

HC order upheld in Anubhav Plantations case

THE Supreme Court has given the green signal for implementing the directive of the Madras High Court to the Official Liquidator of the Chennai-based Anubhav Plantations Ltd to take custody of Woodrock Hotel in Kulu Manali, which belongs to the company and is now under liquidation proceedings.

The property will now be vested with the lessee, Mr Vijay Kumar, under a lease agreement for a period of five years, which was agreed to by the High Court.

As per the directive of the Division Bench of the High Court, the lessee, whose bid of Rs 6 lakh per annum under the mutually agreed lease agreement was accepted in the tender, should furnish a bank guarantee for a sum of Rs 5 lakh by way of security deposit for the movables together with the first year lease amount of Rs 6 lakh at the earliest and in any case on or before March 31, 2003 to the Official Liquidator.

During the hearing of the appeal, the Bench was informed that two offers had been received for lease of the hotel. It directed the acceptance of Mr Vijay Kumar's offer. Both the parties agreed to the terms and conditions of the draft lease agreement.

The Bench, which heard the appeal of Percept Advertising Ltd, Mumbai, against the order dated April 12, 2002 of the single judge made in company application No 260 of 2002, had directed that on such receipt of both the bank guarantee and the first year lease amount, the Official Liquidator should hand over the keys of the property to the lessee.

The appeal before the Bench was for a direction to the appellant herein to hand over the keys of the property to the Administrator appointed following the company petition No 130 of 1999 against Anubhav Plantations.

The hotel belonged to the company and as such, either the Administrator or the Official Liquidator must be put in management of the property, the Administrator had contended.

The appellant disputed the claim of the Administrator on the ground that they were the owner of the property pursuant to the purchase. However, the single judge found that the purchase being subsequent to the filing of the above company petition against the vendor of the appellant, it was not open to the appellant to claim any title under the sale deed.

By his order dated April 12, 2002, the single judge directed the Official Liquidator to take custody of the hotel and further directed the appellant

herein to hand over its keys to the Administrator.

The judge further directed the Official Liquidator to arrange for the lease of the property to the highest tenderer and that the amount realised to be kept in a separate account. As against the said order, the appeal was preferred.

In the apex court, Mr Justice N. Santosh Hegde and Mr Justice B.P. Singh, while disposing of a special leave petition against the order of the Bench, said that the impugned order was based on the consent of parties.

Referring to the contention of the appellant's counsel that since there was no application from the Official Liquidator under Section 531A of the Companies Act, the application of the Official Liquidator was liable to be dismissed, the judges held that since the lease was being granted with a view to preserve the property, and the single judge had protected the interests of the parties by directing the administrator to keep the amounts realised from the lease in a separate account, it was felt that the interest of the petitioner was well safeguarded.

The apex court also noticed that the appellate court in the impugned order had specifically left open the right of the petitioner to establish its title in separate proceedings.