

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 10856 OF 2016

IN THE MATTER OF:

BHUPINDER SINGH

.....PETITIONER

vs.

UNITECH LIMITED

...RESPONDENT

COMPILATION OF EFFECTIVE ORDERS IN BHUPINDER SINGH
V. UNITECH LIMITED [CIVIL APPEAL NO.10856 OF 2016] AND
SANJAY CHANDRA & ORS. V. STATE GOVT. OF NCT OF DELHI
& ORS. [SLP (CRL.) NO.5978-5979 OF 2017]
2017 – 2021

PAPER BOOK

(VOLUME-2)

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ITEM NO.301

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SECTION XVII-A

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R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

IA No. 163215/2019 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 126833/2019 - APPROPRIATE ORDERS/DIRECTIONS
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WITH

SLP(C) No. 9572/2007 (XI)

(IA No. 162939/2019 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 35051/2019 - CLARIFICATION/DIRECTION

IA No. 12/2013 - EXEMPTION FROM FILING O.T.

IA No. 118081/2019 - INTERVENTION APPLICATION

IA No. 11/2013 - PERMISSION TO FILE ANNEXURES

IA No. 10/2013 - PERMISSION TO FILE ANNEXURES

IA No. 9/2011 - PERMISSION TO FILE ANNEXURES

IA No. 13/2016 - PERMISSION TO FILE ANNEXURES)

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IA No. 8196/2019 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 168352/2018 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 86487/2018 - CLARIFICATION/DIRECTION
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IA No. 60512/2017 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 98431/2017 - INTERVENTION/IMPLEADMENT)

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IA No. 46040/2018 - INTERVENTION APPLICATION
IA No. 71446/2018 - INTERVENTION APPLICATION
IA No. 72065/2018 - INTERVENTION APPLICATION

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IA No. 106074/2017 - INTERVENTION APPLICATION

IA No. 122293/2017 - INTERVENTION/IMPLEADMENT
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IA No. 55575/2018 - INTERVENTION/IMPLEADMENT
IA No. 66759/2018 - INTERVENTION/IMPLEADMENT
IA No. 114988/2018 - INTERVENTION/IMPLEADMENT
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 IA No. 189569/2019 - INTERVENTION/IMPLEADMENT
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 IA No. 134806/2018 - INTERVENTION/IMPLEADMENT
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 IA No. 6790/2019 - INTERVENTION/IMPLEADMENT
 IA No. 176528/2018 - MODIFICATION
 IA No. 176545/2018 - MODIFICATION
 IA No. 145494/2018 - MODIFICATION OF COURT ORDER
 IA No. 1614/2019 - MODIFICATION OF COURT ORDER
 IA No. 1610/2019 - MODIFICATION OF COURT ORDER
 IA No. 37229/2019 - MODIFICATION OF COURT ORDER
 IA No. 108822/2017 - PERMISSION TO APPEAR AND ARGUE IN PERSON
 IA No. 103237/2019 - PERMISSION TO APPEAR AND ARGUE IN PERSON
 IA No. 176388/2018 - PERMISSION TO APPEAR AND ARGUE IN PERSON
 IA No. 175965/2019 - PERMISSION TO APPEAR AND ARGUE IN PERSON
 IA No. 23251/2018 - PERMISSION TO APPEAR AND ARGUE IN PERSON
 IA No. 108851/2017 - PERMISSION TO APPEAR AND ARGUE IN PERSON
 IA No. 99900/2018 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES
 IA No. 110611/2019 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES
 IA No. 86731/2018 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES
 IA No. 71828/2018 - PERMISSION TO FILE APPLICATION FOR DIRECTION
 IA No. 175985/2019 - PERMISSION TO FILE APPLICATION FOR DIRECTION
 IA No. 138368/2017 - PERMISSION TO FILE APPLICATION FOR DIRECTION
 IA No. 107196/2017 - PERMISSION TO FILE APPLICATION FOR DIRECTION
 IA No. 73472/2017 - PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN
 COPY OF IMPUGNED ORDER
 IA No. 4504/2018 - PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS
 IA No. 23839/2018 - PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS
 IA No. 72068/2018 - RECALLING THE COURTS ORDER
 IA No. 13046/2018 - SEEKING CUSTODY CERTIFICATE
 IA No. 39547/2019 - WITHDRAWAL OF CASE / APPLICATION)

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

(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. 17008-17011/2017 (XVII-A)
(IA No. 85469/2018 - APPLICATION FOR TRANSPOSITION
IA No. 96100/2017 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 66025/2018 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 15770/2018 - CLARIFICATION/DIRECTION
IA No. 138460/2018 - CLARIFICATION/DIRECTION
IA No. 94577/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT
IA No. 116810/2018 - INTERVENTION/IMPLEADMENT
IA No. 94844/2018 - INTERVENTION/IMPLEADMENT
IA No. 94782/2018 - INTERVENTION/IMPLEADMENT
IA No. 93352/2018 - INTERVENTION/IMPLEADMENT
IA No. 55457/2018 - INTERVENTION/IMPLEADMENT
IA No. 94736/2017 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 16858/2017 (XVII-A)

IA No. 101622/2018 - CLARIFICATION/DIRECTION
IA No. 108044/2018 - INTERVENTION/IMPLEADMENT
IA No. 101795/2018 - INTERVENTION/IMPLEADMENT
IA No. 71612/2018 - INTERVENTION/IMPLEADMENT
IA No. 50215/2019 - INTERVENTION/IMPLEADMENT)

C.A. No. 20003/2017 (XVII-A)
(IA No. 144379/2019 - INTERVENTION/IMPLEADMENT)

SLP(C) No. 30997/2017 (XVII-A)

C.A. No. 3727/2018 (XVII-A)

(IA No. 41952/2018 - APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 6837-6838/2018 (XVII-A)

(IA No. 82490/2018 - EX-PARTE INTERIM DIRECTION)

SLP(C) No. 12667/2018 (XVII-A)

IA No. 127173/2018 - CLARIFICATION/DIRECTION
IA No. 127169/2018 - INTERVENTION/IMPLEADMENT)

Diary No(s). 20540/2018 (XVII-A)

IA No. 104957/2018 - CONDONATION OF DELAY IN FILING APPEAL
IA No. 104958/2018 - CONDONATION OF DELAY IN REFILEING / CURING THE
DEFECTS)

C.A. No. 8524/2018 (XVII-A)

IA No. 111987/2018 - CLARIFICATION/DIRECTION)

C.A. No. 10609/2018 (XVII-A)

SLP(C) No. 30270/2018 (XVII-A)

Diary No(s). 40477/2018 (XVII-A)

IA No. 168356/2018 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 168354/2018 - CONDONATION OF DELAY IN FILING

IA No. 168355/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

W.P.(C) No. 51/2019 (X)

IA No. 8597/2019 - CLARIFICATION/DIRECTION)

Diary No(s). 1380/2019 (XVII-A)

IA No. 14639/2019 - CONDONATION OF DELAY IN FILING

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

Diary No(s). 4454/2019 (XVII-A)

IA No. 30656/2019 - CONDONATION OF DELAY IN FILING

IA No. 30657/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 3236/2019 (XVII-A)

C.A. No. 3269/2019 (XVII-A)

IA No. 51514/2019 - APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 3935/2019 (XVII-A)

(FOR ADMISSION and IA No.63737/2019-CLARIFICATION/DIRECTION)

Diary No(s). 13860/2019 (XVII-A)

IA No. 68265/2019 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 68264/2019 - CONDONATION OF DELAY IN FILING APPEAL)

Diary No(s). 13969/2019 (XVII-A)

(FOR ADMISSION and I.R. and IA No.71090/2019-CONDONATION OF DELAY IN FILING)

C.A. No. 5177/2019 (XVII-A)

C.A. No. 5190/2019 (XVII-A)

(FOR ADMISSION)

C.A. No. 5912/2019 (XVII-A)

(FOR ADMISSION)

Date : 20-01-2020 These matters were called on for hearing today.

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HON'BLE MR. JUSTICE M.R. SHAH**

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Mr. Anuroop Chakravarti, Adv.
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Mr. Abhimanyu Bhandari, Adv.
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Ms. Hima Lawrence, AOR

Mr. Siddharth Batra, AOR
Mr. Ravinder Kumar, Adv.
Ms. Sugandha Sharma, Adv.

Mr. Deepak Goel, AOR

Mr. K. K. Mohan, AOR

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Mr. Harsh Mishra, Adv.

Mrs. Gargi Khanna, AOR

Mr. Abhishth Kumar, AOR

Ms. Rakhi Ray, AOR

Mr. Rajesh Singh, AOR

Mr. Abhinav Mukerji, AOR

Mr. Amit Kumar, AOR

Mr. Santosh Krishnan, AOR
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Mr. Nimit Mathur, Adv.

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Applicant-in-person

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Ms. Rashmi Nandakumar, AOR

Mr. Shantanu Krishna, AOR

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Ms. Tara V. Ganju, Adv.
Mr. Hitaish Chauhan, Adv.
Ms. Jyoti Mendiratta, AOR

M/S. Hingorani & Associates

Mr. Kaushik Choudhury, AOR

M/S. Dua Associates, AOR

Mr. Ayush Sharma, AOR

Mr. Vaibhav Kumar, AOR

Ms. Vanshaja Shukla, AOR
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Mr. Kartik Yadav, Adv.
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Mr. R. Vasanth, Adv.
Mr. Saurabh Babulkar, Adv.
Mr. R. Chandrachud, Adv.

Ms. V. Mohana, Sr. Adv.
Mr. B. Ragunath, Adv.

Mr. Sriram P, Adv.

Mr. R.N. Venjrani, Sr. Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. S.K. Rajora, Adv.
Ms. Sandhya Sharma, Adv.

Mr. Ashutosh Srivastava, In-person

Mr. P.S. Narasimha, Sr. Adv.
Ms. Babita Yadav, Adv.
Ms. Swarupama Chaturvedi, Adv.
Mr. Ashutosh Mohan, Adv.
Mr. Aman Jha, Adv.
Ms. Aparna Trivedi, Adv.
Mr. Mukesh Kumar, Adv.

Mr. Rituraj Biswas, Adv.
Mr. Rituraj Choudhary, Adv.

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

Proposal of the Union government

In pursuance of the order of this Court dated 18 December 2019, Mr K K Venugopal, learned Attorney General for India, has submitted a note on behalf of the Union government. The Union government had previously approached the National Company Law Tribunal in December 2017 to remove the existing management of Unitech Limited and to appoint ten nominee directors. In pursuance of the suggestions contained in the previous order, the Union government has indicated that it is prepared to revisit the proposal and to appoint nominee directors to take over the management of Unitech Limited, subject to the following stipulations:

"(i) That the Government will not infuse any funds for the completion of pending projects;

(ii) That this Hon'ble Court, to ensure a period of calm, will direct a moratorium for 12 months;

(iii) That this Hon'ble Court may appoint a retired Judge of the Supreme Court for supervising the resolution framework finalized by the proposed Board of Directors;

(iv) That this Hon'ble Court may allow the proposed Board of Directors to appoint key managerial persons (KMPs, on need based), professionals (legal, insolvency, financial advisors, real estate professionals, etc.) for assisting the Government appointed Board and payment of requisite professional fees including the legal fees thereof from the Company's account;

(v) That this Hon'ble Court may direct the promoters and the present management of the company to co-operate with the proposed Board of Directors;

(vi) That this Hon'ble Court may direct the Forensic Auditor, Asset Reconstruction Companies/Banks/ Financial Institutions/ State Government(s) and all the regulators to extend co-operation to the proposed Board of Directors;

(vii) That this Hon'ble Court may issue directions to restrain the promoters from alienating, mortgaging, creating charge or lien or interest in the movable and immovable properties owned by them;

(viii) That this Hon'ble Court may place, under the control of the proposed Board of Directors, all the projects carried out by the Asset Reconstruction Companies or independent parties, and the services of the Committee headed by Justice Dhingra may be put at rest;

(ix) That this Hon'ble Court may confer immunity for the proposed Directors in respect of the numerous litigations pending all over India in relation to the Company and its promoters, management, etc.;

(x) That this Hon'ble Court may permit the proposed Board of Directors to raise funds due from the home buyers, and to sell the unsold inventory of stock and the unclaimed inventory available for re-selling. Further, the proposed Board be allowed to monetize the unencumbered assets of the Company for completion of housing units. In addition, this Hon'ble Court may release, to the proposed Board of Directors, funds lying with this Hon'ble Court pertaining to the Company or its management;

(xi) That this Hon'ble Court recognizes and directs that without prejudice to any order, the Government has the right to refer the Company to liquidation or IBC like resolution outside the framework of IBC, in case the assigned takeover is not viable in the absence of requisite resources."

In response to the proposal which has been submitted before the Court on behalf of the Union government, the *amicus curiae* has submitted a status report dated 18 January 2020 containing some suggestions. The *amicus curiae* submitted that:

- (i) The Union government has created a stressed assets fund for real estate projects and hence the Ministry of Corporate Affairs should consult the Ministry of Finance to explore the possibility of releasing funds in the interests of the home buyers of Unitech Limited;

- (ii) The resolution framework should be submitted to this Court by the newly constituted board within a time schedule fixed by the Court;
- (iii) Justice S N Dhingra may also be a part of the Committee since he has considerable experience in regard to the sale of properties of Unitech Limited and construction of fresh buildings which has resulted in the possession of 514 units being handed over to the purchaser;
- (iv) The forensic auditors M/s Grant Thornton have expressed their willingness to support the new management on issues pertaining to the completion of projects, assets monetization, management of shareholders' interface and regulatory compliance, as a supervisory management agency;
- (v) The raising of funds from home buyers should be only when they fall due under the builder - buyer agreements or allotment letters;
- (vi) The newly constituted Board should also be permitted to monetize encumbered assets if feasible;
- (vii) At the present stage, the funds deposited in the Registry of this Court should not be released until a resolution framework plan has been finalized by the Board and is placed before this Court;
- (viii) Any action in future for liquidation or for a resolution outside the framework of the Insolvency and Bankruptcy Code should be only undertaken with the approval of this Court; and
- (ix) The newly constituted board should consider project viability and based on it, a decision may be taken on which projects should be constructed and where refunds to home buyers should be made.

We have also heard representations on behalf of the home buyers, asset reconstruction companies and the management of the Unitech Limited.

Mr Kapil Sibal, learned senior counsel appearing on behalf of the management of Unitech Limited, has submitted that

- (i) Unitech Limited has valid explanations to the observations contained in the report of the forensic auditors;
- (ii) In the event that any action is initiated in pursuance of the report of the forensic auditors by any investigation agency, the erstwhile management should be permitted to place its explanation on record; and
- (iii) The erstwhile management is willing to tender its explanation at some stage before this Court.

Mr Sibal also prefaced his submissions by contending that the data which has been disclosed in the report of the forensic auditors, as recorded in the previous order, would indicate that the assets of the company exceed the liabilities in value. It was also urged that it would be appropriate if a nominee (Mr Ramesh Chandra) of the erstwhile management is permitted to sit on the Board of Directors, together with an accountant, in order to facilitate cooperation being rendered to the new Board of Directors.

We are of the view that it would not be appropriate to

induct any nominee of the erstwhile management on the Board of Directors of Unitech Limited. The purpose of having an independent and professional Board of Directors to manage the company is precisely to obviate the serious problems which have arisen in the business of the company resulting *prima facie* from the misconduct of the earlier management. Inducting a representative of the erstwhile management will not facilitate the purpose of ensuring that the real estate projects are completed at an early date to fulfill the commitments to the home buyers.

We are of the view that the proposal which has been submitted on behalf of the Union government for the appointment of nominee directors on the Board of Unitech Limited must be accepted, having regard to the background which is set out in the previous order of this Court. The concern, which has weighed with the Court is the need to protect the interests of home buyers and to ensure that the monies which they have invested over long years results in their being placed in possession of the premises which are agreed to be sold to them in the foreseeable future.

The Union government has submitted that it would not be in a position to infuse funds for the completion of the pending projects. The learned Attorney General has submitted that though a Stressed Assets Fund has been set up by the Union government, the policy of the government

is not to make any funds available for matters where litigation is pending. We are not dilating on this aspect at this stage. The issue can be taken up at the appropriate stage.

At this stage, it would be appropriate if the Board of Directors constituted by the Union government submits to this Court a report within a period of two months suggesting the resolution framework.

We issue the following directions:

(i) The existing Board of Directors of Unitech Limited is superseded with immediate effect in order to facilitate the taking over of management by the new Board of Directors constituted in terms of the proposal submitted by the Union government;

(ii) The Union government has proposed that the Board of Directors shall consist of seven persons, whose names have been suggested in the proposal, namely,

(a) Shri Yudvir Singh Malik (retd.), IAS, Haryana cadre (Chairman & Managing Director);

(b) Shri Anoop Kumar Mittal;

(c) Ms Renu Sud Karnad;

(d) Shri Jitu Virwani;

(e) Shri Niranjana Hiranandani;

(f) Dr Girish Kumar Ahuja; and

(g) Shri B Sriram.

We permit the Union government to notify the constitution of the Board of Directors as proposed, subject to the addition of the name indicated in (iii) below;

(iii) In addition to the names which have been proposed by the Union government for the Board of Directors, we direct the induction of Mr Prabhakar Singh, Director General of the CPWD, who is due to attain the age of superannuation at the end of January 2020, as a member of the Board of Directors with effect from 1 February 2020;

(iv) All concerned including the erstwhile management of Unitech Limited shall cooperate with the newly constituted Board. The Board shall be at liberty to devise appropriate modalities for securing full disclosure of information from the erstwhile management;

(v) We request the newly constituted Board of Directors to prepare a resolution framework within a period of two months from today and to submit it to this Court;

(vi) In terms of the proposal which has been submitted by the Union government, this Court will pass

orders for appointing a former Judge of this Court for supervising the resolution framework immediately after it is submitted before this Court;

(vii) Pending further orders of this Court, there shall be a moratorium against the institution of proceedings against Unitech Limited and its subsidiaries. The moratorium shall also extend to existing proceedings against the company as well as the enforcement of orders that may have been passed against the company;

(viii) The moratorium which has been imposed by this Court in clause (vii) above shall not impede, affect or restrain any existing investigation or prosecution or any investigation or prosecution which may hereafter be initiated against the erstwhile management or officers of Unitech Limited for acts involving a criminal wrongdoing. This order shall not be construed as any restraint on the investigative process of any agency;

(ix) The erstwhile management of Unitech Limited, when it is called upon to respond to any requisition of an investigating agency based on the Report of the forensic auditors M/s Grant Thornton would explain and clarify its position;

(x) The order of moratorium shall not foreclose the statutory entitlement of the EPFO to enforce the claims for the payment of EPF and other related statutory dues

in accordance with law against the erstwhile management;

(xi) The implementation of existing projects under the auspices of the Justice Dhingra Committee will continue pending further orders. Further directions to facilitate these projects being brought under the control of the newly constituted Board of Directors shall be issued by this Court after the resolution framework is submitted;

(xii) The newly constituted Board of Directors would be at liberty to take a comprehensive view of all pending and other projects and to make such proposals as would appear to them to be proper;

(xiii) We have not interdicted the implementation of any project by the asset reconstruction companies, at this stage.

