 SCC 331 : (2013) 4 SCC (Civ) 456 : (2013) 3 SCC (Cri) 813] , 1-11-2013 [See para 12, above.] and 21-11- 2013 [See para 13, above.] , Mr C.A. Sundaram, learned Senior Counsel, has taken us through Annexure-A, filed along with IA No. 82 of 2013, which gives details of various properties which the alleged contemnors have agreed to offer to SEBI. Reference

was specifically made to properties mentioned at Items 68, 69 and 70, which, according to Mr Sundaram, would fetch a value of more than Rs 11,000 crores.

15. Mr Arvind Datar, learned Senior Counsel appearing for SEBI, prayed for some time to verify the same as well as the valuation reports filed along with the IA in support of that prayer. However, he submitted that if it is the stand of the alleged contemnors that they had refunded the amounts (Rs 17,443 crores approximately in case of SIRECL and Rs 5442 crores approximately in case of SHICL), then they should produce the relevant records, duly certified by a competent authority which is acceptable in a court of law, indicating the sources from which they got the money for repayment, as requested vide SEBI's letter dated 28-5-2013.

16. Put up on 9-1-2014 at 2.00 p.m. ORDER DATED 9-1-2014

17. Heard the counsel on either side.

18. Mr C.A. Sundaram, learned Senior Counsel appearing for one of the alleged contemnors, submitted that earlier this Court on 11-12-2013 [See paras 14-16, above.] has only reiterated the submission made by Mr Arvind Datar, learned Senior Counsel appearing for SEBI, that they did not disclose the source from which they got money for repayment, despite SEBI's letter dated 28-5-2013. Mr Sundaram is right in his submission. However, we feel that it would be appropriate to give a direction of the nature stated above.

19. Accordingly, we direct the alleged contemnors to disclose the complete details and source from which they repaid the amount to the investors as also the manner of making payments. They shall also disclose the information which SEBI has sought from them from time to time. Such information shall be provided to SEBI and also be filed in this Court by 23-1- 2014.

ORDER DATED 28-1-2014

21. Heard Mr Ram Jethmalani, learned Senior Counsel and Mr Arvind P. Datar, learned Senior Counsel.

20. Put up on 28-1-2014 at 2.00 p.m. In the meantime, SEBI shall verify the information provided to it by the alleged contemnors.

22. Mr Datar submitted that the Saharas have not disclosed the details as to when the refund was made. Reference was made to pp. 6 to 9 of the reply-affidavit filed today. Mr Datar further submitted that SEBI requires an explanation from the Saharas with regard to the payments made on behalf of Sahara India Real Estate Corpn. Ltd. (SIRECL) (partnership firm) by the following firms, as mentioned below:

Rupees (in crores) 1 Sahara Credit Cooperative Rs. 13,366.18 Society Ltd.

2 Sahara India Commercial Rs. 4384.00 Corpn. Ltd.

3 Sahara Q Shop Rs. 2258.32 4 Ketak City Homes Ltd. Rs. 19.43 5 Kirti City Homes Ltd. Rs. 14.05

23. Similarly, SEBI requires the Saharas to show the following payments made on behalf of Sahara Housing Investment Corpn. Ltd. (SHICL) (partnership firm), by the following firms, as mentioned below:

Rupees (in crores) 1 SICCL Rs. 2479.00 2 Sahara Q Shop Rs. 2411.90

24. Further, the Saharas will also provide the bank statements of the above firms showing when the amount was paid to the partnership firms and subsequently, when and how partnership firm made the disbursement, as sought for by SEBI.

25. Mr Ram Jethmalani, learned Senior Counsel appearing for the respondents submitted that he will examine the same and come out with a response within a week.

26. Post on 11-2-2014 at 2.00 p.m. ORDER DATED 20-2-2014

27. Heard Mr Ram Jethmalani and Mr C.A. Sundaram, learned Senior Counsel appearing for the alleged contemnors and Mr Arvind P. Datar, learned Senior Counsel appearing for SEBI.

