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

\+ W.P.(C) 4348/2020

APEX MEADOWS PVT. LTD. ..... Petitioner

Through: Mr. B.L. Narasimhan, Mr. Karan Sachdev and Ms. Avisha Khatri, Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Jatin Puniyani, Adv. for R-1.
Mr. Ravi Prakash, Mr. Farman Ali, Mr. Aman Malik and Mohammad Shahan Ulla, Advs. for R-2&3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

% 20.07.2020

[VIA VIDEO CONFERENCING]

CMs No.15650/2020 & 15651/2020 (both for exemption)

1. Allowed, subject to just exceptions and as per the extant rules.

2. The applications are disposed of.

W.P.(C) No.4348/2020 & CM No.15649/2020 (for stay)

3. The petition, besides challenging the vires of Section 171 of the Central Goods and Services Tax Act, 2017 and Chapter XV of Central Goods and Services Tax Rules, 2017, particularly Rules 126, 127 and 133 thereof, impugns the order dated 6th December, 2019 passed by the respondent No.2 National Anti-Profiteering Authority holding the petitioner,

a builder, to have profiteered in the amount of Rs.3,45,22,974/- during the period of investigation and directing the petitioner to refund the said amount to the buyers of the flats under construction by the petitioner. Challenge is also made to the notice dated 17th January, 2020 issued to the petitioner to show cause, why penalty should not be imposed on the petitioner.

4. It is informed by the counsel for the petitioner, and affirmed by the counsel for the respondents No. 2&3 appearing on advance notice, that vide order dated 6th July, 2020 in W.P.(C) No.3911/2020, 33 matters entailing common questions of law and which also arise in this petition, have been clubbed and ordered to be listed for hearing on 24th August, 2020.

5. Issue notice.

6. Notice is accepted by the counsels for the respondents**.**

7. Counter affidavit, if any be filed by 7th August, 2020.

8. Rejoinder thereto, if any be filed before the next date of hearing.

9. We have heard the counsels on the interim relief.

10. The counsel for the petitioner states that out of Rs.3,45,22,974/-**,** benefit of an amount of Rs.1.53 crores has already been given to the flat buyers and now only the balance amount of Rs. 1.92 crores approx. remains. He states that in several other matters pending before this Court, stay has been granted, subject to deposit of 10% only of the amount. It is contended that the petitioner has already given benefit to the flat buyers of much more than 10% of the assessed amount and thus the recovery of the balance amount be stayed.

11. With respect to the stay sought of penalty proceedings, it is contended that the provision for penalty was introduced in the Central Goods and Services Tax Act, vide the Finance Act, 2019, with effect from 1st January,

2020. It is argued that the assessment period is of prior thereto and at the time of assessment vide the impugned order dated 6th December, 2019 also, the provision for penalty was not in force. It is thus contended that the penalty proceedings should not be allowed to proceed.

12. The counsel for the respondents No. 2&3 has fairly stated that in some other matters, there is a stay of penalty proceedings.

13. We have however enquired from the counsel for the petitioner, how the profit which has already been assessed to have been made by the petitioner, would be returned to the flat buyers of the petitioner, if recovery of the balance amount of Rs. 1.92 crores approx. is stayed and the petitioner owing to prevalent precarious condition of real estate market / flat building industry, is subsequently unable to refund the amount.

14. The counsel for the petitioner states that it is for this precise reason that the petitioner also is unable to deposit the amount and is seeking stay.

15. We are however of the opinion that granting an absolute stay with respect to the balance amount of Rs. 1.92 crores approx. may result in the flat buyers of the petitioner being left without a flat as well as without the benefit of the amounts which have already been ordered to be refunded to them. We are therefore not inclined to grant stay of recovery of the balance amount. We however grant eight weeks' time to the petitioner to deposit the balance amount in this Court, if the proof of having already given benefit of an amount of Rs.1.53 crores is furnished to the authority concerned. Subject to the said proof being furnished and such deposit being made, there shall be stay of recovery of the said amount of Rs.3,45,22,974/-. However, there shall be a stay of proceedings for recovery of penalty.

16. However, the stay will not come in the way of the respondent No. 3 Director General Anti-Profiteering verifying the claim of the petitioner having already refunded benefit of Rs.1.53 crores.

17. CM No.15649/2020 for interim relief is disposed of.

18. List along with W.P.(C) No.3911/2020 on 24th August, 2020.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 20, 2020
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