

CA-3134-37 72016

Supreme
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SLP- 25922-24

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RECORD OF PROCEEDINGS

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2015
[WITH PRAYER FOR INTERIM RELIEF]

(Against the Impugned interlocutory Order dated 31.07.2015 in CA No. 377 of 2015 and interlocutory Order dated 07.08.2015 passed in C.A. No. 228 of 2015 and C.A. No. 273 of 2015 and final order dated 07.08.2015 passed in C.P. No. 115 of 2002 by the High Court of Punjab and Haryana at Chandigarh)

IN THE MATTER OF:-

Committee – Golden Forests (India) Limited
(Appointed by Supreme Court of India)

..... Petitioner

Versus

The Plantation Investors Protection Society (Regd.)
& Ors.

..... Respondents

OFFICE REPORT ON LIMITATION

☒

The Petition (s) is/are within time.

☐

The Petition is barred by time and there is a delay of ____ days in filing the same against the order dated _____ and petition for condonation of ____ days of delay has been filed.

☐

There is delay of ____ days in refiling the petition and petition for condonation of ____ days of delay in refiling has been filed.

BRANCH OFFICER

NEW DELHI

Dated: 25.08.2015

A1

LISTING PROFORMA
IN THE SUPREME COURT OF INDIA

Section-

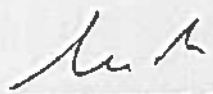
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<input checked="" type="checkbox"/>	Section	N.A.
<input type="checkbox"/>	Central Rule (Title)	N.A.
<input type="checkbox"/>	Rule No (s):	N.A.
<input type="checkbox"/>	State Act: (Title)	N.A.
<input type="checkbox"/>	State Rule: (Title)	N.A.
<input type="checkbox"/>	Rule No(s)	N.A.
<input type="checkbox"/>	Impugned Interim Order: (Date)	N.A.
<input checked="" type="checkbox"/>	Impugned Final Order/Decree (Date)	31.07.2015 & 07.08.2015
<input checked="" type="checkbox"/>	High Court (Name)	High Court of Punjab and Haryana at Chandigarh
<input checked="" type="checkbox"/>	Name of Judges	HON'BLE MR. JUSTICE AMIT RAWAL J .
<input type="checkbox"/>	Tribunal/Authority (Name)	N.A.

1. Tribunal/Authority (Name) ☒ Civil ☐ Criminal
2. a) Petitioner/Appellant No. 1: **Committee – Golden Forests (India) Limited**
 b) E-mail ID: N.A.
 c) Mobile Phone Number N.A.
3. a) Respondent No.1 **The Plantation Investors Protection Society (Regd.)**
 b) E-mail ID: N.A.
 c) Mobile Phone Number N.A.
4. a) Main category Classification
 b) Sub-Classification:
5. Not to be listed before: N.A.

A2

6. Similar/Pending matter: _____ N.A.
7. Criminal Matters: _____ N.A.
- a) Whether Accused/convict has surrendered: _____ Yes _____ No
- b) FIR No. _____ N.A. Date _____
- c) Police Station _____ N.A.
- d) Sentence Awarded _____ N.A.
- e) Sentence Undergone _____ N.A.
8. Land Acquisition Matters: _____ N.A.
- a) Date of Section 4 Notification _____ N.A.
- b) Date of Section 6 Notification _____ N.A.
- c) Date of Section 17 Notification _____ N.A.
9. Tax Matters: State the Tax effect: _____ N.A.
10. Special Category (First Petitioner/Appellant Only) _____ N.A.
- ☐ Senior Citizen > 65 years ☐ SC/ST ☐ Woman/Child
- ☐ Disable ☐ Legal Aid Case ☐ In custody
11. Vehicle Number (In case of Motor Accident Claim Matters) _____ N.A.
12. Decided Case with Citation _____ N.A.

Advocate for the Petitioner/Appellant


SURUCHII AGGARWAL
 C-61, Jangpura Extension,
 New Delhi-110014.
 PH:9312691490
 CODE-1183

Dated: 24.08.2015

SYNOPSIS

The present Special Leave Petition arises out of the Orders passed by the Hon'ble Company Judge of the Punjab and Haryana High Court in the Company Petition pertaining to M/s Golden Projects Limited which is an associate/ Group Company of M/s Golden Forests (India) Limited for which this Hon'ble Court had on 19.08.2004 appointed a Committee being Petitioner herein (to take over the assets and to sell them).

Several applications had been filed before this Hon'ble Court to plead that the assets of other group companies cannot be sold by the Committee appointed by this Hon'ble Court. This Hon'ble Court has dismissed the said applications.

The following applications were discussed:-

- a) The Directors of five Golden Forests Group Companies namely (1) M/s. Super Bricks Private Limited; (2) M/s. Golden Scientific & Technical Education Society; (3) M/s. Golden Royal Home Financial Corporation Limited; (4) M/s. Golden Tourists Resorts & Developer Limited and (5) M/s. Golden Projects Limited filed objections vide I.A.No.7 to 11 of 2005 respectively in T.C.(C) 68 of 2003 before this Hon'ble Court that these Companies are independent from M/s. Golden Forests (India) Limited.

The said applications did not find favour with this Hon'ble Court and were dismissed.

- b) Ms. Pamila Syal in the capacity of Managing Director, Golden Tourists Resorts & Developer Limited Group company of GFIL

had filed I.A.No.53 taking objections that the property namely Drive-Inn 22 situated in Village Kurli, District Mohali could not be sold by the Committee GFIL as the property belongs to Golden Tourists Resorts & Developers Limited. The prayers made by Ms. Pamila Syal in I.A. No.53 of 2006 read as follows:-

- "1. GFIL as appointed by this Hon'ble Court be directed not to sell/advertise for sale, the properties which do not belong to Golden Forests (India) Ltd.
2.
3. As by advertising the sale of properties, which do not belong to Golden Forests (India) Ltd. a huge public money is being wasted without any reason, it is therefore prayed that appropriate order/directions be issued to the Committee - GFIL so that it confines itself only with the sale of properties belonging to Golden Forests (India) Ltd."

This Hon'ble Court after hearing the parties passed the following order:-

"I.A. No.52 is dismissed as withdrawn. Heard. I.A. No.53 is dismissed. The Committee is at liberty to proceed with the auction".

- c) Shri R.K.Syal (now dead) in the capacity of Managing Director of Golden Forests (India) Limited filed I.A. No.56 of 2006 with the following prayers:-

- D
- "1. The assets of the companies other than Golden Forests (India) Ltd. should not be sold as these companies are independent and no amount of Golden Forests (India) Ltd is invested in these companies
 2. Since the companies other than GFIL are not before this Hon'ble Court in these proceedings, appropriate direction be issued so that the Committee does not sell the assets of those companies in terms of order dated 5.9.2006 passed by this Hon'ble Court."

This Hon'ble Court passed the following order on 04.01.2007:-

"I.A. No.56 Heard. The Interlocutory Application No.56 is dismissed. However, the applicant would be at liberty to approach the Committee for working out the settlement. If the Committee is prepared to settle, then it may submit a report to this Court."

The above order reaffirms that this Hon'ble Court has put its seal of approval on the contention of the Committee (Petitioner) that the Group of Companies, Trusts and Societies as declared by GFIL are part of Golden Forests (India) Limited and that the Committee GFIL is fully competent to take over all the assets of those companies including Golden Projects Limited and to sell them.

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The issue that whether M/s Golden Projects Limited is an independent Company from M/s Golden Forests (India) Limited and the restraint order passed by this Hon'ble Court on the Company M/s Golden Forests (India) Limited are not applicable to the Company M/s Golden Projects Limited has thus already been decided by this Hon'ble Court. In the circumstances aforesaid, the very important question which arises is that whether the Ld. Company Judge of Punjab and Haryana High Court could surpass the orders passed by the Delhi High Court on 25.07.2013 as affirmed by this Hon'ble Court on 26.03.2015. The Hon'ble Punjab and Haryana High Court has in violation of the orders passed by this Hon'ble Court quashed the order dated 20.01.2010 passed by the Petitioner Committee GFIL appointed by this Hon'ble Court.

The sales of properties known as Hotel Drive Inn Mussoorie and Drive In Dhanaulti belonging to M/s Golden Projects Limited were rejected by the Committee vide its two separate orders dated 20.01.2010. These orders were impugned before this Hon'ble Court by M/s BCC Builders Pvt. Ltd. and Sh. S.P. Singh in I.A. No. 116-119 of 2010 in TC (C) No. 2 of 2004. The said applications were transferred to Delhi High Court and were renumbered as CM No. 4306 of 2010 (Drive In Mussoorie) and CM No. 5546-47 of 2010 (Drive In Dhanaulti) in WP No. 1399 of 2010. It was held by the Delhi High Court that repeated efforts were made by different individuals claiming that M/s Golden Projects Limited was not part of GFIL Group of Companies and therefore its properties cannot be sold by the Committee, were considered and rejected by the Supreme Court. The aforesaid applications filed by M/s BCC Builders

Pvt. Ltd. and Sh. S.P. Singh were rejected with cost. by the Delhi High Court.

Thereafter the Hon'ble Supreme Court dismissed the SLP filed by the Hotel Drive Inn Mussoorie on 26.03.2015.

In absolute disregard of the orders passed by the Delhi High Court and this Hon'ble Court, M/s BCC Builders have mischievously sought to move an application before the High Court of Punjab and Haryana, so that the possession of the property Hotel Drive Inn Mussoorie is not taken away from them. Despite filing detailed replies before the Delhi, Punjab and Haryana High Court, High Court and bringing to light the fact that the Delhi High Court has stated that properties of M/s Golden Projects Limited could be sold by the Committee-GFIL and despite confirmation of the order dated 25.07.2013 passed by the Hon'ble High Court of Delhi by the Hon'ble Supreme Court of India vide its order dated 26.03.2015, the Punjab and Haryana High Court has quashed the order dated 20.01.2010 of the Committee GFIL and the warrants of possession with regard to the aforesaid property.

The Petitioner is also challenging the order dated 31.07.2015 in CA No. 377 of 2015 in CP No. 115 of 2002 whereby a separate committee for M/s Golden Projects Limited has been appointed contrary to the directions of this Hon'ble Court. The order dated 07.08.2005 passed in C.A. No. 228 of 2015 and C.A. No. 273 of 2015 whereby the orders of the Committee and warrant of the Deputy Commissioner Mussoorie and the Committee have been quashed are also challenged.

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The Petitioner also challenges final order dated 07.08.2015 passed in C.P. No. 115 of 2002 by the High Court of Punjab and Haryana at Chandigarh, whereby the Company M/s Golden Projects Limited has been wound up and the new Sale Committee appointed by replacing the Committee GFIL appointed by this Hon'ble Court has been directed to take charge of the assets of M/s Golden Projects Limited, in direct contravention of orders passed by this Hon'ble Court.

DATES

EVENTS

18.06.2003 The Hon'ble Punjab & Haryana High Court appointed a Provisional Liquidator in the matter of CP No. 60 of 2001 and the Hon'ble Bombay High Court appointed a Receiver in the matter of CWP No. 344 of 1998 to sell some of the properties of Golden Forests (India) Ltd. However, it is clear from the direction of the Hon'ble Court that assets of M/s Golden Projects Ltd., being one of Golden Forest Group of Companies, were also directed to be taken into custody. While appointing a Provisional Liquidator the Court passed certain directions and the following direction was one of them:-

"4. The provisional liquidator shall prepare an inventory of all the properties of the company, its subsidiaries and associates created with the funds of the company including the property alienated either by way of sale or by delivery of possession in pursuance of the orders passed by the Lok Adalat."

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True copy of the order dated 18.06.2003 is annexed herewith and marked as ANNEXURE-P-1 (Pg. 61 to 79).

12.09.2003 This Hon'ble Court transferred all cases pertaining to the Golden Forests (India) Limited, pending in various High courts, before itself. WP (C) No.344 of 1998 was transferred from the Bombay High Court and was renumbered as TC (C) 2 of 2004. CP No. 60 of 2001 was also transferred before this Hon'ble Court and was renumbered as TC (C) No. 68 of 2003. All other transferred cases were tagged with TC (C) No. 2 of 2004.

17.08.2004 This Hon'ble Court in the matter of TC (C) No. 2 of 2004 titled Securities & Exchange Board of India Vs. Golden Forests (India) Ltd., passed the following order:-

"In furtherance of our earlier Order, we direct that the Company, its Directors, Officers, Employees, Agents and/or Power of Attorney holders are restrained from alienating, encumbering, creating any third party right or transferring in any manner whatsoever any of the assets of the Company and/or their personal assets. They are also restrained from making any withdrawal from any of the accounts wherever the accounts may be."

True copy of the order dated 17.08.2004 passed by this Hon'ble Court in the matter of TC (C) No. 2 of 2004 titled

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Securities & Exchange Board of India Vs. Golden Forests
(India) Ltd.. is annexed herewith and marked as
ANNEXURE-P-2 (Pg. 80 to 85).

19.08.2004 This Hon'ble Court appointed the present Committee to
take over the assets of M/s Golden Forests (India) Limited,
sell them and to invite claims from the investors/creditors
of the Company M/s Golden Forests (India) Limited while it
was discharging the offices of Provisional Liquidator
appointed by the Hon'ble Punjab & Haryana High Court
and Receiver appointed by the Hon'ble Bombay High
Court. True copy of the Order dated 19.08.2004 passed in
TC (C) No.2 of 2004 is annexed herewith and marked as
ANNEXURE-P-3 (Pg. 86 to 93).

19.10.2004 One M/s B.C.C. Builders Pvt. Ltd. and M/s B.C.C. Group
illegally purchased the property belonging to M/s Golden
Projects Limited, known as Drive Inn Mussoorie situated
on the Mall Road, Mussoorie, District Dehradun vide
registered sale deed dated 19.10.2004 in violation of the
order dated 17.08.2004 passed by this Hon'ble Court.

20.01.2005 Since the appointment of the Committee-GFIL, a number
of applications have been filed before this Hon'ble Court
that the Golden Projects Ltd. is an independent company
from Golden Forest (India) Ltd. and every time this Hon'ble
Court had rejected those applications.

J

The Directors of five Golden Forests Group Companies namely (1) M/s. Super Bricks Private Limited; (2) M/s. Golden Scientific & Technical Education Society; (3) M/s. Golden Royal Home Financial Corporation Limited; (4) M/s. Golden Tourists Resorts & Developer Limited and (5) M/s. Golden Projects Limited filed objections vide I A No 7. to 11 of 2005 respectively in T.C.(C) 68 of 2003 before this Hon'ble Court that these Companies are independent from M/s. Golden Forests (India) Limited. During the course of hearing this Hon'ble Court on 20.01.2005 provided opportunity to the above five Companies to disclose particulars regarding incorporation of Companies, Share Holders, Directors, Capital, Properties, Details of Funds by which properties were acquired, Bank Accounts, Deposits, Investments made and also details of transfer of assets between these Companies and/or with Golden Forests (India) Limited. On 01.04.2005, this Hon'ble Court permitted these Companies to take inspection of records lying in the office of Golden Forests (India) Limited possession of which had been taken over by the Committee. This Hon'ble Court vide orders dated 20.01.2005 and 01.04.2005 restrained the applicant-companies, their agents, directors and their employees from alienating, encumbering, parting with possession or disposing of in any manner any of the assets of the Companies. Copies of the orders dated 20.01.2005 &

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01.04.2005 passed by this Hon'ble Court are annexed herewith and marked as ANNEXURE-P-4 (Pg. 94 to) & ANNEXURE P-5 (Pg. 95 to 97) respectively

05.09.2006 The above applicant-companies could not provide the details as directed by this Hon'ble Court and as such this Hon'ble Court dispsed of I.A.Nos.7 to 11 of 2005 vide Para No.60 of the order dated 5.9.2006 which is reproduced below:-

"60. Thus, all the applications for impleadment / intervention / directions / clarification / modification stand disposed of accordingly."

This Hon'ble Court further on 05.09.2006 passed the following order:-

"40. Insofar as the settlement/sales of immovable properties for the period between the appointment of provisional liquidator passed by the High Court of Punjab and Haryana and the restraint order dated 17th August, 2004 passed by this Court are concerned, any sales/ settlement made contrary to the orders passed after the appointment of Provisional Liquidator by the High Court of Punjab and Haryana on 20th January, 2003 (Correct date is 18th June, 2003) and the restraint order passed on 17th August, 2004 by this Court shall be ignored and the Committee would be at liberty to get hold of those

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properties by taking vacant possession thereof with the help of civil and police authorities and deal with them in accordance with the directions already given."

