A RAKESH BIRANI (D) THROUGH LRS.

v.

PREM NARAIN SEHGAL & ANR.

(Civil Appeal No. 3156 of 2018)

B MARCH 21, 2018

[ARUN MISHRA AND UDAY UMESH LALIT, JJ.]

Security Interest (Enforcement) Rules, 2002: r.9 – Interpretation of – Period of 15 days for making the deposit of C *remaining 75% whether would start from the date of communication of confirmation of sale or from the date of auction – Held: r.9(2) makes it clear that after confirmation by the secured creditor the amount has to be deposited – r.9(3) also makes it clear that period of 15 days has to be computed from the date of confirmation – It is only after confirmation is made under rule 9(4) that the amount has* D *to be deposited and on failure to deposit the amount, 25% amount deposited earlier has to be forfeited and property has to be resold – In the instant case, the provisions had been fully complied with by the auction purchaser by making the deposit of 75% of the amount from the date of confirmation of sale – Sale certificate was rightly* E *issued to the auction purchaser – Auction could not have been set aside.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3156 of 2018.

F From the Judgment and Order dated 06.05.2016 of the High Court of Judicature at Allahabad in Special Appeal No. 955 of 2014.

Manohar Pratap, Raja V. Naik, Ms. Manju Jetley, Advs. for the Appellants.

G Satyajit A. Desai, Vikram D. Chauhan, Rajesh Lalwali, Ms. Anagha S. Desai, Rajesh Kumar-I, Gaurav Kumar Singh, Anant Gautam, Aakash Sehrawat, V. Govinda Ramanan, Soumu Palit, Advs. for the Respondents.

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The following Order of the Court was delivered: A

O R D E R

1. Leave granted.

2. The auction purchaser has come up in this appeal against the judgment and order passed by the Division Bench of the High Court affirming the judgment passed by the Single Bench. B

3. The brief facts in the present case are that the auction of the property was held on 14th February 2013. The appellant was the highest bidder. He offered a bid of Rs.38.30 lakhs and deposited a sum of Rs.3,80,500/- as earnest money on 1st February 2013. He further deposited 25% of the auction amount of Rs.5.80/- lakhs on 15th February 2013 and C remaining amount of Rs.28,69,500/- on 13th March 2013. The auction purchaser claimed that he was intimated regarding confirmation of sale by the Authorised Officer of the secured creditor by letter dated 27th February 2013. As soon as he was intimated of the confirmation, he further deposited the 75% of the auction amount on 13th March 2013 D within 15 days of confirmation of sale.

4. The owner and principal borrower whose property was sold in auction questioned the same by way of filing a writ petition. The Writ Petition (Civil) No.20653 of 2013 was filed by the respondent. The Division Bench passed the order on 25th April 2013 that as the property has E already been auctioned, directed the respondent to file an appeal under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act of 2002"). Thereafter, an appeal was filed that was registered as S.A. No.113 of 2013. The Debts Recovery Tribunal, Allahabad vide order dated 19th December 2013, has set aside the sale, the order was F confirmed by the Debts Recovery Appellate Tribunal as well as by the Single Judge and the Division Bench of the High Court. Hence, the present appeal by the auction purchaser.

5. The main question that arises for our consideration in the appeal is, from which date the period of fifteen days would start for making the G deposit of remaining 75 percent; from the date of communication of confirmation of sale or from the date of the auction. The aforesaid dates are not in dispute. The decision depends upon the interpretation of Rule 9 of Security Interest (Enforcement) Rules, 2002 (for short "the 2002 Rules). Rule 9 of the 2002 Rules reads as under:

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A "9. Time of sale, issues of sale certificate and delivery of possession, etc.-

(1) No sale of immovable property under these rules, in the first instance, shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if the sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer shall be subject to confirmation by the secured creditor:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately, i.e., on the same day or not later than next working day, as the case may be, pay a deposit of twenty five percent of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of the sale of the immovable property or such extended period (as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months).

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited (to the secured creditor) and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for such it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him:

(Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of the money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from the date of finalisation of the sale.)

