SC's Stay on NCLT order

Why in news?

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The Supreme Court stayed a National Company Law Tribunal (NCLT) order directing the government to take over the real estate firm Unitech**.**

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What is the case?

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- Unitech failed to deliver homes to thousands who booked apartments and has over 16,000 undelivered units from nearly 70 projects.
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- It has over Rs.6,000 crore debt and is yet to commence building flats for an estimated 19,000 homebuyers.
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- The company has so far only paid a fraction of the money to customers who don't want to take possession of flats.
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- The Supreme Court had earlier directed Unitech to fast-track delivery of flats or repay the money of homebuyers in its projects.
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- The NCLT's order had come as a response to a plea of the Ministry of Corporate Affairs arguing that Unitech was a fit case for winding up.
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- The NCLT had asked the existing directors not to function, and also not alienate their personal or company properties.
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- The tribunal also permitted the government to nominate 10 directors to the Unitech board.
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- However, the government was considering the interest of thousands of home buyers and small depositors; it wanted to take over the company management.
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- Meanwhile, Unitech appealed against the tribunal's order in the Supreme

Court.
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- The government's move to take over the company without the court's permission has thus received condemnation.
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- The Centre apologised for approaching the NCLT over a matter that was being dealt with by the top court.
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- The Court has however stayed the NCLT order.
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What is the significance?

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- This is a sign that the government is serious about taking errant real estate firms to task.
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- In earlier similar cases, the court has been unable to get the promoters to pay the original amount and may just get away by paying a fraction.
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- Given the magnitude of the problem, especially the fact that banks are unable to recover loans of huge sums from builders, it is important that the government step in.
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- However, the company claimed that the government move had set the clock back on the company's plans to deliver on its pending flats.
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What is the way out?

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- The government must be empowered to address errant builders, in quite the same manner it has on other corporate defaulters.
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- Home-buyers are demanding a status on a par with that of financial lenders.
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- The Ministry of Housing and Urban Affairs has also suggested to the Ministry of Corporate Affairs that home-buyers be recognised not merely as financial creditors, but as primary secured creditors.
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- The Housing Ministry wants the IBC amended such that, in the event of the assets of a company being liquidated, home-buyers would have the first right.
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- However, caution has to be taken that other creditors are also not encouraged to demand a similar status.
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- It is thus better the government takes charge of the assets.
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- And comes up with a solution so as to take care of the interests of both the banks and the home-buyers.
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Quick Fact

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Government & NCLT

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- Under the Companies Act, 2013, the central government may itself apply to the NCLT for an order.
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- This is provided the central government is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest.
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Source: Financial Express, Economic Times

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