

ITEM NO.301

COURT NO.12

SECTION XVII

**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(s).10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

WITH

C.A. No. 2511-2526/2017 (XVII)

(IA No.66938/2017-EXTENSION OF TIME and IA No.90673/2017-EXTENSION OF TIME)

S.L.P.(C)...CC No. 5129-5130/2017 (XIV)

(IA 1/2017-PERMISSION TO FILE PETITION)

C.A. No. 5174-5181/2017 (XVII)

(IA NO. 53934/2017-CLARIFICATION/DIRECTION)

C.A. No. 5674/2017 (XVII)

C.A. No. 10851/2016 (XVII)

(IA 2/2016-PERMISSION TO FILE ANNEXURES)

SLP(Cr1) No. 5978-5979/2017 (II-C)

(IA 73422/2017-PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN COPY OF IMPUGNED ORDER)

C.A. No. 15493/2017 (XVII)

(IA No.77581/2017-CONDONATION OF DELAY IN FILING and IA No.77582/2017-CLARIFICATION/DIRECTION and IA No.78654/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.82788/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

C.A. No. 17008-17011/2017 (XVII)

(FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS ON IA 94736/2017 FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 96100/2017 FOR CLARIFICATION/DIRECTION ON IA 15770/2018, IA 94577-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 9391-9404/2017 (XVII)

(FOR INTERVENTION/IMPLEADMENT ON IA 98431/2017, IA 60512/2017- APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 11008/2017 (XVII)

(IA No.80805/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.85513/2017-INTERVENTION/IMPLEADMENT and IA No.85519/2017-INTERVENTION/IMPLEADMENT and IA No.85880/2017-

INTERVENTION/IMPLEADMENT and IA No.95992/2017-impleading party and IA No.98113/2017-APPROPRIATE ORDERS/DIRECTIONS and IA No.98117/2017-DELETING THE NAME OF RESPONDENT)

C.A. No. 16858/2017 (XVII)  
(WITH IA No.97166/2017-PERMISSION TO FILE APPEAL and IA No.112640/2017-impleading party and IA No.112648/2017-APPLICATION FOR TRANSPOSITION and IA No.128215/2017-impleading party)

SLP(C) No. 30997/2017 (XVII)  
(WITH I.R.)

C.A. No. 20003/2017 (XVII)  
(WITH IA No.119851/2017-CONDONATION OF DELAY IN FILING and IA No.119859/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.119854/2017-CONDONATION OF DELAY IN REFILEING and IA No.119862/2017-APPROPRIATE ORDERS/DIRECTIONS)

WITH C.A. No. 3727/2018 (XVII)  
(WITH I.R. and IA No.41950/2018-CONDONATION OF DELAY IN FILING and IA No.41952/2018-APPROPRIATE ORDERS/DIRECTIONS)

SLP(C) No. 12667/2018 (XVII)  
(WITH I.R.)

C.A. No. 6837-6838/2018 (XVII)  
(IA 82490/2018-EX-PARTE INTERIM DIRECTION)

Diary No(s). 20540/2018 (XVII)  
(WITH IA No.104959/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.104957/2018-CONDONATION OF DELAY IN FILING APPEAL and IA No.104958/2018-CONDONATION OF DELAY IN REFILEING)

C.A. No. 8524/2018 (XVII)  
(IA 111987/2018-CLARIFICATION/DIRECTION)

C.A. No. 10609/2018 (XVII)  
(WITH IA No.141034/2018-CONDONATION OF DELAY IN FILING)

SLP(C) No. 30270/2018 (XVII)  
(WITH I.R. and IA No.164959/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 40477/2018 (XVII)  
(WITH IA No.168354/2018-CONDONATION OF DELAY IN FILING and IA No.168355/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.168356/2018-APPROPRIATE ORDERS/DIRECTIONS)

W.P.(C) No. 51/2019 (X)  
(WITH IA No.8597/2019-CLARIFICATION/DIRECTION)

Diary No(s). 1380/2019 (XVII)  
(WITH IA No.14639/2019-CONDONATION OF DELAY IN FILING and IA

No.14640/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT  
and IA No.14641/2019-STAY APPLICATION)

Date : 15-02-2019 These matters were called on for hearing today.

CORAM :

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HON'BLE MR. JUSTICE M.R. SHAH

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

A letter has been addressed by Justice S.N. Dhingra, former Judge, Delhi High Court to the Amicus Curiae indicating that Unitech has found a buyer for land admeasuring 24.50 acres at Village Mankhal, Maheshvaram Mandal, Rangareddy District, Hyderabad.

The letter indicates that the price which has been offered by the prospective buyer is at the rate of Rs 85 lakhs per acre and an advance of Rs 2 crores by bank draft has been forwarded to the Committee. The bank draft is with the learned Amicus Curiae and permission has been granted to deposit it in the Registry. The



balance of the consideration has to be paid within 45 days at the time of registration upon the approval of the Committee and this Court. The Committee has recommended the approval of the sale since the price which has been quoted has been found to be reasonable. We accordingly grant our approval in terms as proposed by the Committee. The Committee is permitted to proceed with the completion of the sale transaction. This shall be supervised by the Committee and the moneys realized shall be deposited before the Registry of this Court.