(xiv) The proposal submitted by the Union government is, hence, accepted.

Besides the directions issued above in regard to the moratorium, we accept the specific requests contained in clauses (iv), (v), (vi), (vii), (ix) and (x) of the proposal of the Union government and issue directions in the terms as sought.

Status Report of Amicus Curiae dated 18 January 2020

Fees of M/s Grant Thornton

Payment of the invoice dated 19 December 2019 of the Forensic Auditors M/s Grant Thornton is approved. The Registry shall disburse from the accrued interest an amount sufficient to cover the invoice by a demand draft drawn in the name of Grant Thornton India LLP.

Cancellation of Lease by NOIDA

On 18 December 2019, it was brought to the notice of this Court that NOIDA has cancelled the lease which was granted to Unitech in Sector 113, Noida. This has resulted in jeopardizing the rights of 1625 home buyers.

We have heard learned counsel appearing on behalf of NOIDA, who submits that NOIDA was unaware of the number of home buyers whose interests were involved in this particular project.

We consider this explanation of NOIDA to be unacceptable. When the Court was seized of the proceedings pertaining to Unitech Limited, we would have expected that NOIDA seeks the permission of this Court to initiate coercive action against the Unitech Limited. The assets of Unitech Limited, including its leasehold interests, constitute a valuable security for ensuring that they are monetized with a view to fulfill the

commitments to the home buyers.

We, hence, direct NOIDA to forthwith restore the lease of the land in favour of Unitech Limited in respect of the site in Sector 113, Noida.

This would be without prejudice to such rights and contentions that NOIDA may wish to urge before this Court in the present proceedings in regard to its outstanding dues.

Delhi Development Authority

The *amicus curiae* has placed on record a termination notice dated 27 September 2019 by the Delhi Development Authority in respect of an amusement park cum retail space located at Rohini, New Delhi.

Issue notice to the Delhi Development Authority, returnable in three weeks.

DDA is directed to file its response.

The *amicus curiae* shall serve a copy of the status report on DDA.

Refund of Fixed Deposit Holders

In terms of the previous orders passed by this Court, the process of disbursing the claims of fixed deposit holders who are senior citizens, aged 60 years and above, is directed to proceed.

Home buyers of the project 'Vistas'

Home buyers of the project 'Vistas' in Sector 17, Gurgaon, who seek to convert their options from refund to possession are permitted to do so. In order to facilitate this, the home buyers shall register their options for seeking possession instead of refund with the *amicus curiae*. However, the home buyers shall be informed that those among them who seek to alter their option to seek possession will be required to deposit in this court the monies which are payable against the offer of possession. These home buyers will be required to pay the balance payable on account of their allotted units at the time when the offer of possession is made. Those among the home buyers who have already received refunds but now seek possession shall be required to deposit the refunds in the Registry of this Court, together with interest at 9% per annum payable with effect from the date of disbursement until the date of deposit in the Registry of this Court. The *amicus curiae* shall prepare a list of such home buyers and share it with the Registry to facilitate the process.

Ex-employees

The *amicus curiae* states that pursuant to the web portal being opened to receive fresh claims of the employees, 257 employees have registered their claims.

The amount which has been claimed by the employees (as per the web portal) is stated to be Rs 27.94 crores, whereas according to the Unitech Limited, the amount is Rs 23.74 crores. This yields a difference of Rs 4.20 crores. At this stage, we authorise the *amicus curiae* to commence the process of making *pro rata* disbursements on account of outstanding (i) salary; (ii) gratuity; (iii) pension; (iv) provident fund; and (v) superannuation payments.

An amount of Rs 15 crore from the amount which is lying with the Registry is earmarked for disbursal on a *pro rata* basis to the ex-employees, as indicated above. The above payment will cover those of the 257 employees who have registered on the portal.

Bangalore land sale

From the report of the *amicus curiae*, it has emerged that M/s Devas Global LLP has defaulted in making a payment of Rs 52 crores which was due and payable as on January 2019.

We have heard Mr Vikram Hegde, learned counsel appearing on behalf of M/s Devas Global LLP.

In order to obviate the forfeiture of the entire amount, we grant one opportunity to M/s Devas Global LLP to deposit the balance amount of Rs 52 crores

representing the share of Unitech Limited, together with interest at the rate of 12% per annum, within a period of four weeks from today. Until then, M/s Devas Global LLP is restrained from creating any third party rights on the land which has already been registered from Unitech and two acres of access land from Mr Naresh Kumar Kempanna.

Chennai land sale

In respect of the land in Sriperumbudur, the MOU entered into by Unitech Limited with Priadarshini Foundations Pvt Ltd for the purchase of 380.38 acres of land at the rate of Rs 81 lakhs per acre is, according to the report of the *amicus curiae*, approved by the orders passed by this Court on 19 November 2018, 30 November 2018 and 7 December 2018.

As on date, according to the report of the *amicus curiae*, Rs 60 crores has been deposited in the Registry and an amount of Rs 85 crores is overdue as of 31 October 2019. An amount of Rs 15 crores was paid by three cheques which have been dishonoured on presentation.

We direct the purchaser, Priadarshini Foundations Pvt Ltd, to deposit the balance overdue as of date, inclusive of the overdue amount of Rs 85 crores as of 31 October 2019, within a period of four weeks from today in two equal tranches, the first of which shall be payable on or before the end of February 2020 and the second, on or

before 31 March 2020, together with interest at the rate of 12% per annum. The payments to be made shall be inclusive of the further deposits which fall due as per the schedule prescribed in the MOU.

Mr Rajiv Dutta, learned senior counsel, submits that the payments have fallen overdue because there were certain difficulties in the transfer of land from the affiliates of M/s Unitech Limited to the purchaser.

The *amicus curiae* has submitted before the Court that the modalities for the transfer of land would be duly completed and is being looked into by Justice Dhingra Committee.

Sale of Unitech Power Transmission Limited to Sterling and Wilson Pvt Ltd

The report of the *amicus curiae* indicates that M/s Sterling and Wilson Pvt Ltd has been seeking repeated extensions for making payments despite their initial commitment to make the payments by 8 October 2019.

The Registry shall issue notice to M/s Sterling and Wilson Pvt Ltd. The address for service shall be provided by the *amicus curiae*, within the course of the week. Notice shall be returnable in three weeks.

IA Nos 31375-376 of 2019 filed by JLL Properties Consultants India Private Limited

By its report dated 4 September 2019 [Annexure 5 of the report submitted by the *amicus curiae*], Justice Dhingra Committee has recommended the payment of an amount of Rs 58,42,500/- to M/s JLL Properties Consultants India Private Ltd on account of transaction advisory services for a property at Kolkata. The recommendations of the Committee are approved.

The Registry shall disburse an amount of Rs 58,42,500 by way of a demand draft drawn in favour of JLL Properties Consultants India Private Ltd.

IA Nos 31375-376 of 2019 shall stand disposed of.

The office report dated 18 January 2020 indicates that the four FDRs are maturing on different dates. The Registry is directed to reinvest the monies for a period of one year in a nationalized bank which offers better rates of interest.

List the matters on 10 February 2020 at 2 pm.

On the next date of hearing, the Court would proceed in the following order:

- (i) SLP (C) No 9572 of 2007 (Noida matter);
- (ii) Pending IAs.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

ITEM NO.301

COURT NO.8

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(With appln.(s) for appropriate orders/directions, clarification/direction and intervention/impleadment)

WITH S.L.P.(C) No.9572/2007 (XI)

(With appln.(s) for permission to file Annexures, exemption from filing O.T., clarification/direction, appropriate orders/directions)

C.A. No.11108/2016 (XVII-A)

(With appln.(s) for permission to file additional documents)

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

(With appln.(s) for permission to file Annexures)

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

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

(With appln.(s) for permission to file SLP)

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

(With appln.(s) for clarification/direction and appropriate orders/directions)

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

C.A. Nos.9391-9404/2017 (XVII-A)

(With appln.(s) for appropriate orders/directions)

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

(With appln.(s) for clarification/direction and transposition)

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

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

(With appln.(s) for exemption from filing c/c of the impugned judgment, intervention/impleadment, appropriate orders/directions and deleting the name of respondent)

C.A. No. 16858/2017 (XVII-A)

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

(With appln.(s) for exemption from filing c/c of the impugned judgment, permission to file additional documents/facts/Annexures, appropriate orders/directions, clarification/direction, intervention/impleadment, for transposition)

C.A. No. 20003/2017 (XVII-A)

(With appln.(s) for intervention/impleadment)

S.L.P.(C) No.30997/2017 (XVII-A)

C.A. No.3727/2018 (XVII-A)

C.A. Nos.6837-6838/2018 (XVII-A)
S.L.P.(C) No.12667/2018 (XVII-A)
Diary No.20540/2018 (XVII-A)
 (With appln.(s) for c/delay in filing SLP)
C.A. No.8524/2018 (XVII-A)
C.A. No.10609/2018 (XVII-A)
S.L.P.(C) No.30270/2018 (XVII-A)
Diary No.40477/2018 (XVII-A)
 (With appln.(s) for c/delay in filing SLP)
W.P.(C) No.51/2019 (X)
Diary No.1380/2019 (XVII-A)
 (With appln.(s) for c/delay in filing SLP)
Diary No.4454/2019 (XVII-A)
 (With appln.(s) for c/delay in filing SLP)
C.A. No.3236/2019 (XVII-A)
C.A. No.3269/2019 (XVII-A)
 (With appln.(s) for appropriate orders/directions)
C.A. No.3935/2019 (XVII-A)
 (With appln.(s) for clarification/direction)
Diary No.13860/2019 (XVII-A)
 (With appln.(s) for c/delay in filing SLP)
Diary No.13969/2019 (XVII-A)
 (With appln.(s) for c/delay in filing SLP and interim relief)
C.A. No.5177/2019 (XVII-A)
C.A. No.5190/2019 (XVII-A)
C.A. No.5912/2019 (XVII-A)

Date : 10-02-2020 These matters were called on for hearing today.

CORAM :

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

For Appellant(s) Mr. Ajay Kumar Talesara, AOR
 Mr. A.P. Singh, Adv.
 Mr. Saurav Kumar, Adv.

 Mr. Deepak Goel, AOR

 Mr. Dhruv Mehta, Sr. Adv.
 Mr. Joshua H. Samuel, Adv.
 Mr. Sahil Tagotra, AOR
 Mr. Rajat Agnihotri, Adv.

 Ms. Vanshaja Shukla, AOR
 Mr. Parmanand Yadav, Adv.
 Ms. Anuja Pethia, Adv.

Ms. Sapna Chouhan, Adv.

Mr. Rahul Shyam Bhandari, AOR

Dr. Harish Uppal, Adv.

Mr. Tileshwar Prasad, Adv.

Ms. Prerna Mehta, AOR

Mr. Awanish Kumar, AOR

Mr. Rahul Narayan, AOR

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Mr. Mayank Grover, Adv.

Mr. Paban K. Sharma, Adv.

Mr. Anchit Sripath, Adv.

Mr. Himanshu Shekhar, AOR

Mr. Shubhranshu Padhi, AOR

Mr. Ashish Yadav, Adv.

Mr. Rakshit Jain, Adv.

Mr. Vishal Banshal, Adv.

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Dr. Harsh Uppal, Adv.

Mr. Vikas Mehta, AOR

Mr. T. Prasad, Adv.

Mr. Kushal Sarkar, Adv.

Mr. Devendra Singh, AOR

Mr. Kamendra Mishra, AOR

Ms. Aswathi M.k., AOR

Mr. Piyush Vashista, Adv.

Mr. Gaurav, AOR

Mr. Pahlad Singh Sharma, AOR

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Ms. Uttara Babbar, AOR

Ms. Bhavana Duhoon, Adv.
Mr. Manan Bansal, Adv.

Mr. Sandeep Bajaj, Adv.
Mr. Soayib Qureshi, Adv.
Ms. Aakanksha Nehra, Adv.
Mr. Dhananjaya Sud, Adv.
Ms. Nidhi Mohan Parashar, AOR

Mr. Pawanshree Agrawal, AOR
Ms. Abhipsa Anamika, Adv.

Ms. Priyanjali Singh, AOR
Mr. Rahul Rathor, Adv.
Mr. Karunesh Kumar Shukla, Adv.

Mr. Gp. Capt. Karan Singh Bhati, AOR

Mr. P.S. Patwalia, Sr. Adv.
Mr. Pinaki Mishra, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Ankur Sehgal, Adv.
Mr. Saket Sikri, Adv.
Mr. Anuroop Chakravarti, Adv.
Ms. Neeha Nagpal, Adv.
Mr. Abhimanyu Bhandari, Adv.
Mr. Ajay Singh Khullar, Adv.
Mr. Ravinder Singh, Adv.
Mr. Vishal Gosain, Adv.
Ms. Gauri Rishi, Adv.
Mr. Vishvendra Tomar, Adv.
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Mr. Prashant Daya, Adv.

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Mr. B. Ragunata, Adv.

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Mr. Rituraj Biswas, Adv.

Mr. Rituraj Choudhary, Adv.

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

Mr. P.S. Patwalia and Mr. Pinaki Mishra, learned senior counsel submitted before this Court that they have been authorized to appear on behalf of the newly constituted Board of Directors of Unitech Limited. The Board of Directors has been constituted by the Union Government as already noted in the previous order of this Court. Subsequently, on further reflection, both Mr. P.S. Patwalia and Mr. Pinaki Mishra, learned senior counsel have requested the Court that they may be permitted to desist from appearing for the newly constituted Board. Having regard to the wider issues of public interest involved and since the Board has been constituted pursuant to the intervention of the Union Government in the public interest more specifically of the home buyers, we have requested Mr. Tushar Mehta, learned Solicitor General to assist the Court on behalf of the newly constituted Board of Directors.

The learned Attorney General for India has been assisting the Court on behalf of the Union of India. Ms. Madhavi Divan, learned Additional Solicitor General has submitted before the Court that the learned Attorney General is engaged elsewhere today and she would be assisting him.

We clarify that all the decisions which are to be taken in respect of the management of the business and projects of Unitech Limited shall be taken collectively by the Board of Directors in meetings convened for that purpose. In other words, decisions will not be taken by any individual member of the Board of Directors, without the approval of the Board, in a meeting convened for that purpose. This will also apply to the Chairman and Managing Director who is directed to convene a meeting of the Board of Directors expeditiously, if he has not already done so. The Union of India shall formerly notify the constitution of the Board of Directors as approved in the previous order of this Court within one week, if not already done.

A status report dated 10 February 2020 has been submitted by the Amicus Curiae. Having considered the report, we issue the following directions:

(i) Refund of FD Holders: On 12 December 2019, this Court allowed the refunds to FD holders who are senior citizens aged 60 years and above to be proceeded with. Ten per cent of the amount deposited with the Registry at that time (Rs 17.4 crores) was allocated for that purpose. Having regard to the number of FD holders who have registered themselves on the web portal, we accede to the request made in the status report and direct that a further sum of Rs 30

crores be allocated for distribution among the FD holders. This would represent ten per cent of Rs 300 crores which has been deposited in the meantime. The additional amount of Rs 30 crores shall also be disbursed to FD holders of the age group of 60 years and above in terms of the earlier directions of this Court.

(ii) Ex-employees: The Amicus Curiae has apprised the Court of the fact that the entire amount towards (i) salary; (ii) gratuity; (iii) pension; and (iv) superannuation payments, is being disbursed on a *pro rata* basis. Provident Fund payments are being refunded in entirety.

(iii) IL&FS (Cr1 M P Nos 106596 and 106597 of 2019): The status report of the Amicus Curiae indicates that all the properties which were mortgaged to IL&FS are part of the project Uniworld City in Sectors 97, 106 and 107 of Greater Mohali, Punjab. Learned counsel appearing on behalf of IL&FS has submitted that there is no allottee as such of the above lands.

At this stage, since the newly constituted Board of Directors is preparing a resolution plan, we are only inclined to observe that IL&FS will continue to exercise the lien as a mortgagee, but this shall be subject to the final orders that may be passed by this Court after considering the resolution plan to be submitted by the Board of Directors.

(iv) Bangalore Land Sale: The Bangalore land sale has been dealt with in the previous order of this Court where a notice was issued to M/s Devas Global LLP to deposit the balance amount of Rs 52 crores representing the share of Unitech Limited, together with interest at the rate of twelve per cent per annum within four weeks. In the meantime, M/s Devas Global LLP was restrained from creating third party rights on the lands already registered from Unitech Limited and two acres of access land from Mr. Naresh Kumar Kempanna.

Mr Sajan Poovayya, learned senior counsel appears on behalf of the M/s Devas Global LLP while Mr Huzefa A Ahmadi, learned senior counsel is appearing on behalf of Mr Naresh Kumar Kempanna.

Justice Dhingra Committee has submitted a status report indicating the following position:

"26 acres of unencumbered land was held by Unitech Limited in Bangalore and the same was directed to be monetized under the purview of this Committee.

A MOU dated 02.01.2018 was signed between M/s Devas Global LLP and Col. Kheira (Mr. Naresh and Unitech being the confirming parties) for sale of the said 26 acres. The same MOU was placed before the Hon'ble Supreme Court and approved on 05.07.2018.

As per the MOU, M/s Devas Global LLP has to pay Rs 7.80 crores per acre in totality wherein Unitech's

share was Rs 4.00 crores per acre.

Upon conversion of 12 acres land from agricultural to residential, M/s Devas executed conveyance deed on 25.07.2018 and paid the equivalent amount of INR 48 crore as per the MOU to the Registry of the Hon'ble Supreme Court.

As on date out of the balance 14 acres, 10.5 acres have already been converted and is ready for registration.

After a joint meeting between Unitech, Devas, Col. Kheira, Naresh and the undersigned held at Bangalore on 04.10.2019, Devas made an offer to pay Rs. 4 crore per acre (which was the amount due to Unitech) against agreed price of Rs. 7.80 crore per acre.

