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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 20.03.2012

Judgment delivered on: 02.05.2012

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W.P.(C) 7150/2011

M/S HOTEL WAMAN

..... Petitioner

versus

UNION OF INDIA

..... Respondent

+

LPA 952/2011

UNION OF INDIA

..... Appellant

versus

RAMDEV KUMAR CHITTLANGIA & SONS & ORS. Respondents

+

LPA 33/2012

UNION OF INDIA

..... Appellant

versus

MAHIPAL SINGH

..... Respondent

+

LPA 34/2012

UNION OF INDIA

..... Appellant

versus

MADHU SINGH

..... Respondent

+

LPA 35/2012

UNION OF INDIA

..... Appellant

versus

RAGHU RAJ SINGH SISODIA

..... Respondent

+

LPA 36/2012

UNION OF INDIA

..... Appellant

versus

SHYAM LAL KABRA

..... Respondent

+

LPA 74/2012

UNION OF INDIA

..... Appellant

versus

AMBIKA RESORTS

..... Respondent

Advocates appeared in this case:

For the Petitioner: Mr Krishna Kumar Singh & Mr Jamesh Daniel David, Advs. for Mr. S. Udaya K. Sagar, Adv. for the Petitioner in WP(C) No. 7150/2011.

For the Appellants: Mr A.S. Chandhiok, ASG with Mr Neeraj Chaudhari, CGSC in LPA No. 952/2011; Mr B.V. Niren, CGSC in LPA Nos. 33/2012, 34/2012, 35/2012, 36/2012; Mr Jatan Singh, CGSC in LPA No. 74/2012 and Mr Praveen Chakroborti, Assistant Director, Ministry of Tourism.

For the Respondents: Mr A.S. Chandhiok, ASG with Mr Jatan Singh, CGSC in WP(C) No. 7150/2011.
Mr Ajay Talesra, Mr Brajesh Kumar & Mr Varun Nischal, Advs. in LPA Nos. 952/2011, 33/2012, 35/2012 and 36/2012.
Mr Hitesh Malik & Ms Nupur Chaudhary, Advs. in LPA no. 34/2012.
Mr M.J. Michael, Mr Pradeep Jain, Mr Dveep Ahuja & Mr Abhas Mishra, Advocates in LPA no. 74/2012.

CORAM:-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. In respect of the captioned matters, we have before us two points of view expressed by two single judges of this court. The six (6) LPAs being LPA Nos. 952/2011, 33/2012, 34/2012, 35/2012, 36/2012 & 74/2012, are directed against order dated 02.06.2011 passed by Dr. Justice S. Muralidhar, while WP(C) No.

7150/2011 has been referred to us for adjudication vide order dated 27.09.2011 by virtue of an order passed by Mr Justice Rajiv Sahai Endlaw.

2. In so far as Dr. Justice S. Muralidhar is concerned, he allowed the writ petitions from which the present six (6) LPAs arise vide his order dated 02.06.2011, while Mr Justice Rajiv Sahai Endlaw having differed with the view of Dr Justice S. Muralidhar, as indicated above, after recording short reasons referred the said writ petition to the division bench for a final view in the matter.

3. The facts pertaining to the formation and the evaluation of the scheme promulgated by the Government of India (in short GOI), Department of Tourism (in short DOT) fall in a narrow compass. What really bedevils the litigant before us, is the applicability of the provisions of the scheme to the facts obtaining in each case. We shall deal with relevant facts of each case, in so far as they are, in our view, pertinent to in their applicability to the provisions of the scheme put in place by the DOT, as we go along with our judgment.

SCHEMES IN PLACE IN 2003-04

4. We are in these matters concerned with a scheme formulated on 07.12.2007 (in short the 2007 scheme) by the DOT, under aegis of the GOI. However, in order to appreciate the provisions of the 2007 scheme, one would have to broadly advert to the earlier schemes put in place since, the 2007 scheme is only, a revised version of the earlier schemes; the general terms and conditions remaining the same. Therefore, firstly, we intend to indicate the broad background in which the 2007 scheme came to be formulated.

4.1 It appears that the DOT between August, 2003 to June, 2004 had issued a series of notifications to encourage the growth of budget hotel accommodation for tourism in the country. The notifications issued in this behalf bore the same number, i.e., no. N.14-TH.II(3)/2002. They were, however, issued on different dates these being: 22.08.2003, 02.12.2003 and 07.06.2004. The schemes, thus formulated, were directed towards grant of

"Incentive to Accommodation Infrastructure" vis-à-vis newly approved hotel projects in the category of first, second and third star, as also, in the heritage (basic) category. The schemes, as notified in the aforementioned notifications of 2003-04, were applicable throughout the country except in the four (4) metropolitan cities of Delhi, Mumbai, Kolkata and Chennai.

4.2 The aforementioned three (3) notifications were superseded by a fourth (4th) notification bearing no. N.14-TH.II(3)/2002 dated 30.09.2004 (in short the 2004 scheme). The broad provisions of the 2004 scheme were as follows:

2004 SCHEME

- (i) The 2004 scheme was to remain effective throughout the tenth (10th) five year plan, i.e., between 01.04.2002 to 31.03.2007.
- (ii) The scheme was to apply to all hotels in one, two and three star, and heritage (basic) category in respect of those hotel projects which were ***"completed"*** and ***"classified"*** during the tenth (10th) plan period.
- (iii) The incentives were to be given in the form of a capital grant at the rate of 10% of the total principal loan amount taken from a designated financial institutions subject to a limit of Rs 25 lacs for one star hotel, Rs 50 lacs for two star hotel, and Rs 75 lacs for a three star and a heritage (basic) hotel. Therefore, the applicant hotel was entitled to a capital grant of 10% of the principal loan amount or the limits prescribed, whichever was less.
- (iv) The scheme specifically prohibited grant of incentives on additional loans taken for creation of additional facilities, accommodation/escalation etc. The benefits were also not available if a loan was taken for refinancing an earlier loan.
- (v) In so far as heritage hotels were concerned where investment was required only for refurbishment of existing building, which included creation of additional facility and accommodation, the incentive was available only on the "main loan" and not on any additional loan taken.