True copy of the order dated 05.09.2006 is annexed herewith and marked as ANNEXURE-P-6 (Pg. 95 to 12).

The Company Golden Forests (India) Limited on 05.09.2006 filed an application along with a list of 110 Golden Group Companies which was numbered as I.A. 51. Shri R.K.Jain, Senior Advocate, counsel for the Company Golden Forests (India) Limited stated that the Company has no objection to the Committee taking over the properties and assets of the Companies mentioned at Sr. Nos. 1 to 90 as well and deal with them as a part of properties of Golden Forests (India) Limited. For the properties of the Companies mentioned at Sr.Nos.91 to 110, this Hon'ble Court allowed the Company to file affidavit if they can be taken as the properties of Golden Forests (India) Limited. Shri R.K. Syal filed an affidavit in regard to Companies at Sr. Nos. 91 to 110 which was numbered as I.A. No.52 of 2006. Through this affidavit, Shri R.K.Syal alleged that the properties mentioned at Serial Nos.91 to 110 are independent companies having

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their own objects, assets and liabilities and have nothing to do with operations of Golden Forests (India) Limited

30.11.2006 The Committee, under the order dated 05.09.2006 passed by this Hon'ble Court, issued sale notice for sale of certain properties on 14.10.2006. Ms. Pamila Syal in the capacity of Managing Director, Golden Tourists Resorts & Developer Limited, filed I.A.No.53 taking objections that the property namely Drive-Inn 22 situated in Village Kurli, District Mohali cannot be sold by this Committee as the property belongs to Golden Tourists Resorts & Developers Limited and alleged that it is independent Company from Golden Forests (India) Limited. She filed another application numbered 54 of 2006 for filing additional documents in support of her I.A. No.53 of 2006. The prayers made by Ms. Pamila Syal in I.A. No.53 of 2006 read as follow:-

"Keeping in View the whole situation and the order passed by the Hon'ble Court on 5.9.2006, It is prayed that the Committee--

1. GFIL as appointed by this Hon'ble Court be directed not to sell/advertise for sale, the properties which do not belong to Golden Forests (India) Ltd.
2. It is further prayed that the Committee GFIL be directed to first ascertain the total liability of Golden

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Forests (India) Ltd and only thereafter should proceed with the sale of the properties.

3. As by advertising the sale of properties, which do not belong to Golden Forests (India) Ltd, a huge public money is being wasted without any reason, it is therefore prayed that appropriate order/directions be issued to the Committee - GFIL so that it confines itself only with the sale of properties belonging to Golden Forests (India) Ltd.

Any other order or directions as this Hon'ble Court may deem fit and proper be passed."

The Committee contested the aforementioned application.

This Hon'ble Court after hearing the parties passed the following order:-

"I.A. No.52 is dismissed as withdrawn. Heard. I.A. No.53 is dismissed. The Committee is at liberty to proceed with the auction.

I.A. No.54 (for permission to file additional documents) also stands dismissed."

True copy of the order dated 30.11.2006 is annexed herewith and marked as ANNEXURE-P-7 (Pg. 126 to).

04.01.2007 Shri R.K.Syal (now dead) in the capacity of Managing Director of Golden Forests (India) Limited filed I.A. No 56 of 2006 with the following prayers:-

- "1. The assets of the companies other than Golden Forests (India) Ltd. should not be sold as these companies are independent and no amount of Golden Forests (India) Ltd. is invested in these companies.
2. Since the companies other than GFIL are not before this Hon'ble Court in these proceedings, appropriate direction be issued so that the Committee does not sell the assets of those companies in terms of order dated 5.9.2006 passed by this Hon'ble Court."

The order dated 04.01.2007 reads as follow:-

"I.A. No.56 Heard. The Interlocutory Application No.56 is dismissed. However, the applicant would be at liberty to approach the Committee for working out the settlement. If the Committee is prepared to settle, then it may submit a report to this Court."

True copy of the order dated 04.01.2007 is annexed herewith and marked as ANNEXURE-P-8 (Pg. 127 to 128).

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The above order reaffirms that this Hon'ble Court has put its seal of approval on the contention of the Committee (Petitioner) that the Group of Companies, Trusts and Societies mentioned at Serial Nos.91 to 110 are part of Golden Forests (India) Limited and that the Committee is fully competent to take over all the assets of the companies at Serial Nos. 1 to 110 and to sell them.

01.07.2007 The Committee (Petitioner) then issued public notices on 01.07.2007 in various leading newspapers to invite claims from the depositors and creditors of Golden Projects Limited and on 11.08.2007 in various leading newspapers to invite claims from the depositors and creditors of subsidiary companies & societies of Golden Forests (India) Limited. Thereafter, Committee put to sale some of the properties of Golden Forests Group including properties of Golden Projects Limited against which Ms. Pamila Syal, Director of Golden Projects Limited and Shri R.K.Syal (now dead), Director of Golden Forests (India) Limited filed objections through I.A. Nos.102, 103 & 108, which were later transferred to Hon'ble High Court of Delhi and each time the objections were rejected/dismissed by the Hon'ble High Court of Delhi.

True copy of the public notices dated 01.07.2007 is annexed herewith and marked as **ANNEXURE-P-9** (Pg. 129 to 130).

(C)

14.08.2007 In the meantime, Sh. S.P.Singh, Managing Director of BCC Builders of Ghaziabad had illegally purchased the property belonging to M/s Golden Projects Limited known as Drive Inn Dhanolti situated on Mussoorie-Chamba Road, District Uttarkashi vide registered sale deed dated 14.08.2007 in violation of the orders dated 17.08.2004 & 05.09.2006 passed by this Hon'ble Court.

15.10.2008 This Hon'ble Court specifically directed this Committee to take over possession of all the properties of Golden Forests (India) Ltd. and its group of Companies. the Hon'ble Court also outlined the manner in which the properties are to be sold by this Committee. The relevant portion of the order is reproduced as below:-

"Dr. Namavati has filed the list of immovable properties owned and possessed by the Golden Forests (I) Ltd and its group of companies. These properties were allegedly purchased by Golden Forest (I) Ltd. and other group of companies. It is said that the title deeds vest with these respondents.

.....

In order to facilitate the disbursement due to the investors, the money has to be collected by selling these properties. The Committee is authorized to take possession of all the properties owned by the respondents. If there are any valid claims in respect of any of these properties by third

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parties, the Committee may consider the same and pass appropriate orders, subject to confirmation by this Court

As regards the sale of properties is concerned, the Committee may make appropriate publication regarding the sale and sufficient notices be issued to the prospective purchasers by publishing the same in the local newspapers

True copy of the order dated 15.10.2008 passed in I.A.No. 60-83, 85-90 & I.A.No. 91-92 & 93 in T.C. (C) No 2 of 2004 is annexed herewith and marked as ANNEXURE-P-10 (Pg. 131 to 135).

It is pertinent to mention here that after number of applications filed by the Company Golden Projects Limited claiming to be independent from the Company Golden Forests (India) Limited were rejected by this Hon'ble Court and later on by the Hon'ble High Court of Delhi, the Committee-GFIL (Appointed by the Hon'ble Supreme Court of India) invited claims from the investors/creditors of the Company Golden Projects Limited which are about two lakhs and got these claims computerized, report of which was also sent to this Hon'ble Court.

20.01.2010 The Committee-GFIL, the Petitioner herein (Appointed by the Hon'ble Supreme Court), under the orders dated 17.08.2004 and 05.09.2006 passed by this Hon'ble Court.

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after issuing show cause notices and granting hearing to the aforesaid BCC Builders Pvt. Ltd. & Sh. S.P. Singh rejected the sale deeds vide its two separate orders dated 20.01.2010. True copies of the orders dated 20.01.2010 separately is annexed herewith and marked as ANNEXURE-P-11 (Pg. 136 to 149) & ANNEXURE-P-12 (Pg. 150 to 165) respectively.

27.05.2010 Proceedings in the Company Petition No.115 of 2002 pending before the High Court of Punjab and Haryana had been adjourned sine die for the reason that all the cases relating to Golden Forests (India) Limited were transferred to this Hon'ble Court vide its order dated 12.09.2003.

Subsequently, however, on the application of Golden Projects Limited, the Company Petition was revived and by an order dated 27.05.2010, a Committee was appointed consisting of the Official Liquidator¹ and two Lawyers to be appointed by the Court to dispose of a part of the lands owned by Company Golden Projects Limited.

Upon an application made by the Committee whereby the Punjab and Haryana High Court was apprised about various orders passed by this Hon'ble Court which covers entire Golden Forests Group which includes Golden Projects also. The earlier order dated 27.05.2010, was modified to hold that the Committee-GFIL (Appointed by the Hon'ble Supreme Court of India) shall be the Sale

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Committee in respect of the sale of assets of the Company Golden Projects Limited and its associate Companies as well and the sale conducted by the Sale Committee shall be subject to confirmation by the Hon'ble Punjab & Haryana High Court.

True copy of the order dated 27.05.2010 & 15.12.2010 is annexed herewith and marked as ANNEXURE-P-13 (Pg. 166 to) & ANNEXURE-P-14 (Pg. 167 to 171) respectively.

14.02.2011 The order dated 15.12.2010 passed by Punjab & Haryana High Court was affirmed by the Division Bench in Company Appeal No. 2 of 2011 on 14.02.2011.

05.08.2011 This Hon'ble Court dismissed the SLP filed by the Company Golden Projects Limited against the order dated 14.02.2011 passed by the Division Bench of Punjab and Haryana High Court against the appointment of the Committee GFIL as the said Committee in respect of sale of assets of the company Golden Projects Limited and its associate companies.

True copy of the order dated 05.08.2011 is annexed herewith and marked as ANNEXURE-P-15 (Pg. 172 to).

25.07.2013 The aforesaid BCC Builders and Mr. S.P. Singh who had illegally purchased properties of Golden Projects Limited in

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violation of the Delhi High Court orders dated 07.10.1998. Punjab and Haryana High Court order dated 18.06.2003 and this Hon'ble Court order dated 17.08.2004. 01.04.2005 and 05.09.2006, moved IA nos. 116-119 of 2010 before this Hon'ble Court in TC (C) No. 2 of 2004. as all the matters (winding up) pertaining to the Golden Forests (India) Ltd. pending different High Courts were transferred to itself by this Hon'ble Court vide order dated 12.09.2003. Thereafter, vide order 03.02.2010 this Hon'ble Court transferred all the cases pertaining the M/s Golden Forests (India) Ltd. to the Hon'ble High Court of Delhi.

The IAs filed by the BCC Builders Pvt. Ltd. and Sh. S.P. Singh in the Hon'ble Supreme Court were renumbered as CM No. 4306 of 2010 (Drive Inn Mussoorie) and CM. No. 5546-47 of 2010 (Drive Inn Dhanolti) in the Hon'ble High Court of Delhi. The purchasers contended that Golden Projects Limited is an independent company from the Golden Forests (India) Limited so the restrained orders passed by this Hon'ble Court are not applicable to M/s Golden Projects Limited.

The Committee (Petitioner) contested CM No. 4306 of 2010 (Drive Inn Mussoorie) and CM. No. 5546-47 of 2010 (Drive Inn Dhanolti) before the High Court of Delhi who dismissed the aforesaid applications on 25.07.2013. The Delhi High Court while passing the order dated 25.07.2013

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considered all earlier orders passed by this Hon'ble Court by which the claim of Golden Projects Limited being an independent company from Golden Forests Groups of Companies was rejected by the Hon'ble High Court of Delhi and held that:

"8. It is apparent from the above extracts and the narrative that repeated efforts made by different individuals, claiming that Golden Projects Limited was not part of GFIL group of companies and, therefore, its properties could not be sold by the Committee, were considered and rejected by the Supreme Court. In fact I.A. 52 was filed on behalf of R.K. Syal, MD of Golden Forests by the counsel who appears today and who has filed I.A. 4306/2010, Sh. Ashok Kumar Singh. There is an advertence of I.A. No. 52 in page 61 of the present application in an Annexure, i.e. copy of I.A. 56. Significantly, however, the order made in I.A. 52 whereby Sh. Ashok Kumar Singh withdrew the application preferred on behalf of MD of GFIL has not been disclosed. To compound this, Sh. Ashok Kumar Singh has now sought to address arguments- this time on behalf of alleged purchasers, claiming that they were bonafide purchasers/transferees. This conduct of the applicant as well as the learned counsel deserves to

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be deprecated and the Court does so in strong terms. So far as the reliance on orders of the Punjab and Haryana High Court is concerned, it is apparent from a reading of the Single Judge and Division Bench's orders that notice was not drawn to the orders of the Supreme Court in I.A. Nos. 52, 56 and 57. We have no manner of doubt that had such been the case, the nature of the order could well have been different. We are not required to say anything further.

9. In view of the above discussion, we are satisfied that there is no merit in the applications; they are accordingly dismissed with costs quantified at Rs.1 lakh for each of the applications, i.e. C.M. Appl. 4306/2010 and 5546/2010 to be paid to the Committee within four weeks. C.M. Appl. 4306/2010, 5546/2010 and 5547/2010 are dismissed. Order dasti."

True copy of the order dated 25.07.2013 is annexed herewith and marked as **ANNEXURE-P-16** (Pg. 173 to 180).

26.03.2015 The SLP No. 24996-97 of 2013 filed by Hotel Drive-Inn through M/s .BCC Builders Pvt. Ltd. and Sh. S.P. Singh against the order dated 25.07.2013 passed by High Court of Delhi at New Delhi in CM No. 4306 of 2010 (Drive Inn

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Mussoorie) and CM. No. 5546-47 of 2010 (Drive Inn Dhanolti) was dismissed on 26.03.2015. True copy of the order dated 26.03.2015 is annexed herewith and marked as ANNEXURE-P-17 (Pg. 181 to 182).

Therefore, the issue that M/s Golden Projects Ltd. is an independent Company from M/s Golden Forests (India) Ltd. and the restraint orders passed by the Hon'ble Supreme Court on the Company M/s Golden Forests (India) Ltd. regarding sale of properties are not applicable to the Company M/s Golden Projects Ltd.. is decided as per the order dated 25.07.2013 passed by the Hon'ble High Court of Delhi, according to which M/s Golden Projects Ltd. is a part of the Golden Forests Group.

01.04.2015 Thereafter, this Committee issued warrants of possession to the District Magistrate, Dehradun (Uttarakhand) in respect of the property Drive-Inn Mussoorie and to District Magistrate, Tehri Garhwal (Uttarakhand) in respect of the property Drive-Inn Dhanolti to take over their possession.

True copy of the warrants of possession dated 01.04.2015 to the District Magistrate, Dehradun (Uttarakhand) in respect of the property Drive-Inn Mussoorie and to District Magistrate, Tehri Garhwal (Uttarakhand) are annexed herewith and marked as ANNEXURE-P-18 (Pg. 183 to 187) & ANNEXURE-P-19 (Pg. 188 to 192) respectively.

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In April 2015, pursuant to the warrants of possession issued by the Committee GFIL, the District Magistrate issued directions to the Manager Hotel Drive Inn Mussoorie fixing the date of 19.05.2015 for handing over possession to the Committee GFIL.

04.04.2015 Surprisingly, after the order dated 26.03.2015 passed by this Hon'ble Court in the SLP filed by M/s Hotel Drive Inn, on 04.04.2015 an application being CA. No. 228 of 2015 was filed by Hotel Drive Inn Mussoorie through M/s BCC Builders in the Company Petition No. 115 of 2002 pending before the High Court of Punjab and Haryana at Chandigarh. In the said application it was prayed that the decision of the Committee GFIL to include the property of M/s Golden Projects Limited within the purview of M/s Golden Forests (India) Limited was arbitrarily and unconstitutional. It was surprisingly also prayed that the further proceedings pending before the Committee GFIL may be stayed qua the property of the application namely Mayfield Estate. The aforesaid application was filed despite the order dated 20.01.2010 passed by the Committee, whereby the Committee GFIL (Petitioner), had directed the M/s Golden Projects Limited to hand over the vacant possession of the property to the Committee and also imposed damages of Rupees 2 Lacs for unauthorised user from 2004 till the possession of the property. The said order has been affirmed by the High Court as well as this

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Hon'ble Court. The said order was annexed to the said application as annexure A-20.

