

ITEM NO.302

COURT NO.4

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(With IA No.97388/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.80954/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.50706/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No.79304/2020 - INTERVENTION APPLICATION, IA No.50704/2021 - INTERVENTION/IMPLEADMENT, IA No.47795/2021 - INTERVENTION/IMPLEADMENT, IA No.80947/2020 - INTERVENTION/IMPLEADMENT, IA No.100828/2019 - INTERVENTION/IMPLEADMENT and IA No.5463/2021 - PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS and IA No.70286/2020 - CLARIFICATION)

WITH S.L.P.(Cr1) Nos.5978-5979/2017 (II-C)

(With IA No.64802/2022 - CLARIFICATION/DIRECTION, IA No.57578/2022 - CLARIFICATION/DIRECTION and IA No.118046/2018 - CLARIFICATION/DIRECTION)

Date : 05-05-2022 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

Mr. Pawanshree Agrawal, AOR (A.C.)
Mr. Varun K. Chopra, Adv.

For Appellant(s)

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Ms. Aarushi Singh, Adv.
Ms. Neeha Nagpal, Adv.

Mr. N. Venkataraman, ASG
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For Respondent(s)

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Ms. Ruchi Kohli, Adv.
Mr. Siddhant Kohli, Adv.
Mr. Sughosh Subramaniam, Adv.
Ms. Suhashini Sen, Adv.
Mr. T.A. Khan, Adv.
Mr. Anish Kr. Gupta, Adv.
Mr. Amrish Kumar, Adv.
Mr. Santosh Kumar, Adv.
Mr. Shekhar Vyas, Adv.
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Mr. Raj Bahadur Yadav, Adv.
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Mr. M.K. Maroria, Adv.

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Ms. Mansi Binjrajka, Adv.

Ms. Charu Ambwani, AOR

Ms. Misha Rohatgi Mohta, AOR

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Mr. Akash Khurana, Adv.

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Mr. Rajan Chawla, AOR

Mr. Sanjay Bhatt, Adv.

Mr. Dama Seshadri Naidu, Adv.
Mr. B. Arvind Srevastsa, Adv.
Mr. S. Santanam Swaminadhan, Adv.
Ms. Abhilasha Shrawat, Adv.
Ms. Aarthi Rajan, AOR

Mr. M. Gireesh Kumar, Adv.
Mr. S.K. Kulkarni, Adv.
Mr. Ankur S. Kulkarni, Adv.
Ms. Uditha Chakravarthy, Adv.

Mr. Ravindra Kumar, Sr. Adv.
Mr. Binay Kumar Das, Adv.
Ms. Priyanka Das, Adv.
Ms. Neha Das, Adv.

Mr. Anil Grover, AAG
Ms. Noopur Singhal, Adv.
Mr. Rahul Khurana, Adv.
Mr. Sanjay Kr. Visen, Adv.
Mr. Shalen Bhardwaj, Adv.

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

IA Nos 57578 of 2022 & 64802 of 2022

- 1 List the Interlocutory Applications on 18 May 2022 at 2.00 pm.
- 2 Reply be filed in the meantime.

Action Taken Report - III (Post - 28.10.2021)

- 1 Chapter 2 of the Action Taken Report (ATR) which has been submitted by the new Board of Management of Unitech constituted by the Union Government deals with approvals from statutory authorities. Statutory approvals for carrying out the work of construction is required from the local authorities such as, (i) the Department of Town and Country Planning, Haryana; (ii) NOIDA; and (iii) Greater NOIDA.

- 2 The National Building Code¹ was introduced in 2016. Building plans for several under-construction projects of Unitech were initially prepared and approved in accordance with the erstwhile National Building Code 2005. The ATR states that construction on a majority of the under-construction projects, especially the high-rise structures of group housing projects and commercial projects was taken up in 2010-2015 following the then applicable NBC and Building Regulations.

- 3 In view of the above backdrop, two specific issues have been raised in Chapter II of the ATR:
 - (i) In cases where construction has been completed above the foundation level, it has been stated that it may not be feasible to incorporate the changes introduced in NBC 2016. On the other hand, where construction is to be taken up from the level of foundation itself, it would be feasible to prepare building plans conforming to the latest codes and regulations; and
 - (ii) The local and statutory authorities would demand payment of their dues for the grant of statutory approvals and renewals. The present Management does not have funds available for making these payments upfront. Hence, it has been submitted that the statutory authorities may be directed to accord their approvals or renewals without insisting on upfront payment. However, the payment of the dues can be made in

¹“NBC”

a staggered manner once construction commences and realizations are made through the projects concerned.

- 4 We have heard Mr Ravindra Kumar, senior counsel appearing on behalf of NOIDA and Greater NOIDA, Mr Anil Grover, counsel appearing on behalf of the DTCP, Haryana and Mr M Gireesh Kumar, counsel for the Bangalore Development Authority.
- 5 During the course of the hearing, as detailed above, there are two broad issues which are implicated in Chapter 2 of the ATR: the first relates to applicability of NBC 2016, while the second relates to the stage at which the dues which are payable to the authorities should be disbursed.
- 6 As regards the first issue, we have suggested to the counsel that a joint meeting can be held between Mr Ravindra Kumar, Mr Anil Grover, Mr M Gireesh Kumar and Mr N Venkataraman, Additional Solicitor General so that an agreed formulation can be presented before the Court in a manner which is consistent with the provisions of the NBC 2016. Counsel have agreed to meet during the course of the week and to endeavour to submit a formulation by the next date of listing.
- 7 As regards the staggered payments of the dues to the authorities, it is necessary for all the statutory authorities to comprehend that at present the government appointed Board of Management of Unitech may not have the requisite funds necessary to pay the dues for the grant of building

permissions and renewals upfront. Allowing the lands to remain unused and undeveloped will not sub-serve the interest of the statutory authorities and will result in a situation where the home buyers will not be able to secure their flats. Once the construction commences, it is anticipated by the Board of Management that realizations will also take place from which the dues can be paid over in a staggered manner. Cooperation in this regard from the statutory authorities would facilitate the completion of the projects and protect the interest of the home buyers, while at the same time facilitating the realization of the dues of the statutory authorities. The payments of the dues of the statutory authorities is also dependent on the construction taking place and it is from the realizations from the projects that the dues can be paid.

- 8 On both the above aspects, we deem it appropriate to request all the counsel to put their thoughts together after a joint meeting and to endeavour to submit a formulation which would protect the interest of all the concerned including the home buyers in a fair and balanced manner. For this purpose, list the matter on 18 May 2022 at 2.00 pm.

Action Taken Report - IV

- 1 Annexure - 2 to the ATR - IV contains a revised/updated payment plan in respect of the balance receivables from the home buyers. The Annexure contains a schedule for the payment of dues by the home buyers to facilitate construction.

- 2 On the request of Mr N Venkataraman, Additional Solicitor General, we permit the new Board of Management to upload the payment schedule on the web portal of Unitech so as to intimate the home buyers of the proposed schedule.

Civil Appeal Nos 10856 of 2016 and SLP (Crl) Nos 5978-5979 of 2017

- 1 List the following on 27 July 2022 at 2.00 pm:
- (i) D.A. Kumar - IA Nos 97388 of 2020, 47795 of 2021 filed by Unitech and IA Nos 80954 of 2020 and 80947 of 2020 filed by D A Kumar;
 - (ii) Carnoustie - IA Nos 50704 of 2021, 50706 of 2021 filed by Unitech and IA Nos 79304 of 2020, 5463 of 2021 filed by Carnoustie and IA No 118046 of 2018 in SLP (Crl) Nos 5978-5979 of 2017;
 - (iii) IA No 100828 of 2019 and IA No 70286 of 2020 in Civil Appeal No 10856 of 2016; and
 - (iv) IA No 50683 of 2021 in Civil Appeal No 10856 of 2016.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Court Master