

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

Item No. 205  
Company Appeal No. 236/252/ND/2023

**IN THE MATTER OF:**

**Unitech Limited**

(Through its Authorised Representative, Mr. Harsh Niwas  
100% shareholder of the Struck Off Company Nirvana  
Real Estate Projects Limited)  
6 Community Centre,  
Saket, New Delhi-110017

... **Appellant**

**Versus**

**The Registrar of Companies**

NCT of Delhi & Haryana  
IFCI Tower, 4th Floor, 61,  
Nehru Place, New Delhi-110019

... **Respondent**

**Order Delivered on: 19.04.2024**

**Under Section: 252(3) of the Companies Act, 2013**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**  
**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Appellant :** Adv. Siddharth Batra, Adv. Shivani Chawla, Adv.  
Chinmay Dubey, Adv. Rhythm Katyal and Adv.  
Pratyush Arora

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORAL ORDER**

The factual background qua the Appellant as mentioned in para 1.1 of  
the appeal reads thus:-

***"1.1 Description of the Appellants:***

*That the Appellant, Unitech Limited having its registered office at  
6 Community Centre Saket New Delhi-110017 holds 100%  
shares in the struck off company (hereinafter referred to as*

“struck off Company”). The Appellant is a member of the struck off Company as per Section 2 (55) (ii) of the Companies Act, 2013 and was a member even when the Company was struck off by the Registrar of Companies, NCT of Delhi & Haryana (hereinafter referred to as the ‘ROC’) in accordance with the Section 248 of the Companies Act, 2013 (hereinafter referred to as ‘the Act’) and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. The definition of member as per Section 2 (55) (ii) of the Act is reproduced herein below:

2. Definitions.— In this Act, unless the context otherwise requires,—

(55) —member, in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

**(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;**

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

- a) That the affairs of the Unitech Limited and its entities became a subject matter of consideration before the Hon’ble Supreme Court of India. Numerous litigations by a large number of homebuyers, FD holders and stakeholders have been initiated against the Appellant as well as its entities. The Hon’ble Supreme Court directed the Union Government to appoint an independent management for Unitech Limited. In compliance thereto, a new Board of Directors was nominated by the Union of Indian and the same approved by the Hon’ble Supreme Court vide its Order dated 20.01.2020 in Bhupinder Singh Vs. Unitech Limited in Civil Appeal No. 10856/2016. The erstwhile management of Unitech Limited was superseded and a new Board of Directors was appointed to take over the management of Unitech Limited and its affiliates under the chairmanship of Mr. Y.S. Malik, IAS (Rtd), formerly Secretary to Government of India. Further, vide order

*dated 24.03.2021, the new Board was also made responsible for the management and control of the Unitech Group (including all its affiliates, trusts, subsidiaries etc.). The present Application is being filed on instructions of the new Board of Directors of Unitech Limited responsible for the management and control of the Appellant as well as the struck off Company. The relevant portion of the order dated 20.01.2020 is being reproduced herein:*

*“(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;...”*

*The copy of the order dated 20.01.2020 passed by the Hon’ble Supreme Court in Bhupinder Singh Vs. Unitech Limited in Civil Appeal No. 10856/2016 is annexed herewith as **Annexure A-1**.*

- b) That pursuant thereto, the Ministry of Corporate Affairs, Government of India, appointed an independent Board of Directors, vide its orders bearing No. Legal-10/01/2020 dated 21.01.2020, dated 22.01.2020 and dated 03.02.2020, which has since taken over the management of Unitech Limited and its affiliates, including the Appellant and the struck off Company, with effect from 21.01.2020.*
- c) That the matter concerning the affairs of Unitech Limited and its entities has been under consideration before the Hon’ble Supreme Court in Bhupinder Singh Vs. Unitech Limited in Civil Appeal No. 10856/2016 as mentioned above.*
- d) That subsequently, the Hon’ble Supreme Court was also pleased to pass the following directions vide its Order dated 24.03.2021, in the ibid case:*

*“The Learned Additional Solicitor General has explained the import of the directions which have been sought in respect of the above categories. Certain directions have been sought from this Court to facilitate the work of the new Board of Management. Having considered the proposed directions, we are of the view that at this stage, the following directions can*

*been issued to facilitate the control and management of the new Board of Management:*

**(1) The new Board shall be responsible for the management and control of the Unitech Group (including all its affiliates, trusts, subsidiaries etc.).** *The Order passed by this Court dated 20 January 2020 is applicable to all group entities of Unitech Ltd. The management is authorized to appoint and remove Directors/ Trustees of its subsidiaries/ trusts etc.;....”.*

*The copy of the order dated 24.03.2021 passed by the Hon’ble Supreme Court in Bhupinder Singh Vs. Unitech Limited in Civil Appeal No. 10856/2016 is annexed herewith as **Annexure A-2.***