True copy of the application dated 04.04.2015 filed by Respondent No.3 is annexed herewith and marked as ANNEXURE-P-20 (Pg. 193 to 229).

17.04.2015 The Petitioner Committee contested the said application and filed a detailed reply alongwith annexures and submitted that in view of the fact the applications filed against the order dated 20.01.2010 had already been dismissed by the Hon'ble Delhi High Court with cost and the said affirmed by this Hon'ble Court, M/s BCC Builders ought to direct to vacate the property known as Drive Inn Mussoorie and Mr. S.P.Singh directed to vacate the property known as Hotel Drive Inn Dhanolti situated in Mussoorie and handover its possession to the Committee GFIL.

True copy of the reply dated 17.04.2015 is annexed herewith and marked as ANNEXURE-P-21 (Pg. 230 to 254).

07.05.2015 An application was filed by the Applicant 'the Plantation Investors Protection Society' in CA No. 228 of 2015 placing on record (as Annexure A-29) two warrants of possession dated 01.04.2015 issued by the Committee to the District Magistrate Dehradun for taking over the

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possession of the property Hotel Drive Inn Mussoorie and direction by Deputy Commissioner Mussoorie to Manager of Hotel Drive Inn Mussoorie to hand over the vacant possession of the abovesaid property to the Committee-GFIL.

True copy of the application dated 07.05.2015 is annexed herewith and marked as ANNEXURE-P-22 (Pg. 255 to 266).

11.05.2015 The Punjab and Haryana High Court ignored and surpassed the order dated 26.03.2015 passed by this Hon'ble Court and granted stay of the orders dated 01.04.2015 passed by the Committee and April 2015 by the Deputy Commissioner Mussoorie directing the Manager Hotel Drive Inn Mussoorie to handover possession to the Committee. True copy of the order, dated 11.05.2015 is annexed herewith and marked as ANNEXURE-P-23 (Pg. 267 to 268).

15.07.2015 Strangely another application being CA No. 377 of 2015 was filed in CP No. 115 of 2002 before the High Court of Punjab and Haryana by one GPL Investors Forum Haryana. It was prayed that a separate and dedicated Committee for sale of assets of M/s Golden Projects Limited be appointed. The Committee GFIL contested the said application and submitted that in view of the events that have transpired the application appears to be filed by

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a bogus forum at the behest of M/s Golden Projects Limited to create hindrances in the working of the Committee appointed by this Hon'ble Court. It was pointed out that the Committee GFIL has sold a number of properties which were confirmed earlier by this Hon'ble Court and thereafter by the Hon'ble Delhi High Court when the matter was transferred to Delhi High Court. Apart from the properties belonging to M/s Golden Forests (India) Limited, properties belonging to Golden Tourist Resorts & Developers Ltd. and Super Bricks were auctioned and sold.

True copy of the application dated 15.07.2015 filed by GPL Investors Forum Haryana is annexed herewith and marked as ANNEXURE-P-24 (Pg. 269 to 282).

Thereafter, properties of M/s Golden Projects Ltd. (1) Commercial Building: SCO No. 8, Sector-11, Panchkula was auction-sold on 17.08.2007 for Rs.11.770 Crore. and (2) Agricultural Land measuring 119 Bigha - 11 Biswa situated in Village Issapur, Tehsil Najafgarh, District Delhi (South-West) was auction-sold on 16.03.2012 for Rs.18.110 Crore. Both the sales were confirmed by the Hon'ble High Court of Delhi.

It is clear from the above that one of the properties of the Golden Projects Ltd. was auction-sold even before the order dated 15.12.2010 passed in CP 115 of 2002 by the Hon'ble

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Punjab & Haryana High Court and confirmed by the Hon'ble High Court of Delhi.

The Hon'ble Court needs to be informed one more fact and that is, in between the years 1998 and 2000 the Companies and their management fabricated hundreds of resolutions transferring the properties of the Companies and the Committee had to fight hard to recover possession of those properties and thereafter sell them. Thousands of resolutions were passed alone on 05.12.2000 and that too at the same place and time which is physically impossible and that proves fabrication of the resolutions. The Hon'ble Supreme Court has held the resolutions dated 05.12.2000 to be a fabricated document.

So far there are many properties which have been sold on the basis of these fabricated resolutions and the possession of which has to be recovered which include Drive-Inn Mussoorie, Drive-Inn Dhanolti and Commercial Buildings consisting of 10 Shops & Restaurant which are subject matter of Company Applications filed in CP 115 of 2002 pending before this Hon'ble Court.

31.07.2015 The Punjab and Haryana High Court ignored the various orders passed by this Hon'ble Court and passed an order modifying the order dated 15.12.2010 of the Punjab and Haryana High Court in CP No. 115 of 2002. The High Court has stated that the Committee appointed by Hon'ble

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Supreme Court shall no longer be the sale Committee of the properties belonging to M/s Golden Projects Limited and its subsidiaries.

While passing the impugned order dated 31.07.2015, the Hon'ble Company Judge has held that the Company M/s Golden Projects Ltd. is a separate and independent company and is not a subsidiary company of M/s Golden Forests (India) Ltd. The Committee submits that it never pleaded that M/s Golden Projects Ltd is a subsidiary of M/s Golden Forests (India) Ltd. in fact the Committee since beginning has been saying that this Company is a part of GFIL Group of Companies.

True copy of the Reply filed by the Committee GFIL dated 31.07.2015 is annexed as ANNEXURE-P-25 (Pg. 283 to 294).

True copy of the A list prepared by the Vendor in regard to the valid claims received from the investors of the M/s Golden Projects Ltd. is annexed as ANNEXURE-P-26 (Pg. 295 to 297).

The Hon'ble Punjab & Haryana High Court has also observed that the properties of M/s Golden Projects Ltd. which have been sold by this Committee (appointed by the Hon'ble Supreme Court) has not been confirmed by the

Punjab & Haryana High Court as directed vide its order dated 15.12.2010. The Contention of the Committee, since beginning, has been that the properties of all the hundred and ten (110) GFIL Group of Companies shall be dealt with by this Committee under the various orders passed by the Hon'ble Supreme Court of India and any auction-sale of the properties conducted by this Committee is subject to confirmation by the Hon'ble Supreme Court of India and now by the Hon'ble High Court of Delhi where the Hon'ble Supreme Court has transferred all the cases pertaining to GFIL Group of Companies for passing further orders.

The said order has been issued despite the fact that the order dated 15.12.2010 has merged with the order dated 14.02.2011 passed in Company appeal no. 2 of 2011 wherein the appointment of Committee GFIL for sale of assets of GPL had been upheld. The said order has been affirmed by this Hon'ble Court on 05.08.2011 in SLP (C) No. 20403 of 2011 as the SLP had been dismissed.

Moreover, the said order has been passed on an application filed in the wake of an order passed by the Committee GFIL rejecting the sales of properties Hotel Drive Inn Mussoorie and Drive In Dhanaulti (Property of GPL). The orders dated 20.01.2010 passed by this Committee-GFIL have already been affirmed by the Delhi High Court and by this Hon'ble Court and as such the said

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application ought not to have been entertained. These facts were highlighted by the counsel for the committee before the Punjab and Haryana High Court. The allegations in the application no. 377 of 2015 that the Committee has not performed any work for GPL is also not based on facts as explained in the reply of the said application.

07.08.2015 By order dated 07.08.2015 an order was passed by the Punjab and Haryana High Court in CA No. 228 of 2015 whereby in view of the order dated 31.07.2015 passed in CA No. 377 of 2015, the orders at Annexure A-20 and A-29 are quashed. At the cost of repetition it is submitted that Annexure A-20 is order dated 20.01.2010 passed by the Committee and the District Magistrate Mussoorie is already been affirmed by this Hon'ble Court in SLP No. 24996-97 of 2013 on 26.03.2015. The warrant of possession was issued by the Committee and the District Magistrate Mussoorie (Annexure A-29) pursuant to the orders passed by the Delhi High Court dated 25.07.2013 and order dated 26.03.2015 passed by this Hon'ble Court.

07.08.2015 Another order was passed by High Court of Punjab and Haryana in CP No. 115 of 2002 whereby the Company GPL was wound up for the reason stated in CA No. 377 of 2015, and the sale Committee appointed vide order dated

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31.07.2015 is to undergo exercise of taking charge of
property of M/s Golden Projects Limited.

25.08.2015 Aggrieved by the impugned order, the Petitioner has
preferred the present Special Leave Petition.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CA No.377 of 2015 in

CP No.115 of 2002

Date of Decision: July 31, 2015

The Plantation Investors Protection Society (Regd.)

....Applicant

Versus

Golden Projects Ltd.& another

....Non-applicants

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Atul V. Sood, Advocate,
for the applicant.

Mr.Anand Chhibbar, Senior Advocate with
Mr.Vaibhav Sahni, Advocate,
for the applicant in (CA No.273 of 2015).

Mr.Anil Sharma, Advocate with
Mr.Y.S.Turka, Advocate,
for the Company.

Mr.A.S.Narang, Advocate.
for the Committee.

Mr.P.C.Goyal, Advocate.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of CA No.377 of 2015 filed
on behalf of the Plantation Investors Protection Society (Regd.) for
constitution of a separate and a dedicated committee for sale of the assets of
M/s Golden Projects Limited on the premise that this Court, vide order
dated 15.12.2010 passed in CP No.115 of 2002, had, while noticing the

respective contentions of the parties including of the Committee, which had filed CA No.430 of 2010, assigned the task of sale of properties belonging to the M/s Golden Projects Limited to the Committee constituted by the Hon'ble Supreme Court on 19.8.2004 in respect of sale of assets of Golden Forests (India) Limited.

It has been further submitted that after passing of the order in 2010, the Committee has not taken any task to identify the investors of the Golden Projects Limited, much less, sale of the properties, therefore, the investors are left high and dry.

It would be apt to give little preface to the matter in order to decide the issue raised in the aforementioned application.

This Court, vide order dated 11.4.2002 admitted the Company Petition bearing No.115 of 2002 and the factum of the admission was ordered to be published and the matter was adjourned sine-die on 6.12.2004. Thereafter, an application for revival of the petition was filed, pointing out that the company petitions relating to the respondent-company pending in this Court were not transferred to the Hon'ble Supreme Court. The application was allowed and CP No.115 of 2002 was ordered to be listed. This Court on 27.5.2010 modified the interim order passed by permitting the Company to dispose of a part of the lands owned by it to discharge its debt liability, subject to the condition that the entire sale process is supervised by a Committee consisting of the Official Liquidator and two Lawyers to be appointed by this Court, who shall also associate a representative of the respondent Company with them. The order dated

27.5.2010 reads thus:-

"Having heard learned counsel for the parties for some time, it appears that the interim directions earlier issued needs to be modified to the extent that the respondent Company may be permitted to dispose of a part of the lands owned by it to discharge its debt liability, subject to the condition that the entire sale process is supervised by a Committee consisting of the Official Liquidator and two Lawyers to be appointed by this Court, who shall also associate a representative of the respondent Company with them.

List on 13.08.2010 to enable learned counsel for the respondent Company to furnish details as to which parcel of land the Company wants to be disposed of first."

CA No.430 of 2010 was filed under Order I Rule 10(2) of the C.P.C. on behalf of the Committee headed by Mr.R.N.Aggarwal, Chief Justice (Retd.), now aged 89 years, Mr.B.S.Bedi, aged 68 years (approx.) District & Sessions Judge (Retd.) and Mr.H.L.Randev, now aged 84 years, District & Sessions Judge (Retd.) for impleading the Committee keeping in view of the order dated 5.9.2006 passed by the Hon'ble Supreme Court in the matter of Group Companies of Golden Forest as party respondent. The aforementioned application was allowed and the Committee was permitted to be impleaded as respondent No.2. In the main case, this Court noticed a fact that a list of 110 Companies had been submitted and such Companies were divided into three categories i.e., (i) Golden Forest (India) Limited and its assets mentioned at Serial Nos.1 to 90; (ii) Golden Project and its associate companies mentioned at Serial Nos.91 to 104 and; (iii) Societies and Trusts mentioned at Serial Nos.105 to 110, which are also not part of

the Golden Forest (India) Limited. It was also noticed that the Hon'ble Supreme Court had permitted the counsel for the Golden Forests (India) Ltd. to file an affidavit as to whether the properties of the Companies mentioned at Serial Nos.91 to 104 belonged to Golden Projects Ltd. and its associates and the properties of societies and trusts mentioned at Serial Nos.105 to 110 can be taken as the properties of Golden Forest (India) Limited. In this regard, the respondent company sought time and the matter was adjourned vide order dated 17.9.2010, which reads thus:-

"Present: None for the petitioner.

Mr. Y.S. Turka, Advocate for the respondent.

*Mr. Abhimanyu Sharma, Advocate for the
applicant in CA Nos.430 and 431 of 2010.*

CA No.431 of 2010

This is an application under Order I Rule 10(2) of the CPC for impleading the Committee appointed by the Hon'ble Supreme Court vide order dated 05.09.2006 for the sale of the assets of Group Companies of Golden Forest as the party respondent.

It is averred that the respondent-company i.e. Golden Projects Limited is also a Group Company of the Golden Forest and, therefore, to facilitate the sale of assets of the said company, the Committee appointed by the Hon'ble Supreme Court should also be appointed as the Committee for the sale of its assets instead of Committee constituted by this Court on 27.05.2010 consisting of the Official Liquidator and two Lawyers.

Keeping in view the averments made in the application, I am of the opinion that the Committee appointed by the Hon'ble Supreme Court vide order dated 05.09.2006 is a necessary party in the present proceedings

even to determine: whether the respondent-company is part of the Group Companies of Golden Forest. Therefore the applicant i.e. Committee Golden Forest (India) Limited is impleaded as respondent No.2.

CA stands disposed of.

CP No.115 of 2002

Before the Hon'ble Supreme Court, learned counsel representing the Golden Forest Group of Companies has given list of 110 companies. Such companies were divided into three categories i.e. (i) Golden Forest (India) Limited and its assets mentioned at Serial Nos.1 to 90; (ii) Golden Project and its associate companies mentioned at Serial Nos.91 to 104 and; (iii) Societies and Trusts mentioned at Serial Nos.105 to 110, which are also not part of GFIL.

The Hon'ble Supreme Court permitted the counsel for the Golden Forest to file an affidavit if the properties of the companies mentioned at Serial Nos.91 to 104 belong to Golden Project and its associates and the properties of Societies and Trusts mentioned at Serial Nos.105 to 110 can be taken as the properties of Golden Forest (India) Limited.

Mr. Turka, learned counsel representing the respondent-company seeks some time to produce the affidavit, if any, filed in pursuance of such statement.

List again on 11.11.2010.

CA No.430 of 2010

List along with CP No.115 of 2002.

Sd/- (Hemant Gupta)

17.09.2010

Judge

On 15.12.2010, while taking up the application in CA No.430

of 2010 filed at the behest of the Committee and considering the submissions made on behalf of the rival parties, the Court found that since the Committee had taken number of steps in realising all the assets of Golden Forest (India) Limited and undertaken to some extent, a task of selling the properties belonging to the Golden Forests (India) Limited and also invited the claims from the investors, therefore, the Sale Committee of Golden Forests (India) Ltd. was permitted to continue with the sale of the assets of the Golden Project Limited. The order dated 15.12.2010 is reproduced herein below:-

"The present application is by a Committee constituted by the Hon'ble Supreme Court in respect of sale of the properties in Golden Forest (India) Limited and its Group companies vide order dated 19.08.2004. Subsequently, on 05.09.2006, the Hon'ble Supreme Court has issued comprehensive directions in respect of conduct of proceeding by the said Committee in respect of assets of the Golden Forest (India) Limited.

Golden Projects Limited is said to be an independent company of the group companies of Golden Forest (India) Limited. It is so stated on the basis of list of Companies filed before the Hon'ble Supreme Court in which the companies mentioned at Sr. Nos.91 to 104 were said to be not part of group companies of Golden Forest (India) Limited.

