



2024:DHC:5983



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

Date of Decision: 9th August, 2024

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CO.PET. 39/2009

DINESH MITTAL & ORS.

.....Petitioners

Through:

versus

**M/S TRIVENI INFRASTRUCTURE DEVELOPMENT
CO. LTD**

.....Respondent

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Deepak Aggarwal, Ms. Debashree Mukherjee & Ms. Aarohi M., Advs. (M: 9650290474)

Mr. Roopansh Purohit Adv.

Dr. Pankaj Garg, Mr. Milind Garg, Mr. Yaksh Garg & Ms. Saumya Jain, Advs. for Applicant. (M:9560846436)

Ms. Noopur Singhal, Adv. with Mr. Rajat Chauhan, ATP, DTCP, HQ. (M: 9312765888)

Mr. Rajeev Saxena and Ms. Megha Saxena, Advs. for the Applicant. (M:9810811180)

Mr. Abhimanyu Bhandari, Ms. Nattasha Garg, Mr. Raghav Alok & Mr. Thakur Ankit Singh Advs. (M: 9654998650)

Mr. Faisal Naseem & Mr. Dinesh Kumar Advocates (M: 9971936365).

C3

AND

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2024:DHC:5983



**CO.PET. 333/2010, CO.APPLs. 2375/2011, 905/2016, 4542/2016,
4587/2016, 1113/2017, 315/2018, OLR 255/2017**

SH. SAMEER SHARMA

.....Petitioner

Through:

versus

**M/S TRIVENI INFRASTRUCTURE DEVELOPMENT
CO LTD**

.....Respondent

Through: Mr. Akhil Sibal, Sr. Adv. with Mr.
Deepak Aggarwal, Ms. Debashree
Mukherjee & Ms. Aarohi M., Advs.
Ms. Noopur Singhal, Adv. with Mr.
Rajat Chauhan, ATP, DTCP, HQ.
Mr Abhishek Gupta, Adv. for
Applicant in CA 27/2024.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **09.08.2024**

1. This hearing has been done through hybrid mode.

Directions qua Land Acquisition Collector ('LAC'), Faridabad

2. In respect of the land situated in Sector 89, Faridabad, vide order dated 18th July, 2024, this Court had directed Mr. Jagdeep Sharma, Id. Counsel for the State of Haryana to appear along with a senior official from the LAC, Faridabad. The relevant portion of the said order reads as follows:

“10. Ld. Counsel for the DTCP submits that the extension of the in-principle approval for the redevelopment rights in respect of the land situated in Sector 89, Faridabad has been granted to the OL. However, certain conditions are attached with the same.



11. Let a chart in respect of the conditions be prepared by Ms. Sindhwani, Id. Counsel and be presented on the next date. The extension of the in-principle approval dated 25th June, 2024 is taken on record.

12. Mr. Jagdeep Sharma, Id. Counsel for the State of Haryana has entered appearance and submits that he would communicate the order dated 10th May, 2024 to the concerned LAC Faridabad.

13. Let a Senior Official from the LAC Faridabad who is aware of the facts of this case be present on the next date of hearing. Let a short note of the status be also brought by the LAC Faridabad, in respect of the amounts due qua the acquisition which was to be paid to the company in liquidation.

14. In CO. APPL. 840/2013 & CO.APPL. 841/2013, Id. Counsel for the Applicant wishes to file rejoinders.

15. Let him do so within six weeks.”

3. Today, none appears for LAC, Faridabad. No official is also present. Clearly, despite repeated orders passed by this Court, LAC, Faridabad is neither appearing before this Court, nor assisting this Court in respect of the amounts that are to be admittedly disbursed to the company under liquidation. Thus, due to the inaction of the LAC, Faridabad, the interest of thousands of investors is being compromised.

4. This Court has on repeated occasions directed the presence of the LAC, Faridabad or any competent official from the same office. Vide order dated 27th February, 2024, this Court directed as follows:

“13. Regarding the directions concerning the LAC, the



*said OLR states that in compliance with the said order, the OL sent a letter dated 23rd January, 2024, to the LAC, Faridabad, requesting the release of the remaining compensation for three land acquisition awards in favor of TIDCO, namely LAC No. R-232/2016, R-233/2016, & R-233A/2016. **However, no response has been received by this office. Thus, the OLR prays that directions be issued to the LAC to respond to the communications sent by the OL.***

14. In relation to the above directions qua LAC, let notice be issued to LAC, Faridabad including through Counsel who appears for LAC i.e., Mr. Yeeshu Jain, who shall seek instructions and expedite the release of the compensation in terms of LAC No. R-232/2016, R-233/2016 & R- 233A/2016.

15. Let the present order be communicated by the Registry to Mr. Yeeshu Jain, Id. Counsel (M: 9811394417).

16. It is directed that an official from the DTCP shall remain physically present in Court on the next date of hearing. Let the present order be communicated to the DTCP, through Id. Counsel Ms. Noopur Singhal.”

5. On 5th April, 2024 also none appeared on behalf of LAC, Faridabad.

Thus, the following directions were issued:

*“11. In terms of the directions contained in paragraphs 14-16 of the order dated 27th February, 2024, it is submitted on behalf of Mr. Yeeshu Jain, Id. ASC, that the communication to the LAC, Faridabad has been issued by him vide email dated 2nd April, 2024. Telephonic communication on the Ph. No. 0129-2226604 has also been effected. **However, none appears on their behalf.***



12. In view of the same, the order dated 27th February, 2024 along with today's order be sent to the following email addresses by the Registry.

• dcfbd@hry.nic.in • eosbdhudal2@gmail.com

A senior official from the OL's office shall also speak to the LAC, Faridabad and inform them of the orders passed by this Court.

13. If there is no appearance on behalf of the LAC, Faridabad, on the next date of hearing, the Court would then be passing directions in accordance with law for remittance of the compensation”

6. Vide order dated 10th May, 2024, the LAC Faridabad was again issued notice by this Court, wherein it has been directed as follows:

“29. In addition, let the Registry place a report as to whether service of the orders dated 27th February, 2024 and 5th April, 2024 was made on dcfbd@hry.nic.in and eosbdhudal2@gmail.com. In addition, let notice be issued to Mr. Jagdish Sharma, ld. Counsel (+91-9811297224) appearing for the State of Haryana for the purpose of effecting service upon LAC, Faridabad.

30. For the above purpose, list the matter relating to Sector 89, Faridabad on 21st May, 2024.

31. In addition, let an intimation be given to Mr. Yeeshu Jain, ld. Counsel as also to Ms. Hetu Arora Sethi, ASC in order to ascertain the manner in which LAC, Faridabad can be served if they do not appear on the next date”

7. In this view of the matter, this Court has no option but to issue notice of contempt to the following:

- i. Sh. T.V.S.N. Prasad, IAS, Chief Secretary, Haryana
Telephone no.: 0172-2740118,



Mobile No. 7042877882

Email: cs@hry.nic.in

Address: 4th Floor, Haryana Civil Secretariat, Sector-1,
Chandigarh.

- ii. Sh. Bijender Rana, Land Acquisition Officer, Faridabad,
Haryana

Mobile no.: +91-9958700798

Address: Office Address HSVP, Complex Sector-
12, Faridabad, Land Acquisition Officer, State of Haryana

8. The above-named individuals shall remain present in Court on the next date of hearing along with proper instructions regarding payment of the compensation amount, failing which, coercive measures would have to be taken by this Court.

Sector-78, Faridabad

9. On 18th July, 2024, this Court directed the Id. Counsel for the OL as follows:

“3. Today, Ms. Sindhwani, Id. Counsel for the OL submitted that with regard to the sale to be carried out of the land situated in Sector 78, Faridabad, one set of advertisements were published. However, despite various enquiries, no bids were received.

4. From the submissions made before Court today, it appears that since the base price of the land situated in Sector 78 Faridabad is Rs. 550 crores, there may be a requirement to provide some flexibility for bidders.

5. One practical way of conducting the auction in respect of the land situated in Sector 78, Faridabad would be to have the bidding take place in Court itself. Accordingly, let a draft sale notice be put up for approval of the Court by the next date of hearing.”



10. Today, **OLR No. 93/2024** has been placed on record as per which the draft sale notice for the project in Sector-78, Faridabad, Haryana, has been prepared for an auction to be conducted before the Court. A copy of the draft sale notice, along with the terms and conditions, is provided as Annexure-D to the said OLR for approval.

11. The Court has also perused the draft sale notice annexed as '**Annexure-D**' to the **OLR No. 93/2024**. The earlier sale notice published on 17th June, 2024 and 18th June, 2024 had not evinced any bidder. It is the submission of Id. Counsels that considering that the reserve price fixed for the project is itself Rs.550 crores, the earnest money deposit may be modified to 5% at this stage to enable more bidders to come forward.

12. Insofar as the remaining conditions are concerned, the same shall be prescribed when the bidders appear before the Court and submit their bid.

13. Accordingly, the EMD shall be fixed as 5% and condition no. 7 of the terms and conditions contained in '**Annexure-D**' shall be modified to the effect that the deposit with the OL shall be a sum as directed by the Court on the date of the bidding. Let the draft sale notice be now published by the OL's office.

Sector-89, Faridabad

14. Vide order dated 18th July, 2024, in respect of land situated at Sector 89, Faridabad it was directed as follows:

“10. Ld. Counsel for the DTCP submits that the extension of the in-principle approval for the redevelopment rights in respect of the land situated in Sector 89, Faridabad has been granted to the OL. However, certain conditions are attached with the



same.

11. Let a chart in respect of the conditions be prepared by Ms. Sindhwani, Id. Counsel and be presented on the next date. The extension of the in-principle approval dated 25th June, 2024 is taken on record.”

15. Vide the previous order, the Court had also directed the OL to prepare a chart in respect of the conditions. The in-principle approval given by the DTCP dated 28th March, 2024 sets out five conditions. A chart has been prepared, and is annexed to **OLR No. 93/2024** as ‘Annexure-F’, dealing with the said conditions. The said chart is reproduced below :-

S No.	Terms & Condition of DTCP for in-principal approval (Dt. 28.03.2024)	Observations/submissions by the office of the Official Liquidator
1.	<i>An undertaking to abide by the provision of Act/Rules and all the directions that may be given by the DTCP III connection with the abovesaid licenses.</i>	<i>Can be given by the Official Liquidator and will also be made a condition in the sale notice for the prospective developer.</i>
2.	<u>Objections regarding Joint Development rights/Marketing rights shall be invited from the allottees through public notice and/or notice under registered cover, as per the detailed procedures and performa prescribed by the DTCP as per instruction dated 25.01.2021.</u>	<u>This Hon'ble Court vide judgment dated 10.05.2024 examined the contentions of the parties in para 11 to 16 and w.r. t. allottees of Sector-78 project, has held that:-</u> <u>"17. A conjoint reading of the orders leaves no doubt that the assets must be sold and the sale proceeds distributed among all the claimants. Under such circumstances, it is not feasible to reverse the decision and give the allottees of TFAA hope that apartments would be built and</u>



		<p><u>allotted to them. The best outcome in the present winding-up petition is for the payment of their claims, hopefully with some interest in accordance with the law. The assets in question in Sector 78, Faridabad are valuable, and the sale of these assets would provide relief to all the allottees, who have invested significant amounts in this project long ago."</u></p> <p><u>Copy of order dated 10.05.2024 is annexed as Annexure-I.</u></p> <p><u>The said decision would also be binding on the erstwhile allottees of Sector-89 as they have filed their claims against the Company (In Lign.) with the Official Liquidator.</u></p> <p><u>As there are now no allottees of the Company (In Lign.), DTCP may exempt the said condition of inviting objections from the allottees.</u></p>
3.	<i>An undertaking that all the liabilities of the existing Developer shall be owned by new entity qua their share.</i>	<i>Can be given by the Official Liquidator and will also be made a condition in the sale notice for the prospective developer.</i>
4.	<i>You shall submit a detailed report showing line of action to complete the project.</i>	<i>The said condition will also be incorporated in the sale notice for the prospective developer.</i>
5.	<i>The official email ID of new entity.</i>	<i>Will be provided.</i>

16. The court has perused the chart. As per the above chart, the OL shall



give the undertakings *qua* condition nos. 1,3,4 and 5.

17. Insofar as condition no. 2 is concerned, vide order dated 10th May, 2024, in relation to the land situated in Sector 78, Faridabad, this Court has already held that the assets must be first disposed of and the amounts received is to be distributed among all the claimants, and it was not feasible to reverse the decision and give the allottees of TFAA a hope that apartments would be built and allotted to them. The relevant portion of the said order reads as follows:

“11. In response to a query from the Court, ld. Counsel for TFAA, Mr. Abhimanyu Bhandari submitted that most of the allottees have already filed their respective claims before the OL. To the demands of TFAA, the ExManagement pointed out that the allottees’ demand to be allotted units/apartments now is completely contrary to the decision of the ld. Division Bench made back in 2013. Mr. Akhil Sibal, ld. Senior Counsel, has handed over the said decision to the Court and has refuted TFAA’s stance, arguing that the land, under the control of the OL, must be liquidated to satisfy the claims of all allottees. The allottees cannot insist on being allotted apartments. It is his submission that given that the total number of allottees ranges from 1800 to 2000, and the TFAA, which represents about 800 of them, should not be allowed to dictate the terms of how the land in Sector 78, Faridabad is to be utilised to satisfy the claims of the remaining allottees.