- e) *That in view of the abovementioned facts, the New Board of Directors of Unitech Limited is thus, responsible for the management and control of the Appellant as well as the struck off Company vide resolution dated 17.03.2022, wherein approval of the new Board was accorded for revival/ restoration of the names of the struck off Companies which are either wholly-owned subsidiaries of the Appellant, including the struck off Company, or subsidiaries of Unitech Limited or immediate/ stepdown subsidiaries of the Appellant. The copy of the Resolution dated 17.03.2022 is annexed as **Annexure A-3.**”*

2. As can be seen from the aforementioned factual backdrop, the affairs of Unitech Limited and its entities became subject matter of consideration before the Hon’ble Supreme Court and the Hon’ble Supreme Court directed the Union Government to appoint an independent management qua Unitech Limited. In compliance thereto, a new Board of Directors was nominated by the Union of India and the same was approved by the Hon’ble Supreme Court in terms of the order dated 20.01.2020 passed in Bhupinder Singh vs. Unitech Limited in Civil Appeal No. 10856/2016. Apparently, the erstwhile management of Unitech Limited was superseded and a new Board of Directors

was appointed to take over the management of the company. The background of company has been mentioned in Para 1.3 of the appeal which reads thus:-

**“1.3 Background of the Company**

*1.3.1 That the struck off Company Nirvana Real Estates Project Limited was incorporated under provisions of Companies Act, 1956 on 03/05/2006 with the Registrar of Companies, NCT of Delhi & Haryana. The Corporate Identity No. (CIN) of the Company is U70101DL2006PLC148573. It is Subsidiary of the Appellant. The struck off Company was incorporated to carry on the activities as mentioned in the main objects clause of Memorandum of Association (MOA), which is attached herewith.*

*Copies of the Certificate of Incorporation, Memorandum of Association of the Company along with Articles of Association of the Company are enclosed herewith and marked as **Annexure-A4(Colly.)***

*1.3.2 That the Authorised capital of the struck off Company is Rs. 5,00,000/- (Rs. Five lacs only) divided into 50,000 equity Share of Rs. 10/- (Rupees Ten Only ) each and paid-up share capital is Rs. 5,00,000/- (Rs. Five lacs only) divided into 50,000 equity Share of Rs. 10/- (Rupees Ten Only) each A copy of master data of the struck off Company procured from the website of Ministry of Corporate Affairs is annexed herewith and marked as **Annexure-A-5.***

*1.3.3 That currently, there are two Directors on the Board of the struck off Company. One of the Director is not traceable and the other Director has served his resignation.”*

3. It is the case of the Appellant that as on date of issuance of the notice (Form STK-7), striking off the name of the Appellant from Register of Companies i.e. 29.10.2019, the Appellant was carrying the business. Para 4.4 of the appeal wherein such averments have been made reads thus:-

“4.4 That it is pertinent to mention herein that struck off Company is engaged in the real estate business and as such faced immense slowdown in the business after the year 2015 as a result of which the struck off Company dwindled with many irregularities in its operations. Therefore, the struck off Company could not file its annual returns in time after the financial year 2015-2016. However, the Appellant undertakes that the struck off Company was carrying out its business and was struggling to revive its business back to normalcy. The Appellant undertakes to file all the pending annual returns with the Respondent Authority as on date. The copy of Annual returns filed with the Respondent authority for the financial year 2014-2015 & 2015-16 are attached herewith and marked as **Annexure A-7**. The copy of Income Tax Return for A.Y. 2016-17 and 2017-18 are attached herewith and marked as **Annexure A-8**. The copy of the Balance sheet of the struck off Company for the financial year as at 31.03.2016 and 31.03.2017 are annexed and marked as **Annexure A-9**.”

4. In para 4.5 of the appeal, the Appellant has given undertaking that it will file all the pending ITR and would pay the tax as due. It is also the plea raised in the appeal that the Appellant is having an active current account with Canara Bank, Nehru Palace, New Delhi being current account no. 0390201008495. The further ground raised to the appeal is that the restoration of the name of the Appellant in the register of the companies would be in the interest of 15,000 Home Buyers and would be in terms of the order passed by the Hon'ble Supreme Court. The appeal also indicates the road map it proposes to follow to fulfil and achieve its object. It is the plea raised by the Appellant that in the wake of order of it being struck off from the register of companies, the Appellant is facing huge roadblocks in the sale of its land etc. Para 6.4 to 6.8 of the appeal reads thus:-

