

ITEM NO.11

COURT NO.11

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.940/2017

BIKRAM CHATTERJI & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

WITH

IA No.148953 of 2018 in Writ Petition (Civil) No.942 of 2017 -
Application for clarification and further directions) - LISTED

Date : 11-10-2018 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr. M.L. Lahoty, Adv.
Mr. Anchit Sripat, Adv.
Mr. Himanshu Shekhar, AOR

For Applicant(s) Mr. Alok K. Aggarwal, Adv.
Mr. Gaurav Goel, Adv.
Mr. Apoorv Rastogi, Adv.
Mr. Manoj Kumar, Adv.
Mr. Gaurav Goel, AOR

For UOI &
Delhi Police: Mr. Vikramjit Banerjee, ASG
Ms. V. Mohana, Sr. Adv.
Mr. S.S. Shamsbery, Adv.
Mr. Vibhu Shanker Mishra, Adv.
Mr. Mukul Singh, Adv.
Mr. Arvind Kumar Sharma, AOR
Ms. Anil Katiyar, AOR
Mr. B.V. Balaram Das, AOR

For NOIDA Authority Mr. Vishnu Sharma, AOR
Ms. Anupama Sharma, Adv.
Ms. Sonali Negi, Adv.

For GR. NOIDA Mr. Ravindra Kumar, Adv.

For NBCC

Ms. Binsy Susan, Adv.
Ms. Neha Sharma, Adv.
Mr. Shardul S. Shroff, Adv.
M/s. Shardul Amarchand Mangaldas

Ms. Mahalakshmi Pavani, Sr. Adv.
Mr. G. Balaji, AOR
Shiva Vijaya Kumar, Adv.

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

IA No.148953 of 2018 in Writ Petition (Civil) No.942 of 2017

In pursuance of our order dated 10.10.2018, seven premises at NOIDA and Greater NOIDA, as stated in said order, have now been sealed. We are also given to understand that other two premises situated in Rajgir and Buxar (Bihar) have also been sealed. The police officials who sealed the premises at Rajgir and Buxar shall transmit the keys of the sealed premises to the Registrar of this Court. The keys in respect of seven premises of NOIDA and Greater NOIDA which were sealed are presently with the Registrar of this Court. All the keys shall be handed over to the Forensic Auditors.

We had the benefit of hearing Mr. Ravinder Bhatia and Mr. Pavan Kumar Aggarwal, the forensic auditors appointed by this Court. Both the auditors have stated that the documents in respect of 46 companies for the last 10 years have not been kept in proper manner. There is no filing system and documents are lying in completely scattered fashion and disorganized manner. The forensic auditors submitted that it would be impossible for them to go through the process of forensic audit unless the documents are put in a systematic manner and catalogued properly.

Therefore, the first task which needs to be undertaken is to have the documents correctly categorized and catalogued. The persons who are in the know of the entire process of documentation and the way the documents are maintained are the applicants and their staff. At the same time, we must also ensure that the documents which are presently lying in custody are not secreted away.

We, therefore, issue following directions:

- A. All three applicants and such number of personnel from their companies as these applicants deem proper must render complete assistance and see to it that all the documents are properly categorized and catalogued.
- B. For effecting such process, the applicants shall remain personally present for next 15 days right from 0800 hours to 1800 hours everyday.
- C. The concerned Police Officer, namely, Station House Officer, Police Station Sector 58, NOIDA, District Gautam Budh Nagar shall personally supervise and see to it that the seals are opened at 0800 hours and the premises are again resealed at 1800 hours everyday.

During the entire course, there will be at least two police persons on guard in the day time and one police person in the night to guard each of the sealed premises.

- D. We request the Forensic Auditors to depute such representatives (as they deem proper) who will personally supervise the operation of cataloguing.

- E. After the process is over in one sealed premises, the team may move to the other premises but at no given point of time, more than one premises will be de-sealed.
- F. At the end of the day, the operation for the day will be brought to the notice of the forensic auditors who, going by the nature of the progress, may guide the team as to what shall be the course of action for the next day. It would naturally be open to the forensic auditors to keep revising the nature of documents required by them.
- G. This process shall go on till the Forensic Auditors are satisfied that all the documents required for forensic audit are supplied to them.
- H. Till this process is over, the keys of the sealed premises shall be with the Forensic Auditors.
- I. The Forensic Auditors shall consider the feasibility of transferring the record which stands sealed from Rajgir and Buxar to any of the sealed places in NOIDA or Greater NOIDA so that attention gets focussed. The Forensic Auditors may themselves, or their representatives may visit Rajgir and Buxar to have first hand assessment in that behalf. If they do not consider it feasible to transfer the record, similar directions will have to be issued to the concerned police authorities in Rajgir and Buxar.
- J. If it so facilitates, the Forensic Auditors may consider having the record kept at such place(s) instead of being kept at number of places, as they deem appropriate.