The 12 acres of land already purchased by M/s. Devas's, the balance land parcel will not be of any interest to anyone. Under these circumstances, the Committee had no choice but to direct M/s. Devas Global LLP, the purchaser of the front portion along with access land, to deposit INR 52 crores with the Registry of the Hon'ble Supreme Court as their share of purchase under the MOU.

If Devas fails to deposit the payment within the stipulated time then the Committee be permitted to re-auction remaining part of 26 acres and Devas be directed to give right of way to the new purchaser."

The status report of Justice Dhingra Committee indicates that upon conversion of 12 acres of land from agricultural to residential, M/s Devas Global LLP executed a deed of conveyance on 25 July 2018 and paid the equivalent

amount of Rs 48 crores in accordance with its MOU as a part of the share of Unitech Limited.

As on date, out of the balance of 14 acres, 10.5 acres of land has been converted with change of land use and land conversion having been approved. We accordingly order and direct that the registration formalities for transfer of 10.5 acres of land shall be completed within a period of four weeks from today. M/s Devas Global LLP undertakes to hand over a demand draft representing the share of Unitech Limited for the area ad-measuring 10.5 acres to the Justice Dhingra Committee. The demand draft shall be drawn in the name of the Registrar, Supreme Court of India and upon receipt, Justice Dhingra Committee shall transmit it over to the Amicus Curiae for being deposited in the Registry of this Court. M/s Devas Global LLP has also undertaken that together with the payment of the share of Unitech Limited, it shall make due payment of the respective shares to the other parties in terms of the MOU.

Insofar as the balance of the land is concerned, Mr Huzefa A Ahmadi, learned senior counsel has, on instructions, stated that necessary permissions that have already been applied for and that Mr Naresh Kumar Kempanna undertakes to follow up with the Government of Karnataka so that the permissions are issued expeditiously. The Government of

Karnataka shall process the application which has been submitted by Mr Naresh Kumar Kempanna for the grant of approvals expeditiously.

Mr. Sajan Poovayya, learned senior counsel has submitted that M/s Devas Global LLP undertakes to deposit the respective shares in respect of the balance amounts in terms of the MOU within a period of four weeks of all necessary permissions being intimated by Mr Naresh Kumar Kempanna to M/s Devas Global LLP. The payment would be made at the time of registration of the deed of conveyance. The payment including the share of Unitech Limited shall be effected in the same manner as previously within a period of six weeks.

The status report submitted by Justice Dhingra Committee has indicated the position in respect of (i) projects completed in Phase I; and (ii) projects which are being undertaken in Phase II. In respect of Phase II projects which are under construction, the progress of the work has been indicated in a tabular chart. The Committee has requested the Court to release an amount of Rs.6.75 crores which is towards bills payable for the work done to the vendors. In the absence of payment, it has been stated that the balance work has come to a standstill, though many towers are on the verge of completion.

The Amicus Curiae has submitted that a three stage

verification is carried out by the Committee of the bills of vendors: verification is done by Architect which is followed by an actual verification, both by the Architect and the Committee at site. In this backdrop, we deem it appropriate and proper to grant permission to the Registry of this Court for release of an amount of Rs 6.75 crores to Justice Dhingra Committee in terms of its prayer for meeting the outstanding payments of the concerned vendors in respect of the construction which is being carried out in Phase II projects.

We also request Justice Dhingra Committee to consider completion of those projects in the tabular chart where the work is completed to the extent of ninety per cent and above on priority so that possession can be handed over to the allottees expeditiously. The Committee has also suggested that some allottees have approached it for handing over possession on 'as is and where is basis' so that the allottees may get the balance work completed on their own subject to adjustment of costs against the dues. Permission to do so is granted to the Committee.

The Amicus Curiae is requested to upload the status reports as well as the reports which are being submitted by Justice Dhingra Committee on the web portal for information of all the concerned home buyers and the other stake holders.

During the course of hearing, a number of

suggestions have come from the home buyers including from those who have invested in projects which have been completely stalled and where the home buyers are senior citizens. A suggestion has come before the Court to the effect as in the case of FD holders where a priority was carved out by the Court for senior citizens, a similar dispensation may be implemented in the case of home buyers of stalled projects or senior citizens as the case may be.

Mr. Pawanshree Agarwal, learned Amicus Curiae has stated that he has been engaging with the new Board of Directors so as to apprise them in the entirety about the status of the projects and the present litigation. We permit the Amicus Curiae to fully apprise the Board of Directors on all aspects so that the Board can form a holistic prospective approach in preparing the resolution plan.

List the matter after four weeks.

The Delhi Development Authority is granted two weeks' time to submit its affidavit in the meantime.

(Chetan Kumar)
A.R. - cum - P.S.

(Saroj Kumari Gaur)
Court Master

ITEM NO.301

Virtual Court 4

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No.10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

WITH IA Nos.57718/2020 & 57741/2020 in SLP(Cr1) Nos.5978-5979/2017
(With appln(s) for interim bail and exemption from filing affidavit)

Date : 07-07-2020 This appeal was called on for hearing today.

CORAM :

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

IA No 57718/2020 in SLP (Cr1) Nos 5978-5979/2017

- 1 This application for interim bail has been filed by Sanjay Chandra, who is in custody since 17 August 2017. The ground on which interim bail has been sought is that the parents of the applicant, who are 81 years and 78 years of age respectively, have tested positive for Covid-19.
- 2 Mr Mukul Rohatgi, learned senior counsel appearing for the applicant submits that the father of the applicant, Mr Ramesh Chandra, was hospitalized at Sitaram Bhartia Hospital, but has since been shifted to and is in the ICU at MAX Hospital. Mr Rohatgi states that the mother of the applicant, Dr Pushpa Chandra, who is a gynecologist, has also tested positive for Covid-19 and is presently hospitalized at MAX Hospital. Interim bail has been sought having regard to the condition of the parents of the applicant. The applicant has stated that his spouse is presently abroad and has been unable to return due to the lock down. The brother of the applicant, Ajay Chandra, is also in judicial custody.
- 3 Besides Mr Rohatgi who appears on behalf of the applicant, we have heard Mr K M Natraj, learned Additional Solicitor General for the NCT of Delhi and Mr M L Lahoty, learned counsel for the intervenors.

- 4 Having heard learned counsel, we are of the view that a case for the grant of interim bail has been made out on humanitarian grounds since both the parents of the applicant have tested positive for Covid-19 and having regard to their advanced age. This order is being passed only on the basis of these facts and circumstances.
- 5 We accordingly direct that the applicant, Sanjay Chandra, shall be released on interim bail for a period of thirty days from the date of his actual release, subject to the following conditions:
- (i) The passport of the applicant shall be deposited with the trial court;
 - (ii) The applicant shall report on every Sunday before the nearest local police station;
 - (iii) The applicant shall furnish bail bonds of Rs 1 lakh to the satisfaction of the trial court; and
 - (iv) The applicant shall surrender immediately on the expiry of the period of thirty days specified above.
- 6 The interlocutory application shall accordingly stand disposed of.
- 7 Pending applications, if any, stand disposed of.

IA No 57741/2020 in SLP (Cr1) Nos 5978-5979/2017

- 1 In view of the fact that interim bail has been granted in IA No 57718/2020 in SLP (Cr1) Nos 5978-5979/2017, Mr Mukul

Rohatgi, learned senior counsel appearing on behalf of the applicant states that the present application is being withdrawn at this stage.

- 2 The interlocutory application is accordingly dismissed as withdrawn.

Civil Appeal No.10856/2016 and SLP(Crl) Nos.5978-5979/2017

List IA Nos 59883/2020, 100828/2019, 118412/2019 and 118418/2019 in Civil Appeal No 10856/2016 and IA Nos 26041/2020, 78211/2017 and 77829/2017 in SLP(Crl) Nos 5978-5979/2017 along with letter dated 14 May 2020 of Amicus Curiae regarding *pro rata* distribution to senior citizens FD holders, on 23 July 2020.

(CHETAN KUMAR)
AR-cum-PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

ITEM NO.301

Court 4 (Video Conferencing)

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(ONLY CrI. M.P. Nos.26041/2020, 63800/2020, 63801/2020 IN SLP(CRL)NO.5978-5979/2017 alongwith letter dated 14.05.2020 of the Ld. Amicus Curiae is to be listed on 31.07.2020)

WITH

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

(IA No. 63800/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 26041/2020 - CLARIFICATION/DIRECTION, IA No. 63801/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA no 63683 of 2020 and IA No 63686 of 2020)

Date : 31-07-2020 This appeal was called on for hearing today.

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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 resolution plan has been submitted by the newly constituted Board of Unitech Limited. In order to disseminate information of the resolution plan to stake holders, we request the *amicus curiae*, Mr Pawanshree Agrawal, to upload a copy of the plan, together with IA No 64112 of 2020 filed by the new Board on the web portal maintained by him in pursuance of the orders of this Court. The *amicus curiae* will collate suggestions received and tabulate them in his report. Suggestions shall be submitted to the *amicus curiae* within a period of ten days of the uploading of the resolution on the web portal. The *amicus curiae* shall share the suggestions which are received by him with counsel who has entered appearance on behalf of the new Board of Directors.

List the application on 24 August 2020.

Status Report dated 29 July 2020 of the *amicus curiae*

(1) FD Holders

By the order of this Court dated 10 February 2020, Rs 47.4 crores is to be released to fixed deposit holders of the age of sixty years and above. The *amicus curiae* has indicated that advance receipts have not been issued by the Registry. The *amicus curiae* states that he has submitted a chart to the Registry indicating the names and amounts to be disbursed to the fixed deposit holders.

The Registry is directed to commence the process within one week and complete it within a period of three weeks of commencement.

Since many fixed deposit holders could not register on the portal, the *amicus curiae* is permitted to reopen the portal for fixed deposit holders for a period of two weeks.

(2) Ex-Employees

The *amicus curiae* states that the process of initiating payments of the provident fund and other dues of ex-employees has commenced. The *amicus curiae* has stated that the amounts would be transferred to the Regional Provident Fund Commissioner, Delhi (South), who may in turn be directed to deposit the allocated sums in the individual accounts of the employees with liberty to the employees to withdraw them.

Ms Tara Ganju and Ms Rashi Bansal appearing on behalf of some of the ex-employees, submit that course of action suggested by the *amicus curiae* will be cumbersome and cause delay since the erstwhile management of Unitech Limited had opened accounts with multiple UANs in respect of the same employee.

In order to facilitate the disbursement of the PF and other dues to the former employees on an expeditious basis, we direct that the amounts shall be disbursed by the Registry in the names of the concerned ex-employees, as indicated in the chart to be submitted by the *amicus curiae*. The amount disbursed for the PF dues of each employee shall be separately communicated by the Registry to the Regional Provident Fund Commissioner, Delhi (South), in terms as indicated by the *amicus curiae*. The Regional Provident Fund Commissioner shall thereafter adjust the amount indicated against the outstanding dues in relation to each of the employees.

The *amicus curiae* is permitted to open the web portal for ex-employees for a period of two weeks in order to enable claims to be received from ex-employees who were unable to register their names on the web portal.

(3) Report of the Justice Dhingra Committee

(i) Bangalore Land Sale

Despite the order dated 10 February 2020, directing Devas Global LLP to deposit the balance consideration payable to Unitech Limited, together with interest at 12% per annum within a period of four weeks, the order of this Court has not been complied with. An undertaking of Devas Global LLP was recorded by the Court. Devas Global LLP filed an application on 23 February 2020 for an extension of time. Even the extended period which was sought has expired. Contempt Petition (Civil) No 442 of 2020 has been filed for non-compliance.

Based on the facts which have emerged before this Court, we are prima facie of the view that a case has been made out for initiating contempt proceedings against Devas Global LLP for breach of the undertaking. Accordingly, we issue notice to Devas Global LLP and its partners, returnable on 24 August 2020. The partners of Devas Global shall remain present before this Court on the next date of listing on the video conferencing facility to show cause why they should not be proceeded against.

In order to enable Devas Global LLP and its partners to demonstrate their *bona fides*, we grant them time until 21 August 2020 to deposit the balance consideration in accordance with the order dated 10 February 2020. We clarify that this will not amount to an extension of time which was granted earlier since the time has already expired. This opportunity is being granted in order to demonstrate their *bona fides*.

(ii) Chennai Land Sale

By the order of this Court dated 20 January 2020, Priadarshini Foundations Pvt Ltd was directed to deposit the balance consideration (INR 110 Cr overdue till 31 January 2020), together with 12% interest; of which 50% was to be deposited before 29 February 2020 and the balance by 31 March 2020. No payment towards the above

amount has been made. The prospective purchaser has not responded to the email dated 4 February 2020 of the Justice Dhingra Committee.

In this view of the matter, we are of the view that having due regard to the previous order and persistent default of Priadarshini Foundations Pvt Ltd, the earnest money of INR 30 crores should be forfeited and the balance land be put up for sale again. However, we grant time to Priadarshini Foundatons Pvt Ltd to pay the balance on or before 21 August 2020, failing which the earnest money of INR 30 crores shall stand forfeited without further reference to the court and the land shall be put up for sale again.

The hearing of the Unitech group of matters commenced at 12.45 pm. Since morning, there has been a disruption of the internet network resulting in a loss of connectivity. One of the members of the Bench (Hon'ble Mr Justice M R Shah) will not be available for judicial work during the course of the next week.

In the circumstances, we direct that the further consideration of the report of the amicus curiae shall be taken up on 14 August 2020. Other interlocutory applications listed today shall be taken up on that day.

IA No 63800 of 2020

Shri Sanjay Chandra has been granted interim bail by the previous order of this Court dated 3 July 2020. The court has been unable to take up the application as a result of the disruption of connectivity as adverted to above. Hence, we direct that the interim bail shall stand extended until the next date, namely 14 August 2020.

List the application on 14 August 2020.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

ITEM NO.301 Court 4 (Video Conferencing) 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(s).10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

WITH

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

(IA No. 63800/2020 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 26041/2020 - CLARIFICATION/DIRECTION

IA No. 63801/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No.63683/2020 - DIRECTIONS

IA No. 63686/2020 - EXEMPTION FROM FILING ATTESTED AFFIDAVIT)

Date : 14-08-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE M.R. SHAH

Mr. Pawanshree Agrawal, AOR (AC)

Mr. Varun K. Chopra, Adv.

Ms. Abhipsa Anamika, Adv.

For Appellant(s)

Mr. Tushar Mehta, SG

Ms. Anubha Agrawal, AOR

Mr. Mukul Rohatgi, Sr. Adv.

Mr. Vishal Gosain, Adv.

Ms. Ranjeeta Rohatgi, AOR

Ms. Neeha Nagpal, Adv.

Mr. Anuroop Chakravarti, Adv.

Mr. Mukul Rohatgi, Sr. Adv.

Mr. Mahesh Agarwal, Adv.

Mr. Vishal Gosain, Adv.

Mr. Ankur Saigal, Adv.

Mr. Anuroop Chakravarti, Adv.

Ms. Neeha Nagpal, Adv.

Mr. Anshuman Srivastava, Adv.

Mr. Vishvendra Tomar, Adv.

Mr. E. C. Agrawala, AOR

Mr. Deepak Goel, AOR

For Respondent(s)

Mr. Tushar Mehta, SG
Ms. Madhavi Divan, ASG
Ms. Aishwarya Bhati, ASG
Ms. Shraddha Deshmukh Adv.
Mr. Chinmayee Chandra Adv.
Ms. Suhasini Sen, Adv.
Mr. T.A. Khan, Adv.
Mr. B.V. Balaram Das, Adv.
Mr. A. K. Sharma, AOR
Mr. Raj Bahadur Yadav, Adv.
Mr. Shekhar Vyas, Adv.
Ms. Praveena Gautam, Adv.
Mr. Anish Kumar Gupta, Adv.
Mrs. Anil Katiyar, AOR

Mr. Tushar Mehta, SG
Ms. Anubha Agrawal, AOR

Mr. K.M. Nataraj, ASG
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Ms. Suhasini Sen, Adv.
Mr. T.A. Khan, Adv.
Mr. A.K. Gupta, Adv.
Mr. B. V. Balaram Das, AOR

Ms V Mohana, Sr. Adv.

Mr. Huzefa Ahamadi, Sr. Adv.
Mr. Rajesh D.M., Adv.
Mr. Aman Raj Gandhi, AOR
Mr. Rohan Sharma, Adv.
Mr. Abhishek Sharma, Adv.
Mr. Prashant Daga, Adv

Mr. Parag Tripathi, Sr. Adv.,
Mr. Kartik Yadav, Adv.
Mr. Parinay Vasandani, Adv.
Mr. Manhar Singh Saini, Adv.
Ms. Mishika Bajpai, Adv.

Mr. Anil Grover, Sr. AAG
Ms. Noopur Singhal, Adv.
Mr. Rahul Khurana, Adv.
Mr. Satish Kumar, Adv.
Mr. Sanjay Kumar Visen, AOR

Mr. Nikhil Nayyar, Sr. Adv.
Ms. Pritha Srikumar, AOR
Ms. Mansi Binjrajka, Advocate

Mr. Santosh Kumar - I, AOR

Ms. Shobha Gupta, AOR
Mr. Ravindra Bana, AOR
Mr. Siddhartha Jha, AOR
Ms. Shagun Matta, AOR
Mr. C. K. Sasi, AOR
Mr. Rajiv Mehta, AOR
M/S. Cyril Amarchand Mangaldas Aor
Mr. Gagan Gupta, AOR
Mrs. B. Sunita Rao, AOR
Mr. Harshad V. Hameed, AOR
Mr. Gopal Jha, AOR
Mr. Nikhil Swami, AOR
Ms. Divya Swami, Adv.
Ms. Madhurima Tatia, AOR
Mrs. Swarupama Chaturvedi, AOR
Mr. Ashutosh Mohan, Adv.
Ms. Neha Rai, Adv.
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Mr. Rajiv Ranjan Dwivedi, AOR
Mr. Atul Sharma, Advocate
Ms. Arveena Sharma, Adv.
Mr. Abhishek Agarwal, AOR
Mr. Raj Kamal, AOR
M/S. Kmnp Law Aor
Mr. Sureshan P., AOR
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Mr. Saurabh Ajay Gupta, AOR

Mr. Vikas Mehta, AOR
Dr. Harish Uppal, Adv.
Mr. Tileshwar, Adv.
Mr. Adith Nair, Adv.
Mr. Naresh Aditya Madhav, Adv.