This Court on 27.05.2010 constituted the Sale Committee consisting of the official liquidator and two Lawyers to be appointed by this Court in respect of sale of assets of Golden Projects Limited, who shall also associate a representative of the respondent-company with them. The said order reads as under:-

"Having heard learned counsel for the parties for some time, it appears that the interim directions earlier issued needs to be modified to the extent that the respondent-company may be permitted to dispose of a part of the lands owned by it to discharge its debt liability subject to the condition that the entire sale process is supervised by a Committee consisting of the Official Liquidator and two lawyers to be appointed by this Court, who shall associate a representative of the respondent-company with them.

List on 13.08.2010 to enable learned counsel for the respondent-company to furnish details as to which parcel of land the company wants to be disposed of first."

The present application has been filed by the Committee constituted in terms of the Hon'ble Supreme Court order for modification of the aforesaid order. It has been asserted that the said committee has taken a number of steps in realizing all the assets of group companies of the Golden Forest (India) Limited and that the committee has invited claims from the investors/creditors of Golden Forest (India) Limited in the year 2004 and over 17 lac claims have been received. The Committee has already advertised the properties owned by the Golden Projects Limited and its group Companies as well as invited claim from the investors and more than one lac claims have been received. Therefore, the said sale committee should be permitted to continue with the sale of the assets of the Golden Projects Limited as well.

The management of the company through its counsel Mr. Turka has produced on record an application allegedly filed by the provisional liquidator in CP No.60 of 2001, which proceedings led to an order passed by the Hon'ble Supreme

Court constituting sale Committee. From the said application, it transpires that M/s Golden Projects Limited has about 11 subsidiary companies and that the Golden Forest (India) Limited, Golden Projects Limited and their subsidiary companies are controlled and managed by one family known as "Syals" through A.L. Syal, R.K. Syal, his wife Neena Syal, his sister Pamila Syal, brother-in-law H.K. Sinha and another brother.

This Court constituted sale Committee consisting of the Official Liquidator and two Lawyers to be appointed by this Court, who shall associate a representative of the respondent-Company with them, to dispose of the assets of M/s Golden Projects Limited and its associate Companies

Whether the Order dated 05.09.2006 of Hon'ble Supreme Court in respect of assets of Golden Forest (India) Limited and its associate Companies is inclusive of the Golden Projects Limited is not free from doubt. But the fact remain that M/s Golden Projects Limited and its associate Companies are also managed and controlled by the same family. The nature of investment and the issued therefrom are common to that the Golden Forest (India) Limited and Golden Projects Limited.

Therefore, to avoid contradictory and conflicting proceedings and keeping in view the fact that the sale Committee constituted by the Hon'ble Supreme Court has proceeded ahead in respect of sale of the Assets of the Golden Projects Limited and has also invited claim from the investors. I deem it appropriate to constitute the said sale Committee for the purpose of sale of assets of M/s Golden Projects Limited and its associate Companies as well.

The Provisional Liquidator appointed by the Hon'ble Supreme Court is a former Judge of High Court and the other

members are two former District Judges. The conduct of sale by such distinguished personalities shall invite more confidence of the effected parties than the sale Committee by this Court on 27.05.2010, therefore, in modification of the Order dated 27.05.2010, the sale Committee constituted by the Hon'ble Supreme Court vide Order dated 19.08.2004 in respect of sale of the assets of the Golden Forest (India) Limited shall be the sale Committee for the sale of the assets of Golden Projects Limited and its associate Companies as well.

Such sale Committee may take assistance from the representative of the Company, as it may consider appropriate, so that the sale process of the assets of the Company is completed expeditiously and obtain maximum price. The sale conducted by the Sale Committee shall be subject to confirmation by this Court.

Disposed of accordingly."

The aforementioned order was assailed by the Company by filing CAPP No.2 of 2011, but the same was dismissed vide order dated 14.2.2011, which is reproduced herein under:-

"This appeal has been filed against an order dated 15.12.2010, passed by the learned Single Judge, allowing an application filed at the instance of a Committee, constituted by the Hon'ble Supreme Court on 19.8.2004, to deal with the properties of Golden Forest (India) Limited, a company under liquidation.

Heard counsel for the parties.

A perusal of the paper book indicates that this Court, on 27.5.2010, constituted a Sale Committee of Official Liquidator and two lawyers, to be appointed by the Court, to effect sale of the assets of the appellant i.e. Golden Projects Limited.

It is case of the appellant that the Golden Projects Limited is an independent Company from the Golden Forest (India) Limited. This plea was rejected by the learned Single Judge, by observing as under:-

"This Court constituted Sale Committee consisting of the Official Liquidator and two lawyers to be appointed by this Court, who shall associate a representative of the respondent-Company with them, to dispose of the assets of M/s Golden Projects Limited and its associate companies.

Whether the order dated 05.09.2006 of Hon'ble Supreme Court in respect of assets of Golden Forests (India) Limited and its associate companies is inclusive of the Golden Projects Limited is not free from doubt. But the fact remains that M/s Golden Projects Limited and its associate Companies are also managed and controlled by the same family. The nature of investments and the issues arising therefrom are common to that of Golden Forests (India) Limited and Golden Projects Limited.

Therefore, to avoid contradictory and conflicting proceedings and keeping in view the fact that the Sale Committee constituted by the Hon'ble Supreme Court has proceeded ahead in respect of sale of the assets of the Golden Projects Limited and has also invited claims from the investors, I deem it appropriate to constitute the said Sale Committee for the purposes of sale of assets of M/s Golden Projects Limited and its associate Companies as well.

The Provisional Liquidator appointed by the Hon'ble Supreme Court is a former Judge of High Court and the other members are two former District Judges.

The conduct of sale by such distinguished personalities shall invite more confidence of the effected parties than the Sale Committee to be constituted by this Court on 27.05.2010. Therefore, in modification of the order dated 27.05.2010, the Sale Committee constituted by the Hon'ble Supreme Court vide order dated 19.08.2004 in respect of sale of the assets of the Golden Forest (India) Limited shall be the Sale Committee for the sale of the assets of Golden Projects Limited and its associate Companies as well."

We feel that the order passed is perfectly justified. Let there be contradictory finding by the Committees, it was felt desirable that let sale of the properties of the golden forest (India) Limited and the appellant be conducted by the same committee.

Counsel for the appellant has failed to show any prejudice which may be going to be caused to the appellant in terms of the order passed by the teamed Single Judge, under challenge. Except raising technical objections, which also were not proved on record, no argument has been addressed on merits to assail the findings given by the learned Single Judge.

Dismissed."

The aforementioned order was also assailed by the Company by filing Special Leave to Appeal (Civil) No.20403 of 2011, but the same was dismissed in limine vide order dated 5.8.2011. The order dated 5.8.2011 reads thus:-

"Date: 05/08/2011 This Petition was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE P. SATHASIVAM

HON'BLE DR. JUSTICE B.S. CHAUHAN

For Petitioner(s) Mr. Shailendra Bhardwaj. Adv.

Ms. Aroma Sharma Bhardwaj. Adv.

For Respondents)

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the petitioner and perused the relevant material.

We do not find any valid and legal ground for interference. The special leave petition is dismissed."

The proceedings in CP No.115 of 2002 continued to remain pending and on 16.1.2013, this Court, in the presence of the counsel for the Committee and as well as the investors, fixed the matter to determine the issue whether M/s Golden Project Ltd., i.e., respondent-Company is a subsidiary and/or sister concern of M/s. Golden Forests (India) Ltd. and as to whether the sale of assets and consequential confirmation of such sale is to be done by this Court or by the Delhi High Court in terms of the orders passed by the Hon'ble Supreme Court in the case of M/s. Golden Forests (India) Ltd. The order dated 16.1.2013 reads thus:-

"Present: Mr. Anand Chhibher, Senior Advocate with

Mr. Vaibhav Sphni, Advocate for the petitioner(s)

Mr. YS Turka, Advocate for the Company

Mr. AS Narahg, Advocate for the Committee

Mr. PC Goyal, Advocate and

Mr. Ashok Jindal, Advocate for the applicants.

List for arguments on 01.05.2013 on the issue whether M/s. Golden Projects Ltd.-the respondent-Company is a subsidiary and/or sister concern of M/s. Golden Forests (India) Ltd. as it would determine whether the sale of assets and

consequential confirmation of such sale is to be done by this Court or by the Delhi High Court in terms of the orders passed by the Hon'ble Supreme Court in the case of M/s Golden Forests (India) Ltd.

Photocopy of this order be placed on the record of other connected matters(s)."

It would not be out of place to mention here that vide order dated 15.12.2010, this Court had only granted liberty to the Committee to undertake the task of selling the properties, but the sale of the properties was to be confirmed subject to the order of this Court.

This Court, vide order dated 16.8.2013, while noticing the order dated 25.7.2013 passed by the Delhi High Court observed that it would not be possible to form a definite opinion as to whether the Golden Projects Ltd. is a subsidiary of Golden Forests (India) Ltd., as the expression "subsidiary" is a well known legal connotation and unless its basic ingredients are satisfied, no such conclusion can be drawn. The order dated 16.8.2013 reads thus:-

"With reference to the previous order, it is pointed out by Mr.Narang that after remand by the Hon'ble Supreme Court, a Division Bench of the Delhi High Court vide order dated 25.07.2013 passed in WP(C) 1399/2010 (National Investor Forum Regd. Vs. Golden Forests India Ltd.) has dismissed the applications, seeking to establish that the Golden Projects Ltd. is a separate 'legal entity' different than the Golden Forest India Ltd. On going through the order passed by Delhi High Court or the orders of the Hon'ble Supreme Court referred to, it may not be possible to form a definite opinion that the Golden Projects Ltd. is a subsidiary of Golden Forests India

Ltd.

The expression "subsidiary" is a well known legal connotation and unless its basic ingredients are satisfied, no such conclusion can be drawn.

List on 29.11.2013.

The respondent shall meanwhile place on record the relevant material to establish that Golden Projects Ltd. is a 'subsidiary' of Golden Forests India Ltd.

Photocopy of this order be placed on the record of other connected matters."

The aforementioned order was not challenged by the Company or by the Committee and had attained finality. Since time and again there has been reference to the order dated 5.9.2006 passed by the Hon'ble Supreme Court, it would be apt to extract the relevant portion of the order for determination of the question/issue raised in the present application, which reads as under:-

"44. Insofar as the properties of the companies mentioned at Sl.Nos.91-104 belonging to Golden Project and its associates and the properties of societies and trusts mentioned at Sl.Nos.105-110 are concerned, Mr.Jain states that he would seek instructions and file an affidavit if they can be taken as the properties of GFIL, within two weeks from today."

On perusal of the aforementioned Para 44 of the order, it appears that neither the Company nor the Committee had brought to the notice of the Hon'ble Supreme Court and this Court as to whether the properties mentioned at Sr.Nos.91-104 belonged to Golden Projects and its associates and as well as the properties mentioned at Sr.Nos.105-110 belonged to the Golden Forests (India) Ltd. or not. Even the Committee has

also not made any efforts in this regard.

Mr. Atul V. Sood, Advocate appearing on behalf of the applicant submits that almost five years have elapsed, but the Company had not taken any steps to sell the properties of the Golden Forests (India) Limited and the investors are left in lurch. The sole idea for referring the matter to the Committee was to sell the properties so that the grievance of the investors, who had invested their hard-earned money, would have been vindicated by selling the properties belonging to the Golden Projects Ltd. He has further submitted that the Committee is taking the aid of the orders passed from time to time by Hon'ble the Supreme Court and as well as by the Delhi High Court and in view of such situation, the Committee has not even attempted to identify the list of investors of *Golden Projects Ltd.* and the properties of the *Golden Projects Ltd.* He has further submitted that the stand taken by the respondent Company by taking the aid of the orders where time and again there is a reference of Golden Forests (India) Ltd. and its subsidiary Companies or Group of Companies did not reckon and envisage the properties belonging to the Golden Projects Ltd. being the subsidiaries of the Golden Forests (India) Ltd. In this regard, he has cited Section 4 of the Companies Act, 1956. For the sake of brevity, Section 4, *ibid*, is reproduced herein below:-

"4. Meaning of "holding company" and" subsidiary". (1)
For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if,--

(a) that other controls the composition of its Board of directors; or

(b) that other-

(i) where the first- mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;

(ii) where the first- mentioned company is any other company, holds more than half in nominal value of its equity share capital; or]

(c) the first- mentioned company is a subsidiary of any company which is that other's subsidiary."

Mr.A.S.Narang, learned counsel appearing on behalf of the Committee has raised the following submissions over and above the averments made in the reply filed on behalf of the Committee:-

a) It has been observed that the reply with regard to the efforts made by the Committee vis-a-vis identifying the list of investors and as well as the properties owned and belonging to the Golden Projects Ltd. is conspicuously absent. The entire thrust of the reply is pertaining to the properties owned by the Golden Forests (India) Ltd. and the nomenclature used is '**Golden Forests Group of Companies**'. The Committee has relied upon the order dated 15.10.2008, whereby it was authorised to take possession of all the properties owned by the respondent. It would not be out of place to mention here that the respondent in the aforementioned order was none else but Golden Forests (India) Ltd. The complete sale of the land.

built-up property taken over by the Committee and sold has been annexed as Annexure R-5, which pertains to the properties owned by the Golden Forests (India) Ltd. and NOT by Golden Projects Ltd., except two properties of Golden Projects for which the Committee has sold the same as way back on 17.8.2007 and 16.3.2012, i.e., one before the order dated 15.12.2010 and one afterwards. Even the details of the sale proceeds of the said land have also not been disclosed, though the bid amount has been mentioned, but no efforts has been made to bring it to the notice of this Court, nor any application has been filed in this Court for seeking confirmation of the said sale, which was required to be filed in pursuance to the order dated 15.12.2010 and even after having passing of the order by the Delhi High Court and as well as the impleadment at their behest, which attained finality upto the Hon'ble Supreme Court, as the same was assailed by the Company, namely, Golden Projects Ltd.

b) In paragraph 10 of the reply, it has been mentioned that apart from the properties of the Golden Forests (India) Ltd., properties belonging to Golden Tourists Resorts and Developers Ltd. and Super Bricks Ltd. were also auctioned and sold at that time. The reply is completely silent with regard to the steps taken in respect of properties belonging to M/s Golden Projects Ltd. sold after the order dated 15.12.2010.

except the one referred to in preceding para. The Committee has also enclosed copy of the auditor's report, which pertained to the properties belonging to the Golden Forests (India) Ltd.

c) On going through the audit report, it is borne out that huge amount of money is being spent towards securing of the property belonging to the Golden Forests. As per the audit report as on 31.3.2014, a sum of ₹44,36,932 - has been spent towards the security service charges, besides other expenses which I need not to deliberate upon. It appears that the money realised by the Committee with regard to the property of Golden Forests (India) Ltd. is lying deposited in the F.D.Rs. though incurring interest, but there are enormous heavy expenses in securing the properties belonging to the Golden Forests (India) Ltd. It appears that the Committee has also been assigned heavy and arduous task to look after the affairs of the Company belonging to the Golden Forests (India) Ltd. *

I have heard the learned counsel for the parties and appraised the paper book and as well as their arguments and found that the application deserves to be allowed for the following reasons:-

- i) Taking a clue from the auditor's report, it appears that the Committee has been assigned the heavy task to secure the properties belonging to Golden Forests (India) Ltd. Two of the members of the Committee, in my view, have by now attained the age of 89 and 84 years and, thus, it would not be in the

fitness of things to permit the Committee to continue with the management and the sale of the properties belonging to the Golden Projects Ltd.

ii) The order dated 16.8.2013, *ibid.*, has not been assailed by the Committee. The aforementioned order has been passed by taking into consideration the order dated 25.7.2013 passed by the Delhi High Court in W.P.(C) 1399 of 2010, which came to be passed, whereby order dated 20.1.2010 passed by the Committee had been challenged. By that time, the Sale Committee had not been assigned the task to sell the property belonging to Golden Projects Ltd. The Sale Committee, which had moved the application bearing CA No.430 of 2010 and sought the impleadment, as noticed above, invited direction to deal and sell the properties belonging to the Golden Projects Ltd. vide order dated 15.12.2010, but subject to confirmation of sale by this Court;

iii) The order dated 16.8.2013 and orders prior thereto have also not been brought to the notice of the Delhi High Court. The affidavit/reply filed on behalf of the Sale Committee is conspicuously absent with regard to the steps being taken to identify the properties belonging to the Golden Projects Ltd. and as well as list of investors, except two properties, one which has been sold after the order dated 15.12.2010 and it has not cared to move any application for seeking confirmation of

the sale. Had that exercise been done, perhaps the Court would have had an occasion to order for disbursement of the amount to the investors by passing an order in the main company petition since the petition had already stood admitted:

iv) The Legislature in its wisdom has clearly defined the definition of word "subsidiary" in Section 4 of the Companies Act, 1956, but there is no ambiguity to the same. No such evidence or document has been placed on record to show that the Company, namely, Golden Projects Ltd. is a subsidiary of Golden Forests (India) Ltd., the details of which have been given at Sr.Nos.91-104. Similarly, the subsidiary companies belonging to Golden Forests (India) Ltd. are figuring at Sr.Nos.1-90;

v) It is a settled law that majority share holding of the subsidiary company is held by holding company. Even otherwise, had this Committee been under the impression that the property belonging to Golden Projects Ltd. is the subsidiary or Group of Companies of Golden Forests (India) Ltd., it would have been mentioned in its application bearing No.430 of 2010.