We request the internal auditors, the external auditors and the CFO who had worked with 46 companies in question to render complete assistance in this operation.

We see force in the submission of Mr. Alok Aggarwal, learned counsel appearing for the applicants that during the course of this operation, the applicants need not be kept in the police station or in police lock up in the night. He has suggested a place where these applicants, after the operation for the day is over, can be allowed to stay. According to him, Hotel Park Ascent, Sector 62, NOIDA, shall be the place where these applicants can be housed till the operation is over.

We direct the Superintendent of Police, NOIDA, district Gautam Budh Nagar to ensure that these three applicants, after the operation is over for the day, are brought to the abovementioned Hotel Park Ascent for overnight stay and again taken next morning from the same place for the operation(s) of that day.

These three applicants shall not be allowed any access to any mobiles or telephones or the facility of meeting anyone without the express authorization by the Police and shall always remain under the watchful eye of the police personnel. Only after the operation for the day begins, the applicants can have the benefit of access to mobiles and such means of telecommunication which will further the entire operation.

The forensic auditors also submitted that after the documents are catalogued and proper presentation is available, it will be possible for them to complete the task within 50 days thereafter. We have been given to understand by the applicants that the first

phase of tasks, namely, completing the cataloguing part should take about 10 to 15 days. Therefore, we can expect that the task of forensic auditing shall be over in about 10 weeks time from today.

In its order dated 09.10.2018, this Court had made a *prima facie* observation that the applicants had violated the orders of this Court and had obstructed the course of justice. The order further recited why the applicants, the companies and their directors should not be prosecuted for contempt of court. We, therefore, issue formal notice and direct the Registry to register a separate cause as "Suo Motu Contempt" and the matter shall be listed on 20.11.2018. Mr. M.L. Lahoty, learned Advocate invited our attention to the Compliance Affidavit presented before this Court on 09.10.2018 to submit that incorrect and false statements were made to obstruct the course of justice. This point shall also be looked into while considering whether contempt is made out or not.

On 09.10.2018, this Court had also directed that a sum of Rs.20 lakhs be made over to each of the forensic auditors and account number was also specified in the order. The Registrar of this Court is directed to issue appropriate communication to the bank, namely, IndusInd Bank, Sector-51, NOIDA so that the monies could be disbursed from Account No.201002234299 (IFSC Code INDB0000276) of Amrapali Hospitality Services Pvt. Ltd. in favour of the forensic auditors. Bank details of the forensic auditors are given hereunder:

<u>Name(s)</u>	<u>Bank Details</u>
1. Mr. Ravinder Bhatia	Bhatia and Bhatia HDFC Bank 44, Deenar Bhawan, Branch: Nehru Place New Delhi A/c No.13762020002118
2. Mr. Pavan Kumar Aggarwal	Kotak Mahindra Bank Branch: Nehru Place New Delhi A/c No.5111611060

Since the presence of these three applicants is absolutely essential to complete the task, in case their presence is otherwise required in connection with any other proceedings during this period, on the strength of this order, an appropriate relief of exemption can be sought for by the applicants.

We are informed that the proceedings before the DRT, Delhi in pursuance of the order passed by this Court are fixed on 15.10.2018 and the applicants were called upon to give details of properties and other relevant information. Since the presence of the applicants would be required for the current operations, we allow their representative Mr. Manoj Singh, Advocate to place all the relevant information and documents before the DRT, Delhi on 15.10.2018.

As the entire sealing operation, which was a matter of exigency, has now been completed, Delhi Police has already released the applicants. The applicants shall remain personally present on 12.10.2018 at 8'0 clock in the office of the Station House Officer, Police Station Sector 58, NOIDA, District Gautam Budh Nagar, whereafter the operations as detailed hereinabove shall begin.

List this matter with main matter on 24.10.2018.

(MUKESH KUMAR)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER