

>3

T.C.(C)No. 2 OF 2004  
ITEM No.4

Court No. 5

SECTION XVIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

I.A. No. 40 in Transfer Case(Civil) No.2/2004

THE SECURITIES & EXCHANGE BD. OF INDIA

Petitioner (s)

VERSUS

THE GOLDEN FORESTS (I) LTD.  
( For urgent directions and office report )

Respondent (s)

Date : 29/04/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA  
HON'BLE MR. JUSTICE H.K. SEMA

For Applicant-M/s.Mr. Gopal Subramaniam, Sr.Adv.  
Drive-in-TouristMr. Alok Gupta, Adv.  
Resort

For Chairman of theMs. Suruchii Aggarwal, Adv.  
Committee

For GFILMr. Swaraj Kaushal, Sr.Adv.  
Mr. S.K.Pabbi, Adv.  
Ms. Naresh Bakshi, Adv.

For SEBIMr. Bhargava V.Desai, Adv.  
Mr. Sanjeev Kumar Singh, Adv.  
Ms. Sheenam Parwanda, Adv.  
Mr. Pradeep Kumar Malik, Adv.

Mr. Ranjan Mukherjee,Adv.

For Applicant(s) in  
I.As.7-11 in TC 68/03Ms. Shikha Roy, Adv.  
Mr. S.K.Sabharwal, Adv.

For State of PunjabMr. Bimal Roy Jad, Adv.

For State of Mr. Avatar Singh Rawat, AAG  
UttaranchalMr. J.K.Bhatia, Adv.

Ms. Kiran Suri, Adv.  
Mr. Himanshu Buttan, Adv.

Mr. Somnath Mukherjee, Adv.

Ms. Minakshi Vij, Adv.

Mr. Neeraj Kumar Jain, Adv.  
Mr. Aditya Kumar Chaudhary, Adv.  
Mr. Bharat Singh, Adv.  
Mr. Sanjay Singh, Adv.  
Mr. Umang Shankar, Adv.  
Mr. Ugra Shankar Prasad, Adv.

Mr. Abhijit Sengupta, Adv.

Mr. K.C.Dua, Adv.

Mr. Subramonium Prasad, Adv.

Mr. G.Ramakrishna Prasad, Adv.

Mr. Kh.Nobin Singh, Adv.

Mr. M.C.Dhingra, Adv.

Mr. Rabi Narain Raut, Adv. for  
M/s. I.M.Nanavati Associates

Mr. K.S.Rana, Adv.

Ms. Chitra Markandaya, Adv.

UPON hearing counsel the Court made the following

O R D E R

By this Application M/s. Drive in Tourist Resorts Pvt. Limited is seeking modification of an order by which we have directed the Court appointed Committee to take possession. They claim a right under a purported lease agreement dated 13th July, 2002 entered into between them and M/s. Golden Tourists Resorts and Developers Limited.

We have heard the parties at great length. We find that the Applicant-Company was incorporated only on 3rd May, 2002 yet M/s. Golden Tourists Resorts and Developers Limited at its meeting held on 5th November, 2000 passed a resolution authorising Ms. Pomila Sayal to sign a lease agreement with a Company which was not in existence at that time. We also find that on 13th July, 2002, when the purported agreement was supposed to have been executed at Village Jharmari, Tehsil Dehra Basi, District Patiala (Punjab), the said Ms. Pomila Sayal was in jail. In order to get over this difficulty, an Order dated 10th July, 2002 of the Special Judicial Magistrate was shown to us. It is submitted that by this Order Ms. Pomila Sayal had been permitted to leave the jail. We have, however, found that the Order is very clear. Certain papers had to be produced before the Joint Commissioner of Income Tax. The Order merely permits Ms. Pomila Sayal along with certain other persons to visit the Head office of M/s. Golden Forests (India) Limited in police escort. Thus, it is clear that even pursuant to this Order, Ms. Pomila Sayal could not have gone to Village Jharmari, Tehsil Dehra Basi, District Patiala to sign any such agreement. At the most, she may have visited the head office of M/s. Golden Forests (India) Limited which is in Chandigarh. We are not satisfied with the explanation that negotiations had taken place in the year 2000 and the minutes of meeting held on 5th November, 2000 takes note of that. No negotiation can take place with a Company which has not been incorporated. Also the minutes authorise signing of a lease agreement and it is pursuant to that authorisation that the purported lease agreement dated 13th July, 2002 was executed. The above factors clearly indicate that the resolution and the lease agreement are ante-dated. We are satisfied that they are ante-dated with the intention of by-passing the order of the Punjab and Haryana High Court dated 18th June, 2003 which specifically prohibits any sale, lease, mortgage, alienation, encumbrance of the properties of M/s. Golden Forests (India) Limited or its subsidiaries. It could not be denied that this Golden Tourist Resorts and Developers Limited is a subsidiary of M/s. Golden Forests (India) Limited.

Under these circumstances, it would become necessary to terminate the lease agreement and to take back possession. However, in our view as all claims have not yet been received and the process of winding up of M/s. Golden Forests (India) Limited and its subsidiaries will take some time, it is in nobody's interest to let this property lie idle and deteriorate. Therefore, it becomes necessary to appoint some agent of the Court appointed Committee to run the property. We, therefore, call upon the Court appointed Committee to issue advertisements in various newspapers in Delhi, Chandigarh and Himachal Pradesh calling upon parties who are desirous of running the Resort as agents of the Court appointed Committee to give bids in writing along with an earnest deposit of Rs.5 lakhs. It must be clarified that no bid below Rs.1 lakh per month would be accepted. After all bids are received, the Applicants will be permitted to meet the highest bid. If the Applicants are willing to meet the highest bid, the Resort to be given to the Applicants, otherwise to the highest bidder under an order of the Court to be then obtained.

The Applicants are, in the meantime, permitted to run the Resort on payment of sum of Rs.1 lakh per month on their filing an undertaking in this Court within one week to the effect that in the event of their not being the successful bidder, they shall hand over quiet, vacant and peaceful possession to the Court appointed Committee forthwith without making any claim whatsoever. In case the Applicants are the highest bidder, they shall pay the monthly compensation at the rate then fixed with effect from today.

I.A. No. 40 stands disposed of.  
List all other Applications on 29th July, 2005.

Anita

(Jasbir Singh)  
Court Master