

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
RECORD OF PROCEEDINGS

Civil Appeal No.10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(WITH IA No. 80954/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.57580/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No.50706/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No.97388/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.79304/2020 - INTERVENTION APPLICATION, IA No.80947/2020 - INTERVENTION/IMPLEADMENT, IA No.57581/2021 - INTERVENTION/IMPLEADMENT, IA No.193610/2019 - INTERVENTION/IMPLEADMENT, IA No.50704/2021 - INTERVENTION/IMPLEADMENT, IA No.47795/2021 - INTERVENTION/IMPLEADMENT, IA No.5463/2021 - PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS)

WITH S.L.P(Cr1) No.5978-5979/2017 (II-C)

(With appln.(s) for IA No.118046/2018 - CLARIFICATION/DIRECTION)

Date : 30-03-2022 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.)
Mr. Varun K. Chopra, Adv.

For Appellant(s)

Mr. Deepak Goel, AOR

Mr. N. Venkataraman, ASG
Ms. Anubha Agrawal, AOR

Mr. Siddhartha Dave, Sr. Adv.
Mr. Vishal Gosain, Adv.
Mr. Anuroop Chakravarti, Adv.
Ms. Ranjeeta Rohatgi, AOR
Ms. Samten Doma, Adv.
Ms. Neeha Nagpal, Adv.
Ms. Aarushi Singh, Adv.

For Respondent(s) Mr. N. Venkataraman, ASG
Ms. Anubha Agrawal, AOR

Ms. Madhavi Divan, ASG
Mr. K.M. Nataraj, ASG
Ms. Suhashini Sen, Adv.
Ms. Shraddha Deshmukh, Adv.
Mr. M.K. Maroria, AOR
Ms. Chinmayee Chandra, Adv.
Mr. Siddhant Kohli, Adv.
Mr. Rajan Kr Chourasia, Adv.
Mr. Prashant Singh B, Adv.
Mr. Amrish Kumar, AOR
Mr. Ayush Puri, Adv.
Ms. Ruchi Kohli, Adv.
Ms. Nidhi Khanna, Adv.
Ms. Praveena Gautam, Adv.
Mr. Shekhar Vyas, Adv.
Mr. Santosh Kumar, Adv.
Mr. Sughosh Subramaniam, Adv.
Mr. Ankur Talwar, Adv.
Ms. Vaishali Verma, Adv.
Mr. Raj Bahadur Yadav, AOR
Mr. Arvind Kumar Sharma, AOR
Mr. T.A. Khan, Adv.
Mr. Anish Kr. Gupta, Adv.
Mr. Adit Khorana, Adv.
Mr. Digvijay Dam, Adv.
Mr. G.S. Makkar, AOR

Maharashtra Mr. Rahul Chitnis, Adv.
Mr. Sachin Patil, AOR

Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.
Ms. Shwetal Shepal, Adv.

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

Mrs. Aarthi Rajan, AOR

Mr. Nikhil Nayyar, Sr. Adv.
Ms. Pritha Srikumar Iyer, AOR
Mr. Naveen Hegde, Adv.
Ms. Mansi Binjrajka, Adv.

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

Mr. Brijesh Kumar Tamber, AOR
Mr. Saurabh Choudhary, Adv.
Mr. Yashu Rustagi, Adv.

Mr. Vipin Jain, Adv.
Mr. Shwetabh Sinha, Adv.
Mr. Ujjal Banerjee, AOR
Mr. Akash Khurana, Adv.

Mr. Sanjeev Sen, Sr. Adv.
Mr. Salim A. Inamdar, Adv.
Mr. Modassir H. Khan, Adv.
Mr. Abhishek Thakral, Adv.
Ms. Astha Tyagi, AOR

Mr. Raajan Chawla, AOR

Mr. M L Lahoty, Adv.

	Mr. Himanshu Shekhar, AOR
APIIC	Mr. S. Chakraborty, Sr. Adv. Mr. Arup Banerjee, AOR Mr. Sanjeev Sharma, Adv.
NOIDA	Mr. Ravindra Kumar, Sr. Adv. Mr. Binay K Das, AOR Mr. Amit Agrawal, AOR Ms. Radhika Yadav, Adv. Mr. Naman Khatwani, Adv. Ms. Charu Ambwani, AOR Mr. Satinder S. Gulati, Adv. Mr. Kamaldeep Gulati, AOR
Wisdom World	Ms. Malvika Kapila, Adv. Ms. Swarupama Chaturvedi, AOR Tanwangi Shukla, Adv.

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

Office report dated 29 March 2022 in SLP(CrI) No 5978-5979 of 2017

- 1 By the order of this Court dated 10 February 2022, M/s Wisdom World Developers Pvt Ltd was permitted to withdraw the amount of Rs 15 crores deposited in the Registry, together with accrued interest.
- 2 A report with reference to the order dated 10 February 2022 has been put up by the Registry by which three alternative modalities have been set out for computing the interest. The three illustrations are:

- (i) Illustration 1: on the basis of the per day interest;
 - (ii) Illustration 2: on the basis of the highest rate of interest offered by nationalized banks in other deposits lying in the instant matter; and
 - (iii) Illustration 3: on the presumption of continuation of Rs 15 crores' investment by calling open bids.
- 3 The amount which is due and payable in the three illustrations works out to Rs 18,29,72,940 (Illustration 1); Rs 18,35,26,957 (Illustration 2); and Rs 18,28,12,556 (Illustration 3).
- 4 We have heard the *amicus curiae* on the appropriate basis to be followed for computing the rate of interest. We deem it appropriate and proper to permit the Registry to disburse the amount with interest on the basis of Illustration 3 contained in the office report dated 29 March 2022.
- 5 The office report is accordingly disposed of.

IA Nos 57580/2021 & 57581/2021
[Applications for direction and impleadment of Andhra Pradesh Industrial Infrastructure Corporation (APIIC)]

- 1 The Board of Directors of Unitech Limited¹ has sought a direction for the refund of an amount of Rs 270 crores together with interest at the rate of 18% per annum against the Andhra Pradesh Industrial Infrastructure Corporation².
- 2 On 1 August 2017, bids were invited by APIIC for development of an integrated Vizag city in a public private partnership over 1750 acres of land. On 24 September 2007, a Letter of Award was issued in favour of Unitech Limited. On 17 July 2008, a Development Agreement was executed between APIIC and Unitech Limited. On 15 April 2011, APIIC rescinded the Development Agreement. On 26 April 2011 APIIC addressed a communication purporting to forfeit an amount of Rs 270 crores which was paid by the Unitech in pursuance of the Development Agreement.
- 3 Unitech invoked the arbitration clause of the agreement on 27 May 2011. After issuing notices on 6 July 2011 and 28 March 2012, Unitech filed Arbitration Application No 107 of 2014 under Section 11 of the Arbitration and Conciliation Act 1996 before the High Court of Andhra Pradesh for appointment of an arbitrator on 11 April 2014. The application is pending for nearly eight years.

1“Unitech”

2“APIIC”

- 4 APIIC has filed a counter affidavit in the proceedings.
- 5 Mr N Venkataraman, Additional Solicitor General with Ms Anubha Agarwal appeared on behalf of the present Board of Directors of Unitech (constituted by the Union Government). The submission is that APIIC has proceeded on the basis that (i) the Development Agreement was not ratified by the Board of Directors and would, therefore, not bind APIIC; and (ii) that the arbitration agreement would not subsist in view of (i) above. On this basis, the interlocutory application seeks a direction to APIIC to refund an amount of Rs 270 crores together with interest at the rate of 18% per annum.
- 6 Mr Soumya Chakraborty, senior counsel appearing on behalf of APIIC on the other hand submits that Unitech invoked arbitration and instituted a proceeding under Section 11 of the Arbitration and Conciliation Act 1996. Unitech having submitted that there is an arbitral dispute, it would not be appropriate for this Court in the present proceedings to issue a direction in the nature of a decree for refund of Rs 270 crores when the claim of Unitech would have to be decided on the basis of evidence by the arbitral tribunal. APIIC has suggested that this Court may appoint an arbitrator so as to facilitate an adjudication of the dispute.
- 7 The agreement between Unitech and APIIC was terminated by a letter dated 15 April 2011, which was followed by a letter of forfeiture dated 26 April 2011. An application under Section 11 was instituted on 11 April 2014 by Unitech. Unitech has invoked arbitration. The submission that this Court

should issue a decree for refund together with interest cannot be accepted. The claim of Unitech has to be adjudicated upon after considering the defense to the plea for refund.

- 8 The submission which has been urged on behalf of APIIC by Mr Soumya Chakraborty, senior counsel that the appropriate course of action would be to allow parties to seek recourse to arbitration is deserving of acceptance. Since the application under Section 11 is pending before the High Court since 2014, we are of the view that the ends of justice would be met by directing the appointment of a sole arbitrator to arbitrate upon the disputes and differences between the parties arising from the invocation of the arbitration by Unitech.
- 9 Accordingly Mr Justice R Subhash Reddy, former Judge of this Court shall stand appointed as sole arbitrator to arbitrate upon the disputes and differences between the parties arising out of invocation of arbitration by Unitech.
- 10 The Arbitrator is requested to enter upon the reference and to endeavour the completion of the final award expeditiously having due regard to the fact that the present Board of Management of Unitech has been constituted by the Union government in order to protect the interest of home buyers.
- 11 The Interlocutory Applications shall stand accordingly disposed of.

- 12 The Registrar (Judicial) is requested to communicate a copy of this order to the learned sole Arbitrator.
- 13 Ms Anubha Agarwal, counsel appearing on behalf of Unitech shall also cause copy of the order to be communicated to the Arbitrator so that necessary directions for the appearance of parties can be issued.
- 14 In view of the above order, Arbitration Application No 107 of 2014 which was instituted before the High Court of Andhra Pradesh at Amravati under Section 11 of the Arbitration and Conciliation Act 1996, shall stand disposed of.

Civil Appeal Nos 10856/2016 and SLP(Crl) Nos 5978-5979/2017

List the following on 20 April 2022 at 2 pm:

- (i) Status Report of Directorate of Enforcement;
- (ii) Action Taken Report III by Unitech
- (iii) 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;
- (iv) 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(Crl) Nos 5978-5979/2017; and
- (v) IA No 100828 of 2018 in Civil Appeal No 2016

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

(SAROJ KUMARI GAUR)
COURT MASTER