

ITEM NO.58

COURT NO.13

SECTION XVII

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)

([TO BE TAKEN UP AT 2.00 P.M.])

WITH

C.A. No. 2511-2526/2017 (XVII)
(IA No.66938/2017-EXTENSION OF TIME and IA No.90673/2017-EXTENSION OF TIME)

C.A. No. 5174-5181/2017 (XVII)
(I.A. No. 53934/2017-Clarification/Direction)

C.A. No. 10851/2016 (XVII)(IA No. 2.2016-Permission to file annexures)

SLP(Cr1) No. 5978-5979/2017 (II-C)
(IA No. 73472/2017-Permission to file SLP without certified/plain copy of impugned order)

C.A. No. 15493/2017 (XVII)
(IA No.77581/2017-CONDONATION OF DELAY IN FILING and IA No.77582/2017-CLARIFICATION/DIRECTION and IA No.78654/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.82788/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

C.A. No. 17008-17011/2017 (XVII)
(and FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS ON IA 94736/2017 FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 96100/2017 FOR CLARIFICATION/DIRECTION ON IA 15770/2018, IA No. 94577/2017-Exemption from filing c/c of the impugned judgment)

C.A. No. 9391-9404/2017 (XVII)
(FOR FOR impleading party ON IA 98431/2017
(IA No. 60512/2017-Appropriate orders/Direction)

C.A. No. 11008/2017 (XVII)
(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)
(FOR ADMISSION and IA No.97166/2017-PERMISSION TO FILE APPEAL and IA No.112640/2017-impleading party and IA No.112648/2017-APPLICATION FOR TRANSPOSITION and 19856IA No.128215/2017-impleading party)

SLP(C) No. 30997/2017 (XVII)
(FOR ADMISSION and I.R.)

C.A. No. 20003/2017 (XVII)
(IA No.119851/2017-CONDONATION OF DELAY IN FILING and IA No.119859/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.119854/2017-CONDONATION OF DELAY IN REFILING and IA No.119862/2017-APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 3727/2018 (XVII)
(FOR ADMISSION and I.R. and IA No.41950/2018-CONDONATION OF DELAY IN FILING and IA No.41952/2018-APPROPRIATE ORDERS/DIRECTIONS)

SLP(C) No. 12667/2018 (XVII)
(FOR ADMISSION and I.R.)

C.A. No. 6837-6838/2018 (XVII)
(IA No. 82490/2018-EX parte interim direction)

Diary No(s). 20540/2018 (XVII)
(IA No.104959/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.104957/2018-CONDONATION OF DELAY IN FILING APPEAL and IA No.104958/2018-CONDONATION OF DELAY IN REFILING)

C.A. No. 8524/2018 (XVII)
(IA No. 111987/2018-Clarification/Direction)

C.A. No. 10609/2018 (XVII)
(IA No.141034/2018-CONDONATION OF DELAY IN FILING)

Diary No(s). 40477/2018 (XVII)
(IA No.168354/2018-CONDONATION OF DELAY IN FILING and IA No.168355/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.168356/2018-APPROPRIATE ORDERS/DIRECTIONS)

Date : 07-12-2018 These petitions were 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

The learned Amicus Curiae submitted a report on 21.09.2017 indicating that out of 74 construction projects undertaken by UNITECH, as many as 61 were incomplete. About 16,300

home buyers are involved in these projects. The report indicates that the principal amount due to the home buyers, if the home buyers were to be refunded, the amounts paid to the developer, would amount to nearly Rs.7816 crores.

Having regard to the magnitude of the problem and the urgent need to protect the home buyers, this Court directed the creation of a web portal through which the Amicus Curiae was permitted to collate options from the home buyers on whether they seek possession of the flats which they have booked or seek a refund.

Learned counsel appearing for the UNITECH submitted that if permitted, the developers would wish to generate funds by monetising their assets. In order to facilitate this process and in view of the above submission, this Court had directed that requisite facilities be extended to the Directors who are lodged in Tihar jail so as to enable them to negotiate the sale of their unencumbered properties or assets.

The petitioners were directed to deposit an amount of Rs. 750 crores by December, 2017. The learned Amicus has stated before the Court that in the present proceedings an amount of Rs. 307 cores has been deposited. According to the learned counsel appearing for the UNITECH, a total amount of Rs. 419 crores has been secured by deposit in various proceedings before this Court.

The orders passed by this Court for deposit have not been complied with.

On 05.03.2018, the petitioners were directed to file affidavits stating the details of their unencumbered properties and the properties of their subsidiaries both in India and abroad. On

09.04.2018, a list of unencumbered assets was filed before this Court. On 02.05.2018 this Court directed the petitioners to file a list of their unencumbered properties together with the extent of encumbrances. The Directors of UNITECH as well as its subsidiaries were required to file a list of their personal assets. In pursuance of this Court's order, certain affidavits have been filed. The affidavits, it must be noted, are bereft of details, including the value of the properties, in the absence of which the extent of encumbrances could not be determined.

In this background, on 14.05.2008, this Court constituted a Committee headed by Justice SN Dhingra, former Judge of the Delhi High Court for conducting sales of unencumbered properties of UNITECH. On 05.07.2018, when the petitioners again sought time for filing a list of encumbered properties of UNITECH and its subsidiaries, this Court had adverted to the conduct of UNITECH in failing to comply with the directions that have been issued.

The learned Amicus has drawn attention of this Court to the fact that the information regarding assets which has been furnished is incomplete and is contradicted by the filings made by UNITECH in proceedings which are pending in other jurisdictions.

Documents have been placed on the record of this Court revealing a disturbing state of affairs:

(i) An affidavit filed by the Delhi police in W.P.(Cr1.) No. 2298 of 2016, discloses the manner in which funds were collected from home buyers and then siphoned-off before the accounts were closed;

(ii) The foreign subsidiaries of UNITECH Ltd. have about an

amount of Rs. 4500 crores as reserves and surplus capital, according to the annual report of UNITECH;

(iii) A Newly 150 subsidiaries of UNITECH have been closed down between year 2011-2012 and 2016-2017;

(iv) Observations made by the independent auditors of UNITECH Ltd. are demonstrative of wrong financial practices followed by the company.

The net position which emerges before the Court is that despite having collected money from the home buyers, UNITECH has neither delivered the promised flats in the projects nor is it in a position to refund the amounts collected. The amount of Rs. 750 crores that was directed to be realised by 31.12.2017 has not been realised.

The Justice Dhingra Committee has commenced its work in earnest and has made an effort to sell various properties of UNITECH, including those at Varanasi, Agra and Sriperumbudur. By the previous orders of this Court dated 19.11.2018, 30.11.2018, this Court has permitted the Committee to proceed with negotiating for the sale of the property at Sriperumbudur for which an amount of Rs. 5 crores has been deposited by a prospective buyer.

At this stage, in order to enable the Court to issue structured direction, it is necessary to ascertain how the funds which have been collected both from the home buyers and the financial institutions have been utilised. Tracing the money which was received for the purpose of the construction projects but has prime facie been diverted is necessary to enable the Court to take the matter to its logical conclusion. Full details have not

emerged despite several directions which have been issued by this Court. Hence, it has now become necessary for the Court to direct a forensic audit to be conducted of the UNITECH group of Companies.

We direct that a forensic audit be made of the UNITECH group of Companies including of its subsidiaries, sister concerns and Directors. As already indicated in the earlier part of this judgment, UNITECH appears to have been engaged in as many as 74 projects. While conducting a forensic audit, the auditors will necessarily have to look into the details pertaining to 74 projects. However, it is necessary to clarify that the remit of the auditors shall not be confined to the 74 projects and it will be open to them, as part of the task which is entrusted by this Court to audit fully in order to ensure that the trail of money is traced.

