

ITEM NO.301

COURT NO.4

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
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 IA Nos. 118046 of 2018 and 57578 of 2022 in SLP(Cr1)Nos. 5978-79/2017 and IA Nos. 97388 of 2020, 47795 of 2021, 80954 of 2020, 80947 of 2020, 50704 of 2021, 50706 of 2021, 79304 of 2020, 5463 of 2021, 100828 of 2019, 70286 of 2020, 50683 of 2021 and 81090 of 2020 in Civil Appeal No. 10856 of 2016 are to be listed

IA No. 50683/2021 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 97388/2020 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 80954/2020 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 50706/2021 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 70286/2020 - CLARIFICATION/DIRECTION
 IA No. 79304/2020 - INTERVENTION APPLICATION
 IA No. 81090/2020 - INTERVENTION APPLICATION
 IA No. 50704/2021 - INTERVENTION/IMPLEADMENT
 IA No. 100828/2019 - INTERVENTION/IMPLEADMENT
 IA No. 47795/2021 - INTERVENTION/IMPLEADMENT
 IA No. 80947/2020 - INTERVENTION/IMPLEADMENT
 IA No. 5463/2021 - PERMISSION TO PLACE ADDITIONAL FACTS AND
 GROUNDS)

WITH

SLP(Cr1) No. 5978-5979/2017 (II-C)
 (IA No. 57578/2022 - CLARIFICATION/DIRECTION
 IA No. 118046/2018 - CLARIFICATION/DIRECTION)

Date : 27-07-2022 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. Amit Agrawal, Adv.
Ms. Radhika Yadav, Adv.

Mr. Vineet Bhagat, AOR
Ms. Archana Midha, Adv.

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

Re: Directors of the Board of Unitech

- 1 The Union Government has nominated eight directors to the Board of Unitech in public interest, with a view to facilitate the completion of construction and protection of the interests of home buyers.
- 2 In Action Taken Report III, a request was made to this Court to direct the Ministry

of Corporate Affairs¹ to grant a relaxation to the members of the Board appointed by the Union Government for the purpose of calculating the limit on the maximum number of directorships, which may be held by an individual in terms of Section 165 of the Companies Act 2013.

- 3 On 27 April 2022, SEBI as well as MCA were directed to look into the request and take a considered decision. MCA, by its email dated 7 June 2022, stated that an individual exemption cannot be granted to a particular company. As a result of this one member of the Board of Directors has expressed his desire to relinquish the directorship in view of the ceiling which is prescribed under Section 165 of the Companies Act.
- 2 The Union Government has appointed an eight-member Board to carry on the management of the affairs of the Unitech in order to subserve the public interest in the completion of construction for protecting the interests of home buyers. In this backdrop, bearing in mind the public interest involved in the reconstitution of the Board by the Union Government, it would be necessary to direct that the members of the Board should be exempted from the application of the provisions of Section 165 of the Companies Act 2013 insofar as their position as directors on the Board of Unitech as well as its Committees is concerned. In other words, the members of the Board shall be governed by the provisions of Section 165 in respect of all other directorships which they hold, save and except for the directorship in the Government appointed Board of Directors of Unitech and its Committees. The Ministry of Corporate Affairs shall take immediate steps to implement these directions.
- 3 Ms Renu Sud Karnad, who was appointed as a member of the Board of Directors, tendered her resignation on 24 March 2022. The Ministry of Corporate Affairs

1 “MCA”

shall, in terms of the provisions of Section 149(1) of the Companies Act 2013, nominate a woman who shall be a director in the Government appointed Board of Directors of Unitech within a month. The nomination shall be placed before this Court for its approval.

Re: Issue of refund

- 4 On 27 April 2022 and 18 May 2022, this Court requested the *amicus curiae* to keep the web portal open to enable flat buyers and FD holders to upload information regarding their age profile and to upload scanned documents of relevant medical reports for the purpose of claiming refunds based on medical needs.
- 5 Pursuant to the liberty granted by the orders of this Court, information and documents have been uploaded on the web portal by home buyers and FD holders who seek refunds on the ground of medical exigencies.
- 6 Since a former Judge of this Court, Mr Abhay Manohar Sapre, has been requested by this Court to discharge several functions in relation to the affairs of the Unitech primarily with a view to bringing about transparency and objectivity, we request the learned Judge to take up the task of vetting and claim documents which have been submitted on the ground of medical exigencies. Justice Abhay Manohar Sapre is requested to submit a report at his reasonable convenience. The report may also be made available to this Court in tranches so that as and when cases are duly vetted and found to be genuine, they may be taken up by this Court after the submission of the report.

