

ITEM NO.18 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)

(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 REFILEING / 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 REILING / 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 : 26-08-2021 These matters were called on for hearing today.

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Mr. Rajesh Singh, AOR

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Mr. R.N. Pareek, Adv.

Mr. Jagdamba Singh, Adv.

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Ms. Shikha Dixit, in-person

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Mr. Abhay Singh, Adv.
Ms. Ankita Agarwal, Adv.

Ms. Binu Tamta, Adv.
Mr. Dhruv Tamta, AOR

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

SLP(Cr1) No. 5978-5979/2017

- 1 The order of this Court dated 9 May 2019 adverts to the status report filed by M/s Grant Thornton, who were appointed as Forensic Auditors which indicates that the auditors were not provided complete access to all electronic records, including those which were in possession of the Chief Financial Officer, Unitech Limited. The lack of cooperation was underscored in the following paragraph of the order of this Court:

“The status report makes it evident that the forensic auditors have not been provided with complete recourse to the electronic records including those which were in the possession and custody of the Chief Financial Officer(s). In the absence of a complete availability of the electronic records to the forensic auditors, their task has been severely undermined and obstructed. As a consequence, effective implementation of the order which had been passed by this Court for undertaking a forensic audit has been thwarted. We appreciate the difficulties which are being faced by the forensic auditors and the earnest efforts which have been made by them to provide as complete a picture as possible on the basis of the available records. Mr. Nitin Talwar, representing M/s. Grant Thornton has apprised the Court that since January 2019, he, together with his team of personnel, has been stationed only for completing the assignment which has been entrusted by the Court.”

- 2 In this backdrop, the Court recalled the facilities which had been made available to the accused – Sanjay Chandra and Ajay Chandra, former Directors of Unitech Limited who were lodged in Tihar Central Jail. The Court directed that they shall not be entitled to any additional facilities apart from those which are available in normal course in terms of the jail manual. These directions were to be communicated by the Registrar (Judicial) to the Jail Superintendent of Tihar Central Jail.
- 3 During the course of the proceedings, the Directorate of Enforcement has filed two status reports dated 5 April 2021 and 16 August 2021. The status reports indicate the progress which has been made in the course of the investigations.
- 4 The status report dated 16 August 2021 contains a copy of a letter dated 16 August 2021 by the Assistant Director, HIU, Enforcement Directorate to the Commissioner of Police, Delhi. The letter contains details of the manner in which the premises of Tihar Central Jail have been misused by the accused for:
- (i) Engaging in illegal activities by flouting the jail manual;
 - (ii) Making transfers of assets and dissipating the proceeds of crime;
 - (iii) Influencing witnesses and attempting to derail the investigation.
- 5 In the course of her submissions, Ms Madhavi Divan, Additional Solicitor General summarised the salient aspects of the status reports. Mr K M Nataraj, Additional Solicitor General appearing for Delhi Police, on being queried about the action which has been taken by the Commissioner of Police since the receipt of the communication dated 16 August 2021, states that the steps taken will be placed on record.

- 6 The contents of ED's communication dated 16 August 2021 raise serious and disturbing issues. What is of concern to the Court is that the jurisdiction of this Court is sought to be undermined in complicity with the jail staff, if the contents of the letter are true. The second status report elaborates upon several aspects which have been adverted to in the communication to the Commissioner of Police. In this backdrop, we are of the view that the Commissioner of Police must make an immediate enquiry into the contents of the communication dated 16 August 2021 addressed to him by the Directorate of Enforcement so that all the officers and staff of Tihar Central Jail who may be complicit in the violation of law are held accountable. This process should commence immediately and a report should be filed within a period of four weeks on the action which has been taken pursuant to the communication dated 16 August 2021. The enquiry shall be conducted by the Commissioner of Police, Delhi personally and shall not be delegated to any other officer.
- 7 The contents of the communication dated 16 August 2021 and the material which has come on the record indicate that, despite the orders of this Court, irregularities are taking place within the precincts of the Tihar Central Jail where the two accused have been lodged. These activities undermine the authority of the Court and will derail the investigation which has been ordered by the Directorate of Enforcement.
- 8 In the circumstances, we order and direct that both the accused, Sanjay Chandra and Ajay Chandra be shifted from Tihar Central Jail to the premises of Arthur Road Jail, Mumbai and Taloja Central Jail, Mumbai, respectively. The video conferencing facility at the jails to which the accused are being transferred shall be made available so as to enable them to record their presence in the court proceedings where their presence is required.

- 9 A copy of this communication shall be forwarded by the Registrar (Judicial) of this Court to the Director General of Police, Maharashtra so that necessary arrangements can be made immediately for housing the accused at Arthur Road Jail and Taloja Central Jail.
- 10 We also impress upon the Directorate of Enforcement to proceed ahead with the investigation expeditiously. The investigation has been proceeding at a tardy pace. The Court should be apprised of the status of the investigation within a period of four weeks from today.
- 11 Copies of the interim and final reports of M/s Grant Thornton, forensic auditors appointed by this Court shall be furnished to the Directorate of Enforcement. Copies of the reports shall be handed over in a sealed cover to Ms Shraddha Deshmukh, counsel assisting Ms Madhavi Divan for onward transmission to the Directorate of Enforcement.
- 12 List the Special Leave Petition after six weeks, and a status report shall be filed by ED on the investigation.

IA No 81660/2021 & IA No 81663/2021

- 1 On the request of Mr N Venkataraman, Additional Solicitor General, permission is granted to delete the second respondent from the array of parties.
- 2 Notice shall issue to the Ministry of Corporate Affairs, Government of India, returnable in two weeks.
- 3 Dasti, in addition, is permitted.

IA No 57580/2021 & IA No 57581/2021

- 1 Issue notice, returnable in four weeks.
- 2 Liberty to serve the counsel for the APIIC, in addition.

IA No 50704/2021 & IA No 50706/2021

- 1 Issue notice, returnable in two weeks.
- 2 Mr S C Dharmadhikari, senior counsel with Ms Jasmine Damkewala, accepts notice on behalf of the respondent Nos 1 to 4.
- 3 Ms Jasmine Damkewala, counsel states that two interlocutory applications, being IA No 79304/2020 and IA No 5463/2021, have been filed by the respondent, Carnoustie Management Ltd in the matter.
- 4 Reply to the interlocutory applications be filed within a period of two weeks.
- 5 List the interlocutory applications along with the IAs filed by Carnoustie Management Ltd after three weeks.

IA No 96264/2021, IA No 96157/2021, IA No 100079/2021 & IA No 100070/2021

- 1 The new Board of Management of Unitech Ltd shall file its response to the interlocutory applications within a period of three weeks.

IA No 50683 of 2021 Civil Appeal No(s).10856/2016

- 1 List the interlocutory application tomorrow (27 August 2021) at the end of the Board.

Office Report dated 24 August 2021 in SLP(CrI) Nos 5978-5979 of 2017

The office report indicates that FDR, bearing A/c No 1303-I, is maturing on 24 September 2021. The FDR be renewed for a further period of one year.

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

**(SAROJ KUMARI GAUR)
COURT MASTER**