Thus, in my view, the Golden Projects Ltd. is a separate and a legal juristic entity and is not subsidiary of Golden Forests (India) Ltd. The Sale Committee probably is under the wrong impression that as and when any observation has been made by the Hon'ble Supreme Court while passing the order

with regard to the properties of Golden Forests (India) Ltd by using the nomenclature of Group of Companies, the Golden Projects Ltd. would also fall in that category. The position is otherwise. On going through the orders passed from time to time by the Delhi High Court or the Hon'ble Supreme Court, there has not been any adjudication whether the Golden Projects Ltd. is a subsidiary or an independent/separate entity. Until and unless the aforementioned question is not decided, this Court would not have addressed the issue for the purpose of deciding the application in hand.

Even the publication done by the Joint Registrar in transferring the cases was in respect of cases belonging to the Golden Forests (India) Ltd. and not that of the Golden Projects Ltd. This Court vide order dated 7.2.2008 did not transfer the matters pertaining to the respondent-Company, i.e., Golden Projects Ltd. For the sake of brevity, the order dated 7.2.2008 is reproduced herein below:-

"This is an Application for revival of the Company Petition No. 115 of 2002 which was adjourned sine die vide order dated 06.12.2004. It has been mentioned that the Company Petitions relating to the Respondent-Company pending in this Court have not been transferred to the Hon'ble Supreme Court by orders of the Hon'ble Supreme Court and the petitions be revived for further proceedings.

This application is allowed. Let C.P. No. 115 of 2002 be listed before the Court along with all connected

matters.

List on 28.02.2008"

- vi) This Court cannot remain oblivious of the plight of the investors, who had invested their hard-earned money in the project, which the respondent-Company had projected by giving rosy picture. They have not been able to recover their hard-earned money despite the fact that the litigation is pending in various courts for more than a decade.
- vii) There is already order of admission in the company petition bearing No.115 of 2002 and the subsequent proceedings vis-a-vis winding up order is yet to be passed.
- viii) There is another aspect to be looked into. This Court vide order dated 20.11.2009 directed the Official Liquidator to summon the record from the office of Registrar of Companies and as well as the details of founding and subsequent Directors of the Company along with last two pending annual returns. In pursuance to the aforementioned orders, the Official Liquidator had submitted his inspection report vis-a-vis the records from the office of the Registrar of Companies and after hearing the learned counsel for the parties, the Court, vide order dated 27.5.2010, granted permission to the respondent-Company to dispose of the part of the assets owned by it to discharge its debt liability and in that regard directed the Company to appoint a committee consisting of Official Liquidator and two Lawyers. The orders dated 20.11.2009, 22.01.2010 and

27.5.2010 read thus:-

Order dated 20.11.2009:-

*"Present: Mr. Anand Chhibber, Advocate.
Mr. R.B.S. Jain, Advocate.
Mr. Y.S. Turka, Advocate for the
Respondent-Company"*

*As prayed for by counsel for the respondent-
Company, adjourned to 22.01.2010.*

*In view of the fact that the same company is
the company-in-default in all the connected matters,
learned counsel representing the respondent-Company
in this case, is directed to accept notice and have
instructions from the said Company in all the connected
cases.*

*The Official Liquidator is also directed to
summon records from the office of the Registrar of
Companies as well as the details of the founding and
subsequent Directors of the Company, along with last
two pending annual returns of the Company.*

*Photocopy of this Order be placed on the
record of connected matters."*

Order dated 22.01.2010:-

*"Inspection report of Registrar of companies
furnished by the Official Liquidator, is taken on record.*

*As prayed for by the counsel for the parties,
adjourned to 25.03.2010 to enable them to furnish better
particulars on record.*

*Counsel for the company in default shall also
place on record the details of the land(s) owned by it."*

Order dated 27.05.2010:-

"Having heard learned Counsel for the parties for

some time, it appears that the interim directions earlier issued needs to be modified to the extent that the respondent-Company may be permitted to dispose of a part of the lands owned by it to discharge its debt liability, subject to the condition that the entire sale process is supervised by a Committee consisting of the Official Liquidator and two Lawyers to be appointed by this Court, who shall also associate a representative of the respondent-Company with them.

List on 13.08.2010 to enable learned Counsel for the Respondent-Company to furnish details as to which parcel of land the Company wants to be disposed of first."

ix) As I have already noticed above, this Court had allowed the application of the Committee to be impleaded as respondent No.2 and as well as the fact that the properties mentioned at Sr.Nos.91-104 were not part of the Golden Forests (India) Ltd. The said order was passed in the presence of the counsel representing the Committee;

x) I have seen the record inspected by the Official Liquidator from the office of the Registrar of Companies, vis-a-vis property of respondent-Company (Golden Projects Ltd.), i.e., the annual returns, share holding etc. etc. and found that the Golden Projects Ltd. is not a subsidiary of Golden Forests (India) Ltd. The aforementioned aspect has not been reflected in any my orders, much less, pondered upon by ANY COURT till date, much less, brought to the notice of the Committee. In

my view, had this order been brought to the notice of the Court, probably the Committee would, on its own, move an application seeking modification of the order dated 15.12.2010.

(xi) The contention raised by Mr.Narang that since time and again the nomenclature used in the orders passed from time to time has been Golden Forests (India) Ltd. and its Group of Companies would also envisage the properties at Sr Nos 91-104 belonging to Golden Projects Ltd. to be of Golden Forests (India) Ltd. is not sustainable for the reasons aforementioned.

(xii) It is strange that the Sale Committee is contesting the present application tooth and nail, rather, keeping in view the age of the members of the Committee, the members of the Committee ought to have volunteered to surrender the task of selling the properties belonging to Golden Projects Ltd.

In view of what has been observed above, the order dated 15.12.2010 is hereby modified with the following directions:-

a) The Committee appointed by the Hon'ble Supreme Court in Golden Forests (India) Ltd. shall no longer be the Sale Committee of the properties belonging to Golden Projects Ltd. and its subsidiaries. I deem it appropriate to appoint the following members as the members of the Sale Committee:-

- (1) Mr.Justice Jasbir Singh (Retd.) as Chairman; and
- (2) Priya Bhushan and Associates, Chartered Accountant from the panel of the Official Liquidator, as member.

Their remuneration is fixed as ₹1,25,000 - and ₹1,00,000/- per month respectively by capping limit upto 8 months, to be paid from the sale proceeds of the properties of the Golden Projects Ltd. already sold and the interest incurred from the FDRs. Registrar Judicial is directed to communicate the decision of this order to the members of the Committee and seek their consent.

- b) The aforementioned Sale Committee shall, immediately, on receipt of the order take over the assets both movable and immovable of the Golden Projects Ltd. from the date they assume charge and undertake the task to identify the list of investors and the properties of the Golden Projects Ltd.:
- c) The newly appointed Committee is further directed to expeditiously, preferably within eight months, after identifying the property belonging to the Golden Projects Ltd. and its subsidiaries, put the same for sale after causing wide publication in the Newspapers and making an effort to get highest price, so that the grievance of the investors is redressed.
- d) The Sale Committee already appointed vide order dated 15.12.2010 is directed to hand over the entire record, i.e., books of accounts, FDRs, the proceeds of the properties sold, if any, pertaining to the Golden Projects Ltd. and its subsidiaries to the newly considered Committee;
- e) The Committee is further directed to periodically report

to this Court regarding the steps taken for identification, sale and sale proceeds, if any in respect of the properties belonging to the Golden Projects Ltd. and its subsidiaries;

- f) The Committee can also issue an interrogatory to the Ex-Directors/Management of the respondent-Company in case they have any difficulty in ascertaining the identity of the Company.

The application stands disposed of accordingly.

July 31, 2015
ramesh

(AMIT RAWAL)
JUDGE

TRUE COPY

PUNJAB AND HARYANA HIGH COURT**CA No.273 of 2015 and CA No.228 of 2015****The Plantation Investors Protection Society****vs.****M/s Golden Projects Ltd.**

Present: Mr. Anand Chhibar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate
for the applicant (In CA No.273 of 2015).

Mr. Atul V. Sood, Advocate, for the Investors.

Mr. P.C.Goyal, Advocate, for the applicants.

Mr. Anil Sharma, Advocate with
Mr. Y.S.Turka, Advocate, for the Company.

Mr. A.S.Narang, Advocate for the Committee (GFIL).

The application i.e. CA No.273 of 2015 is allowed, subject to all just exceptions. Annexure A-29 is taken on record.

In view of the order dated 31.07.2015 passed in CA No.377 of 2015, the impugned orders Annexure A-20 and A-29 are quashed.

Accordingly, the applications are allowed,

(AMIT RAWAL)
JUDGE

August 07, 2015
savita

True copy

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CP No.115 of 2002 (O&M)
Date of decision: 07.08.2015

The Plantation Investors Protection Society (Regd.) ... Applicant

Vs.

Golden Projects Ltd. and another ... Respondents

CORAM: HONBLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Anand Chhibar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate
for the petitioner.

Mr. Atul V. Sood, Advocate, for the Investors.

Mr. P.C.Goyal, Advocate, for the applicants.

Mr. Anil Sharma, Advocate with
Mr. Y.S.Turka, Advocate, for the Company.

Mr. A.S.Narang, Advocate
for the Committee (GFIL).

AMIT RAWAL, J. (Oral)

This Court vide order dated 11.04.2002 had admitted the company petition and the factum of the petition was ordered to be published. Thereafter, the matter was adjourned sine die.

This Court had passed order dated 31.07.2015 in CA No. 377 of 2015 in CP No.115 of 2002 by holding that the company is an

independent entity and further appointed a Sale Committee of the properties belonging to Golden Projects Ltd. and its subsidiaries.

For the reasons stated in CA No.377 of 2015, I deem it appropriate for winding up of the respondent-company.

Ordered accordingly.

Let winding up order be published in 'The Indian Express' and 'Dainik Tribune' and in the Official Gazette of Government of Punjab.

There is no need of appointing independent Liquidator for a direction to take charge of the movable and immovable assets of the respondent-company as I have already appointed the Sale Committee which would undergo exercise of taking charge of the properties. In essence, the Committee shall be discharging functions and duties assigned, expectedly in a befitting manner. The Committee, may, if need be, free to take services of the Official Liquidator.

(AMIT RAWAL)
JUDGE

August 07, 2015
savita

TRUE COPY

IN THE SUPREME COURT OF INDIA
[Order XXI Rule 3(1)(a)]
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION
(Under Article 136 of Constitution of India)
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2015
[WITH PRAYER FOR INTERIM RELIEF]

(Against the Impugned interlocutory Order dated 31.07.2015 in CA No. 377 of 2015 and interlocutory Order dated 07.08.2015 passed in C.A. No. 228 of 2015 and C.A. No. 273 of 2015 and final order dated 07.08.2015 passed in C.P. No. 115 of 2002 by the High Court of Punjab and Haryana at Chandigarh)

BETWEEN

POSITION OF PARTIES

Before the
High Court

Before this
Hon'ble
Court

Committee – Golden Forests (India)
Limited
(Appointed by Supreme Court of India)

Appellant

Petitioner

AND

1. The Plantation Investors
Protection Society (Regd.)
H.No. 793, Sector 43-A
Chandigarh
Through its General Secretary
Mr. Jagvir Sharma

Petitioner

Contesting
Respondent
No. 1

2. M/s. Golden Project Limited
Registered office :
Chandigarh Extension
National Highway 22,
Near Ambala, Tehsil Rajpura
Distt. Patiala, Punjab
Through its Managing Director
Ms. Pamila Syal

Respondent

Contesting
Respondent

No. 1

No. 2

3. Hotel Drive In Mussoorie
(Uttarakhand)

Through M/s. BCC Builders Pvt.
Ltd.

and Hotel Drive In Dhanaulti,
Tehri Garhwal

Through its Managing Director
Mr. S.P.Singh

Respondent
No. _____

Contesting
Respondent
No. 3

To

THE HON'BLE CHIEF JUSTICE OF INDIA AND
HIS COMPANION HON'BLE JUDGES OF
HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition is being preferred against the Impugned interlocutory Order dated 31.07.2015 in CA No. 377 of 2015 and interlocutory Order dated 07.08.2015 passed in C.A. No. 228 of 2015 and C.A. No. 273 of 2015 and final order dated 07.08.2015 passed in C.P. No. 115 of 2002 by the High Court of Punjab and Haryana at Chandigarh.

By the interlocutory order dated 31.07.2015 passed in CA No. 377 of 2015, the Hon'ble Punjab & Haryana High Court has held M/s Golden Projects Ltd to be a separate Company from the Golden Forests (India) Ltd and replaced the sale committee by a new committee.

By the interlocutory order dated 07.08.2015, the Punjab and Haryana High Court has allowed the applications being CA No. 228 of 2015 and CA No. 273 of 2015, thus quashing the order dated 20.01.2010 passed by the Petitioner (the Committee appointed by this Hon'ble Court) which has been affirmed by the Delhi High Court by order dated 25.07.2013 and by this Hon'ble Court on 26.03.2015.

The Punjab & Haryana High Court also quashed the warrants of possession dated 01.04.2015 issued by the Committee (Annexure A-29) to the District Magistrate, Dehradun (Uttarakhand) in respect of the property Drive-Inn Mussoorie and to District Magistrate, Tehri Garhwal (Uttarakhand) in respect of the property Drive-Inn Dhanolti to take over their possession. The High Court also quashed the warrants of possession issued by the District Magistrate to the Manager Hotel Drive Inn Mussoorie fixing the date of 19.05.2015 for handing over possession to the Committee GFIL.

By the final order dated 07.08.2015 passed in C.P. No. 115 of 2002 by the High Court of Punjab and Haryana at Chandigarh, the Company Petition has been allowed and the Company M/s Golden Projects Limited has been wound up and the new Sale Committee appointed by replacing the Committee GFIL appointed by this Hon'ble Court has been directed to take charge of the assets of M/s Golden Projects Limited, in direct contravention of orders passed by this Hon'ble Court.

- 1A. That no LPA/Writ Appeal lies before the Hon'ble High Court from the impugned judgment.

2. QUESTIONS OF LAW:

That the petitioner raises the following substantial questions of law for the purpose of appreciation and consideration by this Hon'ble Court:

- A. Whether Ld. Company Judge of Punjab and Haryana High Court could have surpassed the orders passed by the Delhi High Court on 25.07.2013 as affirmed by this Hon'ble Court on 26.03.2015 as the Hon'ble Punjab and Haryana High Court has in violation of the orders passed by this Hon'ble Court quashed the order dated 20.01.2010 passed by the Petitioner Committee GFIL appointed by this Hon'ble Court?
- B. Whether in view of the fact that the issue as to whether M/s Golden Projects Limited is an independent Company from M/s Golden Forests (India) Limited and the restraint order passed by this Hon'ble Court on the Company M/s Golden Forests (India) Limited are not applicable to the Company M/s Golden Projects Limited has already been decided by this Hon'ble Court which has allowed the Committee GFIL to sell the assets of M/s Golden Projects Limited, could the Punjab and Haryana High Court have proceeded to examine the issue as to whether M/s Golden

Projects Limited was a separate company from M/s Golden Forests (India) Limited ?