(8) On such deposit of money for discharge of the encumbrances, the authorised officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchase fee from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

6. The submission raised by learned counsel appearing on behalf of the appellant was that Rule 9(4) of the 2002 Rules provided that the amount has to be deposited only after confirmation. Rule 9(2) also contemplates confirmation of the bid. Learned counsel has also taken us through Rule 9(5) so as to contend that in default of the payment within the period mentioned in sub-rule (4), the deposit made shall be forfeited. The forfeiture is only to follow as consequence of non-deposit of 75 percent of amount after confirmation of sale. Learned counsel

A has also relied upon the provisions of Rule 9(6) to submit that after confirmation of sale, in case, terms of sale have been complied with only then sale certificate is issued. In this case, sale certificate has been issued by the owner in favour of the auction purchaser. Thus, the High Court has erred in law in interpreting the rule 9 of the rules of 2002 to mean that date of the auction is also the date of its confirmation.

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7. On the other hand, learned counsel appearing on behalf of the borrower-respondent No.1 contends that it is apparent from Rule 9(2) that there is confirmation of sale as soon as highest bid is accepted by the authorised officer, within fifteen days, the deposit of 75% of the amount is to be made, failing which the only course is the forfeiture of

C the remaining 25% of the amount that has been deposited and the property has to be resold.

8. In order to comprehend the rival submissions, it is necessary to ponder as to intendment of Rule 9 of the 2002 Rules which deals with the time of sale, issues of sale certificate and delivery of possession, etc.

D Public notice of sale is to be published in the newspaper and only after thirty days thereafter, the sale of immovable property can take place. Under Rule 9(2) of the 2002 Rules, the sale is required to be confirmed in favour of the purchaser who has offered the highest sale price to the authorised officer and shall be subject to confirmation by the secured

E creditor. The proviso makes it clear that sale under the said Rule would be confirmed if the amount offered and the whole price is not less than the reserved price as specified in Rule 9(5). It is apparent that Rule 9(1) does not deal with the confirmation by the authorised officer. It only provides confirmation by the secured creditor. Rule 9(3) makes it clear that on every sale of immovable property, the purchaser on the same

F day or not later than next working day, has to make a deposit of twenty-five percent of the amount of the sale price, which is inclusive of earnest money deposited if any. Rule 9(4) makes it clear that balance amount of the purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of "confirmation of sale of the

G immovable property" or such extended period as may be agreed upon in writing between the purchaser and the secured creditor. Thus, Rule 9(2) makes it clear that after confirmation by the secured creditor the amount has to be deposited. Rule 9(3) also makes it clear that period of fifteen days has to be computed from the date of confirmation. In this case, confirmation has been made and communicated on 27th February

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2013 and within fifteen days thereof *i.e.* on 13th March 2013, the amount of seventy-five percent had been deposited. Thereafter, sale certificate has been issued under Rule 9(6). Rule 9(5) also makes it clear that in default of payment within the period mentioned in sub-rule 9(4), the deposit shall be forfeited. There cannot be any forfeiture of the amount of 25 percent in deposit until and unless the sale is confirmed by the secured creditor and there is a default of payment of 75 percent of the amount. The interpretation made by the High Court thus cannot be accepted.

9. If we read the provisions otherwise then we find even before the confirmation of sale within fifteen days, the amount would be forfeited by the authorised officer who may decide not to confirm the sale that would be a result not contemplated in Rule 9(2), 9(4) and 9(5) which fortify our conclusion that it is only after the confirmation is made under Rule 9(4) that amount has to be deposited and on failure to deposit the amount, twenty-five percent amount has to be forfeited and property has to be resold. The provisions of Rule 9(6) also fortifies our conclusion, inasmuch as it is the expression used that on confirmation of sale by the secured creditor and "if the term of payment has been complied with" sale certificate is issued otherwise the forfeiture takes place, this compliance has to be only after the confirmation of sale and not before it. Thus, various provisions of Rule 9 makes it clear that interpretation made by Debts Recovery Tribunal and Debts Recovery Appellate Tribunal and as affirmed by the High Court cannot be said to be correct.

10. Thus, we find that the provisions had been fully complied with by the auction purchaser as he has complied with the provisions of Rule 9 by making a deposit of 75 percent of the amount from the date of confirmation of sale. The sale certificate was rightly issued in favour of auction purchaser. Thus, the auction could not have been set aside. Since the sale certificate has been issued, let the possession be delivered in accordance with law, as expeditiously as possible.

11. The appeal is allowed and the impugned orders are set aside. No order as to costs.

Devika Gujral Appeal allowed.

A STATE OF HIMACHAL PRADESH

v.