The forensic audit which we require the auditors to conduct shall cover:

- (i) UNITECH Limited and its sister concerns and subsidiaries;
- (ii) the subsidiaries of UNITECH which may have existed at the relevant time but were closed down;
- (iii) encumbered and unencumbered assets of the company, including the market value of the assets; and
- (iv) moveable and immovable assets of all the Directors of UNITECH and members of their families as well as of the related companies.

Tentatively, at the present stage, the period over which the forensic audit shall be conducted would commence from 01.01.2006. If the auditors upon scrutinizing the material require any

modification of this direction, they would be at liberty to place a report before this Court for appropriate directions.

The team constituted by the auditors would be at liberty to obtain details from the PAN numbers of all the Directors and their family members inter alia of the extent of the assets held by them and statement of account for the aforesaid period in order to determine whether any diversion of funds has taken place and to trace the assets in which the money has been invested. The auditors would be at liberty to pursue their inquiry with a view to determine if any assets have been purchased out of the money provided by the home buyers and other beneficiaries including the fixed deposit holders out of the flow of funds.

During the course of hearing, we had requested learned counsel appearing for the contesting parties to suggest the modalities to be adopted for the selection and appointment of auditors. The Court is apprised of the list of empanelled forensic auditors which is maintained by the Securities and Exchange Board of India (SEBI). From the list this Court directs that the forensic audit should be conducted by M/s. Grant Thornton. The learned Amicus is requested to communicate a copy of this order to M/s Grant Thornton immediately in order to enable them to indicate their acceptance and to take steps in pursuance of the order.

We request the Auditors to place before this Court by 13.12.2018, draft terms of audit incorporating the issues which have been flagged in this order. The Auditors will be at liberty to fix the remuneration which they would propose to charge for approval of this Court. The auditors are requested to indicate the

time within which the audit will be completed.

We direct UNITECH Ltd., its Directors, employees and all others to strictly co-operate with the auditors in all matters. All documents, account statements, returns and files pertaining to all the above companies and individuals shall be duly collated, compiled and handed over to them for scrutiny. This will include unhindered access to lap tops, computers, data storage equipment and other devices which the forensic auditors may require. All agencies of Union Government, State Governments and lenders shall co-operate with the auditors and make available all information which is required for the purpose of completing the forensic audit which is directed by this Court. We hasten to add that any dereliction in compliance of this order shall be liable to be dealt with under the contempt jurisdiction of this Court. The auditors would be at liberty to move this Court through Mr. Pawanshree Agarwal for obtaining suitable directions from this Court.

An amount of Rs. 174 crores is presently lying in deposit before this Court. In order to facilitate disbursal, this Court has issued directions for disbursement to those home buyers who have refund orders from judicial fora including the consumer courts. At this stage, it has become necessary for the Court to issue directions in order to ensure that a part of the money is kept aside for completing the construction. The Justice Dhingra Committee has been directed to take up on priority those projects where construction is at least 70% complete so that flats can be handed over to the home buyers who seek possession. In disbursing the amounts which are realised by the monetising of the assets, it

is necessary to protect both group of home buyers viz., those who are seeking possession as well as those those home buyers who are interested in seeking refund. In regard to those projects which can be completed at an early date, as assessed by Justice Dhingra Committee, it will be necessary to allocate sufficient funds which can be disbursed to ensure that the flats are handed over to the home buyers. We had already issued directions earlier in that regard which are being implemented by Justice Dhingra Committee. At this stage we direct that (1) the amount of Rs 174 crores shall be bifurcated in the ratio of 50:40:10. In other words, 50% of the amount realised shall be distributed on an equalising pro rata basis to home buyers who have obtained orders from the competent courts or consumer fora. 40% shall presently be retained by the Registry to await orders for disbursement towards construction projects. 10% will be retained for Fixed deposit holders. A list of the decree holders who are registered on the portal is maintained by the Amicus. The Amicus will complete a list of decree holders as on 30.11.2018 for disbursal.

List these matters on Friday i.e. 14.12.2018.

(SHASHI SAREEN)
AR CUM PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER