

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

IN

IA-183/ND/2025

IN

Company Petition No. 220/ND/2024

AND

Company Petition No. 01/59/PB/2025

IN THE MATTER OF CP (IB)-220/ND/2024:

(Under Section 58, 59 and 88 of the Companies Act, 2013)

Parmesh Construction Company Limited

**... Applicant/
Petitioner**

Versus

Entertainment City Limited And Ors.

**... Respondent/
Corporate Debtor**

IN THE MATTER OF IA-183/ND/2025:

(Under Rule 11 of NCLT Rules, 2016)

Parmesh Construction Company Limited

7th Floor, Tower C, Bhutani Alphathum,
Janpath Marg, Sector 90,
Noida Gautam Buddha Nagar,
Uttar Pradesh – 201301

**... Applicant/
Petitioner**

Versus

1. Entertainment City Limited

Metro Walk, Sector- 10,
Rohini, Near Rithala Metro Station,
Delhi – 110085

2. Unitech Holding Limited

6, Community Centre,
Saket, Delhi - 110017

3. International Amusement Limited

Metro Walk, Sector- 10,
Rohini, Near Rithala Metro Station,
Delhi – 110085

IA-183/ND/2025 in CP-220/(ND)/2024 and CP-01/59/(PB)/2025

Parmesh Construction Company Limited vs. Entertainment City Ltd. & Ors.

Unitech Holdings Limited vs. M/s Entertainment City Limited

4. Appu Ghar Entertainment Private Limited

Metro Walk, Sector-10,
Rohini, Near Rithala Metro Station,
Delhi - 110085

5. IIRF Holding V Limited

International Financial Services Limited,
IFS Court, Twenty Eight, Cybercity,
Ebene, Mauritius

6. Vistra ITCL (India) Limited

Capital Building, B Wing,
5th Floor, Unit No 505 A2,
Bandra Kurla Complex,
Bandra (East),
Mumbai, Maharashtra - 400051

**... Respondents/
Corporate Debtor**

IN THE MATTER OF CP-01/59/PB/2025:

(Under Section 59 of the Companies Act, 2013)

M/s Unitech Holdings Limited

(wholly-owned subsidiary of M/s Unitech Limited)

Through its Authorized Representative,
Mr. Harsh Niwas 6,
Community Centre, Saket,
New Delhi-110017

**... Applicant/
Petitioner**

Versus

1. M/s Entertainment City Limited And Ors.

Metro Walk, Sector-10, Rohini,
Near Rithala Metro Station,
Delhi-110085

2. M/s Vistra ITCL (India) Limited

IL&FS Financial Centre, The Capital Building,
B Wing, 5th Floor, Unit No. 505 A2,
Bandra Kurla Complex, Bandra (East),
Mumbai-400051

3. M/s IIRF Holdings V Limited

Apex House, Bank Street, Twenty Eight,
Cybercity, Ebene-72201, Republic of Mauritius

4. M/s Parmesh Construction Company Limited

7th Floor, Tower-C, Bhutani Alphatham,
Janpath Marg, Sector-90, Gautam Buddha Nagar
Noida, Uttar Pradesh-201301

5. M/s Alankit Assignments Limited

4E/2 Jhandewalan Extension
New Delhi-110055

6. The Registrar of Companies

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

**... Respondent/
Corporate Debtor**

Order Delivered on: 30.06.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Sr. Adv. P. Nagesh, Adv. Gajanand Kirodiwal,
Adv. Akshay Sharma, Adv. Chaitanya Mehra in
CP-220/ND/2024
Adv. Siddharth Batra, Adv. Shivani Chawla for
the petitioner in **CP-01/59/PB/2025**

For the Respondent : Adv. Siddharth Batra, Adv. Shivani Chawla for
R-1 and R-2 in **CP-220/ND/2024**
Sr. Adv. P. Nagesh, Adv. Gajanand Kirodiwal,
Adv. Akshay Sharma, Adv. Chaitanya Mehra for
R-4 Adv. Siddharth Batra, Adv. Shivani Chawla
for R1 in **CP-01/59/PB/2025**

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

The **CP-220/ND/2024** has been preferred by M/s Parmesh Construction Company Limited (hereinafter referred to as Appellant) under Section 58, 59 and 88 of the Companies Act, 2013. The conspectus of the case as espoused in the appeal can be summarized thus:-

- i. The Respondent No. 1 Company viz. Entertainment City Limited (ECL) is a company incorporated under the provisions of the Companies Act, 1956 vide identification number U92199DL2002PLC114139 having its registered office at Metro Walk Sector-10, Rohini, Near Rithala Metro Station, Delhi, India, 110085.
- ii. The Appellant viz. Parmesh Construction Company Limited (PCCL) is a company incorporated under the provisions of the Companies Act, 1956 vide identification No. U45201UP1996PLC198063 having its registered office at 7th Floor, Tower C, Bhutani Alphathum, Janpath Marg, Sector 90, Noida Gautam Buddha Nagar, Uttar Pradesh, India, 201301. It is a part of Bhutani Infra Group.
- iii. The Appellant holds 4.26% shares in the Respondent No. 1 Company and the name of the Appellant is entered as beneficial owner in the records of the depository NSDL. Thus, as per Section 2(55)(iii) of the Companies Act, 2013, the Appellant has become a member of the Company.

- iv. The Unitech Holding Limited (Respondent No. 2) holds 41.9% shares in the Respondent No. 1 Company and is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 6, Community Centre, Saket, Delhi, 110017.
- v. International Amusement Limited (Respondent No. 3) holds 53.15% shares in the Respondent No. 1 Company and is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Metro Walk, Sector-10, Rohini near Rithala Metro Station, Delhi, India, 110085.
- vi. Appu Ghar Entertainment Private Limited (Respondent No. 4) holds 0.64% shares in the Respondent No. 1 Company and is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Metro Walk, Sector-10, Rohini Near Rithala Metro Station, Delhi, India, 110085.
- vii. The 3.70% shares held by IIRF Holding V Limited (Respondent No. 5) in Respondent No. 1 Company could be purchased by the Petitioner in terms of a duly executed Share Purchase Agreement dated 28.03.2024.
- viii. The 0.56% shares in Respondent No. 1 Company held by Vistra ITCL (India) Limited (Respondent No. 6) have also been purchased by the Petitioner and the same are transferred to the Petitioner by way of a duly executed Share Purchase Agreement dated 28.03.2024.
- ix. The Respondent No. 1 is a joint venture between Respondent No. 2 and Respondent No. 3. The Unitech Limited is the holding company of the Respondent No. 2 (the Company which held 41.95% shares in

the Respondent No. 1 Company) and has been operating in the real estate sector.

- x. The consumers of various real estate projects of Unitech had initiated legal proceedings against it and its directors in various forums. The proceedings finally landed before the Hon'ble Supreme Court, where in the lead matter titled Bhupinder Singh vs. Unitech Limited, Civil Appeal No. 10856 of 2016, the Hon'ble Supreme Court passed order dated 20.01.2020, suspending the existing board of Unitech and permitted the Union of India to notify the constitution of the new Board of Directors of Unitech.
- xi. In compliance of the order passed by the Hon'ble Supreme Court, a new Board of Directors for Unitech was appointed by the Union of India and in compliance of the order passed by Hon'ble Supreme Court, Unitech filed a Resolution Framework before the Hon'ble Supreme Court, which got subsequently revised by Resolution Framework dated 28.10.2020 and Resolution Framework dated 27.04.2022. The Resolution Framework dated 27.04.2022 provided inter alia, "with the approval of the Board, the company as well as the JV partners are in the process of divesting their complete Shareholding in Entertainment City Limited."
- xii. In terms of the order dated 24.03.2021, the Hon'ble Supreme Court directed that the new Board shall be responsible for the management and control of the Unitech Group (including all its affiliates, trusts and subsidiaries etc.) and the order dated 20.01.2020 would be applicable to all groups entities of Unitech Limited. The management

was authorized to appoint and remove Directors/Trustees of its subsidiaries/trusts of Unitech.

- xiii. In furtherance of the framework, placed by it before the Hon'ble Supreme Court, the Board of the company resolved for disinvestment of company shareholding of the company. In furtherance of the same, in August 2023, the Company issued public advertisements dated 01.08.2023 in the Economic Times, dated 02.08.2023 in Hindustan Times and dated 04.08.2023 in the Business Standard, seeking Expression of Interest regarding 100% equity disinvestment of the Company. In the process, a public bidding was initiated and the Company issued a Process Document to the bidders who expressed their interest to submit their bids on an enterprise value basis via a non-binding term sheet.
- xiv. In the aforementioned process, initiated by public advertisement on 09.08.2023, the Applicant/Appellant expressed its interest in acquiring 100% stakes in the Company and sought information about the financials and valuation of the Company. On 21.08.2023, the Company shared its Information Memorandum (IM) and on 06.09.2023, the process Document along with Non-Disclosure Agreement for the bidding of ECL was emailed to the Petitioner by the Company.
- xv. On 11.09.2023 an updated Process Document with revised timelines was emailed to the Petitioner.

- xvi. In terms of the process documents the sellers/Transferor of the shares were classified in two categories viz. Non-UHL seller i.e., Respondent No. 3 to 6 and UHL sellers i.e., Respondent No. 2.
- xvii. On 19.09.2023, the Petitioner in accordance with the term mentioned in the process document, submitted/e-mailed the required documents to the Company as bidder for the purchase of 100% shares of the Company. Further on 20.10.2023, the Petitioner also submitted/e-mailed a non-binding term sheet to the Company.
- xviii. In a meeting dated 26.10.2023 held by the Company, the Petitioner was found to be one of the eligible bidders.
- xix. The Company thereafter called for revised non-binding bids from the Petitioner. Thus, on 30.11.2023, the Petitioner e-mailed the revised non-binding term sheet to the Company.
- xx. On 07.12.2023, the Petitioner was informed by the Company that its bid was opened and discussed by the shareholders and the shareholders have given their consent for the Petitioner to proceed with next stage and submit a binding offer by 14.12.2023. Thus, the Petitioner submitted a binding Term Sheet (BTS) dated 14.12.2023, whereby the Petitioner agreed to acquire the Company by way of purchase of 100% of the issued share capital of the Company for a value of INR 13,47,00,00,000 (Rupees Thirteen Hundred and Forty-Seven Crores Only). The BTS was signed by the Authorized Signatory of Respondent Nos. 3 and 4. In the BTS, the Petitioner had set out that the acquisition may be undertaken in two phases.