Mr. Ashwani Garg, Adv.
Mr. Vijay Kumar, AOR

Mr. Mohit D. Ram, AOR

Mr. Yadav Narender Singh, AOR

Mr. Roopansh Purohit, AOR

Mr. Somanatha Padhan, AOR

Mr. Anirudh Sharma, AOR

Mr. Sanjeev Singh, Adv.
Mr. Rajesh Kumar Chaurasia, AOR
Mrs. Garima Shukla, Adv.
Mr. Sujeet Kumar, Adv.

Mr. T. N. Singh, AOR

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Mr. Karan Bharihoke, AOR

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Mr. Gaurav Goel, AOR

Mr. Arjun Harkauli, AOR

Mr. Roshan Santhalia, AOR

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Mr. Praveen Agrawal, AOR

Mr. Prithvi Pal, AOR

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Mr. Sunklan Porwal, Adv.
Ms. Manorma Masih, Adv.

Mr. Ashish Virmani, AOR

Mr. K.G. Bhagat, Adv.
Ms. Archana Midha, Adv.
Ms. Manju Bhagat, Adv.
Mr. Vineet Bhagat, AOR

Mr. Jatin Zaveri, AOR

Mr. Gp. Capt. Karan Singh Bhati, AOR
Ms. Chitrangda Rastravara, Adv.
Mr. Pushpraj Singh, Adv

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Mr. M. P. Vinod, AOR

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Mr. Chandan Kumar, AOR

Mr. Gaurang Kanth, Adv.

Mr. Sumit Kumar, AOR

Mr. Sanpreet Ajmani, Adv.

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Mr. Divyesh Pratap Singh, AOR

Ms. Bharti Tyagi, AOR

Mr. Siddharth Batra, AOR

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Mr. Jinendra Jain, AOR

Mr. Rameshwar Prasad Goyal, AOR

Mr. Aakarsh Kamra, AOR

Mrs. Gargi Khanna, AOR

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Ms Aakanksha Nehra, Advocate

Ms Aditi Pundhir, Advocate

Mr. Manikya Khanna, Advocate

Mr. Tarun Mehta, Advocate

Mr. Pratyaksh Sharma, Advocate

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Mr. Abhinav Mukerji, AAG

Mrs. Bihu Sharma, Adv.

Ms. Pratishtha Vij, Adv.

Mr. Vikram Singh, AOR
Mr. K.K.Singh, Advocate
Mr. Vinod Yadav, Advocate
Mr. Harpreet Singh Sandhu, Adv.
Mr. Bhanu Pant, Adv.
Ms. Smita Singh, Adv.

Mr. Rajan Nagar, Adv.
Ms. Puja Nagar, Adv.
Mr. O. P. Bhadani, AOR

Mr. Vikas Dutta, Adv.
Mr. Shiva Sambyal, Adv.
Mr. O. P. Bhadani, AOR

Mr. Avinash Sharma, AOR

Mr. Sajan Poovayya, Sr. Adv.
Mr. Vikram Hegde, Adv.
Pratibhanu Kharolla, Adv.
Mr. Shantanu Lakhotia, Adv.
Ms. Hima Lawrence, AOR

Mr. Aditya Singh, AOR

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Mr. Harsh Mishra, Adv.

Mr. Udayaditya Banerjee, AOR

Mr. Kumar Dushyant Singh, AOR

Ms. Rakhi Ray, AOR

Ms. Shilpa Chohan, Adv.
Mr. Rajesh Singh, AOR

Mr. Tarun Gupta, AOR

Mr. Akshat Kumar, AOR
Mr. D.K. Rustagi, Adv.
Mr. Ajay K. Jain, Adv.
Mr. Atanu Mukherjee, Adv.
Mr. Yash Karan Jain, Adv.

Mr. E. C. Agrawala, AOR

Applicant-in-person

Mr. S. K. Verma, AOR

Mr. Siddharth, AOR

Mr. Arvind Gupta, AOR

Mr. Rajesh Kumar, AOR

Ms. Kamakshi S. Mehlwal, AOR

Mr. Sanjay Jain, AOR

Mr. Chandra Bhushan Prasad, AOR

Mr. Sanjay Kumar Tyagi, AOR

Mr. S. Rajappa, AOR

Mr. T. Mahipal, AOR

Mr. Siddarth Mehra, Adv.
Ms. Abhilasha Sharma, Adv.
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Ms. Harsh Lata, AOR

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Ms. Divya Roy, AOR

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Mr. P.K. Jain, AOR
Mr. P.K. Goswami, Advocate
Mr. S.P. Singh Rathore, Advocate

Mr. Shantanu Sagar, AOR

Ms. Filza Moonis, AOR

Ms. Rashi Bansal, AOR

Mr. Sumit R. Sharma, AOR

Mr. Varun Chopra, Adv.
Mr. Gurtejpal Singh, Adv.
Ms. Aswathi M.k., AOR

Mr. Jay Kishor Singh, AOR

Mr. Mayank Goel, AOR

Mr. C U Singh, Sr. Adv
Mr. Anupam Lal Das, Sr. Adv
Ms Susmita Banerjee, Adv.

Mr. Sanjay Bhatt, Adv.
Ms. Akansha Srivastava, Adv.
Mr Rabin Majumder, AoR

Mr. Saurabh Chaudhary, Adv.
Ms. Shruti Agarwal, AOR

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Ms. Charu Mathur, AOR

Mr. Sanchar Anand, Adv.
Mr. Devendra Singh, AOR
Mr. Anant Kumar Vatsya, Adv.
Mr. Vinay Kumar Misra, Adv.

Mr. D. Abhinav Rao, AOR

Mr. Abhinav Shrivastava, AOR

Ms. Jaikriti S. Jadeja, AOR

Mr. Rajat Sehgal, AOR

Mr. Preshit Vilas Surshe, AOR

Mr. Amit Sharma, AOR

M/S. Gagrat And Co, AOR

Mr. Ravindra Kumar, AOR

Mr. Ashwani Kumar Dubey, AOR
Mr. Manish Kumar, Adv.

Mr. Ashwani Garg, Adv.

Mr. Abhishek Yadav, Adv.
Mr. Vinod Kumar, Adv.
Mr. Braj Kishore Mishra, AOR

Mr. Akshat Shrivastava, AOR

Mr. Shashibhushan P. Adgaonkar, AOR

Ms. Soumya Dutta, AOR

Mr. Shashank Manish, AOR
Ms. Smriti Shah, Adv.
Ms. Twinkle Kataria, Adv.
Ms. Nidhi Sahay, Adv.

Mr. Rajeev Singh, AOR

Mr. Gyan Prakash Srivastava, AOR

Mr. M. Yogesh Kanna, AOR

Mr. Vivek Gupta, AOR

Mr. Aniruddha P. Mayee, AOR

Mr. Pahlad Singh Sharma, AOR

Mr. Balaji Srinivasan, AOR

Mr. Gopal Sankarnarayanan, Sr. Adv.
Mr. Mayank Grover, Adv.
Mr. Himanshu Shekhar, AOR

Mr. M L Lahoty, Advocate
Mr. Paban K Sharma, Advocate
Mr. Anchit Sripat, Advocate
Mr. Himanshu Shekhar, AOR

Ms. Mridula Ray Bharadwaj, AOR

Mr. Awanish Kumar, AOR

Mr. Aldanish Rein, AOR

Mr. Kaustubh Anshuraj, AOR

Mr. Krishna Kumar Singh, AOR

Mr. Ashwarya Sinha, AOR

Mr. Dharmendra Kumar Sinha, AOR

Mr. Jaideep Gupta, Sr. Adv.
Mr. Partha Sil, AOR
Mr. Tavish Bhushan Prasad, Adv.

Ms. Vibha Mahajan, Adv.
Ms. Upasana Nath, AOR

Ms. Rashmi Nandakumar, AOR

Mr. Shantanu Krishna, AOR

Ms. Tara Ganju, Adv.
Ms. Jyoti Mendiratta, AOR

M/S. Hingorani & Associates

Mr. Kaushik Choudhury, AOR

Mr. Chitranshul A. Sinha, Adv.
Ms. Sonali Khanna, Adv.
For M/S. Dua Associates

Mr. Ayush Sharma, AOR

Mr. Vaibhav Kumar, AOR

Mr. Aneesh Mittal, AOR

Mr. Umesh Shetty, Sr. Adv.,

Mr. Kartik Yadav, Adv.

Mr. Parinay Vasandani, Adv.

Mr. Manhar Singh Saini, Adv.

Ms. Vibha Mahajan, Adv.
Upasna Nath, Adv.

Mr. Mohit Paul, AoR.

Mr. Mohit Jolly, Adv

Ms. Chand Chopra, Adv.

Ms. Bhavya Shukla, Adv.

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

IA Nos 63800 of 2020 and 63683 of 2020

- 1 These applications have been filed by Mr Sanjay Chandra and Mr Ajay Chandra, claiming that they have complied with the condition imposed by this Court in its order dated 30 October 2017 for the grant of bail.
- 2 Mr Mukul Rohatgi, learned senior counsel, in support of the applications, submits:
 - (i) By the order of this Court dated 30 October, 2017, the applicants were admitted to bail *albeit* on the condition that they must deposit an amount of Rs 750 crores;
 - (ii) Presently, the amount which has been deposited in the Registry of this Court is in excess of Rs 750 crores; and
 - (iii) The applicants have had to suffer incarceration for a period of nearly three years despite the order enlarging them on bail, subject to conditions, as a result of their failure to meet the condition of deposit.
- 3 Mr Rohatgi submits that since the amount which has now been brought into the Registry of this Court is in excess of Rs 750 crores, the applicants should be released on bail.
- 4 Mr K M Nataraj, learned Additional Solicitor General appearing on behalf of Delhi Police, on the other hand, opposed the applications. The learned ASG argued that:

- (i) The order dated 30 October 2017 clarifies that the amount which has been deposited in other special leave petitions shall not be included for the purpose of computing the amount required to be deposited;
 - (ii) The applicants were required to deposit an amount of Rs 750 crores on or before 31 December 2017 which they admittedly failed to do;
 - (iii) Since the applicants failed to deposit the required amount by 31 December 2017, they are not entitled to bail; and
 - (iv) On 23 January 2019, this Court, while rejecting the application for bail, had expressly observed that since the conditions had been imposed by a three-Judge Bench of this Court, it was not open to a two-Judge Bench to modify the conditions contained in the order dated 30 October 2017.
- 5 Moreover, it has been submitted by the learned ASG and several other intervening counsel appearing on behalf of the flat buyers, including, Mr M L Lahoty, Ms V Mohana, Mr Nikhil Nayyar, learned senior counsel and Ms Shobha Gupta and Dr Harish Uppal, learned counsel as well as by Mr Pawanshree Agrawal, the *amicus curiae*, that there has been a fundamental change of circumstances since the passing of the order dated 30 October 2017, as noted by this Court in its order dated 18 December 2019. M/s Grant Thornton were appointed by this Court as forensic auditors and have submitted a report which highlights the manner in which moneys have been siphoned off from Unitech Limited during the period when the applicants were in the management of the Company. It has, hence, been submitted that in this view of the matter, there is no occasion for this Court to enlarge the applicants on bail.

6 The order of this Court dated 30 October 2017 contains the following directions:

“...the petitioners shall be admitted to bail subject to the condition that they shall deposit a sum of Rs.750 crores in the Registry of this Court which shall be kept in an interest earning fixed deposit. The deposit shall be made by the end of December 2017. If the petitioners deposit the amount within the said time, liberty is granted to mention.”

7 The above directions indicate that the applicants were admitted to bail subject to the condition that “they shall deposit a sum of Rs.750 crores in the Registry of this Court” and that “the deposit shall be made by the end of December 2017”. The requirements which were imposed by the above order are, thus, two fold. Firstly, the requirement to deposit was by the applicants, Mr Sanjay Chandra and Mr Ajay Chandra; and secondly, the deposit was required to be made by 31 December 2017.

8 We find that neither of the conditions for deposit have been complied with by the applicants. Admittedly, an amount of Rs 750 crores was not deposited by 31 December 2017. The amount which has been deposited in the Registry of this Court has been realised as a result of the demonetisation of the assets of Unitech Limited.

9 In the applications for bail, which have been filed on behalf of the applicants, an amount of Rs 770,10,72,557 is stated to have been brought into deposit in the Registry of this Court. The Table is extracted below:

“S.No.	Amount deposited	Date of deposit	Mode of confirmation with date
1	544,12.74,557	Till July 2019	Letter from the Registry dated 29.11.2019
2	7,99,50,000	18.10.2019	Office report dated 11.12.2019 (Listing dated 12.12.2019)
3	98,68,48,000	14.01.2020	Office report dated 18.12.2019 (Listing date

			20.01.2020)
4	50,00,00,000	20.01.2020	Receipt from the Registry with Receipt No 28093
5	69,30,00,000	10.07.2020	Office report dated 13.07.2020 [SLP(C) 9019/2019, Listing date: 15.07.2020
	Total: 770,10,72,557"		

- 10 At the cost of repetition, it is important to note that the amount which has been brought in is through demonetisation of assets. A significant part of the process of demonetisation has been carried out under the auspices of the Justice Dhingra Committee appointed by this Court.
- 11 Under the circumstances, since the conditions which were imposed in the order dated 30 October 2017 have not been complied with, we are unable to accept the submission that the applicants should be released from custody on the ground that they have complied with the conditions on which they were admitted to bail.
- 12 Since the passing of the order dated 30 October 2017, significant events have taken place. This Court had directed a forensic audit to be conducted by M/s Grant Thornton. The report of M/s Grant Thornton was considered in a detailed order of this Court dated 18 December 2019. Since the observations contained in the report of M/s Grant Thornton have already been dealt with in the order dated 18 December 2019, it is not necessary to reproduce them again in the present order. It would suffice to note that it was as a result of the findings in the forensic report that this Court issued directions for the taking over of the management of Unitech Limited by a Board which has since been constituted by the Union of India. By the order of this Court, a direction was issued to the Union of India to ensure that all aspects which were adverted to in the forensic report

should be investigated by the competent agencies of the Union of India, including in regard to the aspect of money laundering. Serious findings about siphoning of funds to offshore locations and in regard to the misdemeanour of the erstwhile management have been made in the report of the forensic auditors.

- 13 Mr K M Nataraj, learned ASG, is directed to file separately a comprehensive affidavit apprising this Court of the steps which have been taken by the investigating agencies of the Union of India, in pursuance of the above directions and the report of the forensic auditors, before the next date of listing. In the order of this Court dated 23 January 2019, the trial Judge was directed to take up and complete the stage of framing of charges on an expeditious basis having regard to the fact that the proceedings for framing of charges were listed on 7 February 2019. Mr Nataraj shall also ensure that a status report is filed on the position in that regard.
- 14 At this stage, we are clearly of the view that since the order dated 30 October 2017 has not been complied with, there is no question of this Court directing the release of the applicants from custody.
- 15 For the above reasons, we are not inclined to allow the prayer which has been made in the applications. Both the applications stand dismissed.
- 16 Mr Sanjay Chandra, who had been granted interim bail by the orders of this Court dated 7 July 2020 and 31 July 2020 on the ground of the Covid status of his parents, shall surrender by 17 August 2020.

List IA Nos 65076 of 2020, 26041 of 2020 and the report of the *amicus curiae* dated 29 July 2020 on 24 August 2020. On that day, the resolution plan submitted by the newly constituted Board of Unitech Limited, together with IA No 64112 of 2020

shall be considered.

Office report dated 13 August 2020

The office report indicates that two FDRs are maturing on 28 August 2020 and 2 September 2020. These be renewed for a further period of 91 days.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

ITEM NO.17+14 Court 6 (Video Conferencing) 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(s).10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(IA No. 64112/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

C.A. No. 11108/2016 (XVII-A)

(Office report for direction with regard to FDR)

SLP (Cr1.) Nos.5978-5979/2017

(Office report for direction)

Date : 25-02-2021 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.)
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For Appellant(s)

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Ms. Anubha Agrawal, AOR

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Mr. Vipin Kumar, Adv
Mr. Kamal Kumar Pandey, Adv
Ms. Madhuri Gupta, Adv

Ms. Ranjeeta Rohatgi, AOR

Mr. E. C. Agrawala, AOR

Mr. Gp. Capt. Karan Singh Bhati, AOR
Mr. Pushpraj Singh, Adv.
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**UPON hearing the counsel the Court made the following
O R D E R**

- 1 List the Civil Appeal No 10856 of 2016 and SLP (Crl) Nos 5978-5979 of 2017 on 9 March 2021 at 10.30 am.
- 2 In the cause list, it may be reflected that the Unitech matter will be taken up at 10.30 am and all other matters will be taken up at 2.00 pm.

SLP (Crl) Nos 5978-5979 of 2017

The office report indicates that the *amicus curiae* has deposited an amount of Rs 37,50,66,673. The amount so deposited be kept in a fixed deposit for a period of three months in a nationalized bank offering higher rate of interest.

Civil Appeal No 11108 of 2016

The office report indicates that a sum of Rs 55,44,530 invested in an FDR is bearing maturing on 12 March 2021. The amount be renewed for a further period of three months.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

ITEM NO.14 Court 6 (Video Conferencing) SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(With appln.(s) for for approval of the resolution plan, appropriate orders/directions, clarification/direction, early hearing, exemption from filing affidavit, exemption from filing O.T., exemption from paying court fee, extension of time, intervention, intervention/impleadment, permission to appear and argue in-person, permission to file additional documents/facts/Annexures, permission to place additional facts and grounds, recalling the Court's order and withdrawal of case/application)

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

(With appln.(s) for exemption from filing certified as well as ordinary plain copy of the impugned order, substitution, appropriate orders/directions, clarification/direction, early hearing, exemption from filing affidavit, interim bail, intervention, intervention/impleadment, modification, modification of Court order, permission to appear and argue in-person, permission to file additional documents/facts/Annexures, direction, to file SLP without certified/plain copy of impugned order, permission to palce on record subsequent facts, recalling the Court's order, seeking custody certificate and withdrawal of case/application)

Date : 18-03-2021 These matters were called on for hearing today.

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

SLP (Crl) Nos 5978-5979 of 2017

- 1 A status report has been filed on behalf of the Delhi Police by the Additional Deputy Commissioner of Police, Economic Offences Wing, New Delhi. An interlocutory application has been filed by the Delhi Police for staying the order passed by Dr Pankaj Sharma, Chief Metropolitan Magistrate, Patiala House Courts, New Delhi on 13 January 2021 granting bail to the accused, Sanjay Chandra and Ajay Chandra. This fact having been drawn to the notice of the Court yesterday (17.3.2021) during the course of the hearing, the Amicus Curiae was permitted to bring to the notice of the counsel for the accused the status report which has been filed by the Delhi Police.