- C. Whether the Punjab and Haryana High Court could have entertained an application on behalf of M/s BCC Builders Pvt. Ltd. and Sh. S.P. Singh with regard to properties Hotel Drive Inn Mussoorie and Hotel Drive In Dhanaulti when the order passed by the Committee dated 21.01.2010 regarding sale of the property has been upheld by the Delhi High Court and the appeal by M/s Hotel Drive Inn before this Hon'ble Court been dismissed on 26.03.2015?
- D. Whether in view of the fact that several applications filed before this Hon'ble Court to plead that the assets of other group companies cannot be sold by the Committee-GFIL appointed by this Hon'ble Court have been dismissed, could the Punjab and Haryana High Court has proceeded to pronounce on whether M/s Golden Projects Limited is an independent Company and not amenable to the jurisdiction of the Committee-GFIL?

3. DECLARATION IN TERMS OF RULE 3 (2)

The Petitioners state that no other petition seeking leave to appeal has been filed by the Petitioner herein against the Impugned Interlocutory Order dated 31.07.2015 in CA No. 377 of 2015 and interlocutory Order dated 07.08.2015 passed in C.A. No. 228 of 2015 and C.A. No. 273 of 2015 and final order dated

07.08.2015 passed in C.P. No. 115 of 2002 by the High Court of Punjab and Haryana at Chandigarh.

4. **DECLARATION IN TERMS OF RULE 5**

The Annexure P-1 to P-26 produced along with the Special Leave Petition are true copies of the pleadings/documents which formed a part of the records of the case in the Court below against which Order the leave to appeal is being sought for in this petition.

5. **GROUND:**

It is respectfully submitted that the present Special Leave to Appeal is being preferred on the following amongst other grounds taken without prejudice to each other:-

- A. Because the Ld. Company Judge of Punjab and Haryana High Court has erred in surpassing the orders passed by the Delhi High Court on 25.07.2013 as affirmed by this Hon'ble Court on 26.03.2015. The Hon'ble Punjab and Haryana High Court has in violation of the orders passed by this Hon'ble Court quashed the orders dated 20.01.2010 passed by the Petitioner Committee GFIL appointed by this Hon'ble Court.

The sales of properties known as Hotel Drive Inn Mussoorie and Hotel Drive In Dhanaulti belonging to M/s Golden Projects Limited were rejected by the Committee and orders were passed on 20.01.2010, which orders

were impugned before this Hon'ble Court by M/s BCC Builders Pvt. Ltd. and Sh. S.P.Singh in I.A. No. 116-119 of 2010 in TC (C) No. 2 of 2004. The said applications were transferred to Delhi High Court and the subsequent renumbered applications being CM No. 4306 of 2010 and CM No. 5546 of 2010 in WP No. 1399 of 2010 were rejected by the Delhi High Court by a detailed order. It was held by the Delhi High Court that repeated efforts were made by different individuals claiming that M/s Golden Projects Limited was not part of GFIL Group of Companies and therefore its properties cannot be sold by the Committee, were considered and rejected by the Supreme Court. The aforesaid applications filed by BCC Builders Pvt. Ltd. and Sh. S.P.Singh were rejected with cost. by the Delhi High Court.

Thereafter the Hon'ble Supreme Court dismissed the SLP filed by the Hotel Drive Inn Mussoorie and Hotel Drive In Dhanaulti through M/s BCC Builders Pvt. Ltd. and Sh. S.P.Singh on 26.03.2015.

- B. Because the High Court has erred in not appreciating that in absolute disregard of the orders passed by the Delhi High Court and this Hon'ble Court, M/s BCC Builders Pvt. Ltd. & Sh. S.P. Singh have mischievously sought to move an application before the High Court of Punjab and Haryana, so that the possession of the properties Hotel

Drive Inn Mussoorie and Hotel Drive In Dhanaulti are not taken away from them. Despite filing detailed replies before the Punjab and Haryana High Court, and bringing to light the fact that the sales in regard to the properties known as Hotel Drive In Mussoorie and Hotel Drive In Dhanaulti were rejected by the Committee-GFIL (appointed by this Hon'ble Court) vide its orders dated 20.01.2010 which orders have been affirmed by this Hon'ble Court, the High Court of Punjab & Haryana has quashed the orders dated 20.01.2010 of the Committee-GFIL and the warrants of possession with regard to the aforesaid properties.

- C. Because the High Court has erred in entertaining an application on behalf of Hotel Drive In Mussoorie and Hotel Drive In Dhanaulti through M/s BCC Builders Pvt. Ltd. & Sh. S.P. Singh. Despite the fact the Committee represented by an advocate appeared before the Punjab and Haryana High Court on 11.05.2015 and informed the said Court that the issue regarding the property M/s Hotel Drive Inn has already been decided / rejected by the Hon'ble High Court of Delhi as well as by this Hon'ble Court, the Punjab and Haryana High Court granted stay of the operation of the orders (A-29) being warrant of possession dated 01.04.2015 issued by the Petitioner (Committee GFIL) to District Magistrate Dehradun in respect of Hotel Drive Inn Mussoorie and to District

Magistrate Tehri Garhwal in respect of property Drive Inn
Dhanaulti.

- D. Because the High Court has erred in entertaining another application being CA No. 273 of 2015 filed by M/s BCC Builders Pvt. Ltd. & Sh. S.P.Singh whereby the warrants of possession issued by the Committee-GFIL were filed, and which had been issued after its orders dated 20.01.2010 have been affirmed by this Hon'ble Court was allowed to be challenged before the Punjab and Haryana High Court.
- E. Because the Punjab and Haryana High Court has erred in hurriedly disposing of the Company Petition being CP No. 115 of 2002 in a matter of 3 months. It is evident that the application filed by GPL Investors Forum Haryana was a bogus Forum which had filed the application for appointment of a separate Committee for sale of assets of M/s Golden Projects Limited, at the instance of the company M/s Golden Projects Limited to create a hindrance in the working of the Committee appointed by this Hon'ble Court.

Though M/s BCC Builders Pvt. Ltd. & Sh. S.P.Singh had filed an application being CA No. 228 of 2015 for setting aside the decision of the Committee GFIL to include the property of M/s Golden Projects Limited within the purview of M/s Golden Forests (India) Limited and with regard to the property Hotel Drive Inn Mussoorie prior in point of

time, the High Court has first chosen to dispose of the CA No. 377 of 2015. CA No. 377 of 2015 though filed by M/s GPL Investors Forum Haryana, has been wrongly stated in the judgment and order dated 31.07.2015 as filed by Plantation Investors Protection Society.

The Punjab and Haryana High Court has incorrectly and erroneously made observations against the Committee GFIL and have replaced the said Committee by the order dated 31.07.2015. Thereafter, the Hon'ble Punjab and Haryana High Court proceeded to decide CA No. 228 of 2015 read with CA No. 273 of 2015 on the basis of the order passed on 31.07.2015 in the application filed by GPL Investors Forum Haryana. The High Court has not dealt with the submissions of the Committee that the rejection of sales of the aforesaid properties has already been affirmed by this Hon'ble Court and has proceeded to set aside the orders of the Committee-GFIL and the consequent warrants of possession in flagrant violation of the order of this Hon'ble Court. The High Court has erred in modifying the order dated 15.12.2010 whereby Committee GFIL appointed by the Hon'ble Supreme Court was appointed as Sale Committee for M/s Golden Projects Limited by the Punjab and Haryana High Court. This order stood merged with the order passed in Company Appeal No. 2 of 2011 dated 14.02.2011 whereby the Appeal of the Company M/s Golden Projects Limited was dismissed.

Further, the said order also stood merged with order dated 05.08.2011 passed by this Hon'ble Court in SLP(C) No. 20403 of 2011 whereby the SLP filed by the M/s Golden Projects Limited was dismissed.

F. Because the High Court has erred in proceeding to decide the issue as to whether M/s Golden Projects Limited was a subsidiary and or sister concern of M/s Golden Forests (India) Limited. The contentions of the Committee GFIL has always been that M/s Golden Projects Limited is a group company / associate of M/s Golden Forests (India) Limited. Further, by several orders this Hon'ble Court has allowed the Committee GFIL to sell the properties of the Company M/s Golden Projects Limited.

G. Because the High Court has erred in holding that M/s Golden Projects Limited is a separate and legal juristic entity and is not a subsidiary of M/s Golden Forests (India) Limited. The High Court has erred in seeking to interpret the orders passed by this Hon'ble Court and holding as follows:-

"The Sale Committee probably is under the wrong impression that as and when any observation has been made by the Hon'ble Supreme Court while passing the order with regard to the properties of Golden Forests (India) Ltd. by using the nomenclature of Group of Companies, the Golden

Projects Ltd. would also fall in that category. The position is otherwise. On going through the orders passed from time to time by the Delhi High Court or the Hon'ble Supreme Court, there has not been any adjudication whether the Golden Projects Ltd. is a subsidiary or an independent/separate entity. Until and unless the aforementioned question is not decided, this Court would not have addressed the issue for the purpose of deciding the application in hand".

- H. Because the High Court has erred in fallaciously observing and recording the submissions of the counsel for the Appellant as follows:-

"Mr. Atul V. Sood, Advocate appearing on behalf of the applicant submits that almost five years have elapsed, but the Company had not taken any steps to sell the properties of the Golden Forests (India) Limited and the investors are left in lurch. The sole idea for referring the matter to the Committee was to sell the properties so that the grievance of the investors, who had invested their hard-earned money, would have been vindicated by selling the properties belonging to the Golden Projects Ltd. He has further submitted that the Committee is taking the aid of the orders passed from time to time by

Hon'ble the Supreme Court and as well as by the Delhi High Court and in view of such situation, the Committee has not even attempted to identify the list of investors of Golden Projects Ltd. and the properties of the Golden Projects Ltd."

Further, the High Court has erred in observing against the Committee merely because the efforts made by the Committee in identifying the list of investors and properties owned and belonging to the M/s Golden Projects Limited was not stated in the reply to the application. It is pertinent to mention that the Committee has taken steps to identify the investors by inviting claims. This Hon'ble Court, by rejecting various IAs, had put its seal of approval on the contention of the Committee that the Group of Companies, Trusts and Societies are part of Golden Forests (India) Limited. This was a clear mandate of the Hon'ble Supreme Court of India that M/s Golden Projects Ltd. and other Group Companies are part of M/s Golden Forests (India) Ltd. The Committee then issued public notices on 01.07.2007 in various leading newspapers to invite claims from the depositors and creditors of Golden Projects Limited and on 11.08.2007 in various leading newspapers to invite claims from the depositors and creditors of subsidiary companies & societies of Golden Forests (India) Limited. The Committee has got prepared a

database of the claims filed in respect of M/s Golden Projects Ltd.

- I. Because the Punjab and Haryana High Court has erred in winding up the Company M/s Golden Projects Limited and appointing a new Sale Committee by replacing the Committee GFIL appointed by this Hon'ble Court.
- J. Because the High Court has erred in not appreciating that this Hon'ble Court had appointed the Petitioner as the Committee for M/s Golden Forests (India) Limited and its group Companies including M/s Golden Projects Limited (Respondent No.2 herein). Several applications had been filed before this Hon'ble Court by several applicants including M/s Golden Projects Limited to plead that the assets of other group companies cannot be sold by the Committee appointed by this Hon'ble Court. This Hon'ble Court has dismissed the said applications.
- K. Because the High Court has erred in not appreciating that the issue as to whether M/s Golden Projects Limited is an independent Company from M/s Golden Forests (India) Limited and the restraint order passed by this Hon'ble Court on the Company M/s Golden Forests (India) Limited are not applicable to the Company M/s Golden Projects Limited has already been decided by this Hon'ble Court.

The following applications have been dismissed by this Hon'ble Court:-

- a) The Directors of five Golden Forests Group Companies namely (1) M/s. Super Bricks Private Limited; (2) M/s. Golden Scientific & Technical Education Society; (3) M/s. Golden Royal Home Financial Corporation Limited; (4) M/s. Golden Tourists Resorts & Developer Limited and (5) M/s. Golden Projects Limited filed objections vide I.A.No.7 to 11 of 2005 respectively in T.C.(C) 68 of 2003 before this Hon'ble Court that these Companies are independent from M/s. Golden Forests (India) Limited.

The said applications did not find favour with this Hon'ble Court and were dismissed.

- b) Ms. Pamila Syal in the capacity of Managing Director, Golden Tourists Resorts & Developer Limited Group company of GFIL had filed I.A.No.53 taking objections that the property namely Drive-Inn 22 situated in Village Kurli, District Mohali could not be sold by the Committee GFIL as the property belongs to Golden Tourists Resorts & Developers Limited. The prayers made by Ms. Pamila Syal in I.A. No.53 of 2006 read as follows:-

- "1. GFIL as appointed by this Hon'ble Court be directed not to sell/advertise for sale the properties which do not belong to Golden Forests (India) Ltd.
2.
3. As by advertising the sale of properties, which do not belong to Golden Forests (India) Ltd. huge public money is being wasted without any reason, it is therefore prayed that appropriate order/directions be issued to the Committee - GFIL so that it confines itself only with the sale of properties belonging to Golden Forests (India) Ltd."

This Hon'ble Court after hearing the parties passed the following order:-

"I.A. No.52 is dismissed as withdrawn. Heard. I.A. No.53 is dismissed. The Committee is at liberty to proceed with the auction".

- c) Shri R.K.Syal (now dead) in the capacity of Managing Director of Golden Forests (India) Limited filed I.A. No.56 of 2006 with the following prayers:-

- "1. The assets of the companies other than Golden Forests (India) Ltd. should not be

sold as these companies are independent and no amount of Golden Forests (India) Ltd is invested in these companies.

2. Since the companies other than GFIL are not before this Hon'ble Court in these proceedings, appropriate direction be issued so that the Committee does not sell the assets of those companies in terms of order dated 5.9.2006 passed by this Hon'ble Court."

This Hon'ble Court passed the following order on 04.01.2007:-

"I.A. No.56 Heard. The Interlocutory Application No.56 is dismissed. However, the applicant would be at liberty to approach the Committee for working out the settlement. If the Committee is prepared to settle, then it may submit a report to this Court."

The above order reaffirms that this Hon'ble Court has put its seal of approval on the contention of the Committee (Petitioner) that the Group of Companies, Trusts and Societies as declared by GFIL are part of Golden Forests (India) Limited and that the Committee GFIL is fully competent to take over all the assets of those companies including Golden Projects Limited and to sell them.

L. Because the High Court has erred in not appreciating that the properties in question belong to M/s Golden Projects Ltd. and were illegally sold to the M/s BCC Builders Pvt. Ltd. and Mr. S.P. Singh. The Committee GFIL issued notices to both the purchasers and after hearing them rejected the Sale Deeds dated 19.10.2004 & 14.08.2007 made in their favour vide detailed orders No. COM/CHD/2010/401 dated 20.01.2010 and No.COM/CHD/2010/402 dated 20.01.2010. The said purchasers of these properties challenged the orders of the Committee (GFIL) in the Hon'ble Supreme Court and in the Hon'ble High Court of Delhi. The purchasers raised the same issue that M/s Golden Projects Ltd. is an independent Company from Golden Forests Group of Companies so the restraint orders passed by the Hon'ble Supreme Court are not applicable to M/s Golden Projects Ltd. On 25.07.2013, the Hon'ble High Court of Delhi rejected the applications CM. 4306 of 2010, 5546 and 5547 of 2010 filed by M/s BCC Builders Pvt. Ltd. and Sh. S.P.Singh. In fact, M/s BCC Builders Pvt. Ltd. and Sh. S.P.Singh should not have been allowed to file CA No.228 and 273 in the Hon'ble Punjab & Haryana High Court under the principle of estoppel and res-judicata.