- xxi. In terms of the e-mailed dated 15.12.2023 sent by the Disinvestment Team of the Company and letter dated 21.12.2023 issued by the Company, the Petitioner was declared as successful bidder for 100% equity disinvestment of the Company.
- xxii. Between 14.12.2023 and 15.01.2024, several meetings could take place between the shareholders of the Company, their Transaction advisors and the Petitioner. As per Clause 5.1 of the BTS, the Petitioner was to deposit the total sale consideration into an Escrow Account. However, vide an e-mail dated 15.01.2024 addressed to the Company, its shareholders and Transaction Advisors, the Petitioner exercised its rights under Clause 5.2 of the BTS and proposed an alternative transaction structure as under:-(30 and 31 of the Petition of V1 till Parmesh Construction Ltd.)
- xxiii. The above proposal given by the Petitioner was not opposed by any of the stakeholders, thus the same was acceptable unconditionally by all the stakeholders. Hence, there is tacit and binding consent by all the stakeholders to the same.
- xxiv. On 05.02.2024, in furtherance of the acceptance of the stakeholders, the Petitioner submitted a Binding Term Sheet (Second BTS), which was dully executed with the majority shareholders of IAL (Respondent No. 3) to purchase their 100% shares in IAL. An addendum to the said Second BTS was also executed on 03.04.2024.
- xxv. The Petitioner also in-principle agreed to formalize a separate Term Sheet for acquisition of the shares of AGEPL (Respondent No. 4) held by it in the company.

- xxvi. As far as the execution of an agreement with UHL (Respondent No. 2) is concerned, like others it gave its tacit consent to the agreement, thus the same was binding on it. The draft of Binding Term Sheet was revised by the Transaction Advisors to ensure alignment with alternative transaction structure. Vide an e-mail dated 19.04.2024, the Petitioner had agreed to the draft of Binding Term Sheet to be executed with the Respondent No. 2.
- xxvii. On 28.03.2024, as part of alternative structure proposed and agreed, the Petitioner duly executed a Share Purchase Agreement (SPA) with IIRF (Respondent No. 5) and Vistra ITCL (Respondent No. 6) for purchasing their respective shareholding in the company. The transaction was undertaken in furtherance of the commitment made by the Petitioner to acquire the 100% shares of the Company. Thus, it became member qua 4.26% shares of the Company which were to be acquired in due course.
- xxviii. Pursuant to the Share Purchase Agreement, the DEMAT transfer of the shares was completed on 08.4.2024 and the same was notified by the Petitioner to the entire disinvestment team of the Company vide an e-mail dated 09.04.2024.
- xxix. Thereafter, the Respondent Nos. 5 and 6 also separately intimated the Board of Directors of the Company that they had transferred their shareholding in the Company to the Petitioner, vide their e-mails dated 22.04.2024 and 23.04.2024 respectively. The DEMAT statement of the Company issued by the depository, NSDL on 26.04.2024 also reflected that the Petitioner is 4.26% shareholder

qua the Company. As a consequence of the development, the Directors/Observers appointed to the Board of the Company by the Respondent Nos. 5 and 6. Resultantly, vide e-mail dated 25.04.2024, the Petitioner requested ECL and its shareholders to appoint its nominee director to the Board of ECL, exercising its right under Clause 8.1 of the Share Subscription-cum-Shareholders Agreement dated 22.09.2006 read with Agreement dated 26.04.2006.

xxx. Nevertheless, in response to e-mail dated 25.04.2024, the Unitech Group of Companies wrote letter dated 06.05.2024 describing the transaction of disinvestment of equity shares by Respondent Nos. 5 and 6 and the SPA, as null and void and refused to appoint the nominees of the Petitioner as Director in the Board of the Company. In the letter, the Unitech Group of Companies espoused: - (a) the Unitech Group and IAL group had a Right of First Refusal (RoFR), with an offer period of not less than 30 days, in case of transfer of shareholding by investor/s to any other person than its affiliates; (b) the RoFR was not offered to the Promoters; (c) the Deed of Adherence required to be executed as per Share Subscription-cum Shareholders Agreement, was not executed amongst the necessary parties.

xxxi. The objections raised by Unitech Group of Companies were afterthought and are legally untenable and unsustainable and are contrary to the public process of disinvestment. The objection was only an attempt to frustrate the entire process of disinvestment of 100% shareholding of the Company and subsequent mutual

understanding arrived at between the parties for ulterior consideration.

xxxii. After resignation by the directors/observers appointed by the Respondent Nos. 5 and 6, there is no representation of minority shareholders on the Board of the Company.

xxxiii. The Petitioner is kept in complete dark about the Company's affair despite being purchaser of 4.26% shares of the Company.

xxxiv. Despite untenable and misconceived stand taken by the Unitech Group and despite letter dated 06.05.2024, in furtherance of the alternative transaction proposed, the Respondent No. 2 accepted four demand drafts for an amount of INR 83,95,26,636 Crores from the Petitioner as the successful bidder.

xxxv. It is permissible for the Respondent No. 2 to accept the alternative transaction for itself while repudiating the same transaction qua the other shareholders. In any case, the self-serving controversy generated by the Unitech Group to create confusion, support the case of the Petitioner and the transaction agreed to between the parties for sale and purchase of shares.

xxxvi. In response to the e-mail dated 20.06.2024 sent by the Petitioner to the Disinvestment Team of the Company seeking formal recognition of SPA executed with Respondent No. 5 and respondent no. 6, the Director of the Company wrote e-mail dated 21.06.2024 confirming that there was waiver of underlying condition of the RoFR.

xxxvii. In an inexplicable move and contrary to its own action committing itself to the sale of the shares in favour of the Petitioner,

the Company unilaterally notified to the Petitioner through a letter dated 17.07.2024 that it had decided to close the process of disinvestment of equity of Respondent No. 2 in the Company and the bank drafts earlier submitted by the Petitioner were also returned. The bank drafts were returned in bad faith only to deny the Petitioner's name being entered in the Register of Members of the Respondent Company and to dispute the status of the Petitioner as shareholders of the Respondent Company. The letter equally advised the Petitioner to submit a revised proposal for the acquisition, thus the same is self-contradictory. On the one hand, the Company close the public bidding process while on the other hand it sought a revised proposal from the Petitioner.

xxxviii. Subsequently, in terms of the letter dated 12.09.2024 the Company toed the line with the letter dated 06.05.2024 written by Respondent No.2, to deny the legitimate benefit of the SPA to the Petitioner.

xxxix. In reply to the letter dated 12.09.2024 (ibid), the Petitioner wrote letter dated 22.10.2024 to the Company, requesting the Company to enter its name in the Register of Members of the Company.

2. Having narrated the factual position as above, the Applicant/Appellant questioned the act of Respondent Nos. 1 and 2 in delaying the Petitioner's recognition as member of the Company and to frustrate the sale of remaining shares of the Company to it on several grounds elaborated in para 55 of the petition which reads thus: -

“55. *The unilateral, belated and motivated actions of the Respondent Nos. 1 and 2 is to delay the Petitioner's recognition as a member of the Company and also to frustrate the sale of remaining shares of the Company to the Petitioner. The said actions are therefore bad inter alia on the following count:*

A. Perusal of the aforementioned facts reveals that there is no justifiable reason for refusing to enter the Petitioner's name in the Register of Members of the Company. The entire process of sale and purchase of 3.70% and 0.56% shares held by the Respondent Nos. 5 and 6, respectively in the Respondent No.1 Company in favour of the Petitioner is following and pursuant to the Resolution Framework dated 27.04.2022 submitted by the Unitech to the Hon'ble Supreme Court and acted upon by the Company though its various actions. The second largest shareholder of the Company i.e. Respondent No.2 cannot arm twist the Company or create any hurdle in rectification of the Register of Members of the Company to reflect the transfer of shares in favour of the Petitioner, as the entire exercise has been undertaken following the orders dated 20.01.2020 and 24.03.2021 passed by the Hon'ble Supreme Court in Civil Appeal No. 10856 of 2016, which binds the Respondent No.2 equally.

B. In this regard, it is reiterated that the entire process of disinvestment of 100% shares of the Company is founded on the solemn undertaking recorded in the Resolution Framework submitted to the Hon'ble Supreme Court by the government appointed Board of the Unitech. The Resolution Framework stated that "with the approval of the Board, the Company as well as the JV partners are in the process of divesting their complete shareholding in

Entertainment City Limited." Acting in furtherance of the said Resolution Framework, the Respondent No.1 Company invited public bids for the disinvestment process and issued a Process Document. The said Process Document contemplated two sets of sellers. First sellers were Respondent Nos. 3 to 6, and second seller was Respondent No.2. In accordance with the same, the Petitioner acting in good faith submitted its bid to purchase 100% shares of the Company. In the BTS submitted to the Company, the Petitioner outlined a two-phase acquisition process. The sale of shares by all Respondent no. 3 to 6 in first phase; the sale of shares by Respondent no.2 in the second phase. Thereafter, vide its letter dated 15.01.2024, the Petitioner elaborated the steps of acquisition. The same was not objected to by any stakeholder. The acquisition of the shares of the Respondent Nos 5 and 6 in the Respondent No.1 Company by the Petitioner is in furtherance of said transaction structure approved by all the stakeholders. Therefore, it does not lie in the mouth of the Respondent No.1 Company to contend that it will not recognise the said transaction of sale and purchase of 3.70% and 0.56% shares held by the Respondent Nos. 5 and 6, respectively in the Respondent No.1 Company in favour of the Petitioner.

- C. The purchase of 3.70% and 0.56% shares held by the Respondent Nos. 5 and 6, respectively in the Respondent No.1 Company by the Petitioner is part and parcel and intertwined with transaction to purchase of 100% shares of Company by the Petitioner. The Petitioner's right to purchase such shares and have its name entered into the Register of Members of the Company cannot be defeated.

- D. In the present case, the facts are evident and need no serious enquiry. It cannot be disputed that the Petitioner is a beneficial owner of the 4.26% shares of the Company as reflected in the DEMAT statement of the Company. Therefore, as per Section 2(51)(iii) of the Companies Act, 2013, the Petitioner has become a member of the Company. However, without any sufficient cause, there has been an unnecessary delay by the Respondent No.1 in entering the Petitioner's name in the register of member of Company. This calls for this Hon'ble Tribunal to correct the patent error/illegality committed by the company.*
- E. It is submitted that till the time the Petitioner holds the DEMAT shares of the company and its name find recorded as beneficial owner in the record of the depository, the Petitioner has an unassailable right to have its name entered as a member in the Register of Members maintained by the Company. There has been an unnecessary delay in ministerial action and ministerial act on part of the Company to formally enter the Petitioner's name in the Register of Members of the Company. The Company ought to enter the Petitioner's name in the Register of Members of the Company.*
- F. RoFR, a contractual arrangement between the Respondents parties, cannot override the Resolution Framework and disinvestment process undertaken following the orders passed by the Hon'ble Supreme Court. The Resolution Framework and disinvestment process and steps undertaken pursuant thereto cannot be made subservient to any contractual stipulation of RoFR contained in any contract.*
- G. Even otherwise, the aforementioned facts unequivocally demonstrate that, at no point from the issuance of the*

Process Document on 06.09.2023 to the issuance of the correspondences dated 06.05.2024 and 12.09.2024, did any promoter or shareholder of the Company asserted RoFR. In fact, the Process Document, issued with approval of Respondent No.2/Unitech, represented to prospective bidders that the existing shareholders of the Company have decided to disinvest 100% of their shareholding in the Company and the Company was duly authorized to facilitate the sale on behalf of its shareholders.

