



2024:DHC:5750



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th JULY, 2024

IN THE MATTER OF:

+ **CRL.M.C. 1557/2022 & CRL.M.A. 6691/2022**

AJAY KUMAR

.....Petitioner

Through: Mr. Rajesh Anand, Ms. Nidhi Gaur,
Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Shoaib Haider, APP for the State
Insp. Anand Pratap Singh, PS EOW

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking quashing of FIR No.06/2018, dated 09.01.2018, registered at Police Station Economic Offences Wing, for offences under Sections 406/420/120B IPC, and the charge-sheet filed in the said FIR and all the criminal proceedings emanating therefrom.
2. The facts of the case reveals that the Petitioner herein was one of the Directors of M/s Ultra Home Construction Pvt. Ltd., which is the holding company of Amrapali Group of Companies, which is a real estate company engaged in construction of housing projects in Delhi NCR. It is stated that the Petitioner herein was also inducted as Director in some of the subsidiaries of M/s Ultra Home Construction Pvt. Ltd. It is stated that in 2011 in Noida and Greater Noida various real estate projects for housing



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were started and in various projects, the Amrapali Group of Companies proposed to construct approximately 42,000 flats. Various brochures were published and it was assured that the delivery of possession shall be made in 36 months and other world-class amenities were also promised. disputes arose between home buyers and the company due to delay in construction. The Apex Court in a batch of Writ Petitions in Bikram Chatterji v. Union of India, (2019) 19 SCC 161, while considering the allegations of defalcation of money started looking into the complaints. The Petitioner herein was taken into custody on 26.04.2019. A forensic audit was ordered and the report of the forensic audit was submitted in the Apex Court and the charge-sheet was filed on 24.06.2019 against the Petitioner herein and others. The Petitioner has approached this Court contending that there is no allegation against him either in the FIR or in the charge-sheet and that he has not been named in the Charge-sheet for having committed any defalcation of money and he was not instrumental in siphoning off the money of the home buyers.

3. Notice in the present Petition was issued on 11.04.2022. Status Report has been filed.

4. Learned Counsel for the Petitioner states that the Petitioner was a Director of the Amrapali Group of Companies from 2013-16. He states that the investigation started in 2018, i.e. after the Petitioner has retired as a Director. He further states that a reading of the FIR and the charge-sheet shows that the Petitioner has not been named in the FIR and the charge-sheet. He, therefore, states that the proceedings against the Petitioner must be quashed.

5. During the course of hearing, the Investigating Officer, who was assisting the learned APP for the State instructed the learned APP to submit



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that the Petitioner has not been named either in the FIR or in the charge-sheet and that there is no allegation against the Petitioner. The matter was heard and the Judgment was reserved on 11.07.2024.

6. While dictating the Judgment, this Court found that there were allegations in the forensic audit report against the Petitioner. Accordingly, the matter was put for re-hearing on 19.07.2024.

7. On 19.07.2024 it was stated by the learned Counsel for the Petitioner that the correctness or otherwise of the forensic report is under consideration before the Apex Court until and unless a finality is attained in the said matter, nothing can be attributed to the Petitioner herein.

8. In Bikram Chatterji supra, the Apex Court has held that various homebuyers booked their apartments in the Amrapali Group of Companies during the period 2010-2014 by signing the standard form of allotment-cum-flat buyers agreement and even after payment of 40 to 100% of total consideration, they were faced with the threat of forfeiture of huge booking amount. The Apex Court further took cognisance of the fact that there was hardly any progress in construction of the apartments and the home buyers had invested their life savings and had also taken loans from the banks. Contending that approaching the NCLT would not be an efficacious remedy, the Home Buyers approached the Apex Court directly and the Apex Court started looking into the matter. The forensic report was filed before the Apex Court. Instead of going into the forensic report, this Court is confining itself to the role attributed to the Petitioner herein in the forensic report and the same reads as under:

“60. The summary of report submitted by forensic auditors in the Court is as under:



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9. Misuse of funds by Directors involved in scam

The Directors and executives colluded with each other and diverted homebuyers funds. Directors received huge amount of money in the form of salary as well as professional fee, both together. A person could have been either in whole-time employment of the company or render services as consultant. However, a person cannot enjoy salary income and earn professional income at the same time and also both cannot be earned at the same time from same company. But Directors of Amrapali Group withdrew sums using all possible ways, be it salary, professional fee, reimbursement of expenses, use of luxury cars or loans and advances to self/relatives/self-controlled entities/trusted partners or booking of bills of self-controlled entities/trusted partners.

Further professional fee was booked without any agreement or proof of service. It had no correlation with the amount of work done by the Directors. Professional fee was booked as per wish and desire of Directors and did not have any fair basis. There were standing instructions to transfer company funds to the individual Directors bank accounts when the balance was reaching to the specified set minimum balance limit.

The professional fee paid to the Directors, relatives of Directors, and senior managers was a unique way of diverting money. Huge amounts were paid without any agreements at the whims and fancies of the Directors and managers. Moreover it was tax free and the tax liability was discharged by another group company. The whole of professional fee received by the Directors (as stated hereunder) is recoverable from them. (Vol.



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II, pp. 416-17).

<i>Name of director</i>	<i>Professional fee received (as per affidavit)</i>
<i>Anil Kumar Sharma</i>	<i>29,13,23,580</i>
<i>Shiv Priya</i>	<i>26,43,64,571</i>
<i>Ajay Kumar</i>	<i>5,76,90,240</i>
<i>Suvash Chandra Kumar</i>	<i>5,11,21,752</i>
<i>Amresh Kumar</i>	<i>68,11,110</i>
<i>Total</i>	<i>67,13,11,253</i>

Professional fee was underdisclosed to the tune of Rs 33.4 crores (Anil Kumar Sharma 8.75 cr + Shiv Priya 24.65 cr) in affidavits filed on 3-12-2018 (Vol. II, pp. 414-15). The difference was found from the affidavit file and the tax returns.