The Amicus Curiae has placed on the record, together with his status report, a tabular statement for the utilization of funds in respect of a nine months' schedule of construction. 907 units would be completed between 4 to 9 months for which a total fund allocation of Rs 82.50 crores is required. This represents an estimate which has been furnished by Unitech and is yet to be verified by the Justice Dhingra Committee. We accordingly, direct the Registry to release an amount of Rs 40 crores at present to the Justice Dhingra Committee (Unitech Ltd. Escrow A/c. No. 50200032645915) which will be utilised for the completion of the nine projects referred to in the tabulated chart filed on 14 February 2019.

We request the Committee to verify the details of the estimates furnished by Unitech and subject to verification, to authorize the utilization of the amount solely and exclusively for the purpose of the construction of the nine projects. We also direct that all home buyers who are being given possession of the constructed units shall simultaneously deposit the balance of the

dues payable in respect of their flats.

The dues shall be ascertained by the Justice Dhingra Committee flat wise in coordination with a representative of Unitech who shall be nominated specifically for that purpose. We also clarify on the request of the learned Amicus Curiae that in those cases where the fit out is to be carried out by home buyer warranting a reduction in the price of the flat this shall be subject to the due verification and approval of the Justice Dhingra Committee.

In the previous order of this Court dated 23 January 2019, there was a reference to the report of the Amicus Curiae insofar as it dealt with the proposed sale of Unitech Power Transmission Ltd. (UPTL) to Sterling & Wilson Pvt. Ltd. The relevant part of the previous order is extracted below:

"The Report contains several items, including the following:

"DIRECTION OF APPROVAL FOR SALE OF UPTL

1. Unitech has signed a binding term sheet and agreed on a draft Share Purchase Agreement with Sterling Wilson for the sale of its company UPTL for 105 cores, out of which 68.40 Cr. is promised to be deposited with the Registry of this Hon'ble Court after the fulfilment of conditions laid in the term sheet. The balance 35 crores will be backed by a bank guarantee issued in favour of an escrow agent. An application seeking approval for the said transaction has been filed by Unitech. Necessary directions may be given on the said issue."

Insofar as the above transaction is concerned, we are of the view that before the grant of approval by the Court can be considered, there should be an assessment of the fair market value and other terms proposed by a professional expert. Since Grant Thornton India LLP have been appointed by this Court to conduct a forensic audit, we request them to scrutinize the Term Sheet Agreement and submit a report before this

Court preferably within a period of two weeks from today.”

In pursuance of the above directions, M/s. Grant Thornton India LLP have submitted their report on the equity valuation of Unitech Power Transmission Ltd. The report indicates that the fair market value of UPTL, as on 30 September 2018, is comparable with the proposed sale consideration of INR 105 crores.

In the above circumstances, we approve the proposed transaction. Under the terms of the transaction, M/s. Oriental Bank of Commerce and Syndicate Bank are requested to expedite the process of change of management and shareholding of UPTL from Unitech to Sterling & Wilson Pvt. Ltd. preferably within a period of three weeks. The amount which is realized against the aforesaid transaction shall be deposited directly in the Registry of this Court, and shall be kept in a short term deposit of a nationalized bank.

Mr. Sameer Paranjape from M/s. Grant Thornton has presented to the Court an update of the undergoing forensic audit. He has stated that 45 per cent of the financial and operational records of Unitech have been received. We direct that all the remaining records must be handed over to the forensic auditor within two weeks from today. The Chief Financial Officer of Unitech shall be personally responsible for compliance.

The second difficulty which is being faced by the forensic auditors is in regard to the forensic imaging of key electronic devices held by the management of Unitech Ltd. We direct that the data from the electronic devices of the current management and

employees concerned as well as those who have served the company in the past must be handed over within a period of two weeks to the forensic auditors. The Chief Financial Officer shall ensure personally compliance with this direction.

In the event that any previous employee, including erstwhile employee is not complying with the order of this Court, the Court will be constrained to issue a notice of contempt and secure the data through the coercive process of law. In any case, we are of the view that the responsibility for compliance must be fulfilled by M/s. Unitech Ltd. not later than a period of two weeks from today.

Learned counsel appearing for Unitech Ltd. would be at liberty to mention SLP(C) No. 9572 of 2007 for early listing, since learned counsel appearing on behalf of NOIDA has stated before the Court that many of the issues which have a bearing on the present proceedings will stand resolved one way or the other only upon the conclusion of the proceedings in the aforesaid SLP.

The Amicus Curiae has, on the suggestion of some of the learned counsel, submitted that in the event, there are unsold units in the projects which are proceeding to completion, the possibility of offering these unsold units by way of a swap to existing buyers in projects which have not made progress will be considered and a proposal placed before this Court for final direction.

Unitech Ltd. shall, in furtherance of the previous order of this court, provide on affidavit, the data pertaining to the employees of the company as on 1 January 2014 and thereafter

including full details in regard to unpaid salaries, TDS and statutory dues. This data shall be filed employee wise within a period of three weeks.

We clarify and direct that the title deeds, together with NOC of those home buyers who have received the entire principal amount, shall be lodged with the learned Amicus Curiae in the first instance. Mr. Pawanshree Agrawal, learned Amicus Curiae shall in turn lodge the title deeds together with the NOC with the Registry. They shall be kept in the safe custody of the Registry against inventory.

List on 7 March 2019 at 3 pm.

(MANISH SETHI)  
COURT MASTER (SH)

(SAROJ KUMARI GAUR)  
BRANCH OFFICER