- H. It is pertinent to emphasise that the Process Document neither contained any clause regarding RoFR nor provided for execution of the Deed of Adherence.*
- I. It is submitted that considering the principles of estoppel, the Company and its promoters and shareholders, having issued the Process Document and been aware of the ongoing negotiations, led the Petitioner to reasonably rely on the absence of any assertion of RoFR. Their inaction in asserting RoFR and action in issuance of Process Document was a representation that the Company promoters and shareholders would not pursue any such rights including that of RoFR and/or have relinquished this right of RoFR, which in turn led the Petitioner to issue the BTS, incur costs and undertake commitments based on this reliance. Therefore, promoters and shareholders of ECL are estopped from invoking RoFR.*
- J. Furthermore, upon the issuance of the BTS by the Petitioner, which outlined a two-phase acquisition process, no objections were ever raised by any promoter/shareholder of the Company; rather, the bid submitted by the Petitioner was duly accepted. The Phase 1 Acquisition contemplated the purchase of shares from all shareholders of ECL, with the exception of Respondent*

No.2, while the Phase 2 Acquisition contemplated the purchase of shares from Respondent No.2, contingent upon approval from the Hon'ble Supreme Court. The BTS expressly stated that the purchase of Respondent No.2 shares would not impede the completion of the Phase 1 Acquisition. In furtherance of the BTS, the Petitioner proposed a transaction structure via e-mail dated 15th January 2024 (reproduced above), which ultimately culminated in the execution of the SPA.

K. It is submitted that throughout all stages of the transaction, the Unitech Group and IAL Group were in loop. Consequently, the promoters and shareholders of the Company have acquiescence, consciously waived and/or abandoned their RoFR, as purportedly stipulated under the Share Subscription-cum-Shareholders Agreement. Their inaction in asserting this right, despite being aware of the ongoing negotiations and the issuance of relevant documents, demonstrates a conscious decision to forgo their claim of RoFR.

L. In fact, as already mentioned above, it was the stand of Mr. Monny Vijeshwar, Director of the Company, that there was a waiver to any underlying condition of the RoFR. In the email dated 21.06.2024 issued by him, it has been stated as under:

"Dear all,

We refer to the email received from Mr. Amit Tania of PCCCL

Considering the necessary consents provided by all shareholders approving the transaction/exercise of 100% divestment shareholding in ECL, as well as the appointment of Transaction Advisors in August 2023 jointly by the Shareholders, (Unitech and IAL) in terms of

which the TA was to identify a bidder party followed by bidding process.

Now all of the aforesaid with and subsequent to appointment of TA actually served as a waiver to re-senderlyng condition of the Right of First Refusal (RoFR).

In any case, we hereby, for ease of procedures and documentation, grant our consent to walve the RoR condition and agree to proceed with the execution of the Deed of Adherence (DA).

However, our consent was/is and will remain contingent upon Unitech providing their agreement to the same.

Should Unitech not consent, our consent as stated above shall be considered withdrawn.

Furthermore, please note that if Unitech provides similar consent, both our consents will be strictly limited to this specific transaction with PCCL, directly and indirectly as it relates to the shares of ECL held by Unitech and IAL, and will not apply to any other transactions.

Thanking you,

Monnv Vileshwar

Sent from dagabah"

[emphasis supplied)

M. It is submitted that once the requirement for RoFR was waived by the promoters/shareholders of the ECL., there was no requirement to seek wavier of RoFR.

N. Furthermore, in light of the doctrine of indoor management, which protects third parties dealing with a company by presuming that internal company rules have been followed, the actions of the Company and its promoters and shareholders are presumed to be valid and binding. Thus, claim of RoFR should be viewed in the

context of this doctrine, as it was reasonable for the Petitioner to assume that the necessary approvals for sale have been appropriately managed by the Company.

- O. *It is also pertinent to emphasize that the Hon'ble Supreme Court is seized of disputes pertaining to various defaults committed by Unitech Limited, the holding company of the Respondent No.2. These disputes inter alia involve delays in construction of homes and non-refund of amounts to home buyers. Pursuant to orders passed by the Hon'ble Supreme Court, Unitech has submitted the aforementioned Resolution Framework to the Hon'ble Supreme Court affirmatively stating that Unitech as well as JV Partners are in the process of divesting their complete shareholding in the Company. Consequently, it is inconsistent for Linitech Group to now assert that it possesses a right to acquire shares of the Company from other shareholders. It would have been an exercise in futility to offer RoFR 10 Unitech Group when it could not have purchase shareholding of Respondent No.5 and Respondent No.6.*
- P. *Furthermore, the disinvestment of the 100% shareholding of Company (which include the shareholding of Respondent No.2) is for the benefit of the various home buyers of the Unitech projects, who are deprived of their hard-earned money. Respondent No.2 by reneging on its undertaking to sell its shareholding in the Company and delaying/closing the entire process of the 100% disinvestment of the Company, is causing burdensome and wrongful loss to the public at large.*
- Q. *At the cost of repetition, it is reiterated that the shareholders of the Company have represented and evinced their intention to sell 100% of their shares in the*

Company. The Process Document invited bids based on enterprise value. Consequently, the Petitioner submitted a bid for the acquisition of 100% shares of the Company and was subsequently identified as the successful bidder. As outlined above, the execution of the SPA is integral and intertwined to this transaction. Given that the sale of the Company is structured on an enterprise basis, the requirement to execute a Deed of Adherence is rendered unnecessary and was in fact waived by the parties; such a condition would only arise in instances where an individual investor seeks to sell its shareholding in the Company. It would be illogical to require the execution of a Deed of Adherence when, following completion of the composite sale, there will be no continuing shareholders in the Company. The principles of estoppel, waiver and acquiescence, as explained above, are equally applicable here.

R. In any case, non-execution of Deed of Adherence does not impinge upon the validity of SPA.

S. It is submitted that apart from Respondent No.2, all other shareholder of the Company seeks disinvestment of their shareholding in the Company as per the alternative transaction structure and BTS submitted by the Petitioner. It is submitted that these discord and friction amongst the shareholders are resulting in serious prejudice to the Company.”

3. Having espoused as above, the Applicant/Appellant sought issuance of direction for registration of Petitioner as a legitimate member/shareholder of the Respondent No. 1 Company and rectification of the Register of the

Company to record the shareholding of the Petitioner to the extent of 4.26% shares.

- 4.** The Respondent No. 2 opposed the petition by espousing thus:-
- i. The Respondent No. 2 i.e. M/s Unitech Holding Limited (UHL) (originally M/s Unitech Investments Limited) is a wholly-owned subsidiary of M/s Unitech Limited and holds 41.95% shares in Respondent No. 1 i.e. M/s Entertainment City Limited (ECL). The ECL (formerly known as M/s International Recreation Parks Private Limited) is a joint venture of UHL (M/s Unitech Holding Limited) and Respondent No. 3 i.e. M/s International Amusement Limited (IAL).
 - ii. The transfer of shares by Respondent Nos. 5 and 6 to the Petitioner is void *ab-initio* and contrary to Articles of Association of ECL and Clause 11 of the Share Subscription-cum-Shareholders' Agreement dated 26.04.2026 (hereinafter referred to as "First SS&SHA") which provide for Right of First Refusal to the existing promoters of ECL, execution of Deed of Adherence (DoA) and giving prior written notice.
 - iii. The disinvestment of ECL was undertaken in the larger public interest under the supervision of the Hon'ble Supreme Court and Hon'ble Supreme Court is seized of the matter. The Petitioner, by illegally purchasing shares of Respondent Nos. 5 and 6 only, is attempting to circumvent the disinvestment process and shy away from its total bid commitment of Rs. 1,347 Crores. This deliberate act of acquiring partial shares, in contravention of the Articles of Association of ECL, is a clear tactic to undervalue ECL and undermine the public disinvestment process. The Petitioner at

various stages altered the proposed payment structure, failing to meet the agreed terms of the Process Document. The Board of ECL, therefore rejected the alternate structure suggested by the Petitioner, wherein Demand Drafts amounting to Rs. 83,95,26,636/- were submitted. The Demand Drafts were returned to the Petitioner by ECL, reaffirming that partial transactions are impermissible. The disinvestment of ECL as a single, unified transaction serves a public purpose and is vital to restoring the confidence of stakeholders in the Unitech Group's recovery process. The Petitioner's actions are nothing but a calculated attempt to derail this objective.

- iv. The ECL is currently controlled and managed by the newly appointed management of M/s Unitech Limited, being its affiliate. The Hon'ble Supreme Court in Bhupinder Singh vs. M/s Unitech Limited (Civil Appeal No. 10856/2016) directed the suppression of M/s Unitech Limited's erstwhile Board of Directors, appointing a new Board with Mr. Y.S. Malik, IAS (Retd.) as Chairman and Managing Director. The new Board was constituted by the Union of India (Ministry of Corporate Affairs) with the prior approval of the Hon'ble Supreme Court vide its order dated 20.01.2020. Subsequently, vide order dated 24.03.2021 in Bhupinder Singh vs. M/s Unitech Limited (Civil Appeal No. 10856/2016), the new management M/s Unitech Limited was entrusted with the management and control of the entire Unitech Group, including all Affiliates, Trusts, and Subsidiaries. The new management approved 100% disinvestment of ECL in its Board meeting held on 27.11.2021. The decision was acknowledged by ECL

in the meeting held on 17.12.2021, affirming the continued management and supervision of ECL by the M/s Unitech Limited's new Board of Directors.

5. Largely, the Respondent No. 2 conceded the stand taken by the Petitioner in its petition regarding disinvestment of ECL. Paras 7 to 13 of the reply reads thus:-

- “7. That in August 2023, ECL issued public advertisements dated 01.08.2023 (The Economic Times), 02.08.2023 (Hindustan Times), and 04.08.2023 (Business Standard), seeking Expressions of Interest (EOIs) for **100% equity disinvestment of ECL**. Subsequently, ECL provided a Process Document to interested Bidders, outlining that the entire shareholding in ECL was to be divested to a strategic or financial investor on an "as-is-where-is" basis, emphasizing a single, unified transaction.*
- 8. That thereafter, ECL shared an Information Memorandum with the Bidders, followed by the Process Document and draft of Non-Disclosure Agreement (NDA) on 06.09.2023. A revised Process Document with revised timelines was circulated on 11.09.2023, reiterating that the proposed transaction involved 100% sale of ECL shares in a consolidated manner. Following the submission of some of the required documents on 19.09.2023, the Petitioner was informed on 07.12.2023 that their Bid had been discussed and that they were required to submit a binding offer by 14.12.2023.*
- 9. That the Petitioner submitted a Binding Term Sheet (BTS) dated 14.12.2023, proposing to acquire the entire issued share capital of ECL for an amount of Rs. 1,347 Crore **which was purportedly signed by only the representatives of IAL and M/s Appu Ghar Entertainment Private Limited (AGEPL) without any valid authority and not by the Petitioner,***

ECL or Respondent Nos. 5 and 6. As per the BTS, the acquisition of ECL was to be undertaken in two phases. The relevant clauses are reproduced herein below:

"1.4 The Acquisition may be undertaken in two phases:

- a. Primary infusion and Share Sale by all Sellers except Unitech ("First Sellers") in the first phase ("Phase 1 Acquisition");
- b. Sale of shares by Unitech to the Acquirer in the second phase upon receipt of approval of Hon'ble Supreme Court in accordance with Clause 2.41 of the Process Document ("Unitech Sale"

Other relevant clauses of the BTS are as under:

2.2 It is clarified that since the Acquisition may take place in two phases, the pendency of conditions relevant for Unitech Sale shall not delay completion of Phase 1 Acquisition.

1.2 The Acquirer may adopt an alternate payment mechanism in consultation with the relevant lenders and/or pledgees.

Provided that the completion of the proposed Acquisition and release of encumbrances/pledges on the Sale Shares shall be the sole responsibility of the Acquirer."

10. That on 15.12.2023, ECL's Disinvestment Team informed the Petitioner that it is the highest Bidder subject to the condition of the submission of Performance Bank Guarantee equal to 10% of the Bid Value on or before 04.01.2024 and proof of investible surplus funds. The said condition was not adhered to by the Petitioner. Furthermore, as per Clause 2.2.1 of the revised Process Document dated 11.09.2023, the Petitioner was to provide the proof of availability of Investible Surplus of Rs. 300 Crores as on 31.03.2023 for completing the proposed transaction which the Petitioner failed to provide.

11. That thereafter, the Petitioner instead of adhering to the abovementioned conditions, suo moto, proposed an alternative

transaction structure vide its email dated 15.01.2024, which talked about four steps of acquisition which are detailed below:

"Dear Disinvestment Team Mr. Narasimhan,

This has reference to our EOI. NHTS and BTS submission for taking over 100% shareholding in ECL. and consequent confirmation dated 21st December 2023 from ECL, we emerging as the successful bidder here by propose the following structure as per the rights available to us under clause 5.2 of BTS for the closure of

We shall complete the transaction at an enterprise value of INR 1347Crores (as submitted in our final BTS dated 14 December 2023) including the shareholders pay-out aggregating to INR 211 Crores (including preference share capital amount).

As agreed in our submitted BTS, we here by confirm that the above enterprise value includes the takeover of all the liabilities defined more specifically in BTS

Steps of acquisition

Step 1:

Parmesh Construction Company Limited (PCCL) proposes to buyout 100% shareholding of IAL. from its existing shareholders.

Step 2:

PCCL proposes to buy AGEPL'S stake of 0.64% in Mis Entertainment City Limited.

Step 3:

PCCL. proposes to enter into a Binding Term Sheet with Mix Unitech Holdings Limited to purchase their 41.95% shareholding in ECL.

Step 4:

PCCL proposes to enter into a Binding Term Sheet with IRF Holdings V Limited and Vistra IICI. (India) Limited to

purchase their 3.70% and 0.56% shareholding in ECL respectively.

Further to the extent of the Liabilines we are in discussions with PNB for addressing their liabilities and our discussions shall have no effect on timing and quantum of pay-out to the shareholders.

All other liabilities will be addressed after the completion of all steps as proposed above. Accordingly, we shall submit proof of funds for completion of steps Ito (with respect to the underlining shareholding value of respective shareholders) in due course. We now request you to share a separate draft BTS for UHL, IIRF Holdings V Limited and Vistra ITCL (India) Limited shareholdings takeover.

This is for information and necessary action of all the shareholders and Transaction Advisors

*Thanks & regards
Amit Taneja
Director Operations
Bhutani Infra (Parmesh Constructions Ltd)*

- 12. That in furtherance to the alternative transaction structure proposed by the Petitioner which was in violation of the revised Process Document, the Petitioner executed a Second Binding Term Sheet dated 05.02.2024 with the majority shareholders (pertaining only to the extent of 79% shareholding) of IAL. (not 100%) to acquire their shareholding, along with an addendum on 03.04.2024 and submitted the same to ECL on 09.04.2024, Notably, no agreement was ever executed with the UHL, or ECL with respect to transfer of shares.*
- 13. That the Performance Bank Guarantee, equivalent to the value of 10% of Bid Value, and proof of Investible Surplus were to be submitted by the Petitioner on or before 04.01.2024, which was not done. Rather, the Petitioner submitted yet another alternate plan vide its e-mail dated 21.02.2024 and modified the same qua the submission of the*

Performance Bank Guarantee (PBG) and submitted four Demand Drafts, valuing Rs. 83,95,26,636 (Rupees Eighty Three Crore Ninety Five Lakh Twenty Six Thousand Six Hundred and Thirty Six Only) to ECL towards UHL's share after withholding an amount of Rs. 10,00,19,488, inclusive of GST, at its own, without any justification, on the grounds of payment of Transaction Advisors Fees to the Transaction Advisors (appointed by M/s Unitech Limited and not by the Petitioner) on 07.06.2024 after a substantial delay of more than five months from 04.01.2024. After handing over of the said Demand Drafts by the Petitioner, the matter was put up before the new Board of Directors of M/s Unitech Limited wherein the Board of Directors was informed about the aforesaid transaction and the Demand Drafts submitted by the Petitioner, in departure to the agreed terms of providing the Performance Bank Guarantee. M/s Unitech Limited in its Board's meeting held on 26.06.2024 decided that the "process of disinvestment of equity of UHL at this stage be treated as closed and the Demand Drafts submitted by M/s PCCL be returned forthwith." Consequently, on 17.07.2024, the aforesaid Demand Drafts for the partial amounts were returned, and the equity disinvestment process of ECL was closed. The new Management reiterated that ECL was mandated to be disinvested as a whole, aligning with the revised Process Document dated 11.09.2023, which stipulated that the transaction could not be divided split into parts."

- 6.** Nevertheless, the Respondent No. 2 espoused two alternate aspects viz. either (i) the Petitioner ought to have purchased 100% shares or in alternate the Respondent Nos. 5 and 6 could transfer their shares to Petitioner only in due deference to the provisions contained in Article of Association and Specific

Terms of the “Share Subscription-cum-Shareholders’ Agreement”. According to Respondent No. 2, the transfer of shares by Respondent Nos. 5 and 6 to Petitioners was null and void.

7. In para 17 of the reply, the Respondent No. 2 has taken a stand that it is ready and willing to pay the consideration amount of Rs. 1,18,04,436/- which the Petitioner paid to Respondent No. 6 as also the consideration amount of Rs. 7,79,82,247/- which the Petitioner paid to Respondent No. 5 for acquiring their equity shareholding in ECL. Para 17 of the reply reads thus:-

*“17. That it is brought to the notice of this Tribunal that UHL is ready and willing to pay the consideration amount of Rs. 1,18,04,436/- which the Petitioner paid to Respondent No. 6 and consideration amount of Rs.7,79,82,247/- which the Petitioner paid to Respondent No. 5 for acquiring their respective equity shareholding in ECL. Two bankable crossed cheques of total value of Rs. 8,97,86,683/- in favor of the Petitioner are appended herewith, along with the Petition to show its bonafide. It is, however, pertinent to mention that as per the purported Binding Term Sheet dated 14.12.2023 submitted by the Petitioner to ECL, the share value of Respondent No. 5 and 6 has been determined as Rs. 88,48,066/- and Rs.5,84,51,934/- whereas amounts of Rs. 1,18,04,436/- and Rs.7,79,82,247/- have been paid by the the Petitioner to them respectively. The copy of the cheques are annexed hereto as **Annexure R-5.**”*

8. It is also the stand taken by Respondent No. 2 in para 21 of its reply that the bid was subject to the condition of submission of Performance Bank Guarantee equal to 10% of the bid value on or before 04.01.2024 and proof of investible surplus funds and the condition was not adhered to by the

Petitioner. Furthermore, as per Clause 2.2.1 of the revised Process Document dated 11.09.2023, the Petitioner was to provide the proof availability of Investible Surplus of Rs. 300 Crores as on 31.03.2023 for completing the proposed transaction which the Petitioner failed to provide. In any case, the Respondent No.2 could admit that the acquisition was to be undertaken in two phases. In first phase the sale of the shares by all Sellers except Unitech (First Seller) was to take place and in second phase upon receipt of approval by Hon'ble Supreme Court in accordance with Clause 2.4.1 of the Process Document, the sale of the shares by Unitech to the acquirer was to take place.

Paras 20 and 21 of the reply reads thus:-

*"20. That the contents of Para 31 are wrong and denied. The Petitioner was informed on 07.12.2023 that their Bid had been discussed and that they were required to submit a binding offer by 14.12.2023. A Binding Term Sheet (BTS) dated 14.12.2023, proposing to acquire the entire issued share capital of ECL for an amount of Rs. 1,347 Crore **which was purportedly signed by only the representatives of IAL and M/s Appu Ghar Entertainment Private Limited (AGEPL) without any valid authority and not by the Petitioner, ECL or Respondent Nos. 5 and 6.** As per the BTS, the acquisition of ECL was to be undertaken in two phases. The relevant clauses are reproduced herein below:*

- "1.4 The Acquisition may be undertaken in two phases:*
- a. Primary infusion and Share Sale by all Sellers except Unitech ("First Sellers") in the first phase ("Phase 1 Acquisition");*
 - b. Sale of shares by Unitech to the Acquirer in the second phase upon receipt of approval of Hon'ble Supreme Court in accordance with Clause 2.4.1 of the Process Document ("Unitech Sale").*

Other relevant clauses of the BTS are as under:

"2.2 It is clarified that since the Acquisition may take place in two phases, the pendency of conditions relevant for Unitech Sale shall not delay completion of Phase 1 Acquisition.

5.2. The Acquirer may adopt an alternate payment mechanism in consultation with the relevant lenders and/or pledgees.

Provided that the completion of the proposed Acquisition and release of encumbrances/pledges on the Sale Shares shall be the sole responsibility of the Acquirer."

