

ITEM NO.301

COURT NO.7

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)

IA No. 163215/2019 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 126833/2019 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 179388/2019 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 118418/2019 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 131930/2019 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 167501/2019 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 127532/2019 - CLARIFICATION/DIRECTION  
 IA No. 143332/2019 - CLARIFICATION/DIRECTION  
 IA No. 168590/2019 - CLARIFICATION/DIRECTION  
 IA No. 117566/2019 - INTERVENTION APPLICATION  
 IA No. 127529/2019 - INTERVENTION APPLICATION  
 IA No. 116589/2019 - INTERVENTION APPLICATION  
 IA No. 116576/2019 - INTERVENTION APPLICATION  
 IA No. 122309/2019 - INTERVENTION APPLICATION  
 IA No. 142769/2019 - INTERVENTION APPLICATION  
 IA No. 118517/2019 - INTERVENTION APPLICATION  
 IA No. 134346/2019 - INTERVENTION APPLICATION  
 IA No. 118412/2019 - INTERVENTION APPLICATION  
 IA No. 117154/2019 - INTERVENTION/IMPLEADMENT  
 IA No. 153933/2019 - INTERVENTION/IMPLEADMENT  
 IA No. 126831/2019 - INTERVENTION/IMPLEADMENT  
 IA No. 143330/2019 - INTERVENTION/IMPLEADMENT  
 IA No. 168586/2019 - INTERVENTION/IMPLEADMENT  
 IA No. 131928/2019 - INTERVENTION/IMPLEADMENT)

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)

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

IA No. 2/2016 - APP FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS

IA No. 8196/2019 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 168352/2018 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 86487/2018 - CLARIFICATION/DIRECTION  
 IA No. 148794/2018 - CLARIFICATION/DIRECTION  
 IA No. 106354/2018 - CLARIFICATION/DIRECTION  
 IA No. 86494/2018 - CLARIFICATION/DIRECTION  
 IA No. 86492/2018 - INTERVENTION APPLICATION  
 IA No. 148790/2018 - INTERVENTION APPLICATION  
 IA No. 106352/2018 - INTERVENTION APPLICATION  
 IA No. 6125/2019 - INTERVENTION/IMPLEADMENT)

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

IA No. 33331/2019 - APPLICATION FOR PERMISSION  
 IA No. 23396/2018 - CLARIFICATION/DIRECTION  
 IA No. 29665/2019 - CLARIFICATION/DIRECTION  
 IA No. 138022/2018 - CLARIFICATION/DIRECTION  
 IA No. 74496/2019 - CLARIFICATION/DIRECTION  
 IA No. 69785/2018 - EXEMPTION FROM FILING O.T.  
 IA No. 89520/2018 - I.A. FOR DIRECTION  
 IA No. 49108/2018 - INTERVENTION APPLICATION  
 IA No. 129613/2018 - INTERVENTION APPLICATION  
 IA No. 117001/2018 - INTERVENTION APPLICATION  
 IA No. 29804/2019 - INTERVENTION APPLICATION  
 IA No. 86677/2018 - INTERVENTION APPLICATION  
 IA No. 66018/2018 - INTERVENTION APPLICATION  
 IA No. 138019/2018 - INTERVENTION APPLICATION  
 IA No. 51916/2019 - INTERVENTION APPLICATION  
 IA No. 33334/2019 - INTERVENTION/IMPLEADMENT  
 IA No. 23393/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 145062/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 69781/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 74495/2019 - INTERVENTION/IMPLEADMENT  
 IA No. 49501/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 136620/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 2/2016 - PERMISSION TO FILE ANNEXURES)

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

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

IA No. 1/2017 - PERMISSION TO FILE PETITION (SLP/TP/WP/..))

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

(IA No. 106008/2019 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 53934/2017 - CLARIFICATION/DIRECTION)

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

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

IA No. 60512/2017 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 98431/2017 - INTERVENTION/IMPLEADMENT)

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

SLP(Cr1) No. 5978-5979/2017 (II-C)  
(IA No. 73474/2017 - APPLICATION FOR EXEMPTION FROM FILING  
CERTIFIED AS WELL AS ORDINARY PLAIN COPY OF THE IMPUGNED ORDER  
IA No. 4543/2018 - APPLICATION FOR SUBSTITUTION  
IA No. 77981/2019 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 97705/2019 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 105639/2019 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 22112/2018 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 182062/2019 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 186266/2019 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 128951/2018 - APPROPRIATE ORDERS/DIRECTIONS  
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IA No. 72065/2018 - INTERVENTION APPLICATION