RAVINDER KUMAR SANKHAYAN (DEAD) AND ORS.

(Civil Appeal No. 3392 of 2006)

B MARCH 28, 2018

[DIPAK MISRA, CJI AND A. M. KHANWILKAR, J.]

Constitution of India – Art. 226 – Judicial review – Scope of – PIL filed by respondent No.1 before High Court alleging that the C *property owned and possessed by Municipal Corporation, Shimla was leased out to Himachal Pradesh Tourism Development Corporation (HPTDC) at a rate much lower than the prevailing market rate, without conducting auction or resorting to tender process – While considering the prayer for various interim reliefs sought by the writ petitioner, High Court proceeded to pass order* D *dtd. 24th May, 2005 directing Municipal Corporation to issue public advertisement for leasing out the subject property – In continuation of the said order, High Court passed another order dtd. 5th July, 2005 – Held: Interim order dtd. 24th May, 2005, transcends beyond the relief claimed by the writ petitioner and more so, it is a mandatory* E *order passed at an interlocutory stage without recording any just and tangible reasons therefor – High Court did not even advert to the efficacy of subsisting contract between the Municipal Corporation and HPTDC – Contract between the Municipal Corporation and HPTDC or the rental policy of the State, as applicable to the Municipal Corporation, was not challenged much* F *less quashed by High Court – Without deciding on the issue of validity of the subsisting contractual terms and conditions between the Municipal Corporation and HPTDC, High Court could not and should not have ventured to pass order dtd. 24th May, 2005 – Order dated 5th July, 2005 is only a consequential order which must,* G *therefore, meet the same fate – Interim orders passed by High Court were in complete disregard of the scope of judicial review and are set aside – Writ petition which is still pending for final decision before High Court is disposed of – Himachal Pradesh Municipal Corporation Act, 1994 – s.157 – Constitution of India – Art.226 – PIL.*

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Allowing the appeals, the Court A

HELD: 1.1 The interim order passed on 24th May, 2005, transcends beyond the relief claimed by the writ petitioner and more so, is a mandatory order passed at an interlocutory stage without recording any just and tangible reasons therefor. The High Court did not even advert to the efficacy of the subsisting contract between the Municipal Corporation and HPTDC. It was nobody's case that HPTDC was in unauthorized occupation of the subject properties. At best, the High Court felt that the agreed lease rent payable by HPTDC in respect of subject properties was on the lower side, which inevitably progenerated financial loss to the Municipal Corporation. Before recording such a finding, it was necessary for the High Court to first authoritatively hold that HPTDC was not legally entitled to remain in occupation of the subject premises. Notably, the contract between the Municipal Corporation and HPTDC or the rental policy of the State, as applicable to the Municipal Corporation, was not challenged much less quashed by the High Court. Even the decision of the Municipal Corporation recorded in its meeting held on 28th March, 2005, was neither been challenged nor been quashed by the High Court. [Paras 8, 9] [766-H; 767-A-D] B C D

1.2 It is unfathomable as to how the High Court could have passed the order dated 24th May, 2005, to straightway direct the Municipal Corporation to issue tender notice. There is no indication in the order passed by the High Court on 24th May, 2005, of having quashed the subsisting contract between Municipal Corporation and HPTDC. Without deciding on the issue of validity of the subsisting contractual terms and conditions between the Municipal Corporation and HPTDC, the High Court could not and should not have ventured to pass the order, such as dated 24th May, 2005. The order dated 5th July, 2005 is only a consequential order which must, therefore, meet the same fate. The interim orders passed by the High Court were in complete disregard of the scope of judicial review. It is also in complete disregard of Section 157 of the Himachal Pradesh Municipal Corporation Act, 1994, which mandates the procedure for grant of lease. First, the proposal should be recommended by the Municipal Corporation; and second, the agreement can be E F G H

executed by the Municipal Corporation only after grant of prior sanction by the Government for leasing out the property. The writ petitioner had not even prayed for quashing of the subsisting contract between the Municipal Corporation and HPTDC in respect of the subject properties. The gravamen of the reliefs claimed in the writ petition was to direct the Municipal Corporation to lease out the subject premises on the basis of the prevailing market rent. Such relief could be entertained only after the subject premises were to be vacated by HPTDC upon expiry or termination of the subsisting contract between HPTDC and the Municipal Corporation. [Paras 10-12] [767-G-H; 768-A-C, E-F]