- 2 FIR No 101 of 2015 was registered at the behest of the home buyers of Unitech Limited on 31 July 2015. The Sessions Judge, by an order dated 9 August 2017, dismissed the bail application filed by the accused. The Delhi High Court by an order dated 11 August 2017, declined to grant interim bail. The Economic Offences Wing filed a charge-sheet before the Chief Metropolitan Magistrate, Patiala House Courts under Sections 406, 420 and 409 read with Section 120B of the Indian Penal Code on 21 September 2017. Special Leave Petitions - SLP(Crl) Nos 5978-5979 of 2017 - were moved before this Court against the order of the Delhi High Court noted above. By an order dated 30 October 2017, the two accused were admitted to bail subject to the condition that **they shall deposit** a sum of Rs 750 crores in the Registry of this Court by 31 December 2017. Subsequently, on 30 August

2018 and 7 January 2019, two supplementary charge-sheets have been filed by the Economic Offences Wing.

- 3 On 14 August 2020, this Court considered the applications filed by the accused, namely, IA Nos 63800 and 63683 of 2020, for the grant of bail on the basis of their submission that they had complied with the order dated 30 October 2017 for the grant of bail. The specific submissions which were urged before this Court on behalf of the accused have been noted in the order dated 14 August 2020 in the following terms:

“(i) By the order of this Court dated 30 October, 2017, the applicants were, admitted to bail albeit on the condition that they must deposit an amount of Rs 750 crores;

(ii) Presently, the amount which has been deposited in the Registry of this Court is in excess of Rs 750 crores; and

(iii) The applicants have had to suffer incarceration for a period of nearly three years despite the order enlarging them on bail, subject to conditions, as a result of their failure to meet the condition of deposit.”

- 4 The above submissions were not accepted by this Court for two reasons. First, there was a breach in adhering to the time line indicated by the order of this Court for deposit by 31 December 2017. Second, the Court noted that the amount which had been realized in the Registry of this Court was as a result of the monetization of the assets of Unitech Limited under the auspices of the Court appointed Committee chaired by Justice Dhingra. In other words, the accused had not complied with the direction to deposit Rs 750 crores. Consequently, observing that both the conditions which were

imposed in the order dated 30 October 2017, had not been complied with, this Court declined to grant bail. Paragraphs 7, 8 and 10 of the order of this Court reads as follows:

- “7 The above directions indicate that the applicants were admitted to bail subject to the condition that "they shall deposit a sum of Rs. 750 crores in the Registry of this Court" and that "the deposit shall be made by the end of December 2017". The requirements which were imposed by the above order are, thus, two fold. Firstly, the requirement to deposit was by the applicants, Mr Sanjay Chandra and Mr Ajay Chandra; and secondly, the deposit was required to be made by 31 December 2017.
- 8 We find that neither of the conditions for deposit have been complied with by the applicants. Admittedly, an amount of Rs 750 crores was not deposited by 31 December 2017. The amount which has been deposited in the Registry of this Court has been realized as a result of the monetization of the assets of Unitech Limited.
- 10 At the cost of repetition, it is important to note that the amount which has been brought in is through monetization of assets. A significant part of the process of monetization has been carried out under the auspices of the Justice Dhingra Committee appointed by this Court.”
- 5 Apart from above reasons, this Court noted the circumstance that a forensic audit had been conducted and a report dated 18 December 2019 was submitted, following which this Court issued directions for taking over the management of Unitech Limited by a Board which has been constituted by the Union of India. The Court noted that the contents of the forensic report

warrant an investigation into serious allegations of money laundering and siphoning of funds to offshore locations. By the erstwhile management of Unitech Limited. Paragraph 12 of the order reads as follows:

“Since the passing of the order dated 30 October 2017, significant events have taken place. This Court had directed a forensic audit to be conducted by M/s Grant Thornton. The report of M/s Grant Thornton was considered in a detailed order of this Court dated 18 December 2019. Since the observations contained in the report of M/s Grant Thornton have already been dealt with in the order dated 18 December 2019, it is not necessary to reproduce them again in the present order. It would suffice to note that it was as a result of the findings in the forensic report that this Court issued directions for the taking over of the management of Unitech Limited by a Board which has since been constituted by the Union of India. By the order of this Court, a direction was issued to the Union of India to ensure that all aspects which were adverted to in the forensic report should be investigated by the competent agencies of the Union of India, including in regard to the aspect of money laundering. Serious findings about siphoning of funds to offshore locations and in regard to the misdemeanour of the erstwhile management have been made in the report of the forensic auditors.”

- 6 It may be noted at this stage that during the pendency of the matter before this Court, the accused had applied for the grant of interim bail before this Court on the ground of the Covid-19 pandemic having affected their family. They were released on interim bail for a specific period after which they surrendered back. After the rejection of the application for bail on 14 August 2020, an application was moved before the High Court of Delhi in Bail

Application No 1573 of 2020 by which permission was sought and granted for withdrawing the application with liberty to approach the trial court “since the charge-sheet has now been filed”. In the meantime, it also transpires that one of the accused, Ajay Chandra moved the Metropolitan Magistrate and he was granted interim bail on 23 October 2020 on the ground that his spouse has tested positive for Covid-19. Subsequently, the Chief Metropolitan Magistrate granted interim medical bail to accused Sanjay Chandra on 3 December 2020. It was thereafter, as we have noted earlier, that the application before the Delhi High Court was withdrawn with liberty to move the trial Judge. Eventually, on 13 January 2021, the Chief Metropolitan Magistrate at Patiala House Courts, directed that the accused be released on bail.

- 7 The order of the Chief Metropolitan Magistrate dated 13 January 2021 contains the submission of counsel for the accused that an amount in excess of Rs 750 crores was deposited with the Registry of this court and that there was no embargo placed by this Court on granting bail to the accused. In support of his order granting bail, the Chief Metropolitan Magistrate adduced the following reasons:

- “(a) That the investigation is complete in the present matter as charge sheet has been filed by the police.
- (b) Vide order dated 21.12.2020 Hon’ble Delhi High Court has granted liberty to the applicant to approach the trial court for seeking regular bail in the wake of filing of charge sheet.
- (c) There is no embargo put by the Hon’ble Supreme Court of India for disposal of the present application of the applicant.

- (d) Applicant/accused has already deposited more than Rs 750 crores as directed by Hon'ble Supreme Court of India with the Registry of Hon'ble Supreme Court of India.
- (e) Accused has ceased to be MD of Unitech as the entire management has been changed through nominee directors and resolution plan has been proposed.
- (f) Applicant has already spent 45 months (close to four years) in prison and the mandate of Sec. 436A Cr.P.C.
- (g) The charge sheet is voluminous running in thousands of pages having around more than 244 witnesses.
- (h) The limited functioning of the Court due to Covid-19 due to which the trial would take enormous time to conclude.
- (i) Applicant/accused having been released on bail in other cases and complying the conditions.
- (j) The passport of the accused is already surrendered."

8 *Prima facie*, at this stage, we are of the view that the manner in which the accused were granted liberty by the Delhi High Court to move the Metropolitan Magistrate for the grant of bail and the order of the Metropolitan Magistrate are a shocking exercise of judicial power and a breach of judicial discipline. In the order of this Court dated 14 August 2020, the specific submission which was considered was that the order subject to which interim bail had been granted on 30 October 2017 had been complied with by the deposit of Rs 750 crores. There are specific findings in the order of this court that the deposit of Rs 750 cores was directed by Mr Sanjay

Chandra and Mr Ajay Chandra and the amount which had been realized in the Registry was as a result of the monetization of the assets of Unitech Limited under the auspices of the Justice Dhingra Committee. That apart, the Court adverted to the serious circumstances which had come on the record in the form of the report of the forensic auditors, M/s Grant Thornton which indicated money laundering and siphoning of company funds to offshore locations. These funds are the moneys paid by the home buyers. In the teeth of the observations of this Court, we find that the conduct of the accused in moving an application for withdrawal before the Delhi High Court with liberty to move the Magistrate for bail and seeking regular bail before the Metropolitan Magistrate is an overreach of the jurisdiction of this Court.

- 9 Mr Mukul Rohatgi, learned senior counsel appearing on behalf of the accused submits that the Special Leave Petitions before this Court originated in the order of the Delhi High Court declining to grant interim bail. Hence, it has been submitted by the learned counsel that by the refusal of interim bail, the accused were not precluded from applying for regular bail before the Metropolitan Magistrate. Moreover, it has been submitted that there may have been a delay on the part of the accused in depositing the amount by 31 December, but the actual amount which has been deposited is in excess of Rs 750 crores.
- 10 *Prima facie*, at this stage, neither of the two submissions can be accepted. As regards the quantum of deposit, the order of this Court dated 14 August 2020 expressly directed that the deposit which was required in terms of the order dated 30 October 2017 was by the accused and that the amounts which were realized by the monetization of assets of the company could not

be regarded as a deposit by the accused. Moreover it is evident that the accused themselves had been moving this Court in the interim for bail on medical grounds. Though, this Court is seized of the entire dispute pertaining to the defaults by Unitech Limited and a Board of Management appointed by the Union of India has been placed in charge, several other steps have been taken including conducting a forensic audit and directing the agencies of the Union of India to investigate into all aspects of the matter. In this backdrop, it would be unacceptable for the accused, during the pendency of the proceedings before this Court to seek the liberty of the Delhi High Court and then move the Chief Metropolitan Magistrate and obtain an order of bail. The finding of the Magistrate to the effect that the accused have already deposited more than Rs 750 crores “as directed by the Supreme Court” with its Registry is plainly incorrect and a deviation from the findings specifically recorded in the order dated 30 October 2017. We are, therefore, of the clear view that an attempt has been made to overreach the process of this Court and an order of bail has been sought and obtained, to defeat the control which is being exercised by this Court.

11 In these circumstances, we are constrained to issue notice which we hereby do to the accused, Mr Sanjay Chandra and Mr Ajay Chandra. In the meantime, we order and direct that pending the return of notice, the accused shall on or before 22 March 2021 surrender to the Tihar Jail. The order of the Chief Metropolitan Magistrate, Patiala House Courts dated 13 January 2021 is stayed pending further orders. The accused shall file their affidavits within a period of one week from today.

12 List the Special Leave Petitions on 7 April 2021.

Civil Appeal No 10856 and SLP(Crl) Nos 5978-5979 of 2017

- 1 List the matters tomorrow (19.3.2021) at 2.00 pm.

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

(SAROJ KUMARI GAUR)
Court Master

ITEM NO.17 Court 5 (Video Conferencing) 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 appln.(s) for for approval of the resolution plan, appropriate orders/directions, clarification/direction, early hearing, exemption from filing affidavit, exemption from filing O.T., exemption from paying court fee, extension of time, intervention, intervention/impleadment, permission to appear and argue in-person, permission to file additional documents/facts/Annexures, permission to place additional facts and grounds, recalling the Court's order and withdrawal of case/application)

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

(With appln.(s) for exemption from filing certified as well as ordinary plain copy of the impugned order, substitution, appropriate orders/directions, clarification/direction, early hearing, exemption from filing affidavit, interim bail, intervention, intervention/impleadment, modification, modification of Court order, permission to appear and argue in-person, permission to file additional documents/facts/Annexures, direction, to file SLP without certified/plain copy of impugned order, permission to palce on record subsequent facts, recalling the Court's order, seeking custody certificate and withdrawal of case/application)

Date : 23-03-2021 These matters were called on for hearing today.

CORAM :

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

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Mr. Deepak Goel, AOR

Mr. Vipin Kumar, Adv
 Mr. Kamal Kumar Pandey, Adv
 Ms. Madhuri Gupta, Adv
 Ms. Nandita Sharma, Adv.

Ms. Ranjeeta Rohatgi, AOR
 Ms. Neeha Nagpal, Adv.
 Mr. Anuroop Chakravarti, Adv.
 Ms. Samtem Doma, Adv.

Mr. Mahesh Agarwal, Adv.
 Mr. Ankur Sehgal, Adv.
 Mr. Anuroop Chakravarti, Adv.
 Ms. Neeha Nagpal, Adv.
 Mr. Anshuman Srivastava, Adv.
 Mr. E. C. Agrawala, AOR

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 Ms. Anubha Agrawal, AOR

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 Ms. Aishwarya Bhati, ASG
 Mr. K.M. Nataraj, ASG
 Ms. Shraddha Deshmukh, Adv.
 Mr. Chinmayee Chandra, Adv.
 Mr. M.K. Maroria, Adv.
 Mr. B.V. Balramdas AOR
 Mr. A. K. Sharma AOR
 Mr. Shekhar Vyas, Adv.
 Ms. Praveena Gautam, Adv.
 Mrs. Anil Katiyar, AOR
 Ms. Suhashini Sen, Adv.
 Mr. T.A. Khan, Adv.
 Mr. Anish Kumar Gupta, Adv.
 Mr. B. Krishna Prasad, AOR
 Mr. Raj Bahadur Yadav, Adv.
 Mr. Ayush Puri, Adv.

Mr. Vinay Navare, Sr. Adv..

Mr S.C. Dharmadhikari, Sr. Adv.
 Mr Aniruddha Joshi, Adv.
 Ms Jasmine Damkewala, AOR
 Ms Vaishali Sharma, Adv.
 Mr. Dinesh Chander Trehan, Adv.

Ms Maninder Acharya, Sr Adv.
 Mr Siddhartha Barua, Adv.

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Mr. Manhar Singh Saini, Adv.
Ms. Mishika Bajpai, Adv.
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Mr. Varun Mishra, Adv.
Ms. Tanvi Dubey, Adv.
Ms. Manju Jetley, AOR

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Mr. Sanjeev Prakash Upadhyaya, Adv.
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Mr. Sanjay Kumar Visen, AOR

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Mr. B. Raghunath, Adv.
Ms. N.C. Kavitha, Adv.
Mr. Sriram Parakkat, Adv.

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Mr. Chandan Kumar, AOR

Mr. Ajay Jain, Adv.
Mr. Jinendra Jain, AOR
Ms. Mitika Choudhary, Adv.
Ms. Tannu, Adv.
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Mr. S. K. Verma, AOR
Mr. Aditya Singh, AOR
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Mr. Sanjay Jain, AOR
Mr. Chandra Bhushan Prasad, AOR
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Mr. T. Mahipal, AOR
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Mr. Rajeev Singh, AOR
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Mr. Sandeep Mishra, Adv.
Mr. Prashant Kumar Umrao, Adv.

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Mr. Pahlad Singh Sharma, AOR

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Mr. Pranshu Kaushal, Adv.

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Mr. Paban K. Sharma, Adv.

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Mr. Chitranshul Sinha, Adv.
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Mr. Anshuman Chatuvedi, Adv.
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Mr. Vivek Bhojajka, Adv.
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Mr. Ritin Rai, Sr. Adv.
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Ms. Zehra Khan, Advocate
Ms. Kritika Bhardwaj, Adv.
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Mr. Mohit Paul, AOR
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Ms. Sunaina Phul, Adv.

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Mr. Sumit Kumar, Adv.

Mr. Neeraj Kumar, Adv.

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Mr. Kunal Tandon, Adv
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Ms. Pankhuri, Adv.
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Mr. Akhilesh Yadav, Adv.

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Ms. Kirti Dua, Adv.
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Mr. Awanish Kumar, Adv.

Mr. Shiv Pandey, Adv.

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Mr. Anshul Rai, Adv.

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Mr. Rajesh D.M., Advocate
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Mr. Rohan Sharma, Adv.
Mr. Abhishek Sharma, Adv.

Mr. Akshat Kumar, Adv.

Ms. Reena Singh, Adv.
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Mr. Manish Kumar Gupta, AOR

Mr. Rajesh Kumar-1, AOR
Mr. Anant Gautam, Adv.
Mr. Nipun Sharma, Adv.

Mr. Deepak Bansal, Adv.
Roopak Bansal, Adv.
Mr. Ravi Kumar Tomar, AOR

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Mr. Udit Malik, Adv.
Mr. Ramana Murthy, Adv.

Mr. P.R Ramasesh, Adv.
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Mr. Gurudatta Ankolekar AOR.

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Ms. Vandana Mohanty, Adv.
Mr Dipesh Sinha, Adv.

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Ms. Pooja Mahajan, Adv.
Ms. Mahima Singh, Adv.
Mr. S. Mahajan Adv.
Mr. Avinash B. Amarnath, AOR

Mr. Chirag M. Shroff, Adv.
Ms. Abhilasha Bharti, Adv.
Mr. Sushant Dogra, Adv.

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

IA 88960 of 2020

- 1 On the oral request of Mr N Vekataraman, permission is granted to implead (i) Devas Global Services LLP; (ii) Naresh Kumar Kempanna; and (iii) Col Mohinder Singh Khaira as respondents to the interim application since reliefs have been sought against them.
- 2 The amendment be carried out during the course of this week.
- 3 Issue notice to the newly impleaded respondents.
- 4 Mr Sajan Poovayya, Mr Huzefa Ahmadi and Mr Vinay Navare, learned Senior Counsel, accept notice respectively on behalf of the newly added respondents.
- 5 The response to the interim application shall be filed on or before 5 April 2021 with an advance copy to Ms Anubha Agrawal, learned counsel assisting Mr N Venkataraman, learned Additional Solicitor General, on behalf of the new management of Unitech Limited and the *amicus curiae*.
- 6 List the application on 6 April 2021 at 2 pm.

IA 97388 of 2020

- 1 On the request of Mr N Venkataraman, learned Additional Solicitor General, permission is granted to implead Mr D A Kumar as a respondent to the interim application.
- 2 The amendment be carried out during the course of this week.
- 3 Issue notice to the newly added respondent.
- 4 Mr Nakul Mohta, learned counsel appearing on behalf of the newly added respondent, accepts notice.
- 5 A copy of the application be served to Mr Nakul Mohta.
- 6 Reply, if any, to the application be filed on or before 5 April 2021.
- 7 List the application on 6 April 2021 at 2 pm.

S.L.P.(CrI) Nos.5978-5979/2017

- 1 Ms Madhavi Divan, learned Additional Solicitor General, states that a status report on behalf of the Enforcement Directorate was under preparation for being filed before this Court. However, certain developments have taken place in the meantime and hence it would be necessary to place an updated position.
- 2 On the request of the learned Additional Solicitor General and, as prayed, we grant a period of one week to file a status report in the Registry of this Court in regard to the status of investigation in a sealed cover.

