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

Reserved on: 24.03.2021

Pronounced on: 06.04.2021

(i) + **BAIL APPLN. 1133/2019 & Crl.M.A. 16923/2020**

(ii) + **BAIL APPLN. 1134/2019 & Crl.M.A. 16933/2020**

(iii) + **BAIL APPLN. 1138/2019 & Crl.M.A. 6307/2020 & 16937-38/2020**

(iv) + **BAIL APPLN. 1139/2019 & Crl.M.A. 6308/2020 & 16935-36/2020**

SUSHANT MUTTREJA & ANR. ..... Petitioners
Through: Mr.Rajiv Mohan, Advocate

Versus

STATE ..... Respondent
Through: Mr. Amit Chadha, Additional Public Prosecutor for State with Inspector Suresh Chand & Inspector Jitender Singh, EOW.
Mr.Kalyan Dutt, Advocate for Cosmic Victim Association.
Mr.Alok Kumar Aggarwal, Ms.Anushruti & Mr.Simran Arora, Advocates with Mr.Aashish Bhutani, CMD of M/s. Good Living Infrastructure Pvt. Ltd.

(v) + **BAIL APPLN.4121/2020**

NISHANT MUTTREJA ..... Petitioner
Through: Mr.Rajiv Mohan, Advocate

Versus

STATE & ANR. ..... Respondents

Through: Mr. G.M. Farooqui, Additional Public Prosecutor for respondent No.1/State
Mr.Osama Suhail, Advocate for respondent No.2

(vi) + **BAIL APPLN. 4191/2020**

SUSHANT MUTTREJA ..... Petitioner

Through: Mr.Rajiv Mohan, Advocate

Versus

STATE & ANR. ..... Respondents

Through: Mr. G.M. Farooqui, Additional Public Prosecutor for respondent No.1/State
Mr.Osama Suhail, Advocate for respondent No.2

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. The above captioned first four petitions [Bail Appln.1133;1134;1138;1139 of 2019] and sixth petition [Bail Appln.4191/2020] have been filed by petitioners- *Sushant Muttreja* and *Nishant Muttreja.* The above captioned fifth petition [Bail Appln.4121/2020] has been filed by petitioner-*Nishant Muttreja.* Both the petitioners- *Sushant Muttreja and Nishant Muttreja* are sons of late *Subhash*

Muttreja and are ex-Directors of *M/S Cosmic Structures Ltd.*

2. Bail Appln. 1133/2019, pertains to FIR No. 47/2016, Bail Appln. 1134/2019 pertains to FIR No. 35/2016; Bail Appln. 1138/2019 pertains to FIR No. 46/2016 and Bail Appln. 1139/2019 pertains to FIR No. 36/2016, registered at Economic Offences Wing, New Delhi and by these petitions, petitioner-Sushant Muttreja is seeking interim bail for 06 months.

3. Bail Appln. No. 4191/2020 & Bail Appln.4121/2020 pertain to FIR No. 108/2017, registered at Economic Offences Wing, New Delhi and by these petitions, petitioner-*Sushant Muttreja and Nishant Muttreja* are seeking interim bail for12 months.

4. The brief background of the case, as mentioned in Bail Appln. 1133/2019, pertaining to FIR No. 47/2016, are that the accused company-*M/S Cosmic Structures Ltd* was incorporated in the year 2011 and purchased 100% shares of M/S Splendor Info Park Pvt. Ltd. in the year 2014, to which Plot No 15, Sector KP V, Greater Noida, U.P. was allotted. It proposed to construct the commercial space IT/ ITES fully furnished office space for unit bearing No. A -187 measuring 201 Sq. ft in tower and shop space complex. Further the accused company proposed to construct three towers up to 11th floors and one mall with four shops as commercial and five floors

as studio apartments for residence, three towers up to 11th floors and one mall with four shops as commercial and five floors as studio apartments for residence. In each tower it proposed to construct 1500 (approximately) dwelling units comprising of virtual space, lockable space, furnished units, fully furnished spaces, office spaces at the project sites. Besides this the company also proposed to construct 50 shops at each floors and 50 studio apartments on each floor. Besides this ground floor of each tower had various service units like restaurants, food courts, exhibition centre, medical centres, club, gym, banks, ATMs etc.

5. The allegations levelled FIR No. 35/2016 i.e. in Bail Appln. 1134/2019 are that in the year 2012, accused-company i.e. *M/S Cosmic Structures Ltd* purchased 100% shares of M/S Amplex Technologies Pvt. Ltd. to which the project land at Plot No.10, Tech Zone, Yamuna Express Way, Greater Noida, U.P, was allotted. Thereafter, it proposed to construct commercial space unfurnished divided unit bearing No. E- 101, measuring 1075 sq. ft in Tower -III on the first floor. Further it proposed to construct three towers up to 11th floor, one mall with four shops as commercial and five floors as studio apartments for residence. In each tower, it proposed to construct 1500 (approximately) dwelling units comprising of virtual space,

lockable space, unfurnished units, fully furnished spaces, office spaces at the project sites. Besides this the company also proposed to construct 50 shops at each floors and 50 studio apartments on each floor. Besides this ground floor of each tower had various service units like restaurants, food courts, exhibition centre, medical centres, club, gym, banks, ATMs etc.