21. That the contents of Para 32 are admitted only to the extent that on 15.12.2023, ECL's Disinvestment Team informed Petitioner that it is the highest Bidder however, the Petitioner has very conveniently not disclosed that the bid was subject to the condition of the submission of Performance Bank Guarantee equal to 10% of the Bid Value on or before 04.01.2024 and proof of investible surplus funds. The said condition was not adhered to by the Petitioner. Furthermore, as per Clause 2.2.1 of the revised Process Document dated 11.09.2023, the Petitioner was to provide the proof of availability of Investible Surplus of Rs. 300 Crores as on 31.03.2023 for completing the proposed transaction which the Petitioner failed to provide."

9. The Respondent No. 2 has also expressed discontentment regarding the e-mail dated 15.01.2024, by the Petitioner, which talked about four steps of acquisition. The para 22 of the reply raising the issue reads thus:-

"22. That the contents of Para 33-34 are wrong and denied. The Petitioner instead of adhering to the abovementioned conditions, suo moto, proposed an alternative transaction structure vide its

email dated 15.01.2024, which talked about four steps of acquisition which are detailed below:

"Dear Disinvestment Team/Mr. Narasimhan,

This has reference to our EOI, NBTS and BTS submission for taking over 100% shareholding in ECL and consequent confirmation dated 21st December 2023 from ECL, we emerging as the successful bidder here by propose the following structure as per the rights available to us under clause 5.2 of BTS for the closure of transaction.

We shall complete the transaction at an enterprise value of INR 1347Crores (as submitted in our final BTS dated 14 December 2023) including the shareholders pay-out aggregating to INR 211 Crores (including preference share capital amount).

As agreed in our submitted BTS, we here by confirm that the above enterprise value includes the takeover of all the liabilities defined more specifically in BTS.

Steps of acquisition:

Step 1:

Parmesh Construction Company Limited (PCCL) proposes to buyout 100% shareholding of IAL from its existing shareholders.

Step 2:

PCCL proposes to buy AGEPL'S stake of 0.64% in Mis Entertainment City Limited.

Step 3:

PCCL proposes to enter into a Binding Term Sheet with M/s Unitech Holdings Limited to purchase their 41.95% shareholding in ECL.

Step 4:

PCCL proposes to enter into a Binding Term Sheet with IIRF Holdings V Limited and Vistra ITCL (India) Limited to purchase their 3.70% and 0.56% shareholding in ECL respectively.

Further to the extent of the Liabilities we are in discussions with PNB for addressing their liabilities and our discussions

shall have no effect on timing and quantum of pay-out to the shareholders.

All other liabilities will be addressed after the completion of all steps as proposed above.

Accordingly, we shall submit proof of funds for completion of steps 1 to 4 (with respect to the underlining shareholding value of respective shareholders) in due course. We now request you to share a separate draft BTS for UHL, IIRF Holdings V Limited and Vistra ITCL (India) Limited shareholdings takeover.

This is for information and necessary action of all the shareholders and Transaction Advisors.

Thanks & regards

Amit Taneja

Director Operations

Bhutani Infra (Parmesh Constructions Ltd)"

10. As has been noted hereinabove, the Respondent No. 2 has not been denied the fact that the Respondent Nos. 5 and 6 entered into a Share Purchase Agreement dated 28.03.2024 with the Petitioner to sell their complete shareholding in ECL, however, they have alleged violation of their right of First Refusal and non-execution of Deed of Adherence. The para 25 of the reply reads thus:-

“25. That the contents of Para 38 absolutely wrong and denied.

*The ILFS Investors i.e. Respondent Nos. 5 and 6 entered into a Share Purchase Agreement dated 28.03.2024 with the Petitioner to sell their complete shareholding in ECL, aggregating 59,30,304 equity shares on such terms and conditions as recorded in the said Share Purchase Agreement dated 28.03.2024, **without giving any Right of First Refusal (RoFR) to the existing Promoters of ECL, without execution of Deed of Adherence (DoA) and without giving 30 days' prior written notice for the purpose as stipulated in the Articles of Association (AoA),** which*

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*makes the whole transaction of aforesaid transfer of **shareholding as void-ab-initio and non-est**. The Petitioner in contravention to the Process Document purchased 4.26% shares out of the 100% shares with a malafide intention and is now trying to cover up before this Hon'ble Tribunal that it was committed to acquire 100% shares of ECL. The Petitioner had no intention of acquiring the whole of ECL at one instance and the same is evident from its illegal actions.”*

11. The Respondent No. 2 has also alleged that the Petitioner submitted alternate plan to purchase the shares vide its e-mail dated 21.02.2024. In the reply, filed on behalf of the Respondent, reference is also made to resolution dated 26.06.2024 passed by the Board of the M/s Unitech Limited that the process of disinvestment of equity of UHL was to be treated as closed, and the Demand Drafts submitted by the Petitioner was to be returned forthwith. As per Respondent No. 2, on 17.07.2024 the Demand Drafts were returned to the Petitioner and the equity disinvestment process of ECL was declared closed.

12. The Respondent No. 2 has also brought to the fore that in terms of the e-mail dated 21.06.2024, the management of IAL, had explicitly stated that their consent to transfer of shares by Respondent Nos. 5 and 6 was contingent upon agreement/consent by Unitech, thus there was no waiver of the condition regarding the Right of First Refusal. Deviation from the structure of payment by the Petitioner to the effect that it withheld an amount of Rs. 10,00,19,488/- inclusive of GST on the ground of making payment of transaction fee to the Transaction Advisors (appointed by Unitech and not by the Petitioner) is also the ground espoused on behalf of the Respondent No. 2

to oppose the petition. Nevertheless, the Respondent No. 2 has admitted that the Respondent Nos. 5 and 6 could transfer their shares to the Petitioner and the Respondent No. 2 is willing to purchase the same. The relevant excerpt of para 32 of the reply reads thus: -

“It is also apposite to bring to the notice of this Hon’ble Tribunal that to demonstrate its bona fides, UHL is fully 34 prepared and willing to purchase the shares in ECL that were illegally transferred to Petitioner by Respondents No. 5 and 6. UHL has arranged the requisite funds for the share acquisition, equivalent to the amounts already accepted by Respondents No. 5 and 6 from the Petitioner in exchange for the shares held by them in ECL, through two bankable Cheque No. 017433 and Cheque No. 017434 dated 04.12.2024 drawn on Union Bank of India for Rs. 1,18,04,436/- and Rs. 7,79,82,247/-, in favour of the Petitioner.”

13. Further pleas raised on behalf of the Respondent No. 2 is that the management of M/s Unitech Limited resolved to approve the 100% disinvestment of the Company (ECL) in the Board meeting dated 27.11.2021 and in terms of the advertisement published in August 2023, the Expression of Interest (EoI) was invited for 100% equity disinvestment in ECL as a single unified transaction.

14. As can be seen from the order dated 01.04.2025, Ms. Shivani Chawla Adv. who had earlier submitted that might be she had prepared reply on behalf of the Respondent No. 1 and had provided copy of the same to Ld. Counsel for the petitioner but later she received instructions not to appear on behalf of said respondent as also not to make any statement on its behalf. In the aforementioned order dated 01.04.2025 it was also recorded that there was no appearance on behalf of respondent Nos. 1 and 4 to 6, thus the

proceedings qua them was set ex parte. The order dated 01.04.2025 reads thus:-

“Ms. Shivani Chawla, Ld. Counsel entered appearance on behalf of the Respondent No. 2 stated that the reply has been filed. Ld. Counsel for the Petitioner submitted that he has also received advance copy of the reply from Respondent No. 2 as also from Respondent No. 1. However, Ms. Shivani Chawla submitted that the Respondent No. 1 would not be filing any reply. She also submitted that might be she had prepared reply on behalf of the Respondent No. 1 and provided copy of the same to Ld. Counsel for the Petitioner but now she has instruction not to appear on behalf of the Respondent No. 1 and not to make any statement on behalf of the said Respondents. There is no appearance on behalf of the Respondent No. 1, 4 to 6 despite service of notice. The proceedings qua them are set ex-parte.”

15. As could be noted in Order dated 03.02.2025, the Respondent No. 2 also preferred an appeal under Section 59 of the Companies Act. The order reads thus:-

“The proof of service of notice upon Respondent Nos. 3, 4, 5 & 6 has not yet been filed.

Issue fresh notice to the Respondent, returnable on 17.02.2025. The Applicant undertakes to serve the notice upon the Respondent through all modes viz. registered post, speed post, courier service and E-mail. An Affidavit of service be filed within one week. Reply, if any, may be filed by the Respondent within one week from the date of receipt of the notice.

The Ld. Counsel appearing for Respondent Nos. 1 & 2 submitted that Respondent No. 2 has also preferred an appeal under Section 59 of the Companies Act and the same is scheduled to be heard on 13.02.2025 before the Principal Bench. The Ld.

Counsel appearing for said respondents (Respondent Nos. 1 & 2) also sought further time to file reply to the appeal. Let this be done within one week from today.

List on 17.02.2025.”

16. As can be seen from Order dated 13.02.2025, authored by Hon’ble President in CP-01/59/PB/2025, the appeal referred to by the Ld. Counsel for the Respondent No 2 was directed to be put up on administrative side for clubbing the present appeal with CP-01/59/PB/2025. Later, both the appeals were clubbed together and listed before us for hearing and disposal.

17. CP-01/59/PB/2025 could be preferred by M/s Unitech Holdings Limited viz. Respondent No. 2 in CP-220/ND/2024, praying therein:-

“In view of the totality of facts and circumstances of the entire transactions and in the larger interest of the homebuyers, the Petitioner is ready and willing to pay the consideration amount of Rs. 1,18,04,436/- which PCCL paid to Respondent No. 2 and consideration amount of Rs.7,79,82,247/- which PCCL paid to Respondent No. 3 for acquiring their respective equity shareholding in ECL. Two bankable crossed cheques of total value of Rs. 8,97,86,683/- in favor of PCCL are appended herewith, along with the Petition to show its bonafide. It is, however, pertinent to mention that as per the purported Binding Term Sheet dated 14.12.2023 submitted by PCCL to ECL, the share value of Respondent No. 2 and 3 has been determined as Rs. 88,48,066/- and Rs.5,84,51,934/- whereas amounts of Rs. 1,18,04,436/- and Rs.7,79,82,247/- have been paid by the PCCL to them respectively.”

18. The factual and legal conspectus involved in both the aforementioned appeal is common. However, when in CP-220/ND/2024, the Respondent No.

2 i.e. Unitech Holdings Limited questioned the transfer of shares by IA-183/ND/2025 in CP-220/(ND)/2024 and CP-01/59/(PB)/2025
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Respondent Nos. 5 and 6 in the appeal to the Petitioner therein, in CP-01/PB/2025, preferred by the said Respondent i.e. Unitech Holding Limited, it sought to purchase the shares transferred by aforementioned Respondent Nos. 5 and 6 in CP-220/ND/2024 to Petitioner therein.

19. We heard the counsels for the parties and perused the record. In the reply to CP-220/ND/2024, the Respondent No. 2 in the petition/appellant in CP-01/PB/2025 (hereinafter referred to as Respondent No. 2) made reference to IA Nos. 293714 of 2024 and 293716 of 2024 in Civil Appeal No. 10856/206, titled Bhupinder Singh vs. Unitech Limited, thus we need to refer to the judgments of the Hon'ble Supreme Court in the said matter.

20. In Civil Appeal No(s). 10856/2016, incorrectly referred to as Civil Appeal No. 10856/206, in the reply filed on behalf of Respondent No. 2 in CP-220/ND/2024 (on account of typographical mistake), the Hon'ble Supreme Court passed order dated 20.01.2020, issuing certain directions. The relevant excerpt of the order of the Hon'ble Supreme Court reads thus:-

“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 Niranjan 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 All concerned including the erstwhile management 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.*

Besides the directions issued above in regard to the moratorium, we accept the specific requests contained in clauses (iv), (v), (vi), (vii),

(ix) and (x) of the proposal of the Union government and issue directions in the terms as sought.”

21. Subsequently, in terms of the order dated 24.03.2021, passed by the Hon'ble Supreme Court in aforementioned appeal, following directions were issued:-

- “(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.;*
- (2) ICICI Bank and HDFC Bank shall provide account details already sought from them in soft copy form within 3 days so as to complete the audit of individual allottee ledgers;*
- (3) No bank, authority or forum shall appropriate/ attach any amount from the company's accounts on account of its payment obligations without the prior approval of this Hon'ble Court;*
- (4) The Revenue Officers in the States of Haryana, Uttar Pradesh, Kerala, Tamil Nadu, Telangana, Maharashtra, Karnataka and West Bengal shall on receiving a formal request from the new Board of Management cooperate with and support the site survey agencies engaged by the Unitech Group in determining the boundary pillars of its land holdings so as to complete the work of site-surveys of such land parcels;*
- (5) The new management is permitted to commence the process of appointing Project Management Consultants (PMCs) in order to initiate the bid management process for award of contracts to various project executing agencies;*

- (6) *The Reserve Bank of India and other banks shall allow Unitech Ltd and its group of companies to open new project-wise accounts so as to account for receipts and expenses pertaining to each project;*
- (7) *All Personnel, Professionals and consultants associated with the Unitech Group, in any capacity, counsel and other agencies appointed for the purpose of construction and delivery of projects including architects, designers and contractors are directed to cooperate and handover necessary documents (designs, drawings, court files etc.) to the new management and the contractors shall handover the sites free from any encumbrances so as to facilitate further construction. This will be without prejudice to the right of the above agencies and individuals to take necessary steps, by moving this court in respect of such claims as they may have in regard to past dues;*
- (8) *State Governments and the local administration of places where the properties of the Unitech Group are located, shall on a request being made by the Board of Management support and cooperate in removal of encroachments for securing the assets of the Company;”*

22. In the aforementioned orders, the Hon’ble Supreme Court nowhere commented upon the disinvestment in ECL and transfer of shares by its shareholdings. As is the stand taken by Respondent No. 2 both in reply to CP-220/ND/2024 and in CP-01/PB/2025, it was the ECL i.e. the Company which issued public advertisements dated 01.08.2023, 02.08.2023 and 04.08.2023, in Economic Times, Hindustan Times and Business Standard respectively seeking Expression of Interest (EoI) for 100% equity disinvestment of ECL. A perusal of the advertisement clearly indicate that it

was the decision taken by the shareholders of Entertainment City Limited (ECL) to decide 100% disinvestment of equity in the company (Transaction) on as is where is basis. Further, these were the shareholders of the Company (ECL) who invited offers/Expression of Interest (EoI) for the transaction from the interested investors/buyers. Apparently, it was not so that the offers/Expression of Interest (EoI) was invited from any single investor for all the 100% shares and the same was invited from all the interested investors/buyers. The advertisement also does not indicate anywhere that all the 100% shares held in the Company (ECL) by different shareholders could be purchased only by one investor. The advertisements reads thus:-





OPPORTUNITY TO ACQUIRE 100% SHAREHOLDING in Entertainment City Limited (Company) A Prime Real Estate, Commercial cum Entertainment Space in the heart of Noida (Delhi NCR)

About the Company:
The Company owns a prominent Commercial cum Entertainment project, spread over 147 acres in Noida. Being in close proximity to prime residential areas of Noida and South Delhi, the project is well connected to Delhi by DND Flyover and two metro stations at a walking distance. The project land was allotted to the Company by Noida Authority on a 90-year lease in the year 2003. Company has a total sanctioned FSI of ~3.6 million sqft. comprising of following assets:

- Two operational Malls:**
 -  **The Great India Place** - Houses number of Anchor Stores, a large Food Court, Multiplex and a large number of Non-Anchor stores.
 -  **Gardens Galleria** - The Mall has become a social hub of Delhi NCR with a good number of Restaurants, Lounge Bars. It also houses a big retail chain of construction hardware products and good number of Non-Anchor stores.
- Two Operational Theme Parks:**
 -  **"Worlds of Wonder" Water Park** - Commissioned operations in the year 2013, featuring 21 rides/slides sourced from reputed international and national ride manufacturers.
 -  **"Worlds of Wonder" Amusement Park** - Commissioned operations in the year 2007 across 3 zones (Teen, Family and Children), featuring 21 rides sourced from reputed international ride manufacturers, 2 video game parlours, boating and rain dance arena.

3. **"Arrival Village"** - Houses prominent brands in kids entertainment, Go Karting, Restaurants and Lounge Bars.

4. Further development potential of ~1.7 million sqft.

The remaining FSI of ~1.7 million sqft. can be utilised for entertainment purposes as per Noida Master Plan 2031, which may include various recreational purposes like Sports City, Golf Course, Indoor Stadium, Drive-in Cinema, Exhibition Centre, Theme Park, Auditorium, Film City/Studios and Clubs etc.

Proposed Transaction:

The Shareholders of the Company have decided on 100% disinvestment of equity stake in the Company (Transaction) on as is where is basis and have appointed E&Y as the Transaction Advisor.

The Shareholders invite offers/ expression of interests (EOI) for the Transaction from the interested investors/buyers .

Transaction Process:

Step 1: Interested investors/ buyers to submit EOI via email to the following email id's before closure of business hours on 16th August 2023.
disinvestment@eclindia.com with CC to arun.narasimhan@in.ey.com

Step 2: Further details of the Transaction process shall be notified to the prospective investors/ buyers in response to the EOIs received.

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ENTERTAINMENT CITY LIMITED

OPPORTUNITY TO ACQUIRE 100% SHAREHOLDING
In Entertainment City Limited (Company)
A Prime Real Estate, Commercial cum
Entertainment Space in the heart of Noida (Delhi NCR)

About the Company:

The Company owns a prominent Commercial cum Entertainment project, spread over 147 acres in Noida. Being in close proximity to prime residential areas of Noida and South Delhi, the project is well connected to Delhi by DND Flyover and two metro stations at a walking distance.

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About the Company:
 The Company owns a prominent Commercial cum Entertainment project, spread over 147 acres in Noida. Being in close proximity to prime residential areas of Noida and South Delhi, the project is well connected to Delhi by DND Flyover and two metro stations at a walking distance.
 The project land was allotted to the Company by Noida Authority on a 90-year lease in the year 2003.
 Company has a total sanctioned FSI of ~3.6 million sqft. comprising of following assets:

1. Two operational Malls:

-  **The Great India Place** - Houses number of Anchor Stores, a large Food Court, Multiplex and a large number of Non-Anchor stores.
-  **Gardens Galleria** - The Mall has become a social hub of Delhi NCR with a good number of Restaurants, Lounge Bars. It also houses a big retail chain of construction hardware products and good number of Non-Anchor stores.

2. Two Operational Theme Parks:

-  **"Worlds of Wonder" Water Park** - Commissioned operations in the year 2013, featuring 21 rides/slides sourced from reputed international and national ride manufacturers.
-  **"Worlds of Wonder" Amusement Park** - Commissioned operations in the year 2007 across 3 zones (Teen, Family and Children), featuring 21 rides sourced from reputed international ride manufacturers, 2 video game parlours, boating and rain dance arena.

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Proposed Transaction:

The Shareholders of the Company have decided on 100% disinvestment of equity stake in the Company (Transaction) on as is where is basis and have appointed E&Y as the Transaction Advisor.

The Shareholders invite offers/ expression of interests (EOI) for the Transaction from the interested investors/buyers .

Transaction Process:

Step 1: Interested investors/ buyers to submit EOI via email to the following email id's before closure of business hours on 16th August 2023.
disinvestment@eclindia.com with CC to arun.narasimhan@in.ey.com

Step 2: Further details of the Transaction process shall be notified to the prospective investors/ buyers in response to the EOIs received.

23. We could also peruse the Process Document for sale of 100% shareholding in the Company (ECL). The Process Document also reveals that these were the existing shareholders of the Company who had decided to divest 100% of their shareholding in the Company. It is seen from clause 1.2.1 of the Process Document that these were the shareholders of the Company (sellers) who contemplated to sale 100% of their shareholding in the Company (ECL) to strategic/financial investor(s) on an as is where is basis ("Transaction"), by inviting bids from interested buyers. The Shareholders authorized the Company to facilitate sale of shares and issue the processed documents for and on behalf of the sellers. The relevant excerpt of the process document reads thus:-

"The existing shareholders of the Company have decided to divest 100% of their shareholding in the Company.

*The Company operates an entertainment cum commercial real estate space ("**Project**") consisting of shopping malls, amusement & water park, food courts, multiplex, entertainment zones, recreational zones etc. in Noida, with-in the National Capital Region ("**NCR**"). The Project is spread across a land parcel*

admeasuring 147.48 Acres, which was allotted to the Company by NOIDA Authority in February 2003, on a lease for a period of 90 (Ninety) years.

The operational assets ("**Assets**") of the Company are as follows:

- i. The Great India Place (TGIP) Mall
- ii. Gardens Galleria (GG) Mail
- iii. Arrival Village (AV)
- iv. Worlds of Wonder Amusement and water park

1.2. Proposed Transaction

1.2.1. The shareholders of the Company ("**Sellers**") are contemplating sale of 100% of their shareholding in ECL. ("**Sale Shares**") to strategic/financial investor(s) on an 'as is where is basis ("**Transaction**")', by inviting bids from interested buyers.

1.2.2. The Company has been authorised to facilitate sale of Sale Shares and issue this Process Document, for and on behalf of the Sellers.

1.2.3. The shareholding of the Company as on the date of this process document is as below:

Shareholder	No. of Shares (Cr)	%
First Sellers:		
International Amusement Ltd.	7.41	53.15%
IIRF Holdings V Limited	0.52	3.70%
Appu Ghar Entertainment Pvt. Ltd.	0.09	0.64%
Vistra ITCL (INDIA) Ltd. (part of ILFS group)	0.08	0.56%
Sub-total	8.09	58.05%
Second Sellers:		
Unitech Holdings Ltd.	5.85	41.95%
Sub-total	5.85	41.95%
Total	13.94	100.00%

24. It is seen from clause- 2.3.1.3 of the Process Documents that the interested buyer who could not submit the Pre-Bid Documents to the satisfaction of the Sellers/Company was liable to be rejected at the threshold

and was not to be allowed to further participate in the Sale Process. Thus as the Bid-Documents required to be submitted had to be to the satisfaction of the Sellers/Company, therefore, in a way the Sellers had independent say regarding the shares held by them. The role of the Sellers is also acknowledged in clause 2.3.4.1 of the process document, which provide that the password protected Non-Binding Term Sheets received from all the Interested Buyers was required to be opened in the presence of the authorized representatives of the Sellers. The clause 2.3.5.3 of the Process Document also amplify that the sellers *inter alia* had unilateral right to summarily disqualify the Interested Buyer.

25. As can be seen from the factual position canvassed by the Appellant in CP-220/ND/2024 and the R-2 in the said appeal, which is also Appellant in CP-01/PB/2025, the process of sale/transfer of the shares by the Respondent Nos. 5 & 6 could be finalized to the extent that share purchase agreement dated 28.03.2024 could be executed between the Appellant in CP-220/ND/2024 and the Respondent Nos. 5 & 6 in the petition/appeal as also, the Respondent Nos. 5 and 6 could write letters dated 22.04.2024 and 23.04.2024 to the Board of Directors of the Company (ECL) that they had transferred their shares to the Appellant in CP-220/ND/2024. The agreement and letters are available on record as Annexure P-28, P-30 (581A) and P-31 of the appeal. The copies of letters reads thus:-

“22 April 2024

To,

The Board of Directors

Entertainment City Limited Metro Walk, Sector-10, Rohini,

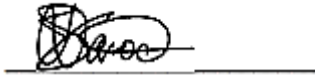
Near Rithala Metro Station,
Delhi, India-110085

Email: atul.mittal@eclindia.com; monny.vijeshwar@eclindia.com

Dear Sir,

We, IIRF Holdings V Limited, have transferred our shareholding in Entertainment City Limited ("ECL") to Parmesh Construction Company Limited ("PCCL"). You can reach PCCL by contacting Mr. Amit Taneja, (amittaneja@bhutanigroup.com).

For IIRF Holdings V Limited



Director

Jihane Muhamodsaroar

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April 23, 2024

To The Board of Directors
Entertainment City Limited
Metro Walk, Sector-10, Rohini,
Near Rithala Metro Station,
Delhi-110085
India

By Email: atul.mittal@eclindia.com; monny.vijeshwar@eclindia.com

Dear Sir,

We, Vistra ITCL India Private Limited acting as a trustee of Infrastructure Leasing & Financial Services Realty Fund, have transferred our shareholding in Entertainment City Limited ("ECL") to Parmesh Construction Company Limited ("PCCL").

You can reach PCCL by contacting Mr. Amit Taneja, (amittaneja@bhutanigroup.com).

Yours sincerely,

For IL&FS Investment Managers Limited
Investment Manager to the
Infrastructure Leasing & Financial Services Realty Fund



Authorised Signatory

26. As could be ruled by Hon'ble Supreme Court in **Vasudev Ram Chandra Shelat vs. Pranlal Jayanand Thakar and Ors. (1974) 2 Supreme Court Cases 323** (Civil Appeal No. 2515 of 1972), shares in a Company are certainly a form of property transferable in the manner provided by the articles of the Company. Paras 6, 11 to 13 and 26 of the judgment reads thus:-

"6. No doubt the Transfer of Property Act is not exhaustive. It does not deal with every kind of transfer of property which the law permits. Nor does it prescribe the mode for every legally recognised transfer. Nevertheless, it is an enactment meant for defining certain basic types of transfer and it lays down the requirements both of substance and of form for their legal recognition and effectiveness. Section 5 of this Act gives a wide connotation to "transfer of property". All that it requires is that the transferor must be living at the time of transfer recognised by the Act. Section 6 of the Act lays down that "property of any kind may be transferred" subject to certain exceptions. Shares in a company are certainly a form of property. Section 28 of the Companies Act, 1913, says that they "shall be moveable property, transferable in the manner provided by the articles of the company". Both sides accept as correct the view of the Division Bench of the High Court that the shares are "goods" within the meaning of the Sale of Goods Act. The point which, however, deserves to be noted here is that the wide definition of "property" in Section 6 of the Transfer of Property Act includes not merely shares as transferable, moveable property,

but would cover, as a separable form of property, a right to obtain shares which may be antecedent to the accrual of rights of a shareholder upon the grant of a share certificate in accordance with the articles of association of a company.

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11. *We think the learned Counsel for the appellant rightly contended that, even in the absence of registration of the gift deed, the delivery of the documents mentioned above to the donee, with the clear intention to donate, would be enough to confer upon the donee a complete and irrevocable right, of the kind indicated above, in what is move-able property. He relied upon Kalyanasundaram Pillai v. Karuppa Mooppanar; Venkatasubba Shrinivas Hegde v. Subba Rama Hegde; Firm Sawan Mal Gopi Chand v. Shiv Charan Das.*

12. *The requirements of form or mode of transfer are really intended to ensure that the substantial requirements of the transfer have been satisfied. They subserve an object. In the case before us, the requirements of both Section 122 and Section 123 of the Transfer of Property Act were completely met so as to vest the right in the donee to obtain the share certificates in accordance with the provisions of the Company law. We think that such a right is in itself "property" and separable from the technical legal ownership of the shares. The subsequent or "full rights of ownership" of shares would follow as a matter of course by compliance with the provisions of Company law. In other words, a transfer of "property" rights in shares, recognised by the Transfer of Property Act, may be antecedent to the actual vesting of all or the full rights of ownership of shares and exercise of the rights of shareholders in accordance with the provisions of the Company law.*

13. *The Companies Act of 1913 was meant "to consolidate and amend the law relating to trading companies and other*

associations". It is concerned with the Acts and proceedings relating to the formation, running, and extinction of companies, with rights, duties, and liabilities of those who are either members or officers of such companies, and of those who deal with companies in other capacities. Its subject-matter is not transfer of property in general. It deals with transfers of shares only because they give certain rights holders and imposes some obligations companies in which they hold shares. entitles the shareholder whose name is share held but also to participate in certain proceedings relating to the company concerned. It is for this purpose that Section 34 of the Companies Act 1913 enables the making of "an application for the registration of the transfer of shares in a company. either by the transferor or the transferee". A share certificate is a prima facie evidence, under Section 29 of the Act, of the title to a share. Section 34 of the Act does not really prescribe the mode of transfer but lays down the provisions for "registration" of a transfer. In other words, it pre-supposes that a transfer has already taken place. The manner of transfer of shares, for the purposes of Company law, has to be provided, as indicated by Section 28, by the articles of the Company, and, in the absence of such specific provisions on the subject, regulations contained in Table 'A' of the 1st Schedule of the Companies Act apply.

X X X

26. The result is that we do not think that the respondent has made out a case for defeating the clearly expressed intention of the donor coupled with the authority with which the donee was armed by reason of the signed blank transfer forms. We think that the implied authority was given with regard to a subject-matter in which Shelat had acquired an interest. On a correct interpretation of the gift deed and the other facts mentioned above, we are of opinion that the right to obtain a transfer of shares was clearly and completely obtained by the donee appellant. There was no

IA-183/ND/2025 in CP-220/(ND)/2024 and CP-01/59/(PB)/2025

Parmesh Construction Company Limited vs. Entertainment City Ltd. & Ors.

Unitech Holdings Limited vs. M/s Entertainment City Limited

question here of competing equities because the donee appellant was shown to have obtained a complete legal right to obtain shares under the gift deed and an implied authority to take steps to get his name registered. This right could only be defeated by showing some obstacle which prevented it from arising or which could defeat its exercise. No such obstacle having been shown to us to exist, the rights of the donee appellant would prevail as against any legal rights which could have accrued to others if the donee had not already acquired the legal right which, as held by us above, had become vested in him.”

27. As has been noted hereinabove the Appellant in CP-1/59/PB/2025, viz. the Respondent No. 2 (Unitech Holding Limited) has taken the stand that the Respondent Nos. 2 and 3 in the appeal had transferred their entire 0.56% shareholding in the Company to Respondent No. 4. The relief/interim relief sought in the petition reads thu:-

“10. RELIEF (S) SOUGHT:

- (i) *Direction for rectification of the Register of Member as the impugned transfer of the shares by Respondents No. 2 and 3, who have transferred their entire 0.56% shareholding in ECL (7,79,669 equity shares) and entire 3.70% shareholding in ECL (51,50,635 equity shares), respectively, to Respondent No. 4, without affording the First Right of Refusal to the existing Promoters, is illegal, null and void and is not binding on the Petitioner and Respondent No. 1.*
- (ii) *To direct for rectification/reversal/restoration of the entries made in the ECL's BENPOS maintained with National Securities Depository Limited (NSDL) and/ or Register of Members qua Respondent No. 1 with respect to 0.56% shareholding (7,79,669 equity*

shares) held by Respondent No. 2 and 3.70% of shareholding (51,50,635 equity shares) held by Respondent No. 3 in Respondent No. 1, in favour of Respondent No. 4.