1.3 The only relief that could have received the attention of the High Court was to direct the Municipal Corporation to recover its outstanding legal dues from various governmental authorities and individuals. However, the emphasis in the writ petition in this behalf is only with regard to the dues recoverable from HPTDC in respect of the subject premises. Assuming that there are outstanding dues payable by HPTDC to the Municipal Corporation, that matter could be resolved with the intervention of the State. In that, if HPTDC is financially incapable of settling the claim/demand of the Municipal Corporation, the State may have to provide financial assistance to HPTDC to the extent necessary, failing which the Municipal Corporation will be left with no other option but to take recourse to statutory remedies for recovery of its dues from HPTDC in relation to the subject premises. Since the State has also come up in appeal against the decision of the High Court, it must take initiative to find out a suitable solution in accordance with law, expeditiously and within a reasonable time, failing which it may be open to the Municipal Corporation to resort to recovery proceedings against HPTDC and including eviction of HPTDC from the suit premises consequent to termination of the contract *inter partes*. [Paras 13, 14] [768-F-H; 769-A-B]

2. Since the tender process in which the impleaded respondent, N & S Resorts had participated (and gave the highest offer) was subject to the outcome of the pending legal proceedings, no right would accrue to it in the stated premises except to get refund of the amount paid as earnest money for participating in

the Court directed tender process. The amount so paid by the impleaded respondent shall be refunded to it, with interest at the rate of 9% p.a. (equivalent to the bank rate for fixed deposits prevailing at the time the deposit was made) from the date of deposit till its realization. [Para 15] [769-E-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3392 of 2006.

From the Judgment and Order dated 05.07.2005 of the High Court of Himachal Pradesh at Shimla in CWP No. 555 of 2004

WITH

Civil Appeal Nos. 3393 and 3394 of 2006.

J. S. Attri, Sr. Adv., Naresh K. Sharma, Varinder Kumar Sharma, Sanjay Jain, Anil Nag, Ms. Tarannum Cheema, Hiral Gupta, Davinder Singh, Advs. for the appearing parties.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. These appeals emanate from the judgment and interim orders dated 24th May, 2005 and 5th July, 2005 passed by the High Court of Himachal Pradesh at Shimla in Civil Writ Petition No.555 of 2004, during the pendency of the said writ petition. Civil Appeal No.3392 of 2006 has been filed by the State of Himachal Pradesh (for short "the State") against the judgment and order dated 5th July, 2005, whereas the other two appeals, i.e. Civil Appeal Nos.3393 & 3394 of 2006 have been filed by the Himachal Pradesh Tourism Development Corporation (for short "**HPTDC**") against the judgment and orders dated 24th May, 2005 and 5th July, 2005, respectively.

2. The stated writ petition was filed by the original respondent No.1, who died during the pendency of the proceedings in this Court. He claimed to be a public spirited person. He was aggrieved by the acts of commission and omission of the Municipal Corporation, Shimla, whereby the property owned and possessed by the Municipal Corporation was leased out to HPTDC at a rate much lower than the prevailing market rate, without conducting auction or resorting to tender process. Additionally, the Municipal Corporation had failed to recover the municipal taxes from HPTDC, including the rental/lease money, which was quite substantial, causing loss to the Municipal Corporation. This is the crux of the grievance made in the aforementioned writ petition, for which following reliefs were claimed:

A "(I) Respondents may kindly be restrained from allotting the above mentioned stall to H.P.M.C. which is loss-making venture in public interest, or in the alternative quash the said allotment to the respondent No.3 and disposed of the same in accordance with law and direct the respondents to demolish the illegal structures.

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(II) Respondent Municipal Corporation be directed to recover its outstanding legal dues from various governmental authorities and individuals.

(III) The respondent Municipal Corporation be directed to reject its leased out properties to a realistic revision of (monthly lease amounts) monthly rentals.

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(IV) The respondents may kindly be directed to produce the entire records pertaining to this case for the kind perusal of this Hon'ble Court.

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(V) Any other writ, order or direction deemed fit and proper in the facts and circumstances mentioned herein above may very kindly be passed in favour of the petitioner and against the respondents.

(VI) Cost of the writ petition may kindly be granted throughout in favour of the petitioner."

