

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO. 10/18/2015-CLB
CA. NO.

CORAM:

PRESENT: SH. R.VARDHARAJAN
HON'BLE MEMBER (J)

SMT. INA MALHOTRA
HON'BLE MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 08.08.2016

NAME OF THE COMPANY: M/s. Unitech Ltd.

SECTION OF THE COMPANIES ACT: 73 (4)

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1	^{Ashok Sooder} SATISH KHANNA		Claimant A-R of 62 Applications Deprss'n self	Innamy
2	KIRAN KHANNA ^{Paleesh Tariq}		Adv. (7 applications)	
3	Madhubala Coora	Investor	self	Mrs. Irena
4	Ujjay Prakash Coora	Investor	husband	
5	Suneel Sardana	Depositor		
6	Sidharth Sardana	investor HUF		
7	Vikas Sardana	Deposit		
8	Vikas SARDANA (HUF)	Deposit		
9	MUKESH SOTA ^{Kumar}	Investor	self	
10	LALIT SAGAR	- Depositor	= self	
11	Mrs. Munni Devi	- do -		
12	S. C. GROVER		4 F.D. No. 1228080	
13	Vijay Bahadur Pandey			
14	Pabina Pandey			
15	Robin Gupta	G.M. Mehar Baba Charitable Trust		

16. SRISHTI Govil, Adv 9818061133 Govil
- for Babu Ram Govila
17. Sunili Chavhan Depositor Depositor
18. Kamana Chavhan Depositor 08/01/2016
19. Smt Sudeshan Vohra Depositor Depositor
20. Anees Akmal 9810148332 8/8/16
21. Ritu Gupta 9868736548 8/8/16
Depositor
22. Shyam Sunder Bansal 9899965771 Depositor
8/8/16
23. KAVITA GOEL & PUNESH GOEL 9015172833 Depositor
24. ANISH SACHDEV & ARCHIKA SACHDEV 9811050002 Depositor
25. R. S. Mathur 9999103554 Re
26. SK Jain & Sonam 9210687223 Sign
27. Sansukh Jain }
28. Shalini Jain }
29. Usha Jain } 9891991113 Sign
30. Shanti Devi }
31. Manish Kumar 9810439540 Manish
32. J. BALASUBRAMA 9510299944 SN. I. M.
33. Davinderjit Singh 9810997753
34. R. K. Sanghi Adv. (For 7th April) 9811040979 Adv.
Ishan Sanghi Adv.
Sahyendra Kumar Adv.
35. Smt Binod Bala - 9953145884 Binod
(Institution)
36. Vaidhyanathan 9811895063 Vaidhyanathan
Arun Mahesh Babu Chaitanya Trust
37. D. V. Sardana 9818945150 Adv.

ORDER

1. In furtherance of the directions given on 5th August, 2016 and pursuant to the same, two Directors of the respondent Company are present viz. Shri Ramesh Chandra and Shri Ajay Chandra. It is informed that Shri Sanjay Chandra, also a joint MD, is not present as he is required to be present in the 2G case before the Special Sessions Court for facing trial. Learned Sr. Counsel for the respondent therefore prays for his exemption. He is duly exempted. Let the order sheet of 8th August confirming the presence of Mr. Sanjay Chandra in the Sessions Court be placed on record.

2. This Bench is apprised by the learned Senior Counsel appearing for the respondents, that due to financial crisis they are unable to pay back the deposits of any investor for the time being. Today, as many as 126 applications claiming a sum of Rs.22,15,95,430 towards deposits made and interest payable thereon are pending before us for consideration. The learned Senior Counsel has argued that the same are not maintainable as the provisions of Section 73 of the Companies Act 2013 came into operation only on being notified on 1.4.2014.

3. Since the respondent company has not taken any deposits on or after the cutoff date of 01.04.14 and all the deposits have been taken prior to the cutoff date as such these applications u/s 73(4) of the Act cannot be entertained by this Bench. Learned Sr. Counsel has further argued that in such a situation, the only recourse open to the various depositors is to pursue their claims before the Civil Courts. It is pertinent to note that the respondents with a view to seeking extension of time for the very same deposits had approached the erstwhile CLB under the provisions of Section 74(2) of the Companies Act 2013, which was dismissed vide order dated 04.07.2016 due to the non-compliance of their own undertaking given in the affidavit to repay as stated. However, it is now proposed on behalf of the Respondents, that in order to show their bonafides, they are ready and willing to deposit the title deeds of 6 properties situated in Western and Southern parts of India which are unencumbered and which they have been trying to sell to meet their financial liabilities, even when a sales committee was in existence prior to its disbanding vide order dated 04.07.2016. It is submitted that these properties will fetch at the very least Rs.500 crores.