Civil Appeal No.10856/2016

Re: Sale of Unitech Power Transmission Limited to Sterling and Wilson Pvt Ltd

- 1 Mr N Venkataraman, learned Additional Solicitor General, submits that the sale of Unitech Power Transmission Limited(UPTL) to Sterling and Wilson Pvt Ltd has not fructified. No amount has been deposited by Sterling and Wilson Pvt Ltd before the Registry of this Court for a period of one and a half years.
- 2 In this view of the matter, the new management of Unitech Limited is permitted to explore other potential buyers for the sale of the shareholding in UPTL. The prior permission of the Court shall be obtained for concluding the transaction in respect of shares in UPTL.

Re: Office report dated 20 March 2021 regarding renewal of FDRs

- 1 The office report indicates that FDR Nos 1303-P, 1303-B, 1303-C and 1303-F are due to mature on different dates in the month of April 2021. The Registry is directed to renew the said FDRs initially for a further period of three months and thereafter the FDRs be renewed on auto renewal basis, subject to further orders of the Court.
- 2 List the Civil Appeal No 10856 of 2016 and the Special Leave Petition Nos 5978-5979 of 2017 tomorrow (24 March 2021) at 2 pm.

**(SANJAY KUMAR-I)
AR-CUM-PS**

**(ANITA RANI AHUJA)
ASSISTANT REGISTRAR**

ITEM NO.16

Court 5 (Video Conferencing)

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(With appln.(s) for for approval of the resolution plan, appropriate orders/directions, clarification/direction, early hearing, exemption from filing affidavit, exemption from filing O.T., exemption from paying court fee, extension of time, intervention, intervention/impleadment, permission to appear and argue in-person, permission to file additional documents/facts/Annexures, permission to place additional facts and grounds, recalling the Court's order and withdrawal of case/application)

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

(With appln.(s) for exemption from filing certified as well as ordinary plain copy of the impugned order, substitution, appropriate orders/directions, clarification/direction, early hearing, exemption from filing affidavit, interim bail, intervention, intervention/impleadment, modification, modification of Court order, permission to appear and argue in-person, permission to file additional documents/facts/Annexures, direction, to file SLP without certified/plain copy of impugned order, permission to palce on record subsequent facts, recalling the Court's order, seeking custody certificate and withdrawal of case/application)

Date : 24-03-2021 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE M.R. SHAH

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Mr. Deepak Goel, AOR

Ms. Ranjeeta Rohatgi, AOR
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Mr. Anuroop Chakravarti, Adv.
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**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Mr N Venkataraman, learned Additional Solicitor General appearing on behalf of the new Board of Management of Unitech Limited appointed by the Union Government has requested this Court to issue three sets of directions to facilitate the work of the new Board of Management. These directions are comprised into the following categories, namely, (i) directions sought in order to enable the Board of Management to take full charge of the projects of Unitech Limited and to exercise due supervision and control of the overall assets including real estate and funds; (ii) directions in regard to information which has been sought from the *Amicus Curiae*, Shri Pawan Shree Agarwal about the receipt of funds deposited in the Registry and the disbursements; and (iii) directions required for facilitating the handing over of the charge of projects which were being supervised by the Justice Dhingra Committee.

- 2 The Learned Additional Solicitor General has explained the import of the directions which have been sought in respect of the above categories. Certain directions have been sought from this Court to facilitate the work of the new Board of Management. Having considered the proposed directions, we are of the view that at this stage, the following directions can be issued to facilitate the control and management of the new Board of Management:
- (1) The new Board shall be responsible for the management and control of the Unitech Group (including all its affiliates, trusts, subsidiaries etc.). The Order passed by this Court dated 20 January 2020 is applicable to all group entities of Unitech Ltd. The management is authorized to appoint and remove Directors/ Trustees of its subsidiaries/ trusts etc.;
 - (2) ICICI Bank and HDFC Bank shall provide account details already sought from them in soft copy form within 3 days so as to complete the audit of individual allottee ledgers;
 - (3) No bank, authority or forum shall appropriate/ attach any amount from the company's accounts on account of its payment obligations without the prior approval of this Hon'ble Court;
 - (4) The Revenue Officers in the States of Haryana, Uttar Pradesh, Kerala, Tamil Nadu, Telangana, Maharashtra, Karnataka and West Bengal shall on receiving a formal request from the new Board of Management cooperate with and support the site survey agencies engaged by the Unitech Group in determining the boundary pillars of its land holdings so as to complete the work of site-surveys of such land parcels;
 - (5) The new management is permitted to commence the process of appointing Project Management Consultants (PMCs) in order to initiate the bid management process for award of contracts to various project executing agencies;
 - (6) The Reserve Bank of India and other banks shall allow Unitech Ltd and its group of companies to open new project-wise accounts so as to

account for receipts and expenses pertaining to each project;

- (7) All Personnel, Professionals and consultants associated with the Unitech Group, in any capacity, counsel and other agencies appointed for the purpose of construction and delivery of projects including architects, designers and contractors are directed to cooperate and handover necessary documents (designs, drawings, court files etc.) to the new management and the contractors shall handover the sites free from any encumbrances so as to facilitate further construction. This will be without prejudice to the right of the above agencies and individuals to take necessary steps, by moving this court in respect of such claims as they may have in regard to past dues;
 - (8) State Governments and the local administration of places where the properties of the Unitech Group are located, shall on a request being made by the Board of Management support and cooperate in removal of encroachments for securing the assets of the Company;
- 3 The *Amicus Curiae* submits that some of the information which has been sought from him would be available with the Registry of this Court and hence, before he furnishes the required information to the Board of Management in terms as sought, an officer of the Registry may be requested to hold a meeting with the *Amicus Curiae* so that such information in regard to the receipts, disbursements and investments and interest which has accrued on amounts invested by the Registry can be made available. The information which has been sought from the *Amicus Curiae* by the new board of management is extracted below:
- (1) Tabulated details of amounts disbursed to the homebuyers (project-wise), under the following categories:
 - (i) Name of the beneficiary along with Unit No. allotted
 - (ii) Amount refunded - separately as to principal and as interest
 - (iii) SLP/ petition no. filed before this Court
 - (iv) Details of amount which had been paid by the beneficiary

- (2) Details of payments made to FD Holders, under the following categories:
 - (i) Name of the beneficiary
 - (ii) Amount paid
 - (iii) Details of documents submitted/ claim filed
- (3) List of ex-employees submitted to the Registry for disbursement of amounts and status thereof;
- (4) Original title deeds received from homebuyers shall be handed over to the Company, along with correspondence with the homebuyers to further deposit the deeds, NOCs and other documents;
- (5) Requests received for possession from different homebuyers and those to whom refunds have been made;
- (6) Copy of correspondences with the Registry of the Hon'ble Court in respect of payments and disbursements;
- (7) Specific requests made vide letter dated 09.02.2021, are extracted below:
 - “(i) It has been mentioned in the Summary Sheet that an amount of Rs. 15 Crore has been allocated for payment to the Ex- employees but no figures are mentioned under Utilization column. Similarly, it has been mentioned that an amount of Rs. 47.40 crore has been allocated for refund to the Sr. Citizen FD Holders - again the Utilization Column is blank. Do we assume that no expenditure has been incurred against these allocations? We request you to kindly provide us with the complete individual details of the same so that these are updated in our records.
 - (ii) Further, since the PF amount of ex-employees has been directly deposited to the individual bank accounts, we request you kindly

provide us a certified copy of the same so that it can be updated with the EPFO as these are statutory liabilities of the Company.

- (iii) We would like to inform you that as per the information retrieved on 13 th August 2020, the amount of interest generated on FDRs placed by the Registry was approximately Rs. 27 crore, as also mentioned in the sheet enclosed with my DO letter of 16 th September 2020. I am sure that it would have gone up for the intervening period from September, 2020 to 31 st January, 2021. I would be grateful if this could be reconciled with the bank and the interest amount accrued till 31.01.2021 is shared with us.
- (iv) In the payment sheet, wherein the payments which have been disbursed from the Registry of the Hon'ble Apex Court, only the payments to M/s Grant Thornton and M/s JLL are shown. As per the records available with the company, certain payments to you (as also mentioned in the sheet enclosed with my letter) and Justice (Retd.) S.N Dhingra have also been processed. I would be grateful if you can provide the complete details of expenditure incurred on various heads so that our books of accounts are updated based on the same.
- (v) In the work-sheet for disbursement to 1338 homebuyers, we are unable to understand as to what is the total amount that has been processed for refund to these home-buyers as payment status is either left blank or is shown as 'payment not yet made' in a number of fields. We need your help in this behalf for greater clarity. If we consider the customers whose status is shown as blank, then the total amount is coming to Rs.124.74 crore (derived totals) as against the figure of Rs. 60.43 crore mentioned in the summary sheet.
- (vi) In the work-sheet of disbursement for persons covered under Civil Appeal 11108 of 2016 (Ravi Kumar Rajoria & Ors. versus M/s Unitech Limited & Ors.), the amount disbursed to the 10 customers

is shown as Rs. 3.22 crore. However, as per the information available with the company, the amount that has already been disbursed to these 10 customers is Rs. 6.67 crores. This needs to be reconciled.”

- 4 The information in Item 7 above is in terms of a communication dated 9 February 2021 which was addressed to the *Amicus Curiae* by the Chairperson of the Board of Directors. We find merit in the submission of the learned Additional Solicitor General that compiling and furnishing the above information is necessary for the Board to have a complete statement in regard to the receipts and disbursements which have taken place in the past. The learned *Amicus Curiae* shall furnish the information as sought by 30 April 2021.
- 5 In order to facilitate the *Amicus Curiae* in compiling the information as sought, the Registrar (Judicial) is requested to depute an officer from the concerned Section which is handling matters pertaining to the receipt of moneys, disbursing of payments and investments so that a complete set of accounts in that regard can be furnished.
- 6 The new Board of Management is also requested to depute an officer who will engage with the *Amicus Curiae* in order to facilitate a seamless transfer of the information and details as sought.
- 7 Since the Board of Management appointed by the Union of India has taken charge of the management of Unitech Limited, it is necessary to initiate and complete the process of handing over charge of the projects which were being looked after by the Justice Dhingra Committee together with all requisite details. The *Amicus Curiae* has informed the Court that an audit has been completed by the Justice Dhingra Committee. A copy shall be made available to the new Board of Management. For convenience of reference, the details which have been sought from the Justice Dhingra Committee are tabulated below:

- (1) Projects where works were taken in hand and initiated by the Committee;
 - (2) Contracts which have been awarded. Concluded contracts as well as pending contracts where financial implications are still to be honoured may kindly be specified, so as to ascertain pending liability that will have to be borne by the Company. This would also ascertain the scope of work yet to be done by the contractor, which can be monitored and implemented;
 - (3) Details of works executed in the projects being monitored by the Committee;
 - (4) Basis of arriving at percentage of work done, as submitted to the Hon'ble Court;
 - (5) Details of amounts received and expenditure incurred by the Committee;
 - (6) All original documents in physical form along with documents which are available in electronic form shall be provided;
 - (7) Copies of minutes of Committee meetings, held from time to time, along with the copy of decisions taken therein;
 - (8) Once the documents are made available, this would be followed by verification of actual site conditions and taking over by a Sub-Committee headed by Sh. Prabhakar Singh, Director on the newly appointed Board;
 - (9) Board shall seek further cooperation of the Committee, in due course, if required for any information that may have been inadvertently left out".
- 8 The Justice Dhingra Committee shall provide details item wise on the above points to the new Board of Management. The Court has been apprised that Mr Prabhakar Singh, a Member of the Board of Directors, has been authorized

by a resolution of the Board to interact with Justice Dhingra in order to ensure that all the requisite details and accounts are made available. Justice Dhingra is requested to complete this exercise by 30 April 2021.

- 9 List the matters tomorrow (25.3.2021) at 2 pm.

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

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 IA 75594/20

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

IA Nos 179388 of 2019 & 75594 of 2020

- 1 The subject matter of this segment is a Memorandum of Understanding (MOU) dated 14 December 2018 between Unitech Limited (Unitech) and Priadarshni Foundations Pvt Ltd (Priadarshni). A narration of the relevant facts has been set out in the convenience note dated 17 February 2021, tendered by the Additional Solicitor General, Mr N Venkataraman, which reads as follows:

**PART VIII-D- PURCHASE OF LAND BY PRIADARSHNI
FOUNDATIONS PRIVATE LIMITED - CHENNAI LAND SALE**

(i) Priadarshini Foundations Pvt. Ltd ['Priadarshini'] had entered into an MOU with Unitech Limited under the purview of Justice Dhingra Committee for purchase of approx. 380.38 acres of land at Sriperumbudur, Chennai at the rate of INR 82.00 lakh per acre i.e. for a total consideration of INR 311 crore, in phases.

(ii) As on date, Priadarshini has paid an amount of INR 60 crore to the Registry. Land worth INR 25 crore has already been registered in favour of Priadarshini and, hence, the balance amount of INR 35 crore (60 - 25) is lying with the Registry of the Hon'ble court as earnest money. As such, a total amount of Rs. 251 crore (311 - 60) is recoverable from Priadarshini on account of principal amount. The Hon'ble Court is requested to order for the payment of the balance sale consideration, along with interest thereon.

(iii) Land was to be registered in the name of Priadarshini in phases on the receipt of the respective amounts, as mentioned below:

Sr. No.	Date of Payment	Amount INR crore	Land to be registered (in acres)
1.	Advance to SC Registry	5.00	NIL
2.	On or before 15 days of the signing of MOU	45.00	30.50
3.	On or before 30 th April 2019	25.00	30.50
4.	On or before 31 st July 2019	25.00	30.50
5.	On or before 31 st Oct 2019	35.00	42.70
6.	On or before 31 st Jan 2020	35.00	42.70
7.	On or before 30 th April 2020	35.00	42.70
8.	On or before 31 st July 2020	35.00	42.70
9.	On or before 31 st Oct 2020	71.85	118.00
10.	Total	311.85	380.30

(iv) Priadarshini had earlier issued post-dated cheques of INR 15 crore (balance in lieu of 2nd Instalment). These cheques were presented to the bank by the Registry of the Hon'ble Court on 19.10.2019 but the same were dishonored due to insufficient balance.

(v) Priadarshini was to get the ownership of the land of its choice registered subject to the approval of the Committee on payment as per MoU. But since no payment was made, the proposed land was not registered.

(vi) The Hon'ble Court, vide its order dated 20.01.2020, directed Priadarshini to deposit the balance consideration (INR 110 crore overdue as on 31.01.2020) along with interest @ 12% within a period of 4 and 8 weeks i.e. by 29.02.2020 (50%) and by 31.03.2020 (50%).

(vii) The Hon'ble Apex Court took cognizance of the delay on the part of Priadarshini and was pleased to issue the following direction vide its order dated 31.07.2020:

"In this view of the matter, we are of the view that having due regard to the previous order and persistent default of Priadarshini Foundations Pvt Ltd, the earnest money of INR 30 crores should be forfeited and the balance land be put up for sale again. However, we grant time to Priadarshini Foundations Pvt Ltd to pay the balance on or before 21 August 2020, failing which the earnest money of INR 30 crores shall stand forfeited without further reference to the court and the land shall be put up for sale again."

(viii) Therefore, a total amount of Rs. 251 crore (311-60) is recoverable from Priadarshini, on account of balance sale

consideration. The Hon'ble Court is requested to order for the payment of the balance sale consideration, along with interest thereon.

(ix) It is relevant to point out that the amount of Rs. 30 crores as referred in the order dated 31.07.2020 is based on the figure supplied by the Ld. Amicus Curiae inadvertently in his status report dated 29.07.2020. This amount has been relied upon by the Justice Dhingra Committee in its report dated 20.07.2020. This figure, in fact, should have been Rs. 35 crores.

(x) In view of the above, Priadarshini may either deposit the entire outstanding amount, alongwith interest, in a stipulated time period or the amount of Rs. 35 crores deposited with the Registry be forfeited in view of order passed by this Hon'ble Court. Timely payments to be made to Unitech are crucial for carrying out the operations and constructions of flats. Hence, no further extension of time can be granted. Priadarshini is already in default since 2019 and has blocked substantial asset of the Company without payment of any amounts.

(xi) It is relevant to mention that as per Clause 1.3 of the MOU dated 14.12.2018, the Buyer was entitled to get the land transferred only after the payment of a particular tranche, whereas, the Priadarshini has remained in complete default on this account. Hence, there is no omission on Unitech Limited's part to transfer the land."

2 Briefly stated, the material facts are as follows:

An MOU was entered into on 14 December 2018 between Unitech and Priadarshni for the sale of lands admeasuring 380.38 acres for a consideration of Rs 311.85 crores. Point (iii) above in the convenience note of the learned Additional Solicitor (which is reproduced in the above note) tabulates the payment schedule which was envisaged between the parties. Following the MOU, a meeting was held on 21 November 2018, together with Justice S N Dhingra, Chairperson of the Committee appointed by this Court. This was followed by a Term Sheet dated 6 December 2018. The Term Sheet envisaged that besides the initial deposit of Rs 5 crores submitted on 20 November 2018 in the Registry of this Court by Priadarshni, within fifteen days of the signing of the MOU or its approval by this Court, whichever is later, an amount of Rs 45 crores

would be deposited. Out of the total of Rs 50 crores, Rs 25 crores were to be retained with the Registry of this Court as EMD, including Rs 5 crores already deposited. For the balance of Rs 25 crores, a proportionate extent of land, as mutually agreed, was to be conveyed and registered in the favour of the buyer or its nominees. It is, thus, common ground that a total amount of Rs 50 crores has been deposited by Priadarshni in this Court, of which an amount of Rs 25 crores has been appropriated towards the transaction for the conveyance of an area which, according to the learned Additional Solicitor General, admeasures 32.23 acres. The time schedule indicated in the MOU was not fulfilled by the buyer as against the installment of Rs 25 crores, which fell due on 30 April 2019. Only an amount of Rs 10 crores was remitted.

- 3 Two orders were passed by this Court dealing with the subject matter of the above transaction with Unitech. The first of the two orders dated 20 January 2020, insofar as it pertains to the transaction in question, is extracted below:

“Chennai land sale

In respect of the land in Sriperumbudur, the MOU entered into by Unitech Limited with Priadarshini Foundations Pvt Ltd for the purchase of 380.38 acres of land at the rate of Rs 81 lakhs per acre is, according to the report of the *amicus curiae*, approved by the orders passed by this Court on 19 November 2018, 30 November 2018 and 7 December 2018.