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3. The Municipal Corporation as well as the State resisted the said writ petition, by filing affidavits. The State asserted that the land in question is owned by the Government of Himachal Pradesh. The entry in the revenue record indicates that the possession of the property was with the Municipal Corporation since 1977. Be that as it may, the property known as "Goofa", situated at the Ridge in Shimla Town, was let out to HPTDC. A lease document was executed on 2nd January, 1978 stipulating the terms and conditions of the lease. The differences between the Municipal Corporation and HPTDC regarding the rent were resolved in terms of the award passed by the Secretary (LSG) to the Government of Himachal Pradesh. The Municipal Corporation and HPTDC were bound by the said award, whereunder enhanced rent in respect of the subject properties was specified. The Municipal Corporation in its meeting held on 20th July, 1988, had taken a decision regarding the increase of rent payable by HPTDC. The thrust of the stand taken by the State was

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that HPTDC, being a State Corporation, was obliged to engage in promoting tourism within the State and in terms of the tourism policy of the State, the directions given by the State were required to be carried out by HPTDC. The possession of the subject premises by the HPTDC cannot be equated with a private lease or occupation by a private individual, as the activities of the HPTDC were to effectuate the larger public interest and tourism within the State. Significantly, the lease agreement between HPTDC and the Municipal Corporation was still subsisting.

4. Despite the opposition to the writ petition by the State authorities, the High Court, while considering the prayer for interim relief sought by the writ petitioner for issuing directions to the Municipal Corporation to file a list of properties owned and possessed by the Municipal Corporation and also to place on record its outstanding legal dues of payment by the various Government authorities and individuals, including the monthly rental values for which the properties have been leased out by the Municipal Corporation, proceeded to pass an order on 24th May, 2005, without considering the cardinal aspects such as that there is a subsisting agreement between HPTDC and Municipal Corporation in respect of the subject premises. Being swayed away by the submission made by the intervener – applicant, whose application was allowed on the same date, that he was willing to offer a monthly lease amount of Rs.2,50,000/- (annual amount of Rs.30 lakhs), the High Court opined that the difference between the lease rent payable by HPTDC and the offer made by the intervener was quite substantial, for which reason the Municipal Corporation should issue public advertisement for leasing out the subject property. The High Court passed the following order:

" **O R D E R**

CWP No.555/2004.

24.05.2005 Present: Mr. B.C. Negi Advocate, for the petitioner.

Mr. M.S. Chandel, Advocate General, with Mr. J.K. Verma, Dy. A.G. for respondent No.1.

Mr. Ajay Mohan Goel, Advocate, for respondent No.2.

Mr. Shrawan Dogra, Advocate, for respondent No.3.

Mrs. Ranjana Parmar, Advocate, for respondent No.4.

Mr. Ankush D. Sood, Advocate for respondent No.5.

A CMP No.1043/2005.

Learned counsel for all the parties submit that they have no objection to this application being allowed to the limited and the only extent of the applicant herein being permitted to intervene in the proceedings. We order accordingly. The other prayers made in the application are declined.

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The application is disposed of.

CWP No.555/2004.

In CMP No.1043/2005 we have ordered today that the applicant therein be allowed to intervene in these proceedings. In that application, the applicant has offered to take the property, Ashiana and Goofa Restaurants situated at the Ridge, Shimla on a monthly lease amount of Rs.2,50,000/-/- (annual lease amount of Rs.30 lacs). This offer of the aforesaid applicant is against the present lease money of Rs.2,86,992/- per annum which works out to Rs.23,916/- per month as is being paid by H.P. Tourism Development Corporation. As per the Statement of Accounts filed by respondent No.2 HPTDC actually it has been in arrears with respect to the payment of aforesaid lease amount also at the aforesaid rate and the amount of arrears, has been worked out at Rs.18,50,361/- as on 31st March, 2005.

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What, therefore, clearly emerges is that as against the aforesaid annual amount of Rs.2,86,992/- being paid by HPTDC to Shimla Municipal Corporation, for the same property a party before us has offered to pay Rs.30,00,000.00 per annum which is more than ten times the aforesaid amount. This is just one party offering to pay the aforesaid amount. We are sure that there is a strong possibility, actually bright prospects, of many more parties coming forward to take the property on lease and offer lease money even higher, much higher, than what the intervener has offered to pay.