Re: Amicus Portal

- 7 The convenience note submitted by the Additional Solicitor General states that it

has come to the knowledge of the management of Unitech that certain Whatsapp messages are in circulation for providing update services to home buyers and FD holders against the payment of fees. One such Whatsapp message under the heading "Unitech Amicus" is placed on the record.

8 Mr Pawanshree Agrawal, *amicus curiae*, states that he has neither issued the Whatsapp message nor has he authorized any person to collect charges.

9 It becomes necessary to clarify in the interest of the home buyers and FD holders that neither this Court nor the Government appointed Board of Directors of Unitech has authorized any person to act as an intermediary to collect any charges from the home buyers or any other person for providing an update in regard to proceedings. The collection of any such charges is unauthorized and would amount to a serious act of professional misconduct and invite serious consequences under the law. Since the Board which has been appointed by the Union Government is in place and this Court has also appointed, in addition, Mr Justice Abhay Manohar Sapre, a former Judge of this Court in order to ensure transparency and objectivity in all transactions undertaken by the Board, it is necessary to clarify that all relevant updates shall be provided only on the web portal maintained by the present management of Unitech. Any home buyer, FD holder or employee, with a grievance, is at liberty to reach out to the management on the web portal. The web portal shall, henceforth, be maintained exclusively by the management of Unitech and, in consequence, any requirement of technical inputs or IT related services shall be availed of by the Management at its discretion.

10 Mr Aneesh Mittal shall clarify within a week that no authorization has been issued by the Court or by the present Board of Management to him to claim any charges from the home buyers.

- 11 The Registry is directed to issue a notice, returnable on 4 August 2022, to Mr Aneesh Mittal to remain present on the next date of listing to explain the circumstances in which the alleged Whatsapp message has been circulated. He shall also clarify on affidavit the number of persons who were registered and the payment, if any, has been received by him.

Re: Approval of authorities of Haryana

- 12 The Board of Management of Unitech has submitted twenty five applications for renewal of licenses to the Department of Town and Country Planning, Haryana and an amount of Rs 26.2142 crores has been deposited towards renewal fees. The Department of Town and Country Planning, Haryana shall expedite the disposal of the applications and grant the renewals within a period of four weeks.
- 13 Simultaneously, other statutory renewals, revisions/release of zoning plans, building plans, layout plans shall be processed without insistence on upfront payment of outstanding dues within a period of four weeks of the date of receipt. The modalities for the payment of outstanding dues shall be worked out in consultation after hearing the Department of Town and Country Planning, Haryana in due course. Unitech shall pay the scrutiny fee, together with the applications.
- 14 Compounding fees which are payable because of the grant of possession without obtaining certificate by the erstwhile management and the Dhingra committee would be treated as outstanding dues. Hence, the completion certificate which had been applied earlier shall be processed, subject to the eventual determination of the modalities for the payment of the outstanding dues by this Court, after hearing the authorities of the State of Haryana.

List the following on 4 August 2022 at 3.30 pm:

- (i) IA No 57578 of 2022;
- (ii) Report submitted by Mr Justice Abhay Manohar Sapre
- (iii) Status Report of DG (Prisons);
- (iv) Action Taken Report III, IV & V
- (v) Issue of refund of the age group 65-75 years and above 75 years;
- (vi) IA No 100828 of 2019 and IA No 70286 of 2020 in Civil Appeal No 10856 of 2016;
- (vii) IA No 81090 of 2020 in Civil Appeal No 10856 of 2016;
- (viii) D.A. Kumar - IA Nos 97388 of 2020, 47795 of 2021 filed by Unitech and IA Nos 80954 of 2020 and 80947 of 2020 filed by D A Kumar;
- (ix) Carnoustie - IA Nos 50704 of 2021, 50706 of 2021 filed by Unitech and IA Nos 79304 of 2020, 5463 of 2021 filed by Carnoustie and IA No 118046 of 2018 in SLP (CrI) Nos 5978-5979 of 2017; and
- (x) IA No 50683 of 2021 in Civil Appeal No 10856 of 2016.
- (xi) IA Nos 77794 and 77795 and 77802 and 77813 of 2022

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
COURT MASTER