It shall be noted that Directors did not share company-wise receipts in the affidavit and also books of accounts of Directors were not provided.

Directors along with their trusted partners and relatives cheated and did criminal breach of trust with the homebuyers. They transferred the funds from the projects to the companies which were closely held by the Directors, their family members and/or by their trusted associates. The objective was to create assets in the closely held companies and leave the homebuyers on the road. For example, Eklavya Building Solutions Pvt. Ltd. acquired property in Goa amounting to is Rs 2 crores through funds received from Amrapali Group, 27 other companies further invested Amrapali funds in Amrapali projects (for example, many flats in IT Park at Greater Noida).

The Directors spent homebuyers funds on wedding of daughter of Director, foreign travels, expensive



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watches, jewellery, purchasing luxury cars for use by Directors. The homebuyers funds were also used for investment in mutual funds, creating personal properties, payment of housing loans, investment in shares & securities. The Directors created discreet projects for personal income for example in the name of Amrapali Hospitality, a hotel at Deogarh was constructed out of funds received from homebuyers without their knowledge of it. They used homebuyers funds in the form of construction of assets for other projects, example, constructed mall at Muzzafarpur, Bareilly, etc., hotel at Deogarh, Bareilly, hospital at Noida, etc.

Few particulars of diversion of funds received from Amrapali Group are as under:

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xxx

By Ajay Kumar

<i>Yogesh Chand</i>	<i>25,00,000</i>
<i>Transferred to Sweep Account</i>	<i>1,33,00,000</i>
<i>Ozone GSP Infratech</i>	<i>50,00,000</i>
<i>Quality Synthetic Industries Ltd.</i>	<i>40,00,000</i>
<i>Investment in mutual funds</i>	<i>2,25,00,000</i>
<i>Payment of housing loan for IRS Colony, Abhay Khand, Indirapuram</i>	<i>56,31,000</i>
<i>Payment of housing loan for Pelican Villa Jaypee Green</i>	<i>37,55,784</i>
<i>Payment for LIC</i>	<i>2,56,53,384</i>



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Total	8,23,40,168
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Instances of misuse of funds are hereunder:

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Ajay Kumar

1. Mr Ajay Kumar received funds from Amrapali Group of Companies which was used for acquiring personal properties, as stated hereunder:

(a) Property located at Plot No. A-014 Savanna Villas, Jaypee Greens Sector 128, Noida; the property was not disclosed in affidavit submitted on 3-12-2018—(Housing loan was paid for this property out of amount received from Group companies).

(b) Property located at IRS Colony, Abhay Khand, Indirapuram, Ghaziabad—Rs 1.38 crores.

(c) Property located at Plot No. A-014, Pelican Villa Jaypee Green Noida 201301—Rs 1.11 crores.

2. Mrs Seema Kumari (wife of Ajay Kumar) made investments in different mutual funds amounting to Rs 2.25 crores out of amounts received from Amrapali Group of Companies during August to September 2018.

3. Mr Ajay Kumar made investments in life insurance policies of Rs 2.59 crores out of amounts received from Amrapali Group of Companies.

4. Mr Ajay Kumar made payment of Rs 1.25 crores to following third parties out of amounts received from Amrapali Group of Companies.

(a) Yogesh Chand : Rs 25,00,000



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(b) *Ozone GSP Infratech : Rs 50,00,000*

(c) *Quality Synthetic Industries Ltd. : Rs 50,00,000*

5. *Mr Ajay Kumar made investment of Rs 1.12 crores in Ultra Home Construction as share capital out of amounts received from Amrapali Group of Companies.*

6. *Mr Ajay Kumar made payment of direct tax of Rs 0.11 crore out of amounts received from Amrapali Group of Companies.*

7. *Mrs Seema Kumari holds mutual funds with HDFC mutual funds Folio No. 14756739/01, which have market value amounting to Rs 0.48 crore as on 28-2-2019.*

8. *Bank statement of Anandi Singh of IndusInd Bank Account No. 150019032006*

A sum of Rs 1.73 crores has been transferred from

<i>Date</i>	<i>Particulars</i>	<i>Amount</i>
16-8-2018	Mirae Asset MF	50,00,000
16-8-2018	Aditya Birla Mutual Fund	50,00,000
18-8-2018	Kotak Mutual Fund	50,00,000
11-9-2018	HDFC Mutual Fund	50,00,000
12-9-2018	Tata Mutual Fund	25,00,000
<i>Total</i>		<i>2,25,00,000</i>

Seema Kumari on 9-8-2018.

Further a sum Rs 2.25 crores has been invested in mutual funds as per details given below:

Note : This amount can be attached and recovered by encashment of these investments. ”

9. It is pertinent to mention that Seema Kumari is the wife of the Petitioner herein.



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10. A perusal of the role attributed to the Petitioner herein in the forensic report shows that there are serious allegations against the Petitioner in the forensic report. The charge-sheet also mentions about the forensic audit report and states that the forensic audit report is under consideration of the Apex Court.

11. The contention of the learned Counsel for the Petitioner that there is no allegation against the Petitioner cannot be accepted at this stage. Unfortunately, the Investigating Officer had instructed the APP that there is no allegation against the Petitioner ignoring the fact that there are serious allegations against the Petitioner in the forensic report.

12. In view of the fact that there are serious allegations against the Petitioner in the forensic report, which is under consideration of the Apex Court, this Court is not inclined to quash the present FIR and the proceedings emanating therefrom.

13. Accordingly, the Petition is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 30, 2024

Rahul