M. Because the High Court has erred in not appreciating, that the Hon'ble High Court of Delhi while passing the order dated 25.07.2013 considered all earlier orders passed by

the Hon'ble Supreme Court by which the Hon'ble Supreme Court had rejected the claim of M/s Golden Projects Ltd. being independent Company from Golden Forests Group of Companies the same issue and held that:-

"8. It is apparent from the above extracts and the narrative that repeated efforts made by different individuals, claiming that Golden Projects Limited was not part of GFIL group of companies and, therefore, its properties could not be sold by the Committee, were considered and rejected by the Supreme Court. In fact I.A. 52 was filed on behalf of R.K. Syal, MD of Golden Forests by the counsel who appears today and who has filed I.A. 4306/2010. Sh. Ashok Kumar Singh. There is an advertence of I.A. No. 52 in page 61 of the present application in an Annexure, i.e. copy of I.A. 56. Significantly, however, the order made in I.A. 52 whereby Sh. Ashok Kumar Singh withdrew the application preferred on behalf of MD of GFIL has not been disclosed. To compound this, Sh. Ashok Kumar Singh has now sought to address arguments- this time on behalf of alleged, purchasers, claiming that they were bonafide purchasers/transferees. This conduct of the

applicant as well as the learned counsel deserves to be deprecated and the Court does so in strong terms. So far as the reliance on orders of the Punjab and Haryana High Court is concerned, it is apparent from a reading of the Single Judge and Division Bench's orders that notice was not drawn to the orders of the Supreme Court in I.A. Nos. 52, 56 and 57. We have no manner of doubt that had such been the case, the nature of the order could well have been different. We are not required to say anything further.

9. In view of the above discussion, we are satisfied that there is no merit in the applications; they are accordingly dismissed with costs quantified at Rs.1 lakh for each of the applications, i.e. C.M. Appl. 4306/2010 and 5546/2010 to be paid to the Committee within four weeks. C.M. Appl. 4306/2010, 5546/2010 and 5547/2010 are dismissed.

Order dasti

- N. Because the High Court has erred in not appreciating that the Hon'ble Company Judge of Hon'ble Punjab & Haryana High Court ignored the various orders passed by the Hon'ble Supreme Court of India and appointed a separate

Committee to deal with the properties of M/s Golden Projects Ltd. It is pertinent to mention here that even at the cost of repetition that the Hon'ble Punjab & Haryana High Court earlier on 15.12.2010 appointed this Committee to dispose of the properties of M/s Golden Projects Ltd. The Hon'ble Company Judge has vide its order dated 31.07.2015 modified the order dated 15.12.2010 and appointed a separate Committee.

- O. Because the High Court has erred in taking a contrary view while appointing a separate Committee that this Committee has not identified the investors of M/s Golden Projects Ltd. by inviting claims. The Hon'ble Judge, however, while passing the impugned order dated 31.07.2015 has recorded observations made by the earlier Company Judge on 15.12.2010 that this Committee has already invited claims from the investors/ creditors of the GFIL Group of Companies. The relevant portion of the order dated 15.12.2010 which is also reproduced in impugned order dated 31.07.2015 reads as under:-

"The present application has been filed by the Committee constituted in terms of the Hon'ble Supreme Court order for modification of the aforesaid order. It has been asserted that the said committee has taken a number of steps in realizing all the assets of group companies

of the Golden Forest (India) Limited and that the committee has invited claims from the investors/ creditors of Golden Forest (India) Limited in the year 2004 and over 17 lac claims have been received. The Committee has already advertised the properties owned by the Golden Projects Limited and its group Companies as well as invited claim from the investors and more than one lac claims have been received. Therefore, the said sale committee should be permitted to continue with the sale of the assets of the Golden Projects Limited as well."

It is clear from the above that the Hon'ble Company Judge has failed to appreciate the averments made by this Committee and which has been part of the record. Therefore, the impugned order passed the Hon'ble Company Judge of the Hon'ble Punjab & Haryana High Court is liable to be rejected as it is passed on incorrect facts.

- P. Because the High Court has erred in recording of his own observations in place of submissions made by the counsel of the Committee and thereby not recorded the submissions of the Committee in the order dated 31.07.2015 which is totally unlawful and therefore, liable to be quashed.

Q. Because the High Court has erred in not appreciating that the CA No. 377 of 2015 has been filed by one 'GPL Investors Forum' which had no locus standi in the Company. Moreover, the Committee in its reply took preliminary objection as to the identity of the Forum and its relation with the pending matter CP No. 115 of 2002. The Hon'ble Company Judge has instead of deciding preliminary objections on that Forum, recorded that application CA No. 377 is filed by the Plantation Investors Protection Society which is a petitioner in that matter.

R. Because the High Court has erred in not appreciating that this Hon'ble Court transferred all the matters related to M/s Golden Forests (India) Ltd. and pending in various High Courts to the Hon'ble Supreme Court itself with a view to avoid passing of contradictory orders by the different High Courts and appointed Central Committee to realize the assets of the Companies of Golden Forests Group.

6. GROUND FOR INTERIM RELIEF:

A. The issue as to whether M/s Golden Projects Limited is an independent Company from M/s Golden Forests (India) Limited and the restraint order passed by this Hon'ble Court on the Company M/s Golden Forests (India) Limited are not applicable to the Company M/s Golden Projects Limited has already been decided by this Hon'ble Court.

In the circumstances aforesaid, the Ld. Company Judge of Punjab and Haryana High Court could not surpass the orders passed by the Delhi High Court on 25.07.2013 as affirmed by this Hon'ble Court on 26.03.2015. The Hon'ble Punjab and Haryana High Court has in violation of the orders passed by this Hon'ble Court quashed the order dated 20.01.2010 passed by the Petitioner Committee GFIL appointed by this Hon'ble Court.

- B. The sales of properties known as Hotel Drive Inn Mussoorie and Drive In Dhanaulti belonging to M/s Golden Projects Limited were rejected by the Committee vide its two separate orders dated 20.01.2010. These orders were impugned before this Hon'ble Court by M/s BCC Builders Pvt. Ltd. and Sh. S.P. Singh in I.A. No. 116-119 of 2010 in TC (C) No. 2 of 2004. The said applications were transferred to Delhi High Court and were renumbered as CM No. 4306 of 2010 (Drive In Mussoorie) and CM No. 5546-47 of 2010 (Drive In Dhanaulti) in WP No. 1399 of 2010. It was held by the Delhi High Court that repeated efforts were made by different individuals claiming that M/s Golden Projects Limited was not part of GFIL Group of Companies and therefore its properties cannot be sold by the Committee, were considered and rejected by the Supreme Court. The aforesaid applications filed by M/s BCC Builders Pvt. Ltd. and Sh. S.P. Singh were rejected with cost, by the Delhi High Court.

- C. Thereafter the Hon'ble Supreme Court dismissed the SLP filed by the Hotel Drive Inn Mussoorie on 26.03.2015.
- D. In absolute disregard of the orders passed by the Delhi High Court and this Hon'ble Court, M/s BCC Builders have mischievously sought to move an application before the High Court of Punjab and Haryana, so that the possession of the property Hotel Drive Inn Mussoorie is not taken away from them. Despite filing detailed replies before the Delhi, Punjab and Haryana High Court, High Court and bringing to light the fact that the Delhi High Court has stated that properties of M/s Golden Projects Limited could be sold by the Committee-GFIL and despite confirmation of the order dated 25.07.2013 passed by the Hon'ble High Court of Delhi by the Hon'ble Supreme Court of India vide its order dated 26.03.2015, the Punjab and Haryana High Court has quashed the order dated 20.01.2010 of the Committee GFIL and the warrants of possession with regard to the aforesaid property.
- E. The Petitioner is also aggrieved of the order dated 31.07.2015 in CA No. 377 of 2015 in CP No. 115 of 2002 whereby a separate committee for M/s Golden Projects Limited has been appointed contrary to the directions of this Hon'ble Court.
- F. The Petitioner is also aggrieved of the order dated 07.08.2005 passed in C.A. No. 228 of 2015 and C.A. No. 273 of 2015 whereby the orders of the Committee and

warrant of the Deputy Commissioner Mussoorie and the Committee have been quashed even though the orders of the committee had attained finality till this Hon'ble Court.

G. The Petitioner is also aggrieved of final order dated 07.08.2015 passed in C.P. No. 115 of 2002 by the High Court of Punjab and Haryana at Chandigarh, whereby the Company M/s. Golden Projects Limited has been wound up and the new Sale Committee appointed by replacing the Committee GFIL appointed by this Hon'ble Court has been directed to take charge of the assets of M/s Golden Projects Limited, in direct contravention of orders passed by this Hon'ble Court.

H. Because if interim relief is not granted, the dignity of the institution has been placed in jeopardy.

7. **MAIN PRAYER**

In the facts and circumstances of the mentioned above the Petitioner most respectfully prays that this Hon'ble Court be pleased to: -

- a) grant special leave to appeal against the Impugned interlocutory Order dated 31.07.2015 in CA No. 377 of 2015 and interlocutory Order dated 07.08.2015 passed in C.A. No. 228 of 2015 and C.A. No. 273 of 2015 and final order dated 07.08.2015 passed in C.P. No. 115 of 2002 by the High Court of Punjab and Haryana at Chandigarh; and

- a) pass any other further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

8. **PRAYER FOR INTERIM RELIEF:**

In the facts and circumstances of the case mentioned above the Petitioner most respectfully prays that this Hon'ble Court be pleased to: -

- a) grant ad-interim ex-Parte stay of the operation of the Impugned interlocutory Order dated 31.07.2015 in CA No. 377 of 2015 and interlocutory Order dated 07.08.2015 passed in C.A. No. 228 of 2015 and C.A. No. 273 of 2015 and final order dated 07.08.2015 passed in C.P. No. 115 of 2002 by the High Court of Punjab and Haryana at Chandigarh;
- b) direct the Respondents - M/s BCC Builders Pvt. Ltd. & Sh. S.P. Singh to deliver vacant possession of the properties known as Drive-In Mussoorie and Drive-In Dhanaulti to this Committee;
- c) direct the District Magistrate, Dehradun (Uttarakhand) and to District Magistrate, Tehri Garhwal (Uttarakhand) to take over possession of the properties Drive-In Mussoorie and Drive-In Dhanaulti and deliver the same to this Committee. if the Respondents- M/s BCC Builders Pvt. Ltd. & Sh. S.P.

Singh failed to deliver the possession of the properties in question; and

- d) pass any other further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

SURUCHI AGGARWAL
ADVOCATE FOR THE PETITIONER

NEW DELHI

FILED ON: 25.08.2015

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO.

OF 2015

IN THE MATTER OF:-

Committee – Golden Forests (India) Limited
(Appointed by Supreme Court of India)

..... Petitioner

Versus

The Plantation Investors Protection Society (Regd.)
& Ors.

..... Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the documents relied upon in those proceedings. No additional facts, documents or grounds have been taken or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the special leave petition are necessary to answer the questions of law raised in the petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner(s)/person authorized by the petitioner(s) whose affidavit is filed in support of the Special Leave Petition.

FILED BY

SURUCHI AGGARWAL
ADVOCATE FOR THE PETITIONER

NEW DELHI

FILED ON: 25.08.2015

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ANNEXURE P-1

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

National investors Forum | v | M/s Golden forests (India) Ltd.

Present: Shri R.K. Chhibbar, Senior Advocate with
Anand Chhibbar, Advocate for Petitioner.
Shri Anil Sharma, Advocate and Mr. Kanchan
Sehgal, Advocate for respondent company
Shri B. Uma Kanta, Advocate and Ms. Gagan Deep
Kathuria, Advocate

HEMANT GUPTA, J.

M/s Golden Forests (India) Limited is a company incorporated under the Companies AC, 1956 (for Short the Act) on 23.2.1987. The company was given cerate for commencement of business under section 149(3) of the Act.

The Company announced some beneficial, deposit schemes ensuring highest returns to its investors, creditors or consumers. The company 1994 thus attached large number of investors and creditors. By the end of close of 7th financial year i.e. 1994, the turnover was Rs. 154 Crores and by the end of 1997, it achieved the business target of Rs. 1,000/- crores. During the course of hearing of the present case, it is admitted by the company that it has 24,65,231 investors who have invested sum of Rs 980.14 crores as principal excluding returns thereon.

Petitioner is National Investors Forum who has sought the winding up of the company on account of its inability to pay admitted debts. Members of the petitioner forum are the investors. When the petition was filed, the petitioner was not a registered society. However, on an objection being raised by the company, the petitioners have got themselves registered as a society under the provisions of societies Registration Act. It has been alleged that the respondent has collected more than 3,000 crores of rupees from investors, creditors and consumers by making false promises in the name of social justice economic freedom for all. It has been alleged that the company got deposited the savings of millions of people which they have saved out of income of blood and sweat. The company have assured to repay the money of investors but in spite of such assurances, it has nor made the payments. It is alleged that a legal notice was issued to return the money within 3 weeks and this notice was published in the Hindi Daily Bhaskar on 14.3.2001 as service by registered post was not possible. It may be stated that the Directors of the company were arrested on 24.12.2000 in respect of allegations contained in six different FIRs lodged by the Vigilance Department, Government of Punjab. In spite of such notice the company failed to settle the claim of the petitioners, therefore, the present petition for winding up was filed.

In response to such petition, company has filed a detailed written statement wherein it has been stated that the company has adequate assets and resources to pay back all its debts. It is further stated that the company has moved an application before Hon'ble Mumbai High Court to remove the receiver and permit the company to hasten the process of repayment of the investors under the supervision of court. It has been stated that the company would welcome the intervention of the Chandigarh High court in whose supervision the investors may be repaid to prevent any further loss of prestige of the company which is financially viable and investor friendly. It has been mentioned that there was a restrain order from Chief Judicial Magistrate restraining the respondents from operating their lockers, bank accounts till the investigation is over by the Vigilance Department. However, the armament lok adalat at Chandigarh was pleased to order on 20th August, 2001 that there is no bar to operate on the accounts of the respondent, company. It was stated that since the matter is Subjudice before the Mumbai High Court therefore, it cannot be said that the respondent has failed or neglected to pay its creditors or is transitory in nature. On merits, the company showed its readiness and willingness to pay the amount and dues payable to the investors. However, it is stated that the appointment of liquidator is against the interests of investors as distress sale of the assets which constitute the security of the investors would yield much lower

proceeds. The company sought a consolidated scheme to be filed on repayment to the satisfaction of the court.

This court on 17.8.2001 restrained the company not to alienate the property. On October 12, 2001, the comments of permanent lok Adalat at Chandigarh are called as in spite of restrain, order, some assets of the company have been alienated. On 23.11.2001, respondents sought time to place on record a comprehensive proposal in support of the plea that the company is in a position wading up was admitted and factum of admission was ordered to be published in the newspapers and official gazette of U.T. Chandigarh.

The respondent company filed C.P. No. 237 of 2001 under section 391(1) of the Ac, seeking permission to enter into an agreement and making arrangement with the Class of investors. On 20th December, 2001, Company was directed to give wide publicity to the proposed arrangement to enable any interested person to file objections. However, the counsel for the company stated on August 1, 2002 that the company is unable to comply with the directions issued, to give wide publicity and therefore, the company petition No. 237 of 2001 filed by the company seeking permission to enter into agreement was dismissed as withdrawn.

In response to the publication of Admission Notice, three sets of objections have been filed - one by the Golden Group Investors Welfare Association, Delhi through its General Secretary, Shri Chet Ram Sharma Vide C. A. No. 929 of 2002 second by the Golden Forest India Limited from Orissa vide C. A. No. 935 of 2002 and third by the Investors and Marketing Members Welfare Society (Regd.), Calcutta through its General Secretary vide C.A. No. 819 of 2002. The winding up petition has not been properly advertised. There are 25 lac investor/creditors all over India and the publication of the factum of admission in Indian Express, Chandigarh edition, Dainik Tribune and official Gazette of U.T. Chandigarh is not sufficient, as such publication reaches hardly 1 to 2 per cent of the total number of investors. The company has been publishing advertisements in various newspapers all over India that the investors of the company will receive their payments since the receiver appointed by the Mumbai High Court is likely to commence the sale of the assets of the company to generate liquidity to pay to all the investors of the company. It was further contended that this Court should not pass any order which may go contrary to the order passed by the Mumbai High Court, in public interest litigation initiated by the securities & Exchange Board of India. It was also argued that the property of the company should be put to sale so that investors realize

that the Central Bureau of Investigation should be directed to investigate into the affairs of the Company.

I have heard Shri R.K. Chhibbar, Senior Advocate for the petitioner and also Shri B. Uma Kanta, Advocate for the objectors as all well as Shri Anil Sharma, Advocate for the company at great length.