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With a view thus to attract the best offers and to ensure that the property is given on lease/license basis which will be in best public interest and also in the interest of Corporation, we direct respondent No.2 to publish and also in the interest of Corporation, we direct respondent No.2 to publish advertisements in three leading newspapers within ten days from today inviting offers from

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interested parties for obtaining the aforesaid property on lease/ license basis. In the advertisements so published, respondent No.2 shall ensure that the last date of receipt of offers is not later than 30th June, 2005.

With a view to attracting the best offers, it shall be desirable that the property is offered on a long term lease/license basis. Also while issuing the advertisement, respondent No.2 shall ensure that for the benefit of prospective bidders, it fully describes and specifically defines the exact details of the property sought to be leased/licensed.

H.P. Tourism Development Corporation and the intervener herein, both are at liberty to respond to the invitation of respondent No.2 in the aforesaid advertisement and to submit their respective offers. The submission of offers by the HPTDC and by the intervener shall be without prejudice to their rights and contentions in this case. It is, however, also specifically made clear that if they both, or anyone of them, fails to offer in response to the aforesaid invitation to offer, they shall be doing so entirely at their own risk and responsibility.

On the next date the Commissioner, Municipal Corporation shall file his affidavit informing this Court the details of the offers received and the action proposed thereupon.

List on 4th July, 2005. Copy Dasti."

5. This interim order passed by the High Court has been assailed by HPTDC by way of Civil Appeal No.3393 of 2006. Pursuant to the aforementioned interim order passed by the High Court, the Municipal Corporation issued Tender Notice on 9th June, 2005, inviting offers from the interested parties. The impleaded respondent N & S Resorts gave the highest offer of rent of Rs.6,51,000/- per month (annual rent of Rs.78,12,000/-). In continuation of the aforementioned order, the High Court proceeded to pass another interim order on 5th July, 2005 which reads thus:

"As a sequel to, and in compliance with the directions contained in our order dated 24th May, 2005 the Commissioner, Municipal Corporation, Shimla has filed his affidavit which has been affirmed on 1st July, 2005. In his affidavit the Commissioner has informed

us that the Corporation had issued a tender notice on 2nd June, 2005 whereby sealed tenders were invited for leasing out the property in question for a period of 25 years on monthly rental basis. In response to the said tender notice, the following five parties submitted their tenders and offered the rates (per months) as shown against the name of each one of them:-

1. N & S Resorts, The Mall, Shimla	Rs.6,51,000.00
2. RA 3 & Co. 48/1, The Mall Shimla Ashiana Restaurant, Chhota Shimla.	Rs.4,80,000.00
3. The Pillancle Service Co. Jasmine Villa, Top Floor, Near CPRI, Shimla-1.	Rs.4,75,251.00
4. Mahavir & Co. Lower Bazar, Shimla	Rs.4,11,000.00
5. Ascot Hotels & Resorts Ltd.	Rs.2,75,000.00

As per the aforesaid affidavit, as well as the aforesaid statement of offers and also as per the comparative statement of tenders filed as Annexure R-2/B to the aforesaid affidavit, it clearly transpires that M/s. N&S Resorts, The Mall, Shimla has offered the highest rate of Rs.6,51,000/- per month. The Committee constituted by the Corporation, as is evidently clear from the perusal of Annexure R-2/B, has also recommended that the offer of M/s N&S, The Mall Shimla may be accepted.

In our order dated 24th May, 2005 we had clearly recounted that with respect to the same property H.P. Tourism Development Corporation had been paying the annual lease money of Rs.2,86,992/- which actually worked out to Rs.23,916/- which is presently being paid by H.P. Tourism Development Corporation, the aforesaid M/s N&S Resorts has now offered the monthly lease money of Rs.6,51,000/- , almost twenty eight-twenty nine times of what is being paid by HPTDC. We have no doubt in our minds that the aforesaid offer by PTDC. We have no doubt in our

minds that the aforesaid offer by M/s. N&S Resorts is in best public interest. We are also convinced that H.P. Tourism Development Corporation did not have any legal, contractual or statutory right to continue occupying the premises in question for any indefinite period.

Apart from the fact that the HPTDC does not have any contractual or statutory right to continue occupying the premises in question for any indefinite period, merely because the HPTDC is a Government owned Corporation, does not mean that, in law, it should have any preferential right of holding on to the occupation of the property despite it paying a very meager amount as lease money. Related to this issue is also the question of pure commercial nature of the property. The property in question is a Restaurant, situated at perhaps the most prime location of Shimla town. The Restaurant is to be run on pure commercial lines and has to serve the best public interest. Therefore, viewed from every angle, it cannot be said that merely because the HPTDC is a government owned Corporation, it should be treated differently than others in the matter of allotment of property on lease. We feel that in such like matters whichever party pays the highest price should be held entitled to the grant of lease.

It may also be worthwhile to recount that at one stage, we had an occasion to go through the accounts of HPTDC for the last few years and we found that in every year the HPTDC has been incurring losses, year after year, as far as the running of this particular Restaurant in question is concerned. Not only that, actually at one stage the HPTDC was in such a precarious position that it had not even paid the arrears of rent to the Corporation for almost a decade or so. In this background, therefore, burdening the HPTDC with the running of this restaurant and at the same time depriving the Municipal Corporation of its legitimate right of leasing out the property for the highest available rent, would be against the principles of natural justice.

In the best interest of the Corporation as well as in best public interest, therefore, we approve of the recommendation of the Committee constituted by the Corporation and direct the Corporation to lease out the premises in question in favour of the highest bidder. All the consequences accordingly shall also follow

A including the consequence of H.P. Tourism Development Corporation being asked to vacate the premises without any loss of time. Actually from today onwards for whatever period the H.P. Tourism Development Corporation continues to remain in occupation of the premises, it shall be its obligation to pay to the Municipal Corporation the monthly lease amount at the rate as has now been offered by M/s N&S Resorts for the period that it remains in occupation.

We also wish to observe and direct that the Municipal Corporation, Shimla shall ensure, before leasing out the property to M/s. N&S Resorts, that the interests of the Corporation are fully secured and protected in so far as ensuring the payment of the lease money to the Corporation by M/s. N&S Resorts is concerned. It may, therefore, insist on receiving advance payment from the aforesaid party or security or taking such other steps. The purpose, of course, is to ensure that the lease money being offered by the aforesaid party is paid to the Corporation regularly and without any delay.

List after three months. On the next date, the Commissioner shall file his latest affidavit giving us the status report in compliance to the aforesaid directions.

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All the parties in this petition may file reply to this application in four weeks."

6. Even this interim order has been assailed before this Court by way of Civil Appeal No.3392 of 2006 by the State and by way of Civil Appeal No.3394 of 2006 by HPTDC. During the pendency of these appeals, the operation of the impugned judgment passed by the High Court has been stayed by this Court.

7. We have heard Mr. J.S. Attri, learned senior counsel appearing for the State of Himachal Pradesh and Mr. Varinder Kumar Sharma and Ms. Tarannum Cheema, learned counsels appearing for the respondents.

8. After perusing the reliefs claimed in the writ petition, purportedly public interest litigation and the application for interim relief filed by the writ petitioner, it is perceptible that the interim order passed on 24th May,

2005, transcends beyond the relief claimed by the writ petitioner and more so, is a mandatory order passed at an interlocutory stage without recording any just and tangible reasons therefor. We say so because the High Court has not even adverted to the efficacy of the subsisting contract between the Municipal Corporation and HPTDC. It was nobody's case that HPTDC was in unauthorized occupation of the subject properties. At best, the High Court felt that the agreed lease rent payable by HPTDC in respect of subject properties was on the lower side, which inevitably progenerated financial loss to the Municipal Corporation. Before recording such a finding, it was necessary for the High Court to first authoritatively hold that HPTDC was not legally entitled to remain in occupation of the subject premises.

9. Notably, the contract between the Municipal Corporation and HPTDC or the rental policy of the State, as applicable to the Municipal Corporation, has not been challenged much less quashed by the High Court. Even the decision of the Municipal Corporation recorded in its meeting held on 28th March, 2005, has neither been challenged nor been quashed by the High Court. The said resolution records as under:

> "The following decisions were taken:-
>
> 1. It has been agreed that HPTDC will pay 10% increase in the rent after every three years as per policy. The enhancement will be applicable and shall be calculated w.e.f. 1.11.1990 as the rent of Ashiana Restaurant was fixed at Rs.13,500/- vide Govt. order dated 24.11.1987, accordingly the first increase of 10% will be due w.e.f. 1.11.1990.
>
> 2. HPTDC also agreed to enhance the rent as per policy of the Municipal Corporation from time to time in future.
>
> The decisions taken in the meeting were also discussed with the MD, HPTDC, Shimla, who also agreed and gave his consent to settle/enhance the rent as per policy of the Municipal Corporation, Shimla."