6. The allegations in FIR No. 46/2016, i.e. Bail Appln. 1138/2019 are that the accused company entered into an agreement dated 16.04.2013 with M/s Surya Jyoti Software Pvt. Ltd for transferring the share holding for the consideration of Rs 42 Crores to which the project namely COSMIC Corporate Park 154, Plot No. l, Sector 154, Noida, U.P. was allotted. Thereafter, it proposed to construct the commercial space No. A-I-0125VBI-1297, measuring 210 Sq. Ft. lockable furnished space in Tower-I on the first floor at CCP- 154, Noida, U.P. Further, it projected to construct three towers up to 11th floors and one mall with four shops as commercial and five floors as studio Apartments for residence three towers up to 11th floors and one mall with four shops as commercial and five floors as studio apartments for residence. In each tower it proposed to construct 1500 (approximately) dwelling units comprising of virtual space, lockable space, unfurnished units, fully furnished spaces, office spaces at the project sites. Besides this

the company also proposed to construct 50 shops at each floors and 50 studio apartments on each floor and ground floor of each tower had various service units like restaurants, food courts. Exhibition Centre, Medical Centres, Club, Gym, Banks, ATMs etc.

7. Similarly, the allegations levelled in FIR No. 36/2016 i.e. Bail Appln. 1139/2019 are that the accused-company purchased 100% of share of the company namely, M/s Minimax Computers & Softwares Pvt. Ltd. in the year 2012 to which the project land bearing Plot No. 5, Sector- 140, Noida, U.P was allotted by Noida Authority, vide Lease Deed dated 23/03/2011. Here also the accused company proposed to construct three towers comprising of 13 floors each and having similar dwelling units comprising of virtual space, lockable space, unfurnished units, fully furnished spaces, office spaces at the project sites.

8. The accused-company started construction and getting the space booked in the name of the buyers and assured them to pay 11.5% to 12.5% assured returns/deferred discount till possession was handed over to those customers who had paid 50% or more as advance payment and to those who opted for Assured Return/Deferred Discount at the time of making investment. The accused company paid assured returns to the investors

initially till March 2015 and thereafter, stopped making payments. Further, as per the allegations the possession was promised to be handed over to the buyers by the middle of 2017 but the company did not build more than 5% of the project till date of lodging of the FIRs. It is also alleged that upon physical inspection no labour was found working on the site and the company made false commitment. It is also alleged that it came to the knowledge of the complainants that M/s Cosmic Group has not taken any kind of approval from SEBI to give assured returns and as per allegations cosmic structures had duped many customers by showing rosy pictures.

9. The allegations levelled in FIR No. 108/2017 i.e. Bail Appln. No. 4191/2020 & Bail Appln.4121/2020 are that the buyers had invested their money in a project called "Casa Italia" by M/S Som Resorts Pvt. Ltd., who entered into an agreement with the accused-company i.e. M/s Cosmic Structures Ltd., whose Directors were authorized to take booking of commercial and residential projects for a consideration of 10% of the amount received. In addition, the accused company had to receive all payments from the buyers and investors in the name of M/S Som Resorts Pvt. Ltd. As per the complaints, out of the total amount of Rs.4.5 croeres, the accused company transferred only Rs.1.5 crores to M/S Som Resorts

Pvt. Ltd. and thereby, it misappropriated amount of Rs.3.00 crores which was to be transferred to M/S Som Resorts Pvt. Ltd.

10. In another FIR bearing No. 909/2015, registered at police station Hari Parbat Agra, with regard to a project under the name of Cosmic Corporate Park-II, both the Directors i.e. petitioners herein were arrested on 30.07.2016 and they are in custody in all the cases registered against M/s Cosmic Structures Pvt. Ltd.

11. During pendency of these petitions, different applications [Crl. M.A. 12791/2019 in BAIL APPLN. 1133/2019; Crl. M.A.12795/2019 in BAIL APPLN. 1134/2019; CrI. M.A. 12792/2019 in BAIL APPLN. 1138/2019 & Crl. M.A. 12790/2019 in BAIL APPLN. 1139/2019] were filed by the petitioners seeking leave to produce in custody for meeting with employees, consultants, government officials for the purpose of finalization of scheme for revival and this Court vide order dated 09.07.2019 had allowed the applications. Again, by order dated 23.07.2019 [in Crl.M.A.31659/2019; Crl.M.A.31661/2019; Crl.M.A.31645/2019; Crl.M.A.31643/2019] this Court had permitted petitioners to meet the Government Officials as also their Advocate to enable them to resolve the subject matter of these petitions.