(v) The scheme adverted to the designated financial institutions, which included Scheduled banks, situated in all places except the four (4) metropolitan cities, i.e., Delhi, Mumbai, Kolkata and Chennai.

(vi) The incentives were to be routed through the designated financial institutions and scheduled banks, after, the completion of the project and approval of its classification. The DOT, had also stipulated the criteria for approval of such hotel projects and their classification. In this connection general terms and conditions and formats of application both for approval at the project level and the classification of hotels was also provided. We will advert to the general terms and conditions a little later.

4.3 The 2004 scheme evolved under the 30.09.2004 notification which superseded the three (3) notifications issued between August, 2003 and June, 2004, brought the incentivisation scheme to an end on 30.03.2007, which was co-terminus with the expiry of the tenth (10th) Five year plan.

5. Consequently, a hiatus was created as the revised scheme (which is the 2007 Scheme) was notified by the government of India only on 07.12.2007 vide notification no. 14-TH.II(I)/2007. The vacuum, so to say, was attempted to be filled up by the DOT by bringing into force, the notification dated 07.12.2007, w.e.f. 01.04.2007. The DOT, however, made it clear that the 2007 scheme would run, that is, will be effective only for the first year of the Eleventh (11th) five year plan, i.e., upto 31.03.2008 and that too on an *"experimental basis"*. Interestingly, this scheme was made applicable throughout the country. The exceptions carved out under the 2004 scheme were given a go-by, in so far as the four metropolitan cities were concerned. Since the claims for grant of capital subsidy under the 2007 scheme are pivoted on certain clauses of the scheme, which are not too many in number, we propose to extract the same.

2007 SCHEME

"(i) The scheme would apply to all new hotels in 1 to 3 star and heritage (basic) category where the hotel projects have been commissioned and classified by the Ministry of Tourism, Govt. of India with effect from 01.04.2007 to 31.03.2008.

(ii) The incentive will be in the form of capital grant of Rs 2.00 lakh per room subject to a maximum of Rs. 30 lakhs to one star hotel. Rs. 3.00 lakh per room subject to a maximum of 75.00 lakh to two star hotel, Rs. 3.00 lakh per room subject to a maximum of Rs. 100.00 lakhs to three star category hotel projects.

(iii) In the case of heritage hotels, where the investment is required mainly for refurbishment of existing building, which includes creation of additional facilities and accommodation, the incentive will be available only for the lowest category, i.e., Heritage (Basic) of Rs 3.00 lakh per room subject to the maximum of Rs 100.00 lakh.

(iv) The amount of incentive will be released to the concerned hotel after completion of its classification in the said category.

(iv) Hotels availing the capital subsidy under the Scheme can apply for upgradation in classification beyond three star category and Heritage (basic) only after a period of eight years from the date of initial classification."

6 The above apart, at this stage it would also be useful to refer to the general terms and conditions which were made applicable to the aforementioned schemes, both for approval of the hotel project and its classification post the operability of the applicant-hotel.

6.1 Importantly, during the course of the arguments, there was no portrayal whatsoever that the general terms and conditions stipulated by the GOI, had not continued to operate since the inception of the scheme, that is, between 2003 and 2004. Therefore, there is no dispute before us, that the said terms and conditions would also apply to the 2007 scheme. In this regard, we propose to cull out hereinbelow, some of the relevant conditions:

"Approval at project level:

1. The Department of Tourism approves hotels at project stage based on documentation which enables the hotels to get certain benefits from the govt. as announced from

time to time. The documents required for project approvals are listed below.

2. Project approvals are valid for 5 years. Project approvals of the Govt. of India, Department of Tourism cease 3 months from the date that the hotel becomes operational even if all its rooms are not ready. The hotel must apply for classification within these 3 months.
3. xxxx
4. Application form, this covers
 - i. Proposed name of the note,
xxxx xxxx
 - vii. Details of the project
xxxx
xxxx
5. xxxx
6. xxxx
7. **The hotel must immediately inform the Department of the date from which the hotel becomes operational and apply for classification within 3 months of this date.**
8. xxxx
9. The promoters must forward regular progress reports for each quarter failing which the project approval would be considered withdrawn.
10. All documents must be valid at the time of application and a Gazetted Officer or Notary must duly certify copies furnished to the Department. Documents in local language should be accompanied by a translation in English/ official language and be duly certified.
11. xxxx
12. xxxx
13. xxxx
14. xxxx

HOTEL CLASSIFICATION

1. Classification for newly operational hotels must be sought within 3 months of completion of approved hotel projects. Operating hotels may opt for classification at any stage. However, hotels seeking re-classification should apply for

reclassification one year prior to the expiry of the current period of classification.

2. If the hotel fails to reapply 1 year before the expiry of the classification order, the application will be treated as a fresh classification case.
3. Once a hotel applies for classification/re-classification, it should be ready at all times for inspection by the HRACC. No requests for deferment of inspection will be entertained.
4. Classification will be valid for 5 (five) years from the date of issue of orders or in case of reclassification from the date of expiry of the last classification provided that the application has been received within the stipulated time mentioned above, along with all valid documents. Incomplete applications will not be accepted.