Shri Chhibbar has vehemently submitted that once the petition is admitted, there is no discretion with the court but to pass the order of winding up and appoint official liquidator as liquidator of the company. It was argued that the arrangement proposed by the company has been withdrawn by the company and the petition has been ordered to be admitted. In these circumstance, the order winding up is a natural consequence. The reliance was Placed upon the cases reported as Advent Corporation Pvt. Ltd (1969)39 Company Cases 463, Seksaria Cotton Mills Ltd. (1969)39 Company Cases 475 and Focus Advertising Pv. Ltd. (1974)44 Company Cases 567. However, I am unable to accept such a wide proposition. Admission of a petition for winding up of the company is prima Facie proof of the admitted liability. The object of publication of admission in the newspapers is to invite objections from the persons interested, for and against the order the order of the winding up of the company. If there is no discretion with court at that stage but to pass the order of winding up, the very purpose of

publication of the admission is rendered nugatory. The company court is required to examine whether the winding up of the company is in the interest of shareholders, secured and unsecured creditors, worker as well as in public interest. It is a natural consequence of admission of petition. Thus, I am unable to accept the argument raised by Shri Chhibbar that the company court has no discretion after the admission of the petition but to pass the order of winding up. The judgements relied upon by the petitioner, no doubt, have taken a view that the Court has no discretion to refuse to make a winding up order *ex debito justitiae* if the company neglects to pay the sum demanded. However, the said judgements are distinguishable and not applicable to the facts of the present case. Here the company has stated on an affidavit that it has assets more than the due amount. The management of the company is not able to sell the property because of its physical disability, being in custody, in an FIR lodged by vigilance Bureau, Punjab. Keeping in view the projected solvency of the company, it will not be fair and reasonable to pass an order of winding up but the interest of the creditors is required to be watched which will be best served by appointing a provisional liquidator for effecting sale of the property of the company. A Division Bench of this Court in *Ambala Bus Syndicate P. Ltd. V. Bala Financiers P. Ltd* (1986)59 Company Cases 838, has quoted with approval the view of Division Bench of Calcutta High Court reported in

Bengal Luxmi Cotton Mills Ltd. v. Mahaluxmi Cotton Mills Ltd.
AIR 1955 Cal 273 Wherein it has been held that the basis of making an order of winding up against a company is that it has ceased to be commercially solvent and accordingly it is fit and proper in the interest of creditor and shareholders not to allow it to function further as a company. The basis of winding up order on the ground of company's inability to pay its debts is always insolvency. In view of the above, it is not possible, at this stage, to hold that the company is insolvent so as to discharge its liability towards the creditors.

Shri. B. Uma Kanta, Advocate opposed the winding up and argued that the winding up order will not be above to protect the interest of large number of investors we have invested their hard earned money. It is pointed out that the affairs of the respondent company have been carried out in a clandestine manner so as to deprive investors of their returns. It is argued that the affairs were conducted in an organised manner to siphon off the funds of the company and the matter is required to be investigated by Central Bureau of Investigation. The winding up order would be detrimental to the interests of the shareholders. The court may not pass any order which is by contradictory to the order passed by the Mumbai High Court keeping in view the possibility of transfer of all cases

to Supreme court in view of the transfer application filed by SEBI.

A perusal of the written statement filed by the company Shows that the liability is no. disputed. Rather, it has sought intervention of this court in whose supervision the investors may be repaid to prevent further loss of Prestige to the company. I, has been stated that the company has assets worth Rs. 1500 crores.as against liability of only Rs. 761 crores and this company is very much in a position to pay its dues. It is stated that the company was set up - 1987 and till 1988, there has been no default in repayment of any maturity amounts and refunds of investors. The company disclosed that in 1998 SEBI filed writ petition No. 344 of 1998 before Mumbai High Court seeking inter-alia, that the company may be prevented from conducting its was no. maintainable as an instrumentality of state without any statutory power, was not entitled to seek any relief against the private party. The respondent company was called upon to satisfy the Mumbai High court in the interest of investors with regard to its workability. The company go. their assets valued which were assessed a, Rs. 1071.55 crores in addition to Rs 33880 crores on account of moveable assets and bank balance as on 31-12.1997 against the total liability of 761 crores as on 31.12.1997. It is further stated in the written statement that the company invited offers for the sale of its

certain properties but none of the buyers had shown any interest in view of the restraint imposed by Mumbai High Court dated 30th September, 1999. Ultimately Mumbai High Court has appointed Mr. Justice M.L. Pendse (retd.) as private receiver for sale of 19 properties as set out in the schedule vide order dated 31.1.2000.

In view of the above, it is apparent that there is no dispute company that it has assets more than Rs. 1,000 crores which are sufficient to the company are in custody since December 2000 and the company has not been able to dispose of any of the property for payment to the investors. It is also on record that the private receiver appointed by Mumbai High Court has also not been able to sell any property so far. Thus a mechanism is required to be drawn so as to facilitate the sale of the property of the company at the earliest with a view to ensure payment to the investors without any further delay. The interest of such large number of creditors is required to be watched by the company court and the management of the company cannot be permitted to take such investors for a ride. The scheme which the company has earlier proposed, has been withdrawn from the court. A large number of cases have been filed before this court by the investors as well as in different courts throughout the country.

Therefore, with a view to protect the interests of the large number of creditors, shareholders and the company. It is just and appropriate to appoint provisional Liquidator for control, management and sale of the moveable and immovable property so as to fetch maximum price thereof with a view to satisfy the claim of 25 lac investors in a proper manner. However, I am of the opinion that the official Liquidator attached to this court may not be able to take over the responsibility of management and sale of the property of the company keeping in view the meager resources at his command and inadequate infrastructure available. The official liquidator attached to this court is managing the affairs of over 177 companies. The additional responsibility of this company will require whole time attention to facilitate sale of property and to deal with the investors spread over the entire country. Therefore, instead of appointing official liquidator, it is necessary to entrust the responsibility of the provisional Liquidator to such a person who commands respect and is able to discharge the onerous responsibility in a fair manner. Such provisional liquidator may have to look after the affairs of the company including its property and take steps for sale thereof. All such affairs should be supervised by a person who can discharge the duties of the provisional liquidator fairly and inspire confidence amongst the creditors as well as with the shareholders of the company.

Apart from vesting of the property with the provisional liquidator so as to facilitate the sale thereof to liquidator the claim of the investors, the affairs of the company are also required to be investigated by an independent agency. The company has avoided investigation by an agency appointed by Mumbai High Court on one pretext or the other. A committee appointed by Mumbai High Court consisting of representative of Reserve Bank of India and that of SEBI has found that the substantial amounts of money have been mobilised by alluring investors of promise of unrealistic returns through agents who have been paid hefty commission and other incentives. It has been found that the entries in the accounts books do not reveal their correct state of affairs, misleading nomenclatures which would generally promote probe hide more than they reveal substantial expenses have been incurred other than those which are warranted, such expenses lead one to believe that the company is not pursuing objectives sought in its schemes and at the same time frittering away the investments mobilised from gullible investors. The committee conclude that the report has been prepared in the absence of audit and accounts of the company on account of its noncooperation. The report reads as under: -

"On the basis of the documents and information available' with the undersigned the detailed analysis of which is contained in

the earlier part of this report, it is evident that the schemes floated by M/s Golden Forest(I) Ltd. Both in regard to performance and account keeping leave much to be desired

The analysis of schemes reveals that all schemes floated by the company are open ended and are inducting investors on on-going basis. Substantial amounts of money have been mobilised by luring investors on promises of unrealistic returns through agents who have been paid hefty commission and other incentives. Mobilising big amounts and even promises of heavy returns per se are not wrong provided it can be backed up by bonafide healthy practices and skillful management of affairs to generate returns to fulfil the promises made. This is where unfortunately the company has been found to be seriously wanting.

In view of the varying figures of land owned by the company and its subsidiaries and in view of the fact that the area of land owned by the company and its subsidiaries had been shown to be substantially higher - 15,000 acres of land as deposited before the MRTPC and approximately 29,000 acres as stated to SEBI - than that shown to the undersigned (approx. 9000 acres), it is believed that the company has been trying to mislead the undersigned regarding the quantum of land owned by them. The reason for their refusal to co-operate with the independent appraising agency appointed by the undersigned may have

been motivated by their desire to hide the exact figure of land owned by them and their subsidiaries.

The security provided by creating lien on land is illusory since the issue of post dated cheques does not guarantee payment but only action in case of non payment and finally the assets created in the form of land does not indicate realisable value enough to meet the liability which the company has already undertaken. The analysis further reveals that the schemes have survived so far only on account of the induction of new subscribers, amounts received from whom have gone for the payment of the previous subscribers. The entire scheme which has very insignificant component of plantation activity is likely to run into serious problems if this chain of inducting new members comes to a halt. Also, it needs to be borne in mind that the amount of from income generated by the company since its inception has been negligible (Rs. 58 lakhs) as compared to the total amount paid to the investors (Rs. 412 crores). In any case, such schemes by its very nature - new investors in the chain servicing old investors - are bound to break and cannot be sustained for indefinite period.

Similarly for the accounts, the entries analysed do not reveal the correct state of affairs. Misleading nomenclatures which would generally pre-empt probe hide more than they reveal. Substantial expenses have been incurred on items other than

those which warranted such expenses leading one to believe that the company is not pursuing the objectives stated in its schemes and at the same time frittering away the investments mobilized from gullible investors.

In fact, the development receipts and expenditure account for the year ended 31.3.1997 shows a deficit of approximately Rs 62 crores. Evidently, if the development expenditure - a major portion of which constitutes payment to be made to the investors - is higher than the development receipt and the return on the assets created by the company is negligible, then it may be surmised that the company may be on the brink of liability mis-match problem, which with the passing of time would only get aggravated.

The inspection of the Department of Company Affairs and also the report of the Income Tax Department consequent upon the search and seizure operation conducted in the case of the company have brought out some serious unethical lapses which further reinforce the apprehensions. It would, therefore not be unreasonable to conclude that the schemes of M/s Golden forests (I) Ltd. are not being run in the best interests of investors and there is a possibility of the investors getting hurt in case even a minor aberration develops in the schemes because prima face there is no indication of any mechanism in

place which could affirm the company's credibility in terms of meeting its commitments."

Shri Anil Sharma, Advocate for the company, objected to the investigation into the affairs of the company by Central Bureau of Investigation but submitted that this court can appoint any person to investigate the affairs of the company in terms of Section 237 of the Act. It is apparent from the proceeding paragraph that the company has not cooperated with the committee appointed by Mumbai High Court to investigate the affairs of the company. However, I am of the opinion that the affairs of the company ought to be thoroughly investigated in view of the allegations that the business of the company is being conducted with intent to deceive its creditors and members with a fraudulent and unlawful purpose. Such systematic investigation into the affairs of the company will bring out the extent of land owned by the company, its legal and valid title, its marketability, valuation as well as to find out whether the company has siphoned off money to its Directors, associates, subsidiary companies, etc. Such investigations are required to be conducted by an auditor who shall exercise such powers and duties inclusive of those contained in Section 227 of the Companies Act.

Thus, I am of the opinion that keeping in view the serious allegations against the management of the company and

deficiencies prima facie found by the committee consisting of representatives of the Reserve Bank of India and SEBI. the affairs of the company are required to be investigated thoroughly. However, the sale of the property by the provisional liquidator is not dependent upon completion of the investigations. Investigation will proceed independent of the sale of the properties.

In view of the above, I am of the opinion that instead of winding up of the company, the interest of creditors shareholders and the company, would be served if the following directions are issued:-

1. The provisional liquidator shall be appointed. Such liquidator will take into his custody or under his control, all property, effects or actionable claims to which the claim is or appears to be entitled. All the property and effects of the company shall be deemed to be in the custody of the court from the date of this order.
2. Provisional liquidator shall have power to sell the moveable and immovable property, actionable claims by public auction or otherwise subject to the approval of this court and shall have all powers of liquidator contemplated under the Act.

3. All properties of the company shall be managed controlled, regulated by the provisional liquidator to be appointed by the court henceforth. The liquidator shall be at liberty to appoint personnel with the approval of the Company Court including chartered accountants and other administrative staff and to do all acts and things necessary to carry out the directions to the provisional liquidator.
4. The provisional liquidator shall prepare an inventory of all the properties of the company, its subsidiaries and associates created with the funds of the company including the property alienated either by way of sale or by delivery of possession in pursuance of the orders passed by the Lok Adalat.
5. The company shall not sell, lease, mortgage, alienate or incur any encumbrance against any property, moveable or immovable, in the name of the company or its subsidiaries without the permission of this court, except the funds required for normal functioning of the company as may be permitted by provisional liquidator with the approval of the Court. It is also directed that respondent company shall not withdraw any amount for the purpose

of paying it to its Sister concerns associates and Directors or any other company or persons.

6. The Directors and all administrative staff, officers of the company are directed to provide all assistance to provisional liquidator to discharge his responsibility without any demur or delay.
7. The provisional liquidator will prepare a scheme for settlement of the claims of the investors especially keeping in view the interest of small investors in the first instance.
8. The provisional liquidator shall submit preliminary report to this court and the parties are at liberty to move this court in case any further directions or clarifications are required.
9. The affairs of the respondent company shall be investigated by auditors to be nominated separately to investigate comprehensively into the affairs of the company including valuation of land purchased marketability of the title and such other issues which may arise

June 18, 2003
Kadyan

T. C.

Sd/-
HEMANT GUPTA
Judge

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

I.A.Nos. 1-33 in TRANSFERRED CASE (CIVIL) No. 2 OF 2004

THE SECURITIES &
EXCHANGE BD. OF INDIA

Petitioner (s)

VERSUS

THE GOLDEN FORESTS (I) LTD.

Respondent (s)

(For intervention and for seeking an order of restraint/injunction and
for impleadment and for seeking certain urgent directions and stay and
directions and stay/intervention/ directions and office report)

WITH

I.A.Nos. 1-4 in T.C. (Civil) No. 68/2003

(For directions and office report)

W.P. (Civil) No.188/ 2004

(With appln. for directions)

Date : 17/08/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

For Petitioner(s)

Mr. Bhargava V.Desai, Adv.

Mr. Sanjeev Kumar Singh, Adv.

Mr. Pradeep Kumar Malik, Adv.

Ms. Naresh Bakshi, Adv.

Mr. Manoj Roy, Sr. Adv.

Mr. Ranjan Mukherjee, Adv.

For Respondent(s)

Mr. M.N.Krishnamani, Sr. Adv.

Mr. Parthapratim Chaudhuri, Adv.

Mr. K.S.Rana, Adv.

Mr. K.C.Dua, Adv.

Mr. Himanshu Bhuttan, Adv.

Ms. Kiran Suri, Adv.

Ms. Amrita Swarup, Adv.

Mr. Himanshu Upadhyay, Adv.

Mr. P.N.Puri, Adv.

Mr. Raja Bahadur Singh Jain, Adv.

Mr. Vikas Jain, Adv.

Mr. Neeraj Sharma, Adv.

Mr. Gaurav Dhingra, Adv.

Mr. M.C. Dhingra, Adv.

Mr. Aditya Kumar Chaudhary, Adv.

Mr. Neeraj Kumar Jain, Adv.

Mr. Bharat Singh, Adv.

Mr. Sanjay Singh, Adv.

Mr. Ugra Shankar Prasad ,Adv

Mr. N.R.Choudhury, Adv.

Mr. Somnath Mukherjee ,Adv

Mr. Manoj Roy, Sr.Adv.

Mr. Ranjan Mukherjee, Adv.

Ms. Minakshi Vij ,Adv

Mr. Rabi N.Raut, Adv.

Ms. V.D.Khanna, Adv.

Ms. Nirmala Gupta, Adv. for

M/S I.M. Nanavati Associates

Mr. Kh. Nobin Singh ,Adv

Mr. Gireesh Kumar, Adv.

Ms. Suruchii Aggarwal ,Adv.

Mr. Ashim Aggarwal, Adv.

Mr. Subramonium Prasad ,Adv

Mr. Abhijit Sengupta ,Adv.

Mr. G.Venkatesh, Adv.

Mr. D.Bharat Kumar, Adv.

Mr. Anand, Adv.

Mr. Pijush K.Roy, Adv.

Mr. G. Ramakrishna Prasad ,Adv

Mr. Alok Gupta,Adv.

Mr. Tara Chandra Sharma, Adv.

Ms. Neelam Sharma, Adv.

Mr. S.Wasim A.Qadri, Adv.

Mr. L.R.Singh, Adv.