IA No. 80237/2018 - INTERVENTION APPLICATION  
IA No. 98447/2018 - INTERVENTION APPLICATION  
IA No. 89941/2017 - INTERVENTION APPLICATION  
IA No. 102780/2018 - INTERVENTION APPLICATION  
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IA No. 139640/2017 - INTERVENTION APPLICATION  
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IA No. 54138/2018 - INTERVENTION APPLICATION  
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IA No. 98587/2017 - INTERVENTION APPLICATION  
IA No. 138858/2018 - INTERVENTION APPLICATION  
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IA No. 164712/2018 - INTERVENTION APPLICATION  
IA No. 106074/2017 - INTERVENTION APPLICATION

IA No. 122293/2017 - INTERVENTION/IMPLEADMENT  
IA No. 123214/2019 - INTERVENTION/IMPLEADMENT  
IA No. 23739/2018 - INTERVENTION/IMPLEADMENT  
IA No. 51222/2018 - INTERVENTION/IMPLEADMENT  
IA No. 72189/2018 - INTERVENTION/IMPLEADMENT  
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IA No. 114962/2018 - INTERVENTION/IMPLEADMENT  
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IA No. 155739/2018 - INTERVENTION/IMPLEADMENT  
IA No. 38852/2019 - INTERVENTION/IMPLEADMENT  
IA No. 66133/2019 - INTERVENTION/IMPLEADMENT  
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IA No. 23734/2018 - INTERVENTION/IMPLEADMENT  
IA No. 49450/2018 - INTERVENTION/IMPLEADMENT  
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IA No. 55575/2018 - INTERVENTION/IMPLEADMENT  
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IA No. 126404/2018 - INTERVENTION/IMPLEADMENT  
IA No. 129870/2018 - INTERVENTION/IMPLEADMENT  
IA No. 123118/2017 - INTERVENTION/IMPLEADMENT  
IA No. 23754/2018 - INTERVENTION/IMPLEADMENT  
IA No. 51232/2018 - INTERVENTION/IMPLEADMENT  
IA No. 55573/2018 - INTERVENTION/IMPLEADMENT  
IA No. 66094/2018 - INTERVENTION/IMPLEADMENT

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 IA No. 51226/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 189569/2019 - INTERVENTION/IMPLEADMENT  
 IA No. 66087/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 71438/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 114978/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 134806/2018 - INTERVENTION/IMPLEADMENT  
 IA No. 107191/2017 - INTERVENTION/IMPLEADMENT  
 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.**

**CORAM :**

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

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Mr. Abhimanyu Bhandari, Adv.  
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Ms. Twinkle Kataria, Adv.

Ms. Nidhi Sahay, Adv.

Ms. Sujata Kurdukar, AOR

Mr. Ranjit Kumar Sharma, AOR

Ms. Preeti Singh, AOR

Mr. Preshit Vilas Surshe, AOR

Mr. Amit Pawan, AOR

Mr. Jinendra Jain, AOR

Mr. Divyesh Pratap Singh, AOR

Ms. Bharti Tyagi, AOR

Mr. Gp. Capt. Karan Singh Bhati, AOR

Mr. Brijendra Singh, Adv.

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Mr. Shishir Saxena, Adv.

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Mr. Anoop Kr. Srivastav, AOR

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Mr. Somesh Chandra Jha, AOR

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Mr. Soayib Qureshi, Adv.

Ms. Aakanksha Nehra, Adv.

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Mr. Rajeev Kumar Yadav, Adv.

Mr. Chandan Kumar, AOR

Mr. Pankaj Prasad, Adv.

Mr. Sanjeev Kumar Choudhary, Adv.

Mr. Aniruddha P. Mayee, AOR

Mr. Sudhir Kumar, Adv.  
Ms. Kumud Lata Das, AOR  
Mr. Bavi Agrawal, Adv.

Mr. Rahul Kaushik, AOR

Mr. Avinash Sharma, AOR

Ms. Hima Lawrence, AOR

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

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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

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Mr. Yakesh Anand, Adv.  
Mr. Nimit Mathur, Adv.

Mr. Rajesh Kumar, AOR

Applicant-in-person

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Mr. Aditya Singh, AOR  
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Mr. P. N. Puri, AOR

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Ms. Geetanjali Mehlwal, Adv.  
Mr. Sanveer Mehlwal, Adv.



Ms. Arna Das, Adv.

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

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Mr. Pahlad Singh Sharma, AOR

Mr. Balaji Srinivasan, AOR

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Mr. B. Ragunath, Adv.

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Mr. S.K. Rajora, Adv.  
Ms. Sandhya Sharma, Adv.

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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