As on date, according to the report of the *amicus curiae*, Rs 60 crores has been deposited in the Registry and an amount of Rs 85 crores is overdue as of 31 October 2019. An amount of Rs 15 crores was paid by three cheques which have been dishonoured on presentation.

We direct the purchaser, Priadarshini Foundations Pvt Ltd, to deposit the balance overdue as of date, inclusive of the overdue amount of Rs 85 crores as of 31 October 2019, within a period of four weeks from today in two equal tranches, the first of which shall be payable on or before the end of February 2020 and the second, on or before 31 March 2020, together with interest at the rate of 12% per annum.

The payments to be made shall be inclusive of the further deposits which fall due as per the schedule prescribed in the MOU.

Mr Rajiv Dutta, learned senior counsel, submits that the payments have fallen overdue because there were certain difficulties in the transfer of land from the affiliates of M/s Unitech Limited to the purchaser.

The *amicus curiae* has submitted before the Court that the modalities for the transfer of land would be duly completed and is being looked into by Justice Dhingra Committee. “

4 From the above order, it is evident that:

- (i) Priadarshni was in default of the payment of the installments due in terms of the MOU; and
- (ii) The Court allowed Priadarshni to deposit the balance overdue in two equal tranches, the first before the end of February 2020 and second before 31 March 2020, together with interest at the rate of 12% per annum. The above payments were inclusive of the further deposits which were to fall due.

5 Thereafter, a further order was passed by this Court on 31 July 2020. The following extract from the order considers the subject of the above land sale:

“(ii) Chennai Land Sale

By the order of this Court dated 20 January 2020, Priadarshini Foundations Pvt Ltd was directed to deposit the balance consideration (INR 110 Cr overdue till 31 January 2020), together with 12% interest; of which 50% was to be deposited before 29 February 2020 and the balance by 31 March 2020. No payment towards the above amount has been made. The prospective purchaser has not responded to the email dated 4 February 2020 of the Justice Dhingra Committee.

In this view of the matter, we are of the view that having due regard to the previous order and persistent default of Priadarshini Foundations Pvt Ltd, the earnest money of INR 30 crores should be forfeited and the balance land be put up for sale again. However, we grant time to Priadarshini Foundatons

Pvt Ltd to pay the balance on or before 21 August 2020, failing which the earnest money of INR 30 crores shall stand forfeited without further reference to the court and the land shall be put up for sale again.

The hearing of the Unitech group of matters commenced at 12.45 pm. Since morning, there has been a disruption of the internet network resulting in a loss of connectivity. One of the members of the Bench (Hon'ble Mr Justice M R Shah) will not be available for judicial work during the course of the next week.

In the circumstances, we direct that the further consideration of the report of the amicus curiae shall be taken up on 14 August 2020. Other interlocutory applications listed today shall be taken up on that day."

- 6 From the above extract, it emerges that in view of the persistent default of Priadarshni, this Court was of the view that the earnest money of Rs 30 crores should be forfeited. Despite this, a final indulgence was granted by this Court to Priadarshni to pay the balance on or before 21 August 2020, failing which the forfeiture of INR 30 crores was to be final and absolute (It is common ground that the amount of forfeiture should be correctly read as Rs 35 crores instead of Rs 30 crores, that being the balance which is lying in the Registry of this Court).
- 7 Mr C S Vaidyanathan, learned Senior Counsel appearing on behalf of the applicant in the two applications, has urged submissions in support of the plea that the order of forfeiture, which was passed on 31 July 2020, should be recalled. It has been submitted that, as a matter of fact, on 31 July 2020, when the order was passed, Priadarshni could not be heard because of certain technical difficulties in the video conferencing platform, which has been noticed in the extract which has been cited above. Learned Senior Counsel submitted that, as a matter of fact, Priadarshni had addressed communications to Justice Dhingra on 13 March 2020 and 30 July 2020 raising certain concerns in regard to the fulfillment of the obligations by Unitech under the terms of the MOU. Reiterating these concerns, Mr Vaidyanathan submitted that:

- (i) The MOU does not specifically contain any condition of forfeiture in the event of default;
 - (ii) The MOU envisages that Unitech must be in a position to convey title to the buyer which is why payments were directed to be made in tranches;
 - (iii) The MOU contemplated that a Special Purpose Vehicle should be constituted for the purpose of ensuring the transfer of title from Unitech to the buyer; and
 - (iv) In the absence of due compliance by Unitech of its obligations under the terms of the MOU, it would be unfair to saddle the applicant with a forfeiture. In this context reliance has been placed on various clauses of the MOU, including Clauses 1.3, 1.4 and 2.1.
- 8 In the alternative, it has been submitted on behalf of the buyer that:
- (i) The buyer may be permitted an opportunity, at this stage, of remitting an amount of Rs 50 crores by 15 April 2021;
 - (ii) A reasonable period of time extending to eight months may be granted for completing the transaction; and
 - (iii) No interest may, however, be levied for the period between 23 March 2020, when the lock down was occasioned as a result of the outbreak of Covid-19 for a period of one year, ending on 31 March 2021.
- 9 Responding to the submissions of Mr Vaidyanathan, Mr N Venkataraman, learned Additional Solicitor General, submits that:

- (i) The MOU envisaged the sale of land admeasuring 380 acres comprised in different villages.
 - (ii) Of the total amount of land, which was agreed to be conveyed, land admeasuring 32.23 acres has been conveyed, for which an amount of Rs 25 crores, out of Rs 60 crores deposited in the Registry has been adjusted.
 - (iii) The objection in regard to absence of title is specious and, as a matter of fact, no objection was raised on the title of Unitech at any point of time;
 - (iv) The title deeds are available with the Company and if the buyer were to come forth with a ready offer of payment, title documents would have been produced so as to ensure the due transfer of title at the time of registration; and
 - (v) The buyer was in a position to deposit only an amount of Rs 10 crores out of the second tranche of Rs 25 crores and a cheque of Rs 15 crores was dishonoured.
- 10 Insofar as the question of title is concerned, it is evident from the MOU that Priadarshni and Unitech agreed to a specific time frame for the deposit of monies and for conveyance of title by the seller to the buyer. There is merit in the contention of the Additional Solicitor General that the buyer ought to have complied with the obligation to effect a deposit of the payments in accordance with the contractual time schedule. It is not the case of the buyer that it was ready with the money in spite of which Unitech was unable to convey title. There has been a default both in observing the time lines under the MOU as well as in terms of making the payments which were envisaged to be made from time to time. It is significant that Clause 1.5 of the MOU provides for the levy of interest at the rate of 18% per annum. Despite this, in order to furnish

Priadarshni with time to comply with its obligations, this Court, by its initial order dated 20 January 2020, allowed it to deposit the outstanding payments, together with interest at 12% per annum.

- 11 It is important to note at this stage that under the MOU, payments had fallen in arrears right from 30 April 2019 and by the time this Court passed its order on 20 January 2020, about seven months had elapsed from the date of the first default. It was in this context that despite the indulgence which was granted to make payments, together with interest, and upon the failure of the buyer to do so, an order of forfeiture was passed on 31 July 2020. Unless the buyer were to comply with the obligation of depositing monies, there would be no occasion for Unitech to convey the title to the land.

- 12 Be that as it may, a plea has been made by Mr Vaidyanathan that a reasonable opportunity may be granted to Priadarshni to deposit monies to complete the bargain. As we have already noted earlier, by the order of this Court dated 20 January 2020, time was granted for complying with the order of deposit by the end of February 2020 and for the balance by 31 March 2020. The subsequent order of this Court, while holding that there was a ground for forfeiture, nonetheless, granted time to pay the balance until 21 August 2020. The Court must take notice of the fact that in the meantime in March 2020, the Covid-19 pandemic broke out, as a result of which there was a serious dislocation of business operations having an impact on real estate business. The new management of Unitech has submitted that Priadarshni must, if it is granted an opportunity, comply with the terms of the bargain agreed by the parties on condition of forfeiture and pay interest for the delayed payment. In the circumstances, we are of the view that, conditional on Priadarshni demonstrating its *bona fides* by continuing to make a monthly deposit of Rs 50 crores, towards the amount which is overdue, together with interest, it should be given an

opportunity of being relieved from forfeiture. The Additional Solicitor General has informed the Court that the total amount which is due as of date is Rs 251.85 crores towards the principal and Rs 29.02 crores on account of interest computed at the rate of 12% .

13 Bearing in mind the above amount which is due, we are of the considered opinion that Priadarshni should be directed to pay the entire amount which is overdue, together with interest at the rate of 12% per annum, in six monthly installments. The first five installments shall be in the amount of Rs 50 crores each payable with effect from 30 April 2021, the succeeding installments being payable on the last day of each succeeding month. The sixth and final installment will be paid together with the accrued interest computed at 12% per annum.

14 We accordingly pass the following order:

- (i) In order to allow Priadarshni an opportunity to demonstrate its *bona fides* in complying with its obligations under the MOU dated 14 December 2018, it shall deposit, in the Registry of this Court, an amount of Rs 50 crores each, on or before 30 April 2021, 31 May 2021, 30 June 2021, 31 July 2021 and 31 August 2021;
- (ii) For the last and final instalment due on 30 September 2021, Priadarshni shall in addition to (i) above, deposit the balance of the principal and the accrued interest computed at the rate of 12% per annum, interest being computed from the due dates when the respective payments fell due. In the payment of the last installment, the amount of Rs 35 crores which is lying in the Registry shall be duly adjusted;

- (iii) In the event that Priadarshni commits a default in the payment of the first installment of Rs 50 crores on or before 30 April 2021, the amount of Rs 35 crores, which is lying in the Registry, shall stand forfeited;
 - (iv) The amount which has been deposited in the Registry of this Court shall stand forfeited in the event there are two or more consecutive defaults or a default in the payment of last installment; and
 - (v) Upon the payment of the last and final installment on 30 September 2021, the transaction for the conveyance of title to Priadarshni shall be effected under the auspices of the new Board of Management of Unitech constituted by the Union government.
- 15 It has been agreed between the learned Additional Solicitor General and Mr Vaidyanathan that, as and when required, inspection of documents of title shall be provided to the buyer.
- 16 The applications are accordingly disposed of.

Civil Appeal No 10856 of 2016 & SLP (Crl) Nos.5978-5979 of 2017

List the matters on 6 April 2021 at 2 pm.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

REVISED(APPEARANCE)

ITEM NO.5+26 Court 11 (Video Conferencing) SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(Orders on renewal of FDR in C.A No. 11108 of 2016)

WITH

C.A. No. 11108/2016 (XVII-A)

(Office report for direction with regard to FDR)

WITH

Special Leave to Appeal(Crl.) No(s). 5978-5979/2017

Date : 04-06-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE M.R. SHAH

(VACATION BENCH)

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CA11108/16

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5978-5979/17

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19279&19287/21

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Mr. O. P. Bhadani, AOR

Mr. Rajesh Kumar-I, AOR

Mr. Arvind Gupta, AOR

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Ms. Ranjana Singh, Adv.

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Ms. Ilma Saifi, Adv.

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Ms. Upasana Nath, Adv.

Mr. U.A. Rana, Adv.
Mr. Himanshu Mehta, Adv.

Mr. Chitranshul Sinha, Adv.
Mr. Anil Agarwal, Adv.
Ms. Sonali Khanna, Adv.
Mr. Anshuman Mohit Chaturvedi, Adv.
Mr. Jaskaran Singh Bhatia, Adv.
For M/s. Dua Associates

Mr. S. Udaya Kumar Sagar, Adv.
Ms. Sweena Nair, Adv.

94632/18, 41216/20
7750/21

Mr. Vikram Hegde, Adv.
Mr. Shantanu Lakhota, Adv.
Ms. Hima Lawrence, Adv.

Mr. Karan Bharihoke, AOR
Mr. Siddhant Sharma, Adv.
Ms. Neha Sahai Bharihoke, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Civil Appeal No. 11108 of 2016

The office report indicates that a sum of Rs. 56,04,086/- invested in an FDR is bearing maturity on 11 June 2021. The amount be renewed for a further period of one year with a nationalized bank which offers highest rate of interest on the same terms and conditions.

IA No. 64921 of 2021 in SLP(Cr1.) No. 5978-5979/2017

Heard Mr. Siddhartha Dave, learned senior counsel appearing on behalf of the applicant.

Having regard to the special circumstances pleaded in the application, particularly the death of the applicant's father in law, the applicant - Sanjay Chandra be released on interim bail forthwith for a period of two weeks from the date. The applicant -Sanjay Chandra shall surrender by 19-06-2021.

The application stands disposed of.

Let the main matter be placed before regular Bench after summer vacation.

(MANISH ISSRANI)
COURT MASTER(SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(Orders on renewal of FDR in C.A No. 11108 of 2016)

WITH

C.A. No. 11108/2016 (XVII-A)

(Office report for direction with regard to FDR)

WITH

Special Leave to Appeal(Crl.) No(s). 5978-5979/2017

Date : 04-06-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE M.R. SHAH

For Parties(s)

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CA11108/16

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5978-5979/17

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94632/18, 41216/20
7750/21

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Mr. Shantanu Lakhota, Adv.

Ms. Hima Lawrence, Adv.

Mr. Karan Bharihoke, AOR

Mr. Siddhant Sharma, Adv.

Ms. Neha Sahai Bharihoke, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Civil Appeal No. 11108 of 2016

The office report indicates that a sum of Rs. 56,04,086/- invested in an FDR is bearing maturity on 11 June 2021. The amount be renewed for a further period of one year with a

nationalized bank which offers highest rate of interest on the same terms and conditions.

IA No. 64921 of 2021 in SLP(Cr1.) No. 5978-5979/2017

Heard Mr. Siddhartha Dave, learned senior counsel appearing on behalf of the applicant.

Having regard to the special circumstances pleaded in the application, particularly the death of the applicant's father in law, the applicant - Sanjay Chandra be released on interim bail forthwith for a period of two weeks from the date. The applicant -Sanjay Chandra shall surrender by 19-06-2021.

The application stands disposed of.

Let the main matter be placed before regular Bench after summer vacation.

(MANISH ISSRANI)
COURT MASTER(SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

ITEM NO.1 Court 4 (Video Conferencing) 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(s).10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(WITH APPLICATION FOR PERMISSION, APPROPRIATE ORDERS/DIRECTIONS, CLARIFICATION/DIRECTION, EXEMPTION FROM FILING AFFIDAVIT, EXEMPTION FROM FILING O.T., EXEMPTION FROM PAYING COURT FEE, EXTENSION OF TIME, INTERVENTION/IMPLEADMENT, MODIFICATION OF COURT ORDER, PERMISSION TO APPEAR AND ARGUE IN PERSON, PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS, WITHDRAWAL OF CASE / APPLICATION)

WITH

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

(WITH APPLICATION FOR EXEMPTION FROM FILING CERTIFIED AS WELL AS ORDINARY PLAIN COPY OF THE IMPUGNED ORDER, APPLICATION FOR SUBSTITUTION, APPROPRIATE ORDERS/DIRECTIONS, CLARIFICATION/DIRECTION, EARLY HEARING APPLICATION, EXEMPTION FROM FILING AFFIDAVIT, INTERIM BAIL, INTERVENTION/IMPLEADMENT, MODIFICATION OF COURT ORDER, PERMISSION TO APPEAR AND ARGUE IN PERSON, PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, PERMISSION TO FILE APPLICATION FOR DIRECTION, PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN COPY OF IMPUGNED ORDER, PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS, RECALLING THE COURTS ORDER, SEEKING CUSTODY CERTIFICATE, WITHDRAWAL OF CASE / APPLICATION)

SLP(C) No. 9572/2007 (XI)

(WITH APPLN.(S) FOR APPROPRIATE ORDERS/DIRECTIONS, CLARIFICATION/DIRECTION, EXEMPTION FROM FILING O.T., INTERVENTION APPLICATION, PERMISSION TO FILE ANNEXURES)

C.A. No. 11108/2016 (XVII-A)

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

(WITH IA No. 1/2017 - PERMISSION TO FILE SLP)

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

C.A. No. 9391-9404/2017 (XVII-A)
(WITH IA No. 60512/2017 - APPROPRIATE ORDERS/DIRECTIONS, IA No.
98431/2017 - INTERVENTION/IMPLEADMENT)

C.A. No. 10609/2018 (XVII-A)

Diary No(s). 40477/2018 (XVII-A)

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

W.P.(C) No. 51/2019 (X)

(WITH IA No. 8597/2019 - CLARIFICATION/DIRECTION)

Diary No(s). 4454/2019 (XVII-A)

(WITH IA No. 30656/2019 - CONDONATION OF DELAY IN FILING, IA No.
30657/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 3236/2019 (XVII-A)

C.A. No. 3269/2019 (XVII-A)

(WITH IA No. 51514/2019 - APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 3935/2019 (XVII-A)
(FOR ADMISSION and IA No.63737/2019-CLARIFICATION/DIRECTION)

Diary No(s). 13860/2019 (XVII-A)

(WITH IA No. 68265/2019 - APPROPRIATE ORDERS/DIRECTIONS, IA No.
68264/2019 - CONDONATION OF DELAY IN FILING APPEAL)

Diary No(s). 13969/2019 (XVII-A)
(FOR ADMISSION and I.R. and IA No.71090/2019-CONDONATION OF DELAY
IN FILING)

C.A. No. 5177/2019 (XVII-A)

C.A. No. 5912/2019 (XVII-A)

(FOR ADMISSION)

C.A. No. 2496-2497/2020 (XVII-A)
(IA No.38349/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.38352/2020-CONDONATION OF DELAY IN FILING APPEAL and IA No.38355/2020-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS, IA No. 48752/2020 - CLARIFICATION/DIRECTION)

CONMT.PET.(C) No. 379/2020 in SLP(Cr1) No. 5978-5979/2017 (II-C)

CONMT.PET.(C) No. 442/2020 in SLP(Cr1) No. 5978-5979/2017 (II-C)
(FOR ADMISSION)

CONMT.PET.(C) No. 663/2020 in SLP(Cr1) No. 5978-5979/2017 (II-C)
(FOR ADMISSION)

C.A. No. 10851/2016 (XVII-A)
(WITH APPLICATION FOR PERMISSION, CLARIFICATION/DIRECTION, EXEMPTION FROM FILING O.T., I.A. FOR DIRECTION, INTERVENTION/IMPLEADMENT, IA No. 2/2016 - PERMISSION TO FILE ANNEXURES)

C.A. No. 2511-2526/2017 (XVII-A)
(WITH IA No. 78083/2020 - APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 5174-5181/2017 (XVII-A)
(WITH IA No. 106008/2019 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 53934/2017 - CLARIFICATION/DIRECTION)