12. Ms. Sindhvani, ld. Counsel for the OL submits that the association members of TFAA are only claimants before the OL, not allottees, and hence they now cannot claim to receive apartment units. It is further submitted that the powers of the Court in a winding-up petition have been settled way back since 1968 by the Supreme Court in J.K. (Bombay) Pvt. Ltd. v. New



Kaiser-I-Hind Spg. & Wvg. Co. Ltd. and Ors., (AIR 1970 SC 1041), where the Supreme Court observed as follows:

...

13. After having heard ld. Counsels for the parties, it ought to be noted that the sale of TIDCO's assets has been pending for several decades. Specifically, regarding the land situated at Sector 78, Faridabad, it has taken a long time to renew the DTCP license necessary to make the assets of the said company marketable and to obtain the best possible value for the sale, in the interest of the creditors. The DTCP has now renewed the license in terms of the order dated 21st December, 2023, and the said project, on an 'as is and where is whatever there is' basis, is proposed to be sold by the OL. The valuation has already been undertaken, and based on this, the reserve price of this asset has been fixed at Rs. 550 crores.

...

17. A conjoint reading of the orders leaves no doubt that the assets must be sold and the sale proceeds distributed among all the claimants. Under such circumstances, it is not feasible to reverse the decision and give the allottees of TFAA hope that apartments would be built and allotted to them. The best outcome in the present winding-up petition is for the payment of their claims, hopefully with some interest in accordance with the law. The assets in question in Sector 78, Faridabad are valuable, and the sale of these assets would provide relief to all the allottees, who have invested significant amounts in this project long ago.

18. In the overall scheme of things, therefore, this Court is of the opinion that the OL's proposal for selling the land situated in Sector 78, Faridabad, in terms of the finalised draft sale notice, which is



submitted to the Court, ought to be permitted to go forward. The same is, accordingly, approved. The OL is free to publish the same.

19. Let the finalised draft sale notice be published and the e-auction be conducted through RailTel Ltd. The said draft sale notice shall be given adequate publicity, so that sufficient number of bidders may be allowed to bid for the same, including in various newspapers in Hindi, English as also in regions languages in Delhi, Calcutta, Hyderabad and Mumbai. The finalised draft sale notice is annexed to the present order as ‘Annexure-A’”

18. In view of the above observations, which are squarely applicable to issues arising out of the land situated in Sector 89, Faridabad, no objections need to be invited by the OL from the general public at this stage, as the company is already being wound up, and all monetary claims would need to be filed with the OL. Additionally, there cannot be any further allottees in respect of this project.

19. The above clarification is objected to by the allottees of the TFAA, who submit that their claims would have to be satisfied until allotment is being adjudicated.

20. However, in the opinion of this Court, the said issue had already been adjudicated on 10th May, 2024, wherein has been clearly held that the best outcome in the present winding up petition is for payment of the claims.

21. Vide order dated 29th May, 2024, in a review application ***CO.APPL. 572/2024***, this Court refused to stay the operation of the order dated 10th May, 2024. The said order was challenged before the Id. Division Bench in ***Co.App. 17/2024*** titled ***‘Saraswati Sewa Kunj Educational Trust v.***



TIDCO’, wherein, vide order dated 5th July, 2024, the Id. Division Bench refused to interfere with the order dated 10th May, 2024, and thus the same has achieved finality. The relevant portion of the order dated 5th July, 2024 passed by the Id. Division Bench reads as follows:

“1. This appeal is directed against the order dated 29 May 2024 passed by the learned Company Judge. The learned Judge has chosen to issue notice on an application for review which was made.

2. The grievance of the appellant is with respect to an e-auction which has been ordered by the learned Company Judge and which comprises a parcel of land which, according to the appellant, is held by it on the basis of a lease.

3. We note that the learned Judge in paragraph 4 of the order impugned before us has noted that the appellant had on no prior occasion pressed CO.APPL. 840/2013 and CO.APPL. 841/2023. The said applications thus remained pending on the board of the learned Company Judge without any effective arguments being addressed thereon. There has thus been a manifest failure on the part of the appellant to have pressed those applications seeking exclusion of the subject parcel of land which undisputedly forms part of the liquidation assets.

4. In any case and since those applications have been posted for 18 July 2024, we find no ground or justification to place the e-auction in abeyance.

5. Consequently, while we leave all contentions of the appellant open to be addressed before the learned Company Judge, the appeal shall stand dismissed.”

22. Thus, the objections raised by TFAA are untenable, and are rejected.



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23. OL may give its response to the *in-principle* approval by the DTCP in respect of the five conditions as per the above order, after which the DTCP shall give the final approval for the land situated at Sector 89, Faridabad.
24. List on 4th October, 2024 at 2.30pm.

PRATHIBA M. SINGH
JUDGE

AUGUST 09, 2024
MR/dn