4. We are unable to be persuaded by the arguments of the learned Senior Counsel that this Bench is not vested with the jurisdiction to redress the

grievances of the depositors under the Act. The qualified report of the respondent's company's own statutory auditors for the year ended 31.3.2015 annexed along with report of M/s. Seema Naresh Bansal & Associates, Chartered Accountant for the purpose to ascertain whether any cash reserve are lying with the company and as ordered by CLB in the application filed by the respondent company under Section 74(2), portrays an alarming picture about the financial state of affairs of the respondent company and the default committed as on 31.03.2015 by the respondent in the repayment of deposits due and payable as follows:

Rs.31.84 crores	Under 1956 Act early maturity
Rs.152.03 crores	Matured deposits not repaid upto 31.03.2015
Rs.19.48 crores	Unclaimed matured deposits not paid.
Rs.407.10 crores	Payment to be made under Section 74 not paid within 1 year.

5. Further the said qualified report of the Auditor of the Company for the year ended 31.03.2015 discloses that there is a sum of Rs.724.27 crores (previous year Rs.771.88 crores) shown as outstanding comprising of advances towards purchase of land, projects pending commencement, advances paid to joint venture entities and collaborators. These amounts have been shown as outstanding in the previous years as well according to the auditors and they had

expressed an opinion that whether all the remaining outstanding amounts as at the balance sheet date are fully recoverable. In the first place why such a huge amount has been given from the coffers of the company and why the auditors feel the same to be unrecoverable requires indepth analysis.

6. Again taking into consideration the qualified report, it is seen that investments in subsidiaries to the extent of close Rs.102.38 crores seems to be dud investment with the subsidiaries consistently showing only accumulated losses over the years, there being no significant movement in the operations of the investee companies. It is to be seen whether these subsidiaries hold any fixed assets/immovable properties and whether the same can be realized so that the investments made in these subsidiaries can be used for the benefit of the depositors of the holding company whose claims remains unsatisfied, if they are not otherwise encumbered.

7. Further perusal of the report discloses that there are large extent of transactions with related parties, subsidiaries, associates including overseas subsidiaries, one such being Unitech Overseas Ltd., wherein Rs.260.30 crores have been invested, which can also give rise to leakage of funds from the company, and taking into consideration the audit objections and qualifications,

the same assumes serious connotations and probing coupled with the fact that the company is handling the money of the public as it is evident that apart from the deposit holders who have not been paid despite maturity or statutory mandate, debenture holders have also not been redeemed as evident from the Board of Directors report and audit qualifications or observations. The year ending 31.03.2016 can be only worse what with the down turn in real estate as claimed by the respondent and consequent non-movement of its stock in hand of completed projects if any, in other words built up area or plots remaining unsold.

8. Provisions as suggested by the auditor of the company would have considerably increased the loss of the company which has been pegged at a measly Rs.15.81 crores, which is quite misleading as the same should have been, at the least, going by the qualified report of the auditor, be to the tune of couple of another hundreds of crores which would have made a huge impact on the capital and reserves of the company thereby reflecting the true financial position of the company. The report of the statutory auditor of the respondent company cannot be easily brushed aside as under the Companies Act, 2013 a duty is placed on the statutory auditor to report that the accounts of the company of which he has audited gives a true and fair view of the state of the affairs of the company at

the date of making of the financial statements for the purpose of the shareholders of the company, of which other stakeholders also rely on, which obviously includes the depositors as well or to qualify their report, found otherwise. Further, an onus is cast on the auditors to also follow the accounting standards prescribed by the Institute of Chartered Accountants of India (ICAI) or the Ministry of Corporate Affairs, as the case may be, and where the auditor indicates that certain accounting standards have not been complied with, it cannot be brushed aside easily as only an audit opinion, and the report to be looked into seriously, as it sounds an alarm bell. We are also aware, that the opinion of a professional cannot be considered as the final say, but under the circumstances, the auditor of the company who has had full access to the books and accounts of the company as stated by them and hence they are at least presumed to be in the know of the financial dealings of the company before issuing the Audit Report.

9. The company going by all the above is in serious jeopardy and it cannot accept deposits. Further it is also conceivable that the directors of the company who have failed to repay the deposits for more than a year may also not be entitled to be reappointed as directors by virtue of Section 164(2) of the

Companies Act, 2013 and hence there is every likelihood that the company is likely to face a management crisis. This coupled with the fact that close to 95% of the promoters' stake according to the details furnished is pledged, thereby completely negating their financial involvement.

10. However, since the respondents claim that they have no liquidity to meet the liabilities, the following directions are being given as interim measures, specially in view of the apprehensions expressed by the petitioners that the amounts have been siphoned off and the respondent directors may flee the country.

11. Taking into consideration all the above aspects, accordingly, the respondents shall file by way of an affidavit:-

- a) Details of the assets of the respondent company, either encumbered or otherwise as on date.
- b) Details list of assets of the subsidiary companies and associates as on date along with their latest available audited financial statements including that of offshore ones.

- c) Details of remuneration paid to the Directors individually for the years ending 31.3.2012, 31.3.2013, 31.3.2014, 31.3.2015, 31.3.2016 along with heads under which it has been paid by the Company.
- d) Personal assets of the immediate family members of the Whole Time Directors and Managing Directors, i.e. Related Parties.
- e) The bank statement corroborating payments of Rs.7.45 crores alleged to be made under the Hardship Committee constituted and subsequently disbanded vide orders dated 4.7.2016 of NCLT with details of the depositors and near address to whom such payments were made to be placed on record.
- f) Statement of the total liability as on date to various depositors including the individual breakup of deposits accepted between 01.01.2014 to 31.03.2014.

g) The proposals for sale of the six unencumbered properties located in Maharashtra, Cochin and Tamil Nadu and the worth in terms of the circle rate.

h) Original Title Deeds of these properties be also filed before this Bench.

12. As already detailed, the respondents' petition under Section 74(2) had been dismissed vide order dated 4.7.2016. The matter was then referred to the ROC to take appropriate action. Status report with respect to the action initiated by the ROC till date be filed with this Bench. The depositors are in an agitated state as their cheques for interest payment have bounced repeatedly. It was further pointed out that despite certificates issued in respect of TDS, the same has not been deposited with the Income Tax Authorities which has further increased the liability and put the investors to greater financial hardship. The respondent Directors were directed to be present in the Court with their pass ports. Apprehension of the depositors is that like many others, they may escape the boundaries of this country. Learned counsel for the respondents has filed an application praying for exemption from depositing their passports as this may tantamount to impounding them. Though we do not agree with the Id. Senior Counsel that such a direction would put fetters on the respondents' freedom,

granting them a total carte blanche would increase the depositors' apprehensions. The depositors have pointed out and it has not strictly been repudiated that the families of the respondent Directors have already settled abroad and that the company has invested huge sum of monies to its overseas subsidiaries/ associates/related parties. In this we are guided by the various precedents of the Hon'ble Supreme Court in such like matters as also the fact that Tribunals including Debt Recovery Tribunals, where monies recoverable by banks are being adjudicated, in the past have directed deposit of passports of respondent debtors, lest they flee the country, which action has been upheld by the Appellate Courts. We feel that this action of the depositors is no less than that of the banks, what with more than Rs.500 crores is payable, even according to the admission of the respondents.

13. Keeping in view the facts and circumstances of the case, it would be expedient and justified to direct all the whole time Directors including the Managing Directors of the respondent company to file the photocopies of their passports. The Directors shall not leave the country without giving prior intimation to this Bench and an order of the Bench recording the same. Finally, we are also aware of the fact that out of the thousands of depositors spread

across India who have deposited their monies, only a fraction are before us in their individual capacities seeking the refund of their individual deposits made with the respondent company. Hence the above directions have become necessary and imperative in the interest of justice and this Tribunal also reserves, at a future date to treat this action of more than one hundred depositors, if necessary as an action contemplated under Section 245 of the Companies Act, 2013 and deal with it accordingly, subject of course if it is within the sphere of its jurisdiction or as otherwise have the matter placed before the appropriate Bench for further orders.

14. To come up for compliance on 22.8.2016, 2.00 p.m.

15. Notice be issued to RoC.

(Ina Malhotra)

Member (Judicial)

(R. Varadharajan)

Member (Judicial)