- “6.4. That the Appellant, being aggrieved due to striking off the Company, submits that the Company is facing huge roadblocks in the sale of its land after being struck off by the Respondent. Moreover, the stakeholders of Unitech Limited and the Appellant rely on the operations of the struck off Company, which have come to a halt owing to being struck off by the Respondent, therefore, the struck off Company as well as the Appellant are adversely affected by the same.*
- 6.5. That the Appellant herein as a member under section 2(55)(ii) of the Companies Act, 2013 has consented to move the present application before this Hon’ble Tribunal to get the name of the struck off Company restored, on the register of Companies maintained by Respondent as per section 252(3) of the Companies Act, 2013.*
- 6.6. That non-restoration of the name of the struck off Company in the register of companies by the Respondent would cause grave loss to the struck off company as well as its shareholders/ Appellant as the Company is very much carrying on the business.*
- 6.7. That the Appellant herein is approaching this Hon’ble Tribunal on instructions from the new Board of Directors of Unitech Limited and the mandate of the Government in view of the financial crunch being faced by them. The restoration of name of the struck off Company will allow the sale of land owned by it which would be beneficial for not only the Unitech Limited and the Appellant but all the aggrieved parties who have initiated proceedings against the Unitech Limited and its entities.*
- 6.8 That a Resolution Framework prepared by the new management is also pending consideration of the Hon’ble Supreme Court, the aim of which is to alleviate the hardships of more than 15,000 home buyers, fixed deposit holders, stake holder etc. The struck off company herein is a part of the Resolution Framework as a wholly owned subsidiary of Unitech Limited and is also a part of the list of entities for proposed consolidation. On revival/*

*restoration of the name of the struck off company, it will perform business operations as per its Memorandum of Association.”*

5. Though the present appeal has not been preferred within the limitation period, prescribed in Section 252(1) of the Companies Act, 2013 but since the appeal has been preferred by the new management constituted, in terms of the order dated 20.01.2020 passed by Hon’ble Supreme Court in Bhupinder Singh vs. Unitech Limited in Civil Appeal No. 10856/2016, we deem it just and proper to restore the name of the appellant in the Register of Companies maintained by RoC. The relevant excerpt of the judgment of the Hon’ble Supreme Court reads thus:-

*“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.”*

6. In response to the notice issued to it, the RoC has filed its report. A perusal of the report revealed that the RoC has no serious objection to the restoration of the Appellant in the register of companies. Nevertheless, it is mentioned in para 7 of the report that during two years preceding the date of issuance of (Form STK-7) the notice of striking of the name of Appellant company, its revenue was zero. As can be seen from the report of RoC, the only plea raised therein that the Appellant may be directed to prove that it was carrying the business during two years preceding the date of the order of striking it of from the Register of Companies was passed. Nevertheless, finally the RoC has viewed that this Tribunal may pass appropriate order regarding restoration of the name of the Appellant to the Registrar of Companies, subject to its filing the Annual Returns and Balance-Sheet with the register of companies. The clause (b) of the report reads thus:-

*“b) If this Hon'ble Tribunal consider the application for restoration of the name of the company, the tribunal may please issue directions to the petitioners to file all the pending Annual Returns and Balance Sheets of the subject Company with the Registrar of Companies within such time as specified by this Hon'ble Tribunal.”*

7. As far as the issue of the business being carried by the Appellant is concerned, it writes large from the averments made in the appeal as also from the documents enclosed therewith that the Appellant i.e. Unitech Limited has taken over the management of the Appellant in terms of the order passed by Hon'ble Supreme Court and the management is yet to take stock of the affairs of the company including as to whether the company has tangible assets or not. The management may not be well equipped to do so in the absence of

restoration of the name of the Appellant in the register of company. Besides indubitably, the Appellant is having a bank account, which is in operation and there is some amount lying as balance therein viz. Rs. 10,119/-. The relevant excerpt of the bank statement available on record at Annexure A-12 to the appeal reproduced below:-

Posting Date	Value Date	BRANCH	DESCRIPTION	REF/CHEQ NO.	WITH DRAWALS	DEPOSITS	BALANCE
01/04/2019	01/04/2019	0	B/F ...		0.00	10,119.00	10119.00
TOTAL :							
OPENING BALANCE :	10,119.00C		Dr. Count :	0	Dr. Amount:	0.00	
CLOSING BALANCE :	10,119.00		Cr. Count :	1	Cr. Amount:	10,119.00	
UNCLEAR BALANCE :							
Sweep in Balance :					0.00		

8. In view of the aforementioned, **we find that it just and proper to allow the present appeal. Ordered accordingly.**

9. The Appellant shall ensure that all the pending return/ financial statements are filed with the RoC within 4 weeks from the date of receipt of this order. The RoC would ensure that the Appellant comply with the requisite provisions of the Companies Act and would restore its name to Register of Companies within 30 days, subject to payment of the fee/additional fee as

leviable in terms of the provisions of Companies Act and other extant provisions of relevant rules and instructions in this regard.

10. **The appeal stands allowed.**

**Sd/-  
(SUBRATA KUMAR DASH)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**

*Upasana/Ruchita*