

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO 3560 of 2021 (O&M)
Date of Decision: April 05, 2022

1. Unitech Limited	...	Petitioner
	Versus	
Sanjay kumar Thakran	...	Respondent

FAO 3561 of 2021 (O&M)

2. Unitech Limited	...	Petitioner
	Versus	
Ram Chander Thakran	...	Respondent

FAO 3562 of 2021 (O&M)

3. Unitech Limited	...	Petitioner
	Versus	
Marshal Thakran	...	Respondent

FAO 3563 of 2021 (O&M)

4. Unitech Limited	...	Petitioner
	Versus	
Neelam Thakran	...	Respondent

FAO 3565 of 2021 (O&M)

5. Unitech Limited	...	Petitioner
	Versus	
Jitender Thakran	...	Respondent

FAO 3566 of 2021 (O&M)

6. Unitech Limited		...Petitioner
	Versus	
Santara Devi		... Respondent

FAO 3567 of 2021 (O&M)

7. Unitech Limited		...Petitioner
	Versus	
Shiksha Devi		... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Abhinav Sood and Mr. Siddarth Batra, Advocate
for the appellants.

Mr. Munish Mittal, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

The above detailed 7 first appeals against orders dated 01.09.2021 having been passed by the Court of learned Additional Sessions Judge, Gurugram dismissing the applications of the appellant Company Unitech Limited (hereinafter referred to the '**appellant/company**') whereby the appellant company had sought with the aid of Section 12 of the

Haryana Protection of Interest of Depositors in Financial Establishment Act 2013 (in short '**the Act**') seeking prayer by way of acceptance of security by the Court in lieu of the property attached by the orders of the District Magistrate Gurugram dated 03.01.2017. All these matters having consanguinity of facts and law point arising out of the same transactions can be conveniently disposed off together and would also bring about curbing of prolixity.

Upon hearing Mr. Abhinav Sood and Mr. Siddharth Batra, learned counsel for the appellants and Mr. Munish Mittal, learned counsel for the respondent and on perusal of the records.

The appellant company was carrying on multifarious commercial activities including building of residential flats, commercial premises etc., as well as running profitable business ventures and had a conglomerate of companies under the umbrella Unitech Limited.

It was after the general public raised hue and cry

over the company's surreptitious acts of defrauding the public who also approached the National Company Law Tribunal way back in December 2017 seeking removal of the existing management of this company and for appointment of nominee directors, the matters have come before the Courts.

It was in continuation of this imbroglio CA No. 10856/2016 titled as “Bhupinder Singh Vs. Unitech Limited” was filed before the Supreme Court of India and which proceedings are still under way in which the various orders by way of SLPs, CAs, IAs and other civil appeals together with the orders those passed in criminal appeals and which this Court need not digress into, were passed at various stages.

The background of the present lis is that, it was precisely in the year 2013 Unitech Ltd. had invited through public invitation by way of scheme calling upon prospective persons to invest in their fixed deposit scheme which the public did and unable to fulfil obligations arising out of this assurance and undertaking, the company has run into rough weather.

The present appeals pertain to the orders passed by the District Magistrate under the Act whereby in exercising the powers under Section 4 of the Act, the learned District Magistrate, Gurugram have attached the properties of the company and further prohibited and restrained them from transferring/charging property detailed in schedule annexed in the said order and which too is not at all put to question and which attachment stood notified by the Haryana Government in its gazetted notification dated 11.09.2018.

Perturbed over this change of events, the company had moved the Court below various applications under Section 12 of the Act primarily on the grounds that Unitech Reality Private Limited is a separate legal entity though a subsidiary of the Unitech Limited and had never been a party to the proceedings before the Apex Court and therefore properties could not be attached. It was even claimed that the fall out of the orders of the District Magistrate jeopardized the rights of 114 home buyers and thereby is hampering the procedure of

delivering homes to the home buyers. It needs to be mentioned here that it was on the orders of the Supreme Court of India a Committee was constituted popularly known as 'Hon'ble Justice Dhingra Committee' to supervise and monitor the construction of the residential project. The precise relief that is sought through the applications of the appellant company is that they are ready to furnish other sets of immovable properties belonging to the appellant company which are of more than the economic worth in question and that the same property be taken as security in the Court which would be sufficient for the satisfaction of the Court and therefore the attachment orders of the learned District Magistrate be set aside/modified.

Appreciating the submissions, the Act was brought into force w.e.f. 27.11.2014 by the Legislature of the State of Haryana and under which the primary object was to protect the interests of depositors in financial establishment and for matters connected therewith or incidental thereto.

Section 4 of the Act empowers the District

Magistrate wherever having reasons to believe that any financial establishment is acting in a calculated manner detrimental to the interests of the depositors with intention to defraud them and upon satisfaction of the District Magistrate that such a financial establishment is not likely to return the deposit or make payment of interest or other benefits assured or to provide the service against which the deposit is received, the District Magistrate may, in order to protect the interest of the depositors of such financial establishment, after giving an opportunity of hearing and giving reasons thereto pass such orders of attachment. Section 4 sub-section 4 of the Act the procedure for making attachment has been clarified that such an attachment of property would be dealt in a manner provided for attachment in execution of a decree under the Code of Civil Procedure 1908 as amended up to date.

As has been argued on behalf of the appellants counsel Mr. Abhinav Sood and Mr. Siddarth Batra, Advocate for the appellants that under Section 12 of the Act the appellant is

armed with the right to move a Court and plea to the designated Court for permission to give security in lieu of such attachment and where the security offered and given is in the opinion of the designated court satisfactory and sufficient, it may cancel the order of attachment or refrain from making the order of attachment absolute as the Court may deem it appropriate.

Section 14 of the Act provides remedy by way of appeal against orders of the competent authority to the aggrieved party and which appeal can be preferred within a period of 60 days to this Court and, thus, the present invocation is there.

To the specific query of this Court to the counsel for the appellants Mr. Abhinav Sood and Mr. Siddharth Batra that the Supreme Court is seized of the matter wherein certain orders are being passed from time to time could not be displaced by any of them. Besides the fact that it is the own grouse canvassed in the present appeal by the appellant company and forms part of the arguments of the counsel that

the company has moved the Apex Court seeking modification of order dated 20.01.2020 of the Apex Court whereby they have sought to seek indulgence of Hon'ble Supreme Court of India for approval of their updated and revised resolution framework to the extent of payment to the FD holders including senior citizens fixed deposit holders be only paid from the Final Surplus in accordance with the Final Surplus Distribution Waterfall and which prayer is still pending approval by the Apex Court and therefore at this stage it would be too preposterous for this Court to interfere in such proceedings or pass any orders which might be in conflict with the orders that are likely to be passed by the Apex Court.

More so, without the appellant company having moved this Court seeking prayer for leading additional evidence, the updated Resolution Plan (Annexure A-9) cannot be considered to be part of this appeal, especially, when one of the reasons for dismissal of the applications of the appellant company was that no such resolution has been placed/proved

on the record, the one claimed to have been passed by the newly constituted Board of Directors resolving to offer security of the shop in question in lieu of the attached property.

In the light of what has been detailed and discussed above, there is apparent no perversity in the orders of learned lower Court and this Court needs to be slow in showing indulgence to the present matters. There being no merit in the instant appeals being wholly devoid of any semblance of legal support needs to be dismissed outrightly and is ordered so.

Disposed off accordingly.

April 05, 2022
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No