12. Further, by order dated 04.11.2019, after hearing both the sides at length and keeping in view that petitioners are the main persons who had collected money from investors and they had shown their willingness to complete the project and in the interest of investors, this Court had allowed the bail applications of petitioners and granted them six months interim bail to enable them to make an earnest effort to complete the project. The aforesaid order of 04.11.2019, was further clarified on 13.05.2020 and petitioners were released on interim bail

13. Again, applications [Crl.M.A. 16923/2020; 16933/2020; 16937/2020 & 16935/2020] seeking extension of interim bail for twelve months came up for hearing before this Court on 07.12.2020. On 21.12.2020, during the course of hearing, it was submitted on behalf of petitioners that after release on interim bail, petitioners had managed to bring companies, namely, M/s Goodliving Infrastructure Private Limited, who is ready to invest 300 crores; M/S Renowned Buildtech Pvt. Ltd. and M/S Alpha Corp Development Pvt., who are ready to invest Rs. 100 crores each on as is where is basis and therefore, their interim bail was extended till further orders on the assurance of petitioners' counsel that CMDs of these companies shall appear before the Court.

14. Similarly, Bail Appln. Nos. 4121/2020 and 4191/2020 were filed before this Court seeking interim bail for 12 months and on 15.02.2021, it was submitted that CMDs of M/s Goodliving Infrastructure Private Limited, who is ready to invest Rs.300 crores and M/S Alpha Corp Development Pvt. Ltd. who is ready to invest Rs.100 crores, shall appear before this Court.

15. On 24.03.2021, Mr. Aashish Bhutani, CMD of Goodliving Infrastructure Private Limited appeared before the Court and submitted that he has presented the scheme before the Company Court to invest the aforesaid amount of Rs.300 crores, however, it will be subject to the approval.

16. Mr. Amit Chadha, learned Additional Public Prosecutor for respondent/State opposed the present applications by stating that the applicants in the capacity of Directors of the company were not only acting as agents of the company but also trustees of the assets of the company and they have misappropriated these assets. He submitted that no efforts were made by the Directors to revive their project and the money collected by these Directors was used in other assets. The bail applications of these applicants have been dismissed on earlier occasions also and they do not deserve further concession of interim bail from this Court.

17. Learned counsel appearing on behalf of Cosmic Victim Association submitted that the accused company, while launching Cosmic Projects, booked units while assuring returns at specified rates ranging from 11% per annum or 12.5% per annum on the amount invested by the buyers/allottees for a period from the date of booking till the offer of possession. However, due to the diversion / siphoning of the investors monies by the Directors/Promoters of the Company, the company defaulted in making payments to the investors/buyers. The construction was stopped and as result of which, six projects of the company are stalled since the year 2015. It is further alleged that the petitioners/applicants had sought interim bail and further extensions, on the camouflage to find out a solution as to how assured returns would be paid to investors and by proposing a scheme of revival and arranging funds to complete the project. The applicants have adopted the *modus operandi* of misleading the courts into granting interim bails on the false ground of arranging funds/investors in the defunct projects and the proposed scheme is nothing but an excuse devised to remain enlarge on interim bail and that the scheme itself violates the rights of the investors/buyers of the project in question.

18. After hearing learned counsel representing both the sides at length,

this Court put a specific query to Mr. Bhutani, CMD of M/s Good Living Infrastructure whether he can deposit an amount of Rs. 300 crores before this Court, he answered in negative and submitted the said money would be generated in an year or so, in terms of the scheme of settlement presented before the Company Court, if approved.

19. Upon hearing both the sides and on perusal of material placed on record, I find that a huge delay on the part of accused company in completion of projects and breach of its obligations to pay assured returns to the buyers/investors has resulted into filing of various litigations against the petitioners and accused company. This Court vide order dated 11.01.2017 [in Co.Pet.152/2016] has appointed official liquidator of accused-company and restrained the Promoters/Directors from associating with the managing the affairs of the company and so, the control over the assets of the accused company is in the hands of Official Liquidator and the petitioners would not be in a position to take any action. It is not disputed that the proposed scheme of revival / settlement has been placed before the Company Court and is subject to approval.

20. No doubt petitioners being the Promoters/Directors of accused company had allured public at large and fraudulently deceived the investors

thereby making them part with their hard-earned money under the garb of selling plots, spaces, offices, shops, dwelling units, etc. furnished and unfurnished and assured them of high returns, though in fact they had not even obtained requisite sanction/ permission from the competent authorities to raise the constructions and this seems to be a planned conspiracy to dupe a large number of investors, as their funds were never utilized in the project.

21. On the assurance that petitioners shall make an earnest effort to protect the interest of the investors, interim bail was granted to the petitioners to work out the modalities, but during the course of hearing, learned counsel for petitioners was not able to convince this Court as to in what manner the said proposal shall be acted upon so that accused company will be revived and the rights of the investors/buyers will also be safeguarded. In the garb of working on modalities to reach at just proposal for revival of accused company and the projects, a blanket order cannot be passed to indefinitely continue the interim bail granted to petitioners.

22. Accordingly, I am not inclined to further extend the interim bail of petitioners granted in the above mentioned petitions. Petitioners are directed to surrender within three days of passing of this order before the concerned jail authorities.

23. A copy of this order be sent to the Trial Court and Jail Superintendent concerned for information and compliance.

24. With aforesaid directions, the above captioned petitions and pending applications are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

APRIL 06, 2021
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