C.A. No. 15493/2017 (XVII-A)
(WITH IA No. 169933/2019 - APPLICATION FOR TRANSPOSITION, IA No. 169922/2019 - CLARIFICATION/DIRECTION)

C.A. No. 11008/2017 (XVII-A)
(WITH 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-A)
(WITH APPLN.(S) FOR CLARIFICATION/DIRECTION and INTERVENTION/IMPLEADMENT)

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

(WITH IA No. 85469/2018 - APPLICATION FOR TRANSPOSITION, APPROPRIATE ORDERS/DIRECTIONS, CLARIFICATION/DIRECTION, EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, INTERVENTION/IMPLEADMENT, IA No. 94736/2017 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 20003/2017 (XVII-A)
(WITH IA No. 144379/2019 - INTERVENTION/IMPLEADMENT)

SLP(C) No. 30997/2017 (XVII-A)

C.A. No. 3727/2018 (XVII-A)
(WITH IA No. 41952/2018 - APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 6837-6838/2018 (XVII-A)

(WITH IA No. 82490/2018 - EX-PARTE INTERIM DIRECTION)

SLP(C) No. 12667/2018 (XVII-A)
(WITH IA No. 127173/2018 - CLARIFICATION/DIRECTION, IA No. 127169/2018 - INTERVENTION/IMPLEADMENT)

Diary No(s). 20540/2018 (XVII-A)
(WITH IA No. 104957/2018 - CONDONATION OF DELAY IN FILING APPEAL, IA No. 104958/2018 - CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS)

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

SLP(C) No. 30270/2018 (XVII-A)

Diary No(s). 1380/2019 (XVII-A)
(WITH IA No. 14639/2019 - CONDONATION OF DELAY IN FILING, IA No. 14640/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 5190/2019 (XVII-A)
(FOR ADMISSION)

Date : 17-08-2021 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
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**

- 1 On the request of Mr N Venkataraman, Additional Solicitor General, the following interlocutory applications are directed to be listed on the Board tomorrow (18.8.2021) in the ongoing hearing:
 - (i) MA No 715 of 2021 in Civil Appeal No 317 of 2021
 - (ii) IA No 58386/2021 [Priyadarshini Foundation Pvt Ltd]
 - (iii) IA No 50683/2021 [Project Management Consultants]
 - (iv) IA No 88960/2020 & IA No 47525/2021 [M/s Devas Global]
 - (v) IA No 97388/2020 & IA No 47795/2021 [D A Kumar]
 - (vi) IA No 57580/2021 & IA No 57581/2021 [APIIC]

- (vii) IA No 50704/2021 & IA No 50706/2021 [Carnoustie Management Ltd.]
- (viii) IA Nos 81660 & 81663 of 2021 [Ministry of Corporate Affairs, Stock Exchanges, NDSL]
- (ix) IA Nos 71283 & 71285 of 2021 [NOIDA]
- (x) IA Nos 95906 & 95904 of 2021 [Government of Haryana]

- 2 Certain directions have been sought by the learned Additional Solicitor General in regard to (i) termination of the MoU dated 14 December 2018 executed with Priyadarshini; and (ii) forfeiture of an amount of Rs 35 crores.
- 3 Mr Vikas Singh, learned senior counsel appears on behalf of Priyadarshini. A copy of the convenience note submitted by the learned ASG may be emailed to Mr Vikas Singh to enable him to urge his submissions on the above aspects. Permission is granted to file a response, as requested. The response may be shared with the learned ASG.
- 4 Since certain directions have been sought against (i) NOIDA or, as the case may be, Greater NOIDA; and (ii) the State of Haryana and its agencies, including the Department of Town and Country Planning, it would be appropriate to issue notice to the authorities through their Standing Counsel. Service of notice be effected on the Standing Counsel for NOIDA/Greater NOIDA and for the State of Haryana.
- 5 Mr Pawanshree Agarwal, *Amicus Curiae* states that he has prepared a list of the counsel who are appearing on behalf of the ARCs or as the case may be, financial institutions. It shall be shared with the Court Masters and AOR for Unitech. The names of the counsel appearing for the ARCs and financial institutions shall be mentioned in the cause list which is printed for tomorrow (18.8.2021) so as to apprise them of the proceedings which will be taken up.

- 6 An amount of Rs 1.13 crores which has been earned as interest in the escrow account of the Justice Dhingra Committee, be transferred to the Registry of the Supreme Court. Upon transfer of the amount of Rs 1.13 crores to the Registry of this Court, the amount shall be invested in a Fixed Deposit of a nationalized bank, to be renewed periodically subject to further orders of this Court.
- 7 As regards the disbursements which are being made to the FD holders, in pursuance of the previous directions of the Court, the *Amicus Curiae* shall share details of the disbursement which has been made thus far and the continuing disbursements with the new Board of Management.
- 8 The home buyers who had earlier opted for refunds on the portal of the *Amicus Curiae* are given an opportunity to revive their option of taking possession. For this purpose, the portal shall be reopened for a period of thirty days. Emails be addressed to the home buyers who have opted for refunds intimating them that they have a period of thirty days to change their option by indicating that if they wish to take possession in place of refund. This shall also be placed on the website.
- 9 There are several home buyers who have been refunded the full principal amount but have not handed over their title documents along with NOCs. They shall do so on or before 30 September 2021. They are put to notice that failing this, such units shall be deemed to have been surrendered and be included in the unsold inventory.
- 10 List the matters tomorrow (18.8.2021).

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

ITEM NO.1+3 Court 4 (Video Conferencing) SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(With appln.(s) for PERMISSION, APPROPRIATE ORDERS/DIRECTIONS, CLARIFICATION/DIRECTION, EARLY HEARING APPLICATION, EXEMPTION FROM FILING AFFIDAVIT, EXEMPTION FROM FILING O.T., EXEMPTION FROM PAYING COURT FEE, EXTENSION OF TIME, INTERVENTION, INTERVENTION/IMPLEADMENT, MODIFICATION OF COURT ORDER, PERMISSION TO APPEAR AND ARGUE IN PERSON, PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS and WITHDRAWAL OF CASE / APPLICATION)

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

(With appln.(s) FOR EXEMPTION FROM FILING CERTIFIED AS WELL AS ORDINARY PLAIN COPY OF THE IMPUGNED ORDER, APPLICATION FOR SUBSTITUTION, APPROPRIATE ORDERS/DIRECTIONS, CLARIFICATION/DIRECTION, EARLY HEARING APPLICATION, EXEMPTION FROM FILING AFFIDAVIT, INTERIM BAIL, INTERVENTION, INTERVENTION/IMPLEADMENT, MODIFICATION, MODIFICATION OF COURT ORDER, PERMISSION TO APPEAR AND ARGUE IN PERSON and PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, PERMISSION TO FILE APPLICATION FOR DIRECTION, PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN COPY OF IMPUGNED ORDER, PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS, RECALLING THE COURTS ORDER, SEEKING CUSTODY CERTIFICATE and WITHDRAWAL OF CASE / APPLICATION)

S.L.P.(C) No.9572/2007 (XI)

(With appln.(s) for PERMISSION TO FILE ANNEXURES, EXEMPTION FROM FILING O.T., CLARIFICATION/DIRECTION and APPROPRIATE ORDERS/DIRECTIONS and INTERVENTION)

C.A. No.11108/2016 (XVII-A)

(Office report for direction with regard to FDR)

S.L.P.(C)...CC 5129-5130/2017 (XIV)

(With appln.(s) for PERMISSION TO FILE SLP)

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

C.A. Nos.9391-9404/2017 (XVII-A)

(With appln.(s) for APPROPRIATE ORDERS/DIRECTIONS and INTERVENTION/IMPLEADMENT)

C.A. No.10609/2018 (XVII-A)

Diary No.40477/2018 (XVII-A)

(With appln.(s) for APPROPRIATE ORDERS/DIRECTIONS, CONDONATION OF DELAY IN FILING and EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

W.P.(C) No.51/2019 (X)

(With appln.(s) for CLARIFICATION/DIRECTION)

Diary No.4454/2019 (XVII-A)

(With appln.(s) for CONDONATION OF DELAY IN FILING and EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No.3236/2019 (XVII-A)

C.A. No.3269/2019 (XVII-A)

(With appln.(s) for APPROPRIATE ORDERS/DIRECTIONS)

C.A. No.3935/2019 (XVII-A)

(With appln.(s) for CLARIFICATION/DIRECTION)

Diary No.13860/2019 (XVII-A)

(With appln.(s) for APPROPRIATE ORDERS/DIRECTIONS and CONDONATION OF DELAY IN FILING APPEAL)

Diary No.13969/2019 (XVII-A)

(With appln.(s) for I.R. and CONDONATION OF DELAY IN FILING)

C.A. No.5177/2019 (XVII-A)

C.A. No.5912/2019 (XVII-A)

C.A. Nos.2496-2497/2020 (XVII-A)

(With appln.(s) for EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, CONDONATION OF DELAY IN FILING APPEAL, CONDONATION OF DELAY IN REFILEING /CURING THE DEFECTS and CLARIFICATION/DIRECTION)

CONMT.PET.(C) No.379/2020 in S.L.P.(Cr1) Nos.5978-5979/2017 (II-C)

CONMT.PET.(C) No.442/2020 in S.L.P.(Cr1) Nos.5978-5979/2017 (II-C)

CONMT.PET.(C) No.663/2020 in S.L.P.(Cr1) Nos.5978-5979/2017 (II-C)

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

(With appln.(s) for PERMISSION TO FILE ANNEXURES, INTERVENTION/IMPLEADMENT, CLARIFICATION/ DIRECTION, INTERVENTION and EXEMPTION FROM FILING O.T)

C.A. Nos.2511-2526/2017 (XVII-A)

(With appln.(s) for APPROPRIATE ORDERS/DIRECTIONS)

C.A. Nos.5174-5181/2017 (XVII-A)

(With appln.(s) CLARIFICATION/DIRECTION and APPROPRIATE ORDERS/DIRECTIONS)

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

(With appln.(s) for CLARIFICATION/DIRECTION and TRANSPOSITION)

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

(With appln.(s) for EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, INTERVENTION/IMPLEADMENT, impleading party, APPROPRIATE ORDERS / DIRECTIONS and DELETING THE NAME OF RESPONDENT)

C.A. No.16858/2017 (XVII-A)

(With appln.(s) for CLARIFICATION/DIRECTION and INTERVENTION/IMPLEADMENT)

C.A. Nos.17008-17011/2017 (XVII-A)

(With appln.(s) for EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, APPROPRIATE ORDERS/DIRECTIONS, CLARIFICATION/DIRECTION, FOR impleading party, INTERVENTION/IMPLEADMENT and TRANSPOSITION)

C.A. No.20003/2017 (XVII-A)

(With appln.(s) for INTERVENTION/IMPLEADMENT)

S.L.P.(C) Nos.30997/2017 (XVII-A)

C.A. No.3727/2018 (XVII-A)

(With appln.(s) for APPROPRIATE ORDERS/ DIRECTIONS)

C.A. Nos.6837-6838/2018 (XVII-A)

(With appln.(s) for EX-PARTE INTERIM DIRECTION)

SLP(C) No. 12667/2018 (XVII-A)

(With appln.(s) for CLARIFICATION/DIRECTION and INTERVENTION/IMPLEADMENT)

Diary No(s). 20540/2018 (XVII-A)

(With appln.(s) for CONDONATION OF DELAY IN FILING APPEAL and CONDONATION OF DELAY IN REFILEING/ CURING THE DEFECTS)

C.A. No.8524/2018 (XVII-A)

(With appln.(s) for CLARIFICATION/DIRECTION)

S.L.P.(C) No.30270/2018 (XVII-A)

Diary No(s).1380/2019 (XVII-A)

(With appln.(s) for CONDONATION OF DELAY IN FILING and EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No.5190/2019 (XVII-A)

M.A. No.715/2021 in C.A. No.317/2021

(With appln.(s) for IA No.32182/2021- APPROPRIATE ORDERS/ DIRECTIONS)

Date : 25-08-2021 These matters were called on for hearing today.

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

- 1 The report of the *Amicus Curiae* dated 11 August 2021 has annexed a copy of the Tax invoice submitted by M/s Grant Thornton (the auditors who were appointed to conduct a forensic audit by this Court) on 17 September 2021 for the submission of the final report dated 15 July 2021 including expenses quantified at Rs 54,21,084.
- 2 During the course of the previous hearing, the invoice being drawn to the attention of the Court, Mr N Venkataraman, ASG was requested to seek instructions from the Board of Management. The ASG states that there is no objection to the payment of the bill of the auditors.
- 3 The Registry is accordingly directed to disburse the amount of Rs 54,21,084 to M/s Grant Thornton towards full and final payment of their final invoice dated 17 September 2021. Since the tax invoice is inclusive of GST, the liability towards GST shall be borne by the auditors.

IA 50683 of 2021 (Project Management Consultants)

- 1 During the course of the hearing, from the material which has been placed on the record by Mr N Venkataraman, ASG, it has emerged that there are 74 residential and 10 commercial projects of Unitech Limited under construction under which possession of about 15,000 units has to be delivered to the home buyers. Simultaneously, the construction and completion of an unsold stock of about 4,000 units has to be taken up. Out of the above projects, 35 projects comprising of 8,008 units (5,918 'sold units' of which possession has to be given and 2,090 'unsold units') have been assigned to Assets Reconstruction Companies (ARCs).
- 2 There are three ARCs involved in the matter:
 - (i) Suraksha ARC;

- (ii) JM Financial ARC; and
- (iii) Edelweiss ARC.

It is common ground that of the above three ARCs, the assignment pertains to two of them, namely, Suraksha ARC and JM Financial ARC. All the three ARCs are represented before the Court by Mr Parag P Tripathi, learned Senior Counsel, Mr Chitranshul Sinha, learned counsel, and Mr Krishnan Venugopal, learned Senior Counsel.

- 3 In order to enter into a comprehensive settlement with the ARCs, the new Board of Management of Unitech Limited has proposed to enter into discussions with their senior management and to place agreed modalities before the Court. For this purpose, a Sub-Committee has been constituted by the new Board of Management which would conduct discussions with the ARCs.
- 4 We permit the new Board of Management to enter upon discussions with the ARCs and to place the modalities for the way forward before this Court, within a period of four weeks. All the ARCs shall cooperate with the new Board of Management by attending the meetings as and when convened for the purposes of resolving their claims.
- 5 It would be necessary to bear in mind the facts pertaining to the transaction with each ARC separately. In particular, Mr Krishnan Venugopal, Senior Counsel apprised the Court of the fact that there has been no project assignment to Edelweiss ARC.
- 6 Mr Ravindra Kumar, learned counsel, who appeared on behalf of NOIDA and Greater NOIDA submits that objections which have been filed to the resolution framework proposed by the new Board of Management, insofar as it impinges upon the rights of NOIDA and Greater NOIDA as land owning units and planning authorities.

- 7 At this stage, without this Court being required to go into the details under each head of objection, it would serve the ends of justice if the Sub-Committee nominated by the Board of Management of Unitech Limited and the concerned officials of NOIDA and Greater NOIDA at a senior level engage in discussions so as to provide a way forward which, while protecting the interests of these statutory authorities would protect the interests of the ultimate flat purchasers. We expect that both NOIDA and Greater NOIDA shall find a pragmatic solution to an issue which has been raised, including their demands. Both sets of bodies shall, therefore, cooperate with the new Board of Management for which meetings may be convened within a period of four weeks from today. The Court may be apprised of the progress which has been made pursuant to the meetings.
- 8 Mr Anil Grover, Senior AAG, appears on behalf of the State of Haryana and its authorities. Following the modalities which have been prescribed for discussions with the authorities of NOIDA and Greater NOIDA, similar discussions be conducted with the authorities of the State of Haryana within a period of four weeks from today so that the claims and demands which are outstanding and the licences and permissions which are required to be renewed can be specifically identified. The authorities of the State of Haryana shall nominate a nodal officer at a senior level for engaging in the discussions with the new Board of Management.
- 9 List IA 50683 of 2021 after four weeks.
- 10 List the matters tomorrow (26 August 2021) after fresh matters.

MA No 715/2021 in Civil Appeal No 317/2021

- 1 This miscellaneous application has been filed by the Board of Management of Unitech Limited for ensuring that compliance is effected by TSIC with the final judgment of this Court dated 17 February 2021.
- 2 There is an outstanding issue in regard to the stamp duty and penalty payable on the Development Agreement.

- 3 A reply has been filed by the General Manager (AM) Legal of TSIC. The affidavit encloses a notification of the Revenue (Registration-I) Department dated 1 April 2008 by which the earlier GOMs No 1475 Rev (Regn-I) Department dated 30 July 2005 has been withdrawn. A copy of a communication dated 25 May 2021 of the District Registrar, Ranga Reddy District is annexed. The District Registrar has quantified the deficit stamp duty at Rs 1,34,75,000 on which penalty of ten times the stamp duty has been imposed, amounting to Rs 13,47,50,000. Together with the penalty, a total demand of Rs 14,82,25,000 has been levied.
- 4 There is a judgment of a three-Judge Bench of this Court in ***Trustees of H C Dhanda Trust vs State of Madhya Pradesh*** (2020) 9 SCC 510 construing similar provisions which has been relied upon by Mr N Venkataraman, learned ASG. This Court has held that when ten times the amount of proper duty or deficient portion exceeds five rupees, a sum equal to ten times such duty or portion is required to be deposited. At the same time, the Collector is empowered to refund the penalty in his discretion, which ought to be exercised reasonably.
- 5 Having regard to the above decision, Mr C S Vaidyanathan, learned senior counsel appearing on behalf of TSIC has suggested that the penalty payable on the deficit stamp duty may be computed on any reasonable basis and the authority would accept such a determination. In the judgment which has been referred to above, the penalty was modified by the order of this Court to five times. In our view, the ends of justice would be met if the total quantum of penalty is determined at three times the deficit stamp duty of Rs 1,34,75,000. There was a long standing litigation between the Unitech Limited and TSIC until it was finally resolved by the judgment of this Court. The penalty is hence reduced in the facts and circumstances as noted above.
- 6 The balance which is due by TSIC to the petitioners after adjusting the deficit stamp duty and penalty redetermined in the above terms, shall be paid over within a period of four weeks, in accordance with the judgment of this Court dated 17 February 2021.

7 The Miscellaneous Application is accordingly disposed of.

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

(SAROJ KUMARI GAUR)
Court Master