28. In view of the conflicting stands taken by the Senior Counsel appearing for the alleged contemnors and the defiant and non-cooperative attitude adopted by the contemnors in honouring the judgment dated 31-8-2012 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 1 SCC 1 : (2013) 1 SCC (Civ) 1 : (2013) 1 SCC (Cri) 257] , passed by this Court as well as orders dated 5-12-2012 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 2 SCC 733 : (2013) 1 SCC (Civ) 1259 :

(2013) 1 SCC (Cri) 1152 : (2013) 1 SCC (L&S) 452] and 25-2-

2013 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 2 SCC 738 : (2013) 1 SCC (Civ) 1264 : (2013) 1 SCC (Cri) 1156 : (2013) 1 SCC (L&S) 457] passed in Civil Appeal No. 8643 of 2012 and IA No. 67 of 2013 by a three-Judge Bench of this Court, we direct the personal presence of the alleged contemnors and the Directors of the respondent Companies in Court on 26-2-2014 at 2.00 p.m., on which date the matter will be next taken up.

ORDER DATED 26-2-2014

29. This Court passed an order on 20-2-2014 [See paras 27- 28, above.] directing the personal presence of the alleged contemnors and the Directors of the respondent Companies today i.e. on 26-2-2014 at 2.00 p.m. On our directions, Mr Ashok Roy Choudhary, Mr Ravi Shankar Dubey and Smt Vandana Bhargava are present in the Court today.

30. Even though, Mr Ram Jethmalani, learned Senior Counsel appearing for the alleged contemnors, made a mention yesterday i.e. on 25-2-2014, before this Bench for dispensing with the

personal presence of Mr Subrata Roy Sahara, alleged Contemnor 5, that request was specifically turned down by this Court.

31. Today, when the matter is taken up, the same request was made by Mr Jethmalani, by moving an application, which was supported by a medical certificate. The said medical certificate was issued by Sahara Hospital and, in our view, the factual position indicated therein does not solicit the exemption sought.

32. Since, we have already declined to grant exemption from personal presence of the alleged Contemnor 5 on 25-2-2014, we find no reason to accede to the renewal of the request made today. Accordingly, we issue non-bailable warrants of arrest qua Mr Subrata Roy Sahara, alleged Contemnor 5. He shall be arrested and produced before this Court on 4-3-2014 at 2.00 p.m. The aforementioned Directors, who are present today, shall also remain present in the Court on the next date. Put up on 4-3-2014 at 2.00 p.m. ORDER DATED 4-3-2014

33. The contemnors are personally present in the Court, including the fifth respondent, who has been brought to the Court by the U.P. Police, in due execution of our non-bailable warrant of arrest.

34. We have heard the Senior Counsel on various occasions and perused the various documents, affidavits, etc. We have heard the learned counsel and the contemnors today as well. We are fully convinced that the contemnors have not complied with our directions contained in the judgment dated 31-8-2012 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 1 SCC 1 : (2013) 1 SCC (Civ) 1 : (2013) 1 SCC (Cri) 257] , as well as orders dated 5-12-2012 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 2 SCC 733 : (2013) 1 SCC (Civ) 1259 :

(2013) 1 SCC (Cri) 1152 : (2013) 1 SCC (L&S) 452] and 25-2-

2013 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 2 SCC 738 : (2013) 1 SCC (Civ) 1264 : (2013) 1 SCC (Cri) 1156 : (2013) 1 SCC (L&S) 457] passed in Civil Appeal No. 8643 of 2012 and IA No. 67 of 2013 by a three-Judge Bench of this Court.

35. Sufficient opportunities have been given to the contemnors to fully comply with those orders and purge the contempt committed by them but, rather than availing of the same, they have adopted various dilatory tactics to delay the implementation of the orders of this Court. The non-compliance with the orders passed by this Court shakes the very foundation of our judicial system and undermines the rule of law, which we are bound to honour and protect. This is essential to maintain faith and confidence of the people of this country in the judiciary.

36. We have found that the contemnors have maintained an unreasonable stand throughout the proceedings before SEBI, SAT, High Court and even before this Court. The reports/analysis filed by SEBI on 18-2-2014 make detailed reference to the submissions, documents, etc. furnished by the contemnors, which indicates that they are filing and making unacceptable statements and affidavits all through and even in the contempt proceedings. The documents and affidavits produced by the contemnors themselves would apparently falsify their refund theory and cast serious doubts about

the existence of the so-called investors. All the fact-finding authorities have opined that majority of investors do not exist. Preservation of market integrity is extremely important for economic growth of this country and for national interest. Maintaining investors' confidence requires market integrity and control of market abuse. Market abuse is a serious financial crime which undermines the very financial structure of this country and will make imbalance in wealth between haves and have-nots.

37. We notice, on this day also, no proposal is forthcoming to honour the judgment of this Court dated 31-8-2012 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 1 SCC 1 : (2013) 1 SCC (Civ) 1 : (2013) 1 SCC (Cri) 257] and the orders passed by this Court on 5-12-2012 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 2 SCC 733 : (2013) 1 SCC (Civ) 1259 :

(2013) 1 SCC (Cri) 1152 : (2013) 1 SCC (L&S) 452] and 25-2-

2013 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 2 SCC 738 : (2013) 1 SCC (Civ) 1264 : (2013) 1 SCC (Cri) 1156 : (2013) 1 SCC (L&S) 457] by the three-Judge Bench. In such circumstances, in exercise of the powers conferred under Articles 129 and 142 of the Constitution of India, we order detention of all the contemnors, except Mrs Vandana Bhargava (the fourth respondent) and send them to judicial custody at Delhi till the next date of hearing. This concession is being extended towards the fourth respondent because she is a woman Director, and also, to enable the contemnors to be in a position to propose an acceptable solution for execution of our orders by coordinating with the detenus. Mrs Vandana Bhargava, who herself is one of the Directors, is permitted to be in touch with the rest of the contemnors and submit an acceptable proposal arrived at during their detention, so that the Court can pass appropriate orders.

38. List on 11-3-2014 at 2.00 p.m. All the contemnors be produced in Court on that date. Mrs Vandana Bhargava, the fourth respondent, to appear on her own. However, liberty is granted for mentioning the matters for preponement of the date if a concrete and acceptable proposal can be offered in the meantime.

ORDER DATED 13-3-2014

39. Shri Ram Jethmalani, learned Senior Counsel, appearing for the petitioner submitted that he has some inconvenience for tomorrow i.e. 14-3-2014 and cannot address arguments tomorrow. The learned Senior Counsel made a request that the matter be posted on 25-3-2014.

40. Consequently, the matter is posted on 25-3-2014 at 2.00 p.m., at the request of the learned Senior Counsel for the petitioner.

41. Prayer made by Mr Ram Jethmalani, learned Senior Counsel for the petitioner, for bail cannot be considered at this juncture, since no written proposal for payment in compliance with the directions issued by this Court has been made so far.

ORDER DATED 26-3-2014

42. We have gone through the fresh proposal filed on 25-3-2014. Though the same is not in compliance with our order dated 31-8-2012 [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 1 SCC 1 : (2013) 1 SCC (Civ) 1 : (2013) 1 SCC (Cri) 257] or the order passed by the three-Judge Bench of this Court on 5-12-2012 in Sahara India Real Estate Exchange Corpn. Ltd. v. SEBI [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 2 SCC 733 : (2013) 1 SCC (Civ) 1259 : (2013) 1 SCC (Cri) 1152 : (2013) 1 SCC (L&S) 452] and on 25-2-2013 in Sahara India Real Estate Corpn. Ltd. v. SEBI [Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 2 SCC 738 : (2013) 1 SCC (Civ) 1264 : (2013) 1 SCC (Cri) 1156 : (2013) 1 SCC (L&S) 457], we are inclined to grant interim bail to the contemnors who are detained by virtue of our order dated 4-3-2014 [See paras 33-38, above.], on the condition that they would pay the amount of Rs 10,000 crores, out of which Rs 5000 crores to be deposited before this Court and for the balance a bank guarantee of a nationalised bank be furnished in favour of SEBI and be deposited before this Court.

On compliance, the contemnors be released forthwith and the amount deposited be released to SEBI.

43. We make it clear that this order is passed in order to facilitate the contemnors to further raise the balance amount so as to comply with the Court's orders mentioned above. Court Masters..."

57. Perusal of the above makes it clear that it would not be impermissible under the law to consider the aspect of grant of regular bail in order to allow the accused applicants to revive the CSL in furtherance to the completion of the pending projects.

58. Imperatively, the applicants were released on interim bail by the order of the Predecessor Bench of this Court to allow them to explore the possibilities towards the revival. Relevant portion of the order dated 22nd November, 2023 is as under:

"...5. Present applications are essentially predicated on an order dated 24.08.2023, passed by the Company Court where the Court has taken note of the submissions of the Applicants, who were produced in Court, that they had earlier filed Schemes for revival, which were rejected and that they wish to file a fresh Scheme for revival of the Company. Court has also taken note of a Scheme of Arrangement filed on behalf of CVA and Members of Assets Revival Society. Copy of the order has been filed with the application and relevant paragraphs relied upon by the Applicants read as under:-..... ***

6. It is the case of the Applicants as argued by the learned Senior Counsel appearing on their behalf that it is a common ground between the Company and the investors that liquidation of the Company is not in the interest of the investors as substantial amounts have been invested by them in residential/commercial projects proposed by the Company and this fact is also noted by the Company Court in the order dated 24.08.2023. Applicants have made persistent efforts to revive the Company so that the projects can be completed. It is urged that in view of the order passed on 24.08.2023, Applicants be enlarged on interim bail for a period of four weeks so that

effective steps can be taken towards revival Schemes in order to save the Company from liquidation. Since the Applicants are in judicial custody, this is hampering the finalisation of revival Schemes. It is further argued that the Applicants were granted interim bail in the past but have never misused the liberty or violated any condition of grant of bail and that the Applicants undertake that every effort will be made in four weeks towards revival of the Company and no extension of bail shall be sought beyond a period of four weeks from the date of release, if this Court releases the Applicants on interim bail for the limited purpose of revival of the Company.

7. Learned Senior Panel Counsel appearing on behalf of the Respondent candidly shares the concern regarding the interest of the investors who have infused substantial amounts out of their savings in the proposed projects and submits that he cannot have any objection against the Applicants taking sincere steps towards revival of the Company. He, however, submits that in case the Court is inclined to grant interim bail for this limited purpose to the Applicants, it should be without prejudice to the rights and contentions of the Respondent on the merits of the matter and with a caveat that the Applicants be bound by their undertaking that they shall not seek extension of the bail, if granted and the order passed by this Court should not affect the hearing on the regular bail applications, as the allegations against the Applicants are very serious.

8. I have heard the learned Senior Counsel for the Applicants and learned Senior Panel Counsel for the Respondent. From a reading of the averments in the applications, orders passed by the Company Court in Company Petition No. 152/2016, from time to time, including the order dated 24.08.2023, it emerges that various revival Schemes have been offered, but so far nothing has fructified. There can be no gainsaying that liquidation of the Company will not be in the interest of the investors and therefore, the Company Court has passed directions to the propounders of the Schemes to file the Schemes on record giving necessary details as enumerated in the order. Interim bail is sought by the Applicants with the objective of reviving the Company to save it from going into liquidation as well as to revive the real estate projects. Looking at the reason for seeking interim bail and in the interest of investors and without prejudice to the rights and contentions of the respective parties on the merits of the present matters and the allegations against the Applicants, this Court directs that the Applicants be released on interim bail for a period of four weeks from the date of release, subject to the following conditions:-.....

59. This Court is well cognizant of the fact that the Courts ought to bear in mind that in a matter of regular bail under Section 439 of the CrPC (now Section 483 of the BNSS), the larger interest of the State must be taken into consideration. Further, a sensitive approach is required to be acquired by the Courts while dealing with the offences constituting economic offences which are increasing plight of this nation as the same impacts the individual roots of the society which is a common man, ultimately leading to minimize the trust of the public in law.

60. However, it is imperative to state that it is upon the judicial discretion of the Courts while granting or refusing a bail application and the said discretion shall be exercised with regard to the facts and circumstances of each case. Thus, while considering the allegations leveled against an accused, the Courts shall, at the same time, adhere to the settled principle with regard to "bail is a rule and jail is an exception", which has been time and again emphasized by various Courts. Therefore, if a Court on merits deems it fit to release an accused on bail, withholding the aforesaid relief will amount to be considered as a punishment.

61. For the purpose of dealing with the merits of a bail application, a conjoint emphasis upon various factors is required to be looked upon, such as the nature of accusation of offence, the severity of punishment in the matter, the stage of trial, the probability of tampering or threatening the witnesses, likelihood of absconding as well as the conduct of the accused in each case.

62. As mentioned earlier, the fundamental postulate that "the grant of bail is rule and the refusal is an exception", has been elaborately and lucidly explained in a catena of judgments such as *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 and *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791, wherein, it was held as under:

"...23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial..."

63. Furthermore, the Allahabad High Court has also emphasized the aforesaid legal principle in *Peeyush Kumar Jain v. Union of India*, (2022) 121 ACC 448, by stating that it is not advisable to categorize all of the economic offences into one group and deny bail on that basis. It was held therein that one of the key factors to determine the gravity of the offence is the term of the sentence that has been prescribed under the provision of offence. The factors that cumulatively affect the grant of bail in an offence, have been listed in the aforementioned judgment as follows:

"..31. While considering the prayer for grant of bail in any offence, including an economic offence, the Court has to consider:--

(i) the nature of accusation and the severity of the punishment to which the party may be liable in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations..."

64. Thus, it is the judicial discretion of a Court to allow a bail application of an accused charged with non-bailable offences. However, in the instant case, this Court, before proceeding to the conclusion, must deal with the satisfaction of twin conditions given under Section 212(6) of the Companies Act. The relevant portion of the said provision is as under:

"212. Investigation into affairs of Company by Serious Fraud Investigation Office.--

(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office-- *** (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 1 [offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by--

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government..."

65. Section 212(6) of the Companies Act imposes twin conditions for granting bail to accused persons in cases involving serious frauds investigated by the SFIO. These conditions are, that an offence covered under Section 447 of the Companies Act shall be cognizable and no person accused thereof shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release and where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he not likely to commit an offence while on bail.

66. Therefore, this Court must be satisfied that there are reasonable grounds for believing that the applicants are not guilty of the offence alleged against them and that they are not likely to commit any offence while on bail.

67. In the present case, this Court, while refraining from adjudicating on the merits of the allegations, observes that the applicants have made bona fide efforts to revive the projects and safeguard the interests of the investors. The said actions not only reflect their intent to rectify the consequences of the alleged offences rather than perpetuating fraudulent activities, but also prima facie satisfies this Court that there are reasonable grounds to believe that the applicants might not be guilty of the offences and they are not likely to commit any offence while on bail as they have sought bail so that they may make efforts towards revival of the CSL and complete the pending projects.

68. The applicants' efforts to secure revival schemes and their active engagement with investors and developers to complete pending projects indicate that they are working toward a resolution rather than any furtherance of criminality.

69. The revival schemes, particularly the infusion of funds by third parties and the contention of submission of bank guarantees, signify the applicants' focus on addressing investor grievances. This Court is thus satisfied that granting bail will prima facie not create a risk of commission of any other offence, as the applicants, who have spent more than 2 years in custody, are unlikely to jeopardize the pending revival process which is their bone of contention to seek bail.

70. In view of the above, this Court holds that the applicants meet the twin conditions under Section 212(6) of the Companies Act and their release on bail would serve the larger public interest without

compromising the ongoing legal proceedings.

71. During the course of arguments, the learned CGSC has also argued that the applicant is already enlarged on interim bail, therefore, for the adjudication of the present regular bail applications, the applicant ought to surrender first.

72. In view of the abovesaid argument, this Court has referred to the various judgments and has arrived to the conclusion of „constructive custody“ in context of interim bail. Constructive custody can be referred to a legal state where an individual, even though not physically confined in actual custody/jail, remains under the control and supervision of the investigating agencies. Further, an accused, released on interim bail, is considered to be in constructive custody as his liberty is conditional and subject to final judicial orders on the question of grant of bail in view of the peculiar facts and circumstances of the case concerned.

73. The contention of the learned CGSC that the applicant must surrender before adjudication of the regular bail application overlooks the settled legal position on constructive custody.

74. In the case of *Manish Jain v. Haryana State Pollution Control Board*, (2020) 20 SCC 123, the Hon ble Supreme Court has categorically observed that a person released on bail is already in the constructive custody of law. Furthermore, in a recent judgment titled *Bhaskar Takri v. State of Odisha*, 2024 SCC OnLine Ori 2190, the Orissa High Court, while citing earlier judgments of the Hon ble Supreme Court observed that in terms of the settled position of law „an accused who has been released on interim bail is deemed to be in constructive custody of the Court“. The relevant portion of the same is as under:

"..23. It is trite that in the face of express remedy, the power under Section 482 Cr. P.C. is not to be exercised. But in the factual matrix of the case at hand when the accused have been remanded even in the face of an order of anticipatory bail being granted by this Court, on a fallacious interpretation of the order and oblivious of the law governing the field, this Court is of the considered view that self-imposed embargo ought not to deter this Court from exercising its inherent jurisdiction to sub- serve justice.

24. As such the objection of the learned counsel for the vigilance regarding maintainability is negated.

25. In the case at hand, the Petitioners were released on interim bail, as already stated.

26. Hence, the other issue which arises for consideration is as to whether the Petitioners have to surrender before the learned Court below, to be released on bail. In the humble view of this Court, law in this regard is no longer *res intergra* inasmuch as, in the case of *Sundeeep Kumar Bafna v. State of Maharashtra*, (2014) 16 SCC 623, there has been a detailed analysis of the connotation of the word "custody".

27. The word custody has not been defined in Cr. P.C. Yet there is no cavil that the accused who has been released on interim bail is deemed to be in the constructive custody of the Court in seisin. In this context, it is apposite to refer in the judgment of the Apex Court in the case of Sundeep Kumar Bafna (Supra). Wherein, the Apex Court quoted with approval its earlier judgment in the case of Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 and that of Niranjana Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559;

"xxx xxx xxx

48. Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused persons into custody and deal with him according to law. Needles to emphasise that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words „custody and "arrest"

are not synonymous terms. Though „custody may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequence, vide Roshan Bevi.

49. While interpreting the expression „in custody within the meaning of Section 439 CrPC, Krishna Iyer, J. speaking for the Bench in Niranjana Singh v. Prabhakar Rajaram Kharote observed that : (SCC p.563, para 9) „9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions. "

(emphasis supplied) If the third sentence of para 48 is discordant to Niranjana Singh, the view of the coordinate Bench of earlier vintage must prevail, and this discipline demands and constrains us also to adhere to Niranjana Singh, ergo, we reiterate that a person is in custody no sooner he surrenders before the police or before the appropriate court.

XXX XXX XXX"

(Emphasis added by this Court)

28. Hence, on the touchstone of the authoritative pronouncement of the Apex Court in the case of Sundeep Kumar Bafna (Supra), it is held that by virtue of the interim bail granted, Petitioners are deemed to be in the constructive custody of the Court in seisin and since for reasons already stated,

the impugned order is set-aside, the interim order is made absolute till the conclusion of trial on the terms fixed, while releasing the Petitioners..."

75. In the instant case, the applicants, though enlarged on interim bail, remains under judicial supervision and is complying with the conditions imposed by the Court. This can be termed to be constructive custody, thereby, fulfilling the necessary legal requirements for considering the regular bail applications as the applicants have not misused any bail conditions and they have been appearing regularly before this Court, through counsel. Furthermore, the respondent has not made any submission stating to the effect that the applicants have violated the interim bail conditions.

76. Therefore, this Court is of the considered view that directing the applicant to first physically surrender and then proceeding with the adjudication of the instant regular bail applications would not serve any substantial purpose and accepting the argument of the respondent might hinder the applicants' ongoing pending efforts to resolve the grievances of the investors by implementing the proposed revival schemes.

77. In view of the above, it is held that the applicants shall be deemed to be in constructive custody and the same is sufficient for the purpose of deciding the captioned regular bail applications. Additionally, the applicants are not required to surrender physically.

78. Therefore, at this stage, for assessing whether an accused is fit for the grant of bail involves numerous factors and this Court is not required to examine the evidence qua the offences available on record, to establish the conviction of the petitioner, rather, it needs to delve into the aspect that whether the continued custody of the applicants serves any purpose for the adjudication of the matter pending before the learned Trial Court.

79. In light of the aforesaid facts and circumstances, this Court is of the view that ensuring the relief to the investors by facilitating the recovery or arrangement of funds is paramount. Applying this rationale to the present facts, the applicants have demonstrated consistent and bona fide efforts to revive the projects of CSL and safeguard the interests of the investors.

80. From the material on record, it is evident that the liquidation of the company would not be in the investors' interest, as substantial investments have already been made in the pending projects. The applicants' revival schemes, including collaborations with third parties and proposals for bank guarantees, signify a sincere attempt to address the grievances of the affected investors and homebuyers. Additionally, the applicants' judicial custody has impeded their ability to effectively negotiate and implement these revival schemes.

81. Given that the primary objective of this Court should be to ensure relief for the aggrieved investors, granting bail to the applicants would facilitate their active participation in finalizing and executing the revival plans.

82. It is apposite to state here that this Court is conscious of the fact that given the gravity of the offence alleged and seriousness of the investigation that is required to unearth the truth, the

applicants must be subjected to the investigating process without letting the said process be impeded in any manner. Thus, it is noted that this decision does not prejudice the merits of the ongoing criminal proceedings but merely seeks to prioritize the larger public interest of enabling the completion of the pending projects and providing relief to the investors.

83. At last, it is observed by this Court that in the present complaint, the applicant was arrested on 16th August, 2021 and thereby, he has been in custody for 2 years 3 months and 8 days as on 24th November, 2023 as per the submissions made.

84. Further, the last of hearing before the learned ASJ was 17th December, 2024 for the purpose of appearance of the Official Liquidator, scrutiny of documents and further proceedings. Therefore, although the present criminal complaint was filed on 14th October, 2021, the trial of the matter has not yet started and the matter is still at the stage of summoning and scrutiny of documents which is at a nascent stage.

85. Moreover, from the above facts and the documents presented before this Court including the perusal of the Lower Court's Record in complaint bearing no. CC/1313/2021, it is likely that the conclusion of the trial of the said complaint will be delayed, owing to which the applicant will be in judicial custody for an undetermined period of time. There is no doubt that the investigation will take place sometime and the trial will take further time in completion in view of the documentary evidences and multiple witnesses.

86. Admittedly, the applicant has already served a period of more than 2 years in judicial custody in connection with the said complaint wherein the offences that have been alleged against the applicants have maximum punishment of 10 years.

87. Further, no submission has been advanced by the learned CGSC that the applicants, when released on interim bail, violated or misused the conditions imposed upon them. Additionally, the nominal roll filed on record also state that the conduct of the applicants has remained satisfactory in the jail.

88. Furthermore, while granting interim bail to the instant applicants, in paragraph no. 7 of the order dated 22nd November, 2023, it was noted that the respondent candidly shares the concern regarding the interest of the investors who have infused substantial amounts in the projects of the CSL, of which the applicants are ex-directors/ex-promoters. It was further submitted before the Court that he has no objection against the applicants taking efforts towards revival of the Company. The relevant portion of the said order is as under:

"..7. Learned Senior Panel Counsel appearing on behalf of the Respondent candidly shares the concern regarding the interest of the investors who have infused substantial amounts out of their savings in the proposed projects and submits that he cannot have any objection against the Applicants taking sincere steps towards revival of the Company. He, however, submits that in case the Court is inclined to grant interim bail for this limited purpose to the Applicants, it should be without prejudice

to the rights and contentions of the Respondent on the merits of the matter and with a caveat that the Applicants be bound by their undertaking that they shall not seek extension of the bail, if granted and the order passed by this Court should not affect the hearing on the regular bail applications, as the allegations against the Applicants are very serious..."

89. Therefore, in light of the principles laid down by the Hon ble Supreme Court for grant of regular bail and the decision rendered in SEBI v. Sahara India Real Estate Corporation Ltd., (Supra), this Court is inclined to grant bail to the applicants.

90. The address given by the petitioner has been verified by the respondent and found to be correct. Therefore, keeping in view the contentions advanced by the learned counsel for the parties, the observations made hereinabove and the interest of the investors/homebuyers/allotees, this Court is inclined to allow the captioned applications seeking regular bail.

91. It is accordingly directed that both the applicants be released on regular bail on them furnishing personal bonds in the sum of Rs.10,00,000/- (Rupees Ten Lakhs only) with two sureties of like amount each to the satisfaction of the Investigating Officer/Court concerned in complaint bearing no. CC/1313/2021 subject to the conditions as follows:-

(a) the applicants shall deposit their respective passports with the Court concerned and they shall under no circumstances leave India without prior permission of the Court concerned;

(b) the applicants shall appear before the Investigating Officer/Court concerned as and when required;

(c) the applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and the applicants shall not tamper with the evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;

(d) the applicants shall provide his mobile number(s) and keep it operational at all times;

(e) the applicants shall commit no offence whatsoever during the period he is on bail;

(f) in case of change of residential address and/or mobile number, the same shall be intimated to the Court concerned by way of an affidavit;

(g) the applicants shall report to the concerned jurisdictional Police Station twice a week, i.e., on every Monday and Friday post their release; and

(h) the applicants shall make all efforts for the implementation of the revival scheme of the CSL and its projects, duly approved by the Court concerned, to make good the investors/homebuyers/allotees.

92. Accordingly, the instant regular bail applications stand disposed of. Pending applications, if any, stand disposed of.

93. Copy of this order be sent to Jail Superintendent for compliance.

94. It is made clear that any observations made hereinabove, touching merits of the case, are purely for the purpose of deciding the question of grant of regular bail by this Court and shall not be construed as an expression of final observations in the proceedings pending before Trial Court.

95. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J DECEMBER 23, 2024 rk/ryp/av Click here to check corrigendum, if any