10. It is unfathomable as to how the High Court could have passed the order dated 24th May, 2005, to straightway direct the Municipal Corporation to issue tender notice. There is no indication in the order passed by the High Court on 24th May, 2005, of having quashed the subsisting contract between Municipal Corporation and HPTDC. As

A aforesaid, without deciding on the issue of validity of the subsisting contractual terms and conditions between the Municipal Corporation and HPTDC, the High Court could not and should not have ventured to pass the order, such as dated 24th May, 2005.

11. The order dated 5th July, 2005 is only a consequential order B which must, therefore, meet the same fate. We hold that the interim orders passed by the High Court were in complete disregard of the scope of judicial review. Further, a mandatory order has been passed at an interlocutory stage by the High Court without even bothering to examine the efficacy of the subsisting contractual obligations of the Municipal Corporation and HPTDC. It is also in complete disregard of C Section 157 of the Himachal Pradesh Municipal Corporation Act, 1994, which mandates the procedure for grant of lease. First, the proposal should be recommended by the Municipal Corporation; and second, the agreement can be executed by the Municipal Corporation only after grant of prior sanction by the Government for leasing out the property. It D is not necessary for us to examine the stand of the State that the Municipal Corporation can moot a proposal for grant of sanction for leasing out, only in respect of the property owned by the Corporation.

12. Suffice it to observe that the writ petitioner had not even prayed for quashing of the subsisting contract between the Municipal Corporation E and HPTDC in respect of the subject properties. The gravamen of the reliefs claimed in the writ petition is to direct the Municipal Corporation to lease out the subject premises on the basis of the prevailing market rent. Such relief could be entertained only after the subject premises were to be vacated by HPTDC upon expiry or termination of the subsisting contract between HPTDC and the Municipal Corporation.

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13. In our opinion, the only relief that could have received the attention of the High Court was to direct the Municipal Corporation to recover its outstanding legal dues from various governmental authorities and individuals, namely, prayer clause (II) of the writ petition. However, the emphasis in the writ petition in this behalf is only with regard to the G dues recoverable from HPTDC in respect of the subject premises. Assuming that there are outstanding dues payable by HPTDC to the Municipal Corporation, that matter could be resolved with the intervention of the State. In that, if HPTDC is financially incapable of settling the claim/demand of the Municipal Corporation, the State may have to

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provide financial assistance to HPTDC to the extent necessary, failing which the Municipal Corporation will be left with no other option but to take recourse to statutory remedies for recovery of its dues from HPTDC in relation to the subject premises. Since the State has also come up in appeal against the decision of the High Court, it must take initiative to find out a suitable solution in accordance with law, expeditiously and within a reasonable time, failing which it may be open to the Municipal Corporation to resort to recovery proceedings against HPTDC and including eviction of HPTDC from the suit premises consequent to termination of the contract *inter partes*.

14. In light of these observations, nothing would survive for consideration in the writ petition as filed before the High Court, which is still pending for final decision. As a result, besides setting aside the impugned judgment and orders dated 24th May, 2005 and 5th July, 2005, respectively, we are inclined to dispose of the said writ petition with the aforementioned observations. Thus, the Writ Petition No.555 of 2004, filed in the High Court of Himachal Pradesh at Shimla, be deemed to have been disposed of accordingly.

15. The only other issue that remains to be addressed is about the amount of earnest money paid by the impleaded respondent N & S Resorts by way of banker's cheque dated 27th June, 2005 in the sum of Rs.10 lakhs. Since the tender process in which the impleaded respondent had participated, was subject to the outcome of the pending legal proceedings, no right would accrue to it in the stated premises except to get refund of the amount paid as earnest money for participating in the Court directed tender process. The amount so paid by the impleaded respondent shall be refunded to it, with interest at the rate of 9% per annum (equivalent to the bank rate for fixed deposits prevailing at the time the deposit was made) from the date of deposit till its realization. The Municipal Corporation shall forthwith refund such amount to the impleaded respondent N & S Resorts but not later than twelve weeks from today, failing which the Municipal Corporation shall be liable to pay interest at the rate of 12% per annum from the date of deposit till the date of its realization.

16. We, accordingly, allow these appeals in the above terms, with no order as to costs.

Divya Pandey Appeals allowed.