11. INTERIM RELIF(S) SOUGHT:

- (1) To Restrain Respondent No. 4 from exercising any rights as shareholders or creating any encumbrances over the company/assets or subject shares or sale of shares or transfer of shares by the Respondent No. 4 while the petition is pending.*
- (ii) To restrain Respondent No. 4 from appointing any person or persons as Director of the Respondent No. 1 in any manner till disposal of the Petition.”*

28. In the present case, it is not so that the Company (ECL) could raise issue regarding registering the transfer of shares by Respondent Nos. 5 and 6. The issue has been raised by Respondent No. 2 in CP-220/ND/2024, which has claimed Right of First Refusal (RoFR). Besides, the Right of First Refusal, the said Respondent (Unitech Holding Limited) has also raised the plea of execution of a Deed of Adherence and a 30 days' prior written notice. Normally, all the conditions were required to be satisfied by Respondent Nos. 5 and 6 and the Appellant in CP-220/ND/2024 could not have purchased the shares from Respondent Nos. 5 and 6 having preference over Respondent No. 2. However, in the present case, all the shareholders in the Company including the Respondent No. 2 had taken decision to disinvest and offered to sell their shares. The shares were offered to be sold to investors in terms of the Process Document (supra). Thus, apparently, all the shareholders including the Respondent No. 2 had waived the Right to First Refusal, as all

the shareholders had taken a decision to disinvest 100% and shares were offered to outsiders. It is not in dispute that the Petitioner in CP-220/ND/2024 could bid to purchase the shares of the shareholders in the Company. It is also not so that the Respondent Nos. 5 and 6 cannot transfer/sell their shares. The only riders are right of Respondent No. 2 to First Refusal, execution of Deed of Adherence and a 30 days' prior notice. Once, all the shareholders offered to sell their shares the conditions stood waived. As far as IA Nos. 293714 of 2024 and 293716 of 2024 in Civil Appeal No. 10856/2016 are concerned, in terms of the IA, the Appellant in CP-220/ND/2024 has sought impleadment in Civil Appeal No. 10856/2016 and to question the letter dated 17.07.2024 issued by ECL, closing the public process of disinvestment. The issue may have bearing regarding entitlement of the Appellant in CP-220/ND/2024 to purchase the shares of the shareholders other than Respondent Nos. 5 and 6. As far as the Respondent Nos. 5 and 6 are concerned, they could confirm the transfer of the shares to the Appellant in CP-220/ND/2024.

29. Merely, because all the shareholders did not transfer their shares to the Petitioner, the sale of shares by Respondent Nos. 5 and 6 to the Appellant in CP-220/ND/2024 cannot be found vitiated. In this regard, a reference may be made to the judgment of the Delhi High Court in ***Union of India vs. Sterlite Industries (India) Ltd. (2025) ibclaw.in 3294 HC***. Paras 45 to 50 and 76 of the judgment reads thus:-

"45. Section 111A of the Companies Act, 1956 deals with transfer of shares or debentures and any interest therein of a company shall be freely transferable. Viewed in this manner, this Court

cannot agree with the submission of the learned Senior Counsel for the Petitioner that Section 111A of the Companies Act, 1956 is restricted only to provide for a remedy to a decision by the company not to register shares. The purport of Section 111A is to ensure that shares are freely transferable. Viewed in this background, this Court therefore proceeds to analyse Clause 5 of the SHA and the question as to whether it is hit by Section 111A(2) of the Companies Act, 1956 or not. Another question that arises for consideration is that though the shares are freely transferable can parties by contract agree to restrict their free transferability and whereas such waiver by a party can be permitted to be enforced or not.

46. *The restrictions on transfer of shares under the SHA are contained in Clause 5.3, 5.4 and, Clause 5.8 of the SHA. Clause 5.3 of the SHA gives a right of first refusal to the Claimant. Clause 5.3 is subject to Clause 5.1(a) which provides for a three year lock-in period whereunder the Petitioner/Claimant was prohibited to directly or indirectly sell, transfer, assign, pledge, charge, mortgage or in any other way dispose of or encumber the shares purchased by the Petitioner under the SPA. It is pertinent to mention here that Clause 5.1(b) of the SHA which is subject to Clause 5.3(a) permitted the Petitioner to pledge charge or mortgage any purchase share provided it gives a written notice to the Government at least 15 days prior to the creation of any such pledge, charge or mortgage, specifying the identity of the person in whose favour the Petitioner proposes to pledge, charge or create a mortgage. Clause 5.1(b) also permitted the Government to pledge, charge or mortgage any equity shares of the Company held by it by giving a special notice to the Petitioner. Clause 5.3(a) gives the right to the Government to sell all or any of the pledge share of the Company held by it by giving a notice of the offer to the Petitioner. Similarly, the Petitioner could also sell the shares after the period*

of three years as provided in Clause 5.1(a) of the SHA to the third party after offering it to the Government first.

47. *Clause 5.3(d) of the SHA provides an outer time limit within which the offer ought to be accepted or rejected which was specified as 30 days and is termed as the offer period. If the offer is accepted then the transaction of sale had to be completed within a period of 60 days from the acceptance of the offer. Clause 5.3(e) of the SHA provides that if the other party to whom the offer is made refuses to accept the offer, it is open for Offering Party to offer it to a third party and, the deal with the third party had to be completed within 60 days from the date of the refusal or expiration of offer period prescribed under Clause 5.3(d) of the SHA. Coupled with Clause 5.3 of the SHA, there is second stipulation under Clause 5.4 of the SHA called as Tag Along Right which provides that in case one party is able to get a third party to agree for the purchase of the shares then it was always open to the other party to sell its shares also to the third party and the third party so obliged to purchase the shares of the other party and the transaction under Clause 5.4 of the SHA cannot be completed if the third party refuses to purchase the other parties" share offered. If a transaction fails then Clause 5.3(a) does kicks in. There are several layers within layers of restriction in the sale. The layers which are discernible are:-*

- i. no permission to sell within three years*
- ii. After the period of three years either party can offer to sell to the other party which has to be accepted within 30 days and acted upon within 60 days*
- iii. If the offer is not accepted a third party had to be identified either or before or after the original offer and that transaction has to be go within 60 days after the refusal or after the period of 30 days mentioned in Clause 5.3(d) of the SHA*

iv. Even if the third party accepts to purchase the shares then it would necessarily have to purchase those shares which the other party wants to sell to the other party which cannot be refused by the third party purchaser failing which the entire transaction fails.

v. That in case the Government is the offeror and the other party does not give its acceptance then the Government can offer the shares to the public after informing the Petitioner the decision to offer to the public and within 15 days of the Government informing the Petitioner, the Petitioner has an option to issue a notice to the Government requiring the Government to sell such part of the offered shares to the Petitioner that would make the entire Petitioner's shareholding in the Company equal to the number of shares as are equal to one share more than 75% of the entire paid-up equity capital and if such a call offer is made, the Government is duty bound to sell to the Petitioner and the Petitioner is duty bound to accept it within 15 days. The Government thereafter cannot sell the shares to the public at a price lower than the sale price to the Petitioner.

48. *These layers of restriction go behind the ethos of Section 111-A(2) of the Companies Act, 1956 and affects the purpose of introducing Section 111-A of the Companies Act, 1956 which is free transferability of shares. The view taken by the Tribunal that such a right cannot be waived as it is opposed to a public purpose is a plausible view.*

49. *That takes us to the third Clause in contention being Clause 5.8 of the SHA. Clause 5.8 of the SHA gives a right to the Claimant to issue a notice after the expiry of three years requiring the Government to sell to the Petitioner the entire balance shares held by the Government and the Government was under a mandatory obligation to sell the shares at a value as stipulated under Clause*

5.8(a) of the SHA. Clause 5.8(c) of the SHA provides that on receiving the call notice, the Government is not entitled to sell, transfer, assign, pledge, charge, mortgage or in any other way dispose of or encumber its shares during the Call Period which was 60 days and if the transaction does not go through then Clause 5.3 and Clause 5.4 of the SHA again becomes operational.

50. As pointed out by the Tribunal, the call option under Clause 5.8 of the SHA is available only to the Petitioner and not to the Government. The Government cannot insist on the Petitioner to purchase the remaining shares. The Petitioner can exercise its option at any point of time it wants to thereby restricting the Government only for the option given under Clause 5.3 of the SHA which is saddled with the Tag Along and Clause 5.4 of the SHA.”

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75. As far as the second issue as to whether the first and second report given by the SBI Caps can be countenanced to determine the true and fair market value of the shares which formed the basis of the relief of specific performance of contract is concerned, the Tribunal has observed that Clause 5.8 of the SHA read with Clause 6.1 of the SHA provides for a mechanism for calculating the fair price of the shares. Clause 6.1 of the SHA also mentions the entities who would value the shares. Since all the five entities mentioned in the schedule to SHA had some or the other dealings with the Claimant, SBI Capital Market Limited (SBI Caps) was included in the list of entities mentioned in schedule 6.1 of the SHA and accordingly SBI Caps was appointed for the purpose of valuation of shares. SBI Caps submitted a report determining the value of shares at Rs.77.93 per share. The Union of India offered a value of Rs.101.65 per share calling upon the Claimant to indicate their willingness to buy the Called Shares @Rs.101.65 ps per share which was ultimately agreed to by the Claimant and a cheque of Rs.1098,89,75,408.20/- was given. During the period of

negotiations on 07.06.2006, the Union of India took a stand that Clause 5.8 of the SHA is itself violative of Section 111A of the Companies Act. Material on record indicates that two reports were given by the SBI Caps and according to the Union of India both the reports could not have been looked into. According to the Union of India, the first report suffered from patent errors as the SBI Caps had overlooked several assets of the company while arriving at the value of shares and both the reports being confidential in nature could not have been taken into account. The Arbitral Tribunal rejected the argument of the Union of India by stating that as far as the first report is concerned, the Claimant have themselves produced the report and now they cannot turn around and say that it is inadmissible. In any event, as the Tribunal has correctly found that Clause 5.8 of the SHA has been struck down, the entire discussion on this issue becomes academic in nature. In the opinion of this Court, the SBI Caps as given a valuation, the Tribunal has gone into the issue and has found no errors in the valuation. In the absence of anything contrary before this Court that the valuation was wrong, this Court is not going into the issue as to whether the valuation of shares is wrong or not as it has become academic in nature.”

30. In the totality of the facts, when the registration of the shares transferred by Respondent Nos. 5 and 6 in the name of Appellant in CP-220/ND/2024 cannot be avoided/refused, due care need to be taken by the management of the Company regarding the role of Unitech Limited in its management. Thus, we dispose of the present appeals, with the following directions:-

- a. The Respondent No. 1 shall register the shares transferred by Respondent Nos. 5 and 6 to the Appellant, in the name of Appellant in

due deference to the letters written by the Respondent Nos. 5 and 6 to the Board of Respondent No. 1 (Annexure P-30 and P-31 to CP-220/ND/2024) and the extant provisions of Companies Act, 2013.

- b. The Appellant in CP-220/ND/2024 would not offer to transfer the shares, sold by Respondent Nos. 5 and 6 to it except in due deference to the provisions of Article of Association of the Company and extant provisions of law.
- c. The registration of shares transferred to it by Respondent Nos. 5 and 6 in the name of the Appellant would not create any right of First Refusal in its favor, in respect of the shares held in the Company by the other shareholders and the shareholders would be entitled to transfer their shares without recognizing any such right of the Petitioner/Appellant.
- d. In the event of there being any decision taken by the Respondent No. 1 regarding 100% disinvestment in future, the parties will abide by the outcome of the IA Nos. 293714 of 2024 and 293716 of 2024 in Civil Appeal No. 10856/2016 preferred before the Hon'ble Supreme Court.

Sd/-
(ATUL CHATURVEDI)
MEMBER (T)

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