5. x x x x

6. Hotels applying for classification must provide the following documentation.

a. application form detailing

i. Name of the hotel.

x x x x

x x x x

v. Date on which the hotel became operational.

x x x x

vii. Details of the hotel

x x x x

x x x x

viii. Certificates/ No objection certificate's (attested copies)

a. Certificate/ licence from Municipality/ Corporation to show that your establishment is registered as a hotel.

b. Certificate/ licence from concerned Police Department authorizing the running of a hotel.

c. Clearance Certificate from Municipal Health Officer/ Sanitary Inspector giving clearance to your establishment from sanitary/ hygienic point of view.

d. No objection certificate with respect to fire fighting arrangements from the Fire Service Department (local Fire Brigade Authorities)

e. Public liability insurance.

f. Bar Licence (necessary 4, 5* and 5*-D only)*

g. Money Changers Licence (necessary for 4, 5* and 5*-D only).*

h. Sanctioned building plans/ occupancy certificates

- i. If classified earlier, a copy of the earlier certificate of classification issued by Department of Tourism.*
- j. For heritage property, certificate from the local authority stating age of the property and showing new and old built up areas separately.*
- k. Any other local authority as may be required.*
- l. Approval/NOC from AAI for projects located near Airports.*
- m. Please indicate whether a few rooms or all rooms are to be let out on a time-share basis.*
- n. Application fees.*

The above-mentioned approvals/No Objection Certificates are the responsibility of the owners/promoters/concerned company as the case may be. The Department's approval is no substitute for any statutory approval and the approval given is liable to be withdrawn without notice in case of any violations or misrepresentation of facts.

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7. All applications for classification or re-classification must be completed in all respects — application form, application fee, prescribed clearances, NOCs, certificates etc. — incomplete application is liable to be rejected.

8. Hotels will qualify for classification as Heritage Hotels provided a minimum 50% floor area was built before 1935 and no substantial change has been made in the façade. Hotels, which have been classified/ re-classified under Heritage categories prior to issue of these guidelines will continue under Heritage categories even if they were built between 1935-1950.

9. xxxx

10. xxxx

11. Hotels will be classified following a two stage procedure

a. the presence of facilities and services will be evaluated against the enclosed checklist.

i. New projects will be required to adopt environment friendly practices and facilities for physically challenged persons.

ii. Existing hotels being classified will need to conform to a phased plan for adding eco-friendly practices and facilities for physically challenged persons, which should be completed by 31st December.

b. the quality of facilities and services will be evaluated against the mark sheet.

12. xxxx

13 Any deficiencies/ rectifications pointed out by the HRACC must be complied with within the stipulated time, which has been allotted in consultation with the hotel representatives during inspection. Failure to do so will result in rejection of the application.

14. xxxx

15. xxxx

16. xxxx

17. xxxx

18. xxxx

19. Incomplete applications will not be considered. All cases of classification would be finalized within three months of application being made." (emphasis is ours)

7. It is not in dispute that all applicant-hotels had commenced operation within the tenure of the scheme, i.e., 01.04.2007 to 31.03.2008; save and except one hotel, to which we will make a reference when we discuss individual cases. It is also not in dispute that the applicant — hotels have been classified by the designated authority; albeit after 31.03.2008. In some cases applications have been made for classification within the prescribed period i.e., 01.04.2007 to 31.03.2008, whereas in others, application has been made after 31.03.2008. We must mention here that, there is one case, in which, application for classification was received prior to 01.04.2007. There are also some cases where on inspection

certain shortcomings were noticed, in respect of which, corrective measures were asked to be taken.

7.1 There are, therefore, on facts cases, which fall in different slots. Whether, and to what extent, such differences ought to lead to denial of grant of capital subsidy will be analysed by us hereinafter, when we deal with individual cases. But before that, we propose to encapsulate the arguments of both sides.

SUBMISSION OF COUNSELS

8. The Union of India (UOI), which is the appellant in the six (6) LPAs, referred to above, were represented by Mr A.S. Chandhiok, the learned ASG instructed by Mr. Neeraj Chaudhari, Mr B.V. Niren and Mr Jatan Singh, CGSCs. On behalf of the applicant-hotels, which include the respondents in the six (6) LPAs and the petitioner in WP(C) No. 7150/2011, arguments were advanced by Mr Krishna Kumar Singh and Mr. Jamesh Daniel David, Advocates in the writ petition; Mr Ajay Talesara, Advocate in LPA Nos. 33/2012, 35/2012, 36/2012 and 952/2011; Mr Hitesh Malik and Ms Nupur Chaudhary, Advocates in LPA No. 34/2012 and Mr. M.J. Michael, Mr. Pradeep Jain, Mr. Dveep Ahuja and Mr. Abhas Mishra, Advocates in LPA No. 74/2012.

9. On behalf of the UOI it was argued that the impugned judgment of the learned Single Judge was flawed for the following reasons:

(i) It failed to take into account that, as per clause 3 of the 2007 scheme, which was in vogue at the relevant point in time, both commissioning as well as classification of the applicant-hotels had to be carried out within the validity period of the scheme, i.e., 01.04.2007 to 31.03.2008.

(ii) It was contended that the policy, in particular, clause 3 of the 2007 scheme, was unambiguous in this regard, and hence there could have been no occasion to stipulate an outer date by which applications for classifications had to be made, as was observed by the learned Single Judge. The contention being that it was inherent in the stipulation of the validity period and the wordings of clause 3 that not only had the application to be made prior to 31.03.2008,

but that, the classification by the designated authority had to be obtained prior to the said date.

(iii) The impugned judgment erroneously granted benefit to all such applicant-hotels, which had made applications prior to 31.03.2008, but had obtained the necessary classification only thereafter. In this connection it was submitted that, the effect of such an interpretation by the learned Single Judge, had led to grant of financial benefit under the 2007 scheme well beyond the time frame prescribed thereunder. The 2007 scheme being valid only for a period of one year had thus been extended much beyond that period.

(iv) The terms and conditions of the scheme required the applicant-hotels to submit applications for classification which were complete in all respects. The learned Single Judge failed to notice that shortcomings had come to light during the course of inspection by the designated authority and, it was only upon the necessary corrections being carried out that, the applicant-hotels were granted their request for classification. In this regard, our attention was drawn by way of example, to the facts obtaining in : WP(C) no. 7150/2011 (Re: Hotel Waman) and LPA No. 74/2010 (Re. Ambika Resorts Pvt. Ltd). As a matter of fact, in respect of, Ambika Resorts Pvt. Ltd., we were informed that the said hotel was inspected by the designated authority on 13.02.2008. The areas of concern were communicated to the concerned persons vide email dated 18.02.2008. The said applicant-hotel was given a time frame of three (3) months to carry out the necessary improvements. The said applicant hotel was thereafter re-inspected on 27.04.2008. On re-inspection, it was recommended for being categorized as a two-star hotel as against three star. It is not in dispute that the said applicant-hotel as a matter of fact finally accepted the two star categorization/rating accorded by the designated authority vide its letter dated 21.05.2008.

(v) It was also quite vehemently argued before us by the learned ASG, that the grant of classification was an exercise which had various benefits attached to it, WP(C) No. 7150/11 with LPA Nos. 952/11, 33-36/12 & 74/12

including the grant of subsidy. In other words, it was the learned ASG's contention that the fact that, the designated authority carried out the exercise of classification post 31.03.2008 had, in a sense, no connection with the grant of capital subsidy. The learned ASG in this regard adverted to a part of the annexure (appended at page 72 of the paper book filed in LPA No. 952/2011), which read as follows:

"Classifieds hotels/approved projects are eligible for various concession and facilities that are announced by the Government from time to time besides getting worldwide publicity through the India Tourism Offices located in India and abroad."

(vi) The contention of the learned ASG was therefore that, the classification by itself has many pluses which, included free world wide publicity as also benefits of grant of capital subsidy. The latter, as the learned ASG put it, was available if the classification was carried out within the time frame prescribed, i.e., between 01.04.2007 to 31.03.2008.

(vii) The learned ASG pointed out instances where application for classification was made just prior to the expiry of the scheme, i.e., 01.04.2007 to 31.03.2008; making it practically impossible to carry out inspection for the purposes of classification prior to 31.03.2008. Amongst others, instances to which specific reference was made were as follows: (a) LPA No. 952/2011 (Hotel Vikramaditya): the application in this case was dated 20.03.2008, which was, received on 25.03.2008; (b) LPA No. 35/2011 (Re. Tiger Valley Resort): the application was made on 18.03.2008; (c) LPA No. 36/2012 (Re. Shreenath Inn Hotel & Restaurant) : application dated nil was received on 28.03.2008.

(viii) In this context, it was contended by the learned ASG that the designated authority would require at least three (3) months, in the normal course, to categorize and rate the applicant-hotels. The time frame accorded by the applicant-hotels being too short, there was no way that the classification could

have been done prior to 31.03.2008, and hence, the applicant-hotels had automatically, so to say, excluded themselves from the fray.

10. On behalf of the applicant-hotels the following submissions were made:

LPA No. 36/2012 (Sreenath Inn Hotel)

(i) Mr Ajay Talesara submitted that the 2007 scheme being a beneficial

scheme, it had to be construed liberally keeping in mind the spirit with which the scheme was formulated. In this regard, our attention was specifically drawn to clause 3 and clause 6 of the 2007 scheme. Clause 3 as indicated above deals with the tenure of the scheme, while clause 6 stipulates that the capital subsidy would be released only after the classification of the hotel is carried out. It was contended that the scheme did not stipulate a cut-off date for either the application or release of the incentive. According to the learned counsel, the 2007 scheme only indicated that commissioning and classification had to be carried out during its tenure. The learned counsel drew our attention to the fact that the inspection in one of cases he represent's, i.e., Shreenath Hotel was carried out after a delay of nearly five (5) months. It was pointed out that the scheme was applicable, based on the classification ultimately accorded by the concerned authority, and not, on the basis of the category applied for by the applicant-hotel. Therefore, the fact that the applicant-hotel had applied for a higher category, which was not accepted by the designated authority, would not, exclude the applicant-hotel from the ambit of the scheme to the extent it was applicable to a two-star hotel; which was the classification accorded to it. Learned counsel submitted that since the 2007 scheme was notified only on 07.12.2007, and thereafter, expired on 31.03.2008, the applicability of the three (3) month period as stipulated in clause 19 of the general terms and conditions under the sub-head of "classification" would make the scheme onerous, impractical and cumbersome. Mr Talesara, invoked the doctrine

of promissory estoppel and legitimate expectation to advance his case for grant of capital subsidy.

LPA No. 952/2011 (Re. Hotel Vikramaditya)

(ii) Since, Mr Talesara was also the counsel representing the respondent in LPA no. 952/2011 (Re. hotel Vikramaditya), he adopted the same arguments except to point out that applicant-hotel was granted classification in the very first instance, without any anomalies being pointed out. It was also submitted that the arguments advanced on behalf of the UOI that more than one inspection was carried out, on shortcomings being pointed out, was not based on the record filed before the learned Single Judge. In other words, neither any averments were made to that effect before the learned Single Judge nor, were any arguments advanced in that behalf. As a matter of fact, it was contended, that there were no such grounds taken even in the letters patent appeal. The letter of rejection dated 02.07.2010 issued by the DOT, denying the grant of capital subsidy was based, only on the ground that the classification had been carried out by the designated authority after 31.03.2008, when according to the DOT, the 2007 scheme had expired. Mr Talesara, thus argued, that all other submissions now advanced on behalf of the UOI were de hors the record.

LPA 35/2012 (Re. Tiger Valley Resort)

(iii) In connection with this case, Mr Talesara submitted that an application for classification was made on 18.03.2008. The application for classification was complete in all respects and was submitted alongwith all necessary documents. The applicant was not communicated any shortcoming, or that, its application was incomplete in any respect. Furthermore, no such plea was also raised before the Single Judge or in the counter affidavit filed before the single judge or even in the grounds taken in the letters patent appeal. It was submitted that clarificatory document, if any, submitted, would not render the original application either incomplete or ineligible. It was re-emphasized that the eligibility for grant of incentive was based on the WP(C) No. 7150/11 with LPA Nos. 952/11, 33-36/12 & 74/12

classification granted, and not, on the category - classification requested by an applicant-hotel. The other submissions made were common to the previous cases argued by Mr Talesara.

LPA No. 33/2012 (Re. Sardargarh Heritage Hotel)

(iv) The last case, in which, Mr Talesara appeared was LPA No. 33/2012 (Re. Sardargarh Heritage Hotel). In this case the following facts were alluded to, by Mr Talesara. The respondent had applied for classification on 12.02.2007 when, the 2004 scheme was in vogue. In the said application, the applicant-hotel had indicated the proposed date of commissioning as, 04.04.2007. Vide communication dated 26.02.2007, Ministry of Tourism (in short MOT) had pointed out defects, in the application. The applicant-hotel removed the defect and furnished necessary documents on 15.03.2007. The applicant-hotel was thus commissioned on 04.04.2007, by which time, the 2007 scheme had kicked-in. The criteria for eligibility under the 2007 scheme was commissioning and classification as against completion and classification under the 2004 scheme. The applicant-hotel was inspected by the designated authority after a delay of fifteen (15) months i.e., on 04.06.2008. It was granted classification as a heritage (basic) category, on 18.06.2008. Immediately, thereafter, the applicant-hotel made an application for grant of capital subsidy, i.e., on 21.07.2008. Mr Talesara contended that, the application for classification was made on 12.02.2007, as even though, the hotel was completed, it was not commissioned by the said date. Therefore, the proposed date for commissioning was indicated as 04.04.2007. The date of commissioning having fallen within the tenure of the 2007 scheme, it was entitled to the capital subsidy. The delay, in classification of fifteen (15) months, despite having submitted all relevant and necessary documents is, unexplained. The allegations with regard to tariff cards filed for the period August, 2006 to September, 2007, were attempted to be refuted, by contending that, this was an aspect which was not urged before the learned Single Judge, and

therefore, the applicant-hotel had no opportunity to rebut this aspect of the matter. It was, however, contended that the applicant-hotel was situated in a rural area of Rajasthan where, men and material were not easily available, and hence, the delay in execution of the project. The tariff cards were, according to Mr Talesara, printed in anticipation of the hotel being completed and commissioned by June, 2006. Since, that did not happen, and it got completed in February, 2007, the said information was disclosed in its application for classification dated 12.02.2007. Mr Talesara submitted that, as indicated above, since the hotel was commissioned on 04.04.2007, which was a date falling within the tenure of 2007 scheme, the applicant-hotel in this case as well, should be accorded the benefit of the capital subsidy. The delay of fifteen (15) months in granting the classification, was solely attributable to the designated authority.

LPA No. 74/2012 (Re. Ambika Resorts)

(v) The learned counsel appearing in the LPA no. 74/2012, submitted that its project received approval of the MOT for a three star category hotel, pursuant to an application made in that regard on, 19.01.2007. It was contended that all approvals were sought by the applicant-hotel based on the fact that, its project had received approval for a three star hotel. The applicant-hotel completed and commissioned its hotel on, 01.09.2007. There appears to be no dispute though, that the hotel was inspected on, 13.02.2008 when, as noticed hereinabove, improvements were suggested through email dated 18.02.2008. Evidently, the applicant-hotel after removing the deficiencies submitted a compliance report.

There is, however, no dispute about the fact that, the applicant-hotel was re-inspected on 27.04.2008 and granted a classification, albeit in a lower category, i.e., two star category, as against its application for a three star category. It was contended that the designated authority took around one year and seven months, and that too, after several reminders, to take a decision on its

application for grant of capital subsidy. The fact that the inspection was delayed by more than five (5) months is the reason that the applicant-hotel could not remove the deficiencies pointed out, much prior to 31.03.2008 as it would have otherwise desired. In these facts, it was submitted that, the applicant-hotel ought to get the capital subsidy as per the recommended two star category.

WP(C) 7150/2011 (Re. Waman Hotel Orient Crown)

(vi) The learned counsel appearing for the petitioner submitted that the hotel was commissioned on 30.04.2007. An application for classifying its hotel, as a three star hotel, was submitted on 20.02.2008. It appears by a communication dated 28.02.2008, the DOT called upon the writ petitioners to furnish certain documents, such as, the NOC from the police and the fire department, and to place on record, a check-list of services and facilities available. Before the needful could be done, on 14.03.2008, a communication was received from the designated authority, conveying that their hotel would be inspected for the purposes of classification, on 21.03.2008. In the meanwhile, the writ petitioners submitted copies of the requisite certificates and documents demanded by DOT vide its letter dated 18.03.2008. After the inspection was completed on 21.03.2008, on the same date, the writ petitioners made an application for the grant of capital subsidy. While this application was under consideration, the writ petitioners received an intimation on 15.04.2008 that, it had been granted a three star category w.e.f. 15.04.2008. Despite, the application for classification and inspection having been made prior to 31.03.2008, DOT vide letter dated 03.12.2010, rejected the writ petitioner's request for grant of capital subsidy.

OUR ANALYSIS

11. Having heard the learned counsels for the parties and perused the record there are broadly two aspects which arise for our consideration in the matter. The

first, as to the manner in which the 2007 scheme needs to be construed, and the second, the applicability of the 2007 scheme to the facts of each case.

12. In so far as the 2007 scheme is concerned, it is quite evident that, it is a continuation of such schemes, which had been in place since 2003-2004. The 2004 scheme, which was brought into effect by virtue of notification dated 30.09.2004, was co-terminus with the tenth (10th) Five Year Plan, which ran between 01.04.2002 till 31.05.2007.

13. As discussed above, the measure of benefits under the 2004 scheme was, different to that under the 2007 scheme. Under the 2007 scheme, the grant of capital subsidy, was dependent on the number of rooms in a hotel, which was in-turn tied-in with the rate of subsidy, as prescribed, per room, depending on the category in which, the hotel stood classified.

14. Importantly, under clause 4 of the 2004 scheme the release of the incentive was tied-in with the "*completion*" of the project and the "*classification*" of the applicant-hotel in the category, in which, it was approved.

15. Both, under the 2004 scheme and the 2007 scheme, the applicant-hotel was required to make an application for initial approval of the project. Under the general terms and conditions, quarterly reports were required to be sent to the concerned department of the GOI. The applicant-hotel was also required to inform the DOT, as soon as the hotel project was completed, for which a time frame of five (5) years was given. Failure to do so meant that, the approval for the project would stand withdrawn.

16. It was also a part of the general terms and conditions which, required the applicant-hotel to apply for classification within three (3) months from the date of its functioning [See condition nos. 1(v) to (viii) of letter dated 20.01.2006 issued by India Tourism, Govt. Of India appended at page 63-64 of the paper book filed in LPA No. 952/2011]

17. Therefore, when on 07.12.2007 a revised scheme was introduced it carried forward the 2004 scheme with the necessary amendments. The particular

amendments, which have a bearing on the 2007 scheme were as follows: (a) the 2007 scheme was made to run on an "*experimental*" basis in the first year of the eleventh (11th) five year plan and, therefore, was necessarily required to terminate on 31.03.2008; (b) While the categories for classification remained the same, i.e., one, two, three star and heritage (basic), the measure for grant of incentives changed; (c) the 2007 scheme applied to those applicant-hotels whose projects were commissioned and classified by the MOT, GOI within the defined period, i.e., 01.04.2007 to 31.04.2008 [see clause (3) of the 2007 scheme]; (d) The incentive, i.e., the capital subsidy was to be released only after completion of the classification exercise qua an applicant-hotel [see clause 6 of the 2007 scheme].

18. Under clause 7 of the general terms and conditions under the sub-head approval of projects (hereinafter referred to as clause 7 of the G.T.C) each applicant-hotel was required to immediately inform the DOT, the date from which its hotel became operational and was required to apply for classification within three (3) months of that date. What is also noticeable is that under clause 19 of the general terms and conditions under the sub-head classification, (hereinafter referred to as clause 19 of G.T.C), the designated authority was required to finalize the applications for classification within a period of three (3) months. It is interesting to note that, the 2007 scheme was notified only on 07.12.2007; though with retrospective effect, i.e., 01.04.2007. Since it expired on 31.03.2008, the time frame between the date of the notification of the 2007 scheme and its expiry was approximately three (3) months and three (3) weeks. If one were to apply clause 7 of the G.T.C (having regard to the argument advanced by the UOI, that the scheme would automatically expire on 31.03.2008) the applicant-hotels would necessarily have had a window of three weeks broadly, i.e., between 07.12.2007 and 31.12.2007 within which to inform of its completion where completion took place prior to 07.12.2007. This would obviously render the 2007 scheme

unworkable as application for classification could be made within three (3) months of such information.

18.1 Since the scheme was given retrospective effect, that is, it was made effective from 01.04.2007, we would have to construe it, as we have, in a manner which makes sense of the terms and conditions stipulated in the 2007 scheme including the general terms and conditions which remained intact through 2003-07. Therefore, it would be in order to apply the 2007 scheme to pending projects which were commissioned within the period stipulated under the 2007 scheme, i.e., 01.04.2007 and 31.03.2008. Thus, there could be instances (and, there is one such instance, which has been pointed out by us hereinabove), that a hotel project was completed prior to 01.04.2007 but was commissioned only on or after 01.04.2007. There is in fact no dispute, with regard to the fact that, all applicant-hotels before us, were commissioned on or after 01.04.2007. There is also no dispute before us that all applicant-hotels have been granted classification; albeit post 31.03.2008.

18.2 In these circumstances, what has to be kept in mind is, the requirement, that the application for classification had to be made within the stipulated period, i.e., three (3) months from the date of operation of the hotel. Since clause 7 of the G.T.C., does not use the expression "commissioning", we would construe the word 'operational' which finds mention in clause 7, as equivalent to the word "commissioning". The other requirement under the G.T.C., in particular, under clause 6, are the details to be provided in the application form as per the provisions contained therein. In this regard, a specific term is contained in clause 6(viii) (a) to (1) of the G.T.C., which requires the applicant-hotel to obtain the enumerated approvals/ NOCs. The responsibility for obtaining the necessary approvals/ NOCs is placed solely on the applicant-hotel.

18.3 Therefore, in our opinion, the applicant-hotels would have discharged their onus for grant of capital subsidy under the 2007 scheme if, they fulfilled the twin conditions which is: (i) the commissioning of their hotel within the validity period of the 2007 scheme, i.e., between 01.04.2007 to 31.03.2008; (ii) the filing of a complete application with relevant information, approvals/ NOCs in accordance with the terms and conditions provided under the 2007 scheme. The consequences of the failure to file complete applications in all respects, (i.e., with prescribed clearances, NOCs, certificates along with the application fee as provided in other clause 7 under the sub-head hotel classification in the G.T.C.), entailed rejection of the application.

18.4 The argument advanced on behalf of the UOI that, the exercise of the classification had also to be completed before 31.03.2008, is an argument, which is patently fallacious in view of the provisions of clause 19 of the G.T.C. which provides for a period of three (3) months for completion of such an exercise. Therefore, if clause 19 has to be construed harmoniously with clause 7 of the G.T.C. it cannot be said that the capital subsidy will not be available, in cases, where classification is carried out by the designated authority post 31.03.2008. A harmonious construction of the 2007 scheme would clearly indicate that, as long as, the commissioning as against completion was brought about, in a given case, within the validity period of the 2007 scheme, i.e., 01.04.2007 to 31.03.2008 and an application for classification was made within three (3) months of that date the applicant-hotel would have discharged its onus for claim of capital subsidy, provided the classification application was complete in all respects.

19. In the light of the aforesaid, we would have to see where each case would fall. For this purpose, we have, for the sake of convenience synthesised the details with respect to the aforesaid aspects in a tabular form given hereinbelow:

S. No.	1	2	3	4	5	6	7
Case No.	LPA 33/12	LPA 34/12	LPA 35/12	LPA 36/12	LPA 74/12	LPA 952/11	WP(C) 7150/II
Name of the Hotel	Sardargarh Heritage Hotel Rajsamand Rajasthan	Grand Haveli & Resort, Nawalgarh, Jhunjhunu Rajasthan	Tiger Valley Resort, Kumbhalgarh Rajasthan	Shreenath Inn Hotel & Restaurant, Nathdwara, Rajasthan	Ambika Resorts Pvt. Ltd., Amritsar, Punjab	Hotel Vikramditya a Sri Ganganagar, Rajasthan	Waman's Hotel Orient Crown, Kolhapur, Maharashtra
Date of the Commissioning	04.04.07	31.12.07	27.12.07	22.09.07	01.09.07	15.03.08	30.04.07
Date of Application for classification/ and its receipt	12.02.07/ 20.02.07	24.01.08/ 14.02.08	18.03.08	28.03.08	26.09.07	20.03.08/ 25.03.08	20.02.08/ 25.02.08
Date of classification	18.06.08	23.10.08	23.02.09	23.02.09	02.07.08	05.12.08	15.04.08
Date of Application for capital subsidy/ and the date of its receipt if any	21.07.08	24.03.08	19.05.08	01.09.08	16.03.08/ 17.03.08	28.01.09 / 03.02.09	21.02.08
The category applied for	Heritage Grand (not eligible for capital subsidy)	Heritage Basic	3 star	3 star	3 star	2 star	3 star
Category recommended	Heritage Basic (eligible for capital subsidy)	Heritage Basic	2 star	2 star	2 star	2 star	3 star
Whether any Discrepancy or Shortcomings found by the Designated inspection authority	No.	Yes	Yes	Yes	Yes	No	Yes
The nature of discrepancies/ short comings	NA	Application did not have copy of money changer and bar licence	Found suitable for 2 star and not 3 star	Found suitable for 2 star and not 3 star	kitchen to be redone Cutlery and crockery need to be replaced in uniformity with 3 star	NA	Application missed documents pertaining to fire NOC, Police NOC & checklist Of facilities
The date on which discrepancies/ short comings were intimated	NA	05.03.08	19.12.08	19.12.08	18.02.08	NA	28.02.08
The date on which rectification was communicated	NA	05.05.08 letter sought 20 days for rectification	15.01.09 received on 27.01.09 (hotel accepted for classification under 2 star category)	12.01.09 received on 23.01.09 (hotel accepted for classification under 2 star category)	25.03.08	NA	18.03.08 received on 19.03.08

20. To be noted the information contained in the aforementioned table, which has been put-in, based on the information supplied by the UOI; the copies of which were handed over to the counsel for the applicant-hotels.

20.1 The dates of the documents supplied or, their receipt, has not been disputed before us; though the common argument was that, this is not the stand which the UOI took either before the learned single judge or, in the grounds of appeal before us. We could have perhaps taken the easier route of remanding the matter to the learned Single Judge. This would have delayed the matters further, according to us. Since the dates of the documents and, broadly what was contended in the note of the UOI, were not disputed, we propose to deal with the information in the context of the provisions of the scheme as understood by us.

21. We, therefore, would take up the facts contained in the table qua each LPA in seriatim.

LPA No. 33/2012

22. In this behalf, as would be noticed, the application for classification was filed in 12.02.2007 when, the 2007 scheme was not even in existence. Though, as indicated above, the 2007 scheme was made effective with retrospective date, i.e., 01.04.2007. The UOI's stand before us, in the note filed in court, is that, since the application for classification was incomplete - vide communication dated 26.02.2007, the applicant-hotel was requested to furnish copies of mandatory documents/ NOCs required for classification. The details of the mandatory documents and NOCs, have not been set out in the note. The UOI, however, admits that the necessary documents were supplied on 20.03.2007; albeit before the commencement of the 2007 scheme. The argument of the UOI for denying capital subsidy to the applicant-hotel is that, in their classification application of 12.02.2007, it has been indicated that they were "fully operational" and to establish the same the applicant-hotel had also enclosed a copy of their tariff card, for the period August, 2006 to September, 2007. It is, therefore, the say of the UOI that, since the applicant-hotel had been commissioned prior to the scheme even having commenced, the applicant-hotel was not entitled to the benefit of the scheme on this ground

alone. Besides this, it is also the stand of the UOI that the inspection was conducted on 04.06.2008, and a recommendation for classifying the applicant-hotel in the heritage (basic) category was accorded on 18.06.2008, for a period of five (5) years from the said date, i.e., till 17.06.2013. Since the period of classification also fell outside the tenure of the scheme, this was an additional ground on which the benefit under the scheme was not to be made available to the applicant-hotel.

22.1 We have considered the aforesaid arguments. In our view, the letter accompanying the application for classification has to be construed as a whole to ascertain as to what the applicant-hotel was attempting to convey. No doubt, the covering letter dated 12.02.2007 conveys that the applicant-hotel was desirous of being classified being fully operational as they wanted to be part of the DOT's apparent advertising campaign "*incredible India*", to attract tourists - the application accompanying the said letter clearly adverted to the following:

"Proposed date on which the hotel may become operational — 04.04.2007."

22.2 It is undoubtedly true that no one was aware of the fact that the GOI would bring out a revised scheme to incentivize, "accommodation infrastructure" in December, 2007 and that too with retrospective effect from 01.04.2007. Therefore, it cannot be said that the date of 04.04.2007, referred to in the application filed, was slipped-in to somehow come within the ambit of the scheme. If that be so, we are inclined to accept the explanation of the learned counsel appearing for the applicant-hotel that the use of the term "*operational*" in the letter dated 12.02.2007 meant completion, whereas the date of 04.04.2007 as indicated in the application gave the actual date of commissioning.

22.3 There is, however, the other issue of submission of a tariff card which bears the period August, 2006 to September, 2007. The explanation offered is that the applicant expected the hotel to be completed in 2006; since the hotel

is located in a remote village where men and material are difficult to reach, the date of completion had to be postponed, though the tariff cards were printed in anticipation of its early completion, and hence, got appended to the application. In other words, much ought not to have been made of the dates printed on the tariff cards.

22.4 In our opinion, the dates on the tariff cards by themselves are not sufficient material to deny capital subsidy to the applicant-hotel, once an explanation has been offered in respect of the same. It would be difficult for the applicant-hotel to prove the negative. If the UOI were serious about its charge now made for the first time before the Division Bench, it could always have called for more information by way of books of accounts and income tax returns etc., to ascertain as to whether, the applicant-hotel had been commissioned prior to 01.04.2007. Since, none of this has been done, and there is no material to hold to the contrary except the dates printed on the tariff card, we are not persuaded to deny what would otherwise be due to the applicant-hotel. Therefore, in our view, LPA No. 33/2012 would have to be rejected.

LPA No. 34/2012

23. Undeniably in this case the applicant-hotel was commissioned on 31.12.2007, which is a date falling within the tenure of the 2007 scheme. Similarly, the application for classification was also made within the tenure of the scheme, under the heritage (basic) category, i.e., on 24.01.2008. The UOI, admits that it received said application on 14.02.2008. In this case, application for capital subsidy was made on 24.03.2008, once again, a date falling within the tenure of the scheme. Interestingly, the designated authority vide a communication dated 05.03.2008 trotted up irrelevant objections, such as, unavailability of money changers and bar licenses. The applicant-hotel vide letter dated 05.05.2008, responded to the said communication. Evidently, the applicant-hotel sought time to obtain the licenses, being unaware that such

licenses, were not required for hotels which fell in the category of heritage hotels.

23.1 The inspection of the hotel in this case, was carried out on 05.10.2010. The applicant-hotel was classified in the category of heritage (basic) on 13.10.2008, for a period of five (5) years ending on 12.10.2013. The argument advanced on behalf of UOI, in this case, for denying the benefit under the 2007 scheme was that the hotel had been classified after 31.03.2008. In our view, this was one of the grossest case, as the applicant-hotel is sought to be excluded, on grounds, which were completely irrelevant and inapplicable to it. Clause 6 (viii) (f) & (g), clearly provide that, bar and money changers licenses are necessary only for hotels falling in categories four star, five star and five star deluxe. The fact that the applicant-hotel had been commissioned and had applied for classification within the tenure of the scheme is, not in doubt. The ground now taken for exclusion is that, classification took place on a date outside the tenure of the scheme, i.e., 23.10.2008 (w.e.f. 21.10.2007 to 20.10.2012). As noticed hereinabove by us, the application was made within the time frame of three (3) months from the date the applicant-hotel was commissioned. This was the only requirement under the scheme. From then on, i.e., 24.01.2008 (under the terms and condition of the 2007 scheme) the designated authority was required to finalize the scheme within a period of three (3) months. This case shows that if the time frame provided clause 19 of the G.T.C. is applied one need not have categorised the applicant-hotel by 31.03.2008. This case also demonstrates that it was never intended that the classification had to take place before 31.03.2008. The fact that it actually took the designated authority nine (9) months to inspect, is another regrettable aspect with which we are not necessarily concerned in this matter. The point, however, still remains that if the scheme allows the designated authority time beyond 31.03.2008 to arrive at a final conclusion vis-a-vis a request for classification, could the applicant-hotel be denied the benefit of 2007 scheme. In our view, it cannot be

so, therefore, we are of the view that LPA 34/2012 should also be dismissed. It is ordered accordingly.

LPA NO. 35/2012

24. In this case the hotel was commissioned on 27.12.2007. The applicant hotel initially applied for being categorized as three star hotel vide its application dated 18.03.2008. Evidently, a second undated application was received by the designated authority on 21.05.2008, whereby the applicant hotel supplied copies of the approved map of the hotel duly signed by the *sarpanch* of the village alongwith a NOC from the Nagar Palika, Rajsmand. It is the say of the UOI that, the application for classification got completed only on the said documents being supplied. It is also not disputed that the inspection in this case was carried out on 02.09.2008. The designated authority recommended a two star classification in this case. Communication in this regard was sent to the applicant-hotel on 19.12.2008, followed by a reminder dated 13.01.2009. By these communications the applicant-hotel was called upon to convey its acceptance to the two star classification recommended in its case. Evidently, vide letter dated 15.01.2009, which was received by the concerned authority on 27.01.2009, the applicant-hotel accepted this proposition. The applicant-hotel was classified as a two star hotel w.e.f. 10.02.2009 for a period of five (5) years. We were informed that this classification was communicated on 23.02.2009, as indicated in our table above. There is no dispute also about the fact that, in this case, the application for capital subsidy was filed on 19.05.2008. In these facts, it is argued on behalf of the UOI that, even though the commissioning took place within the tenure of the scheme, the application for classification, which was filed on 18.03.2008, was deficient, and the deficiency, was cured, only post the tenure of the scheme. Therefore, according to the UOI, the applicant-hotel cannot be granted benefits under the 2007 scheme.

24.1 On the other hand Mr Talesara has argued that the first application dated 18.03.2008 was complete, in as much as, a copy of the approved map as also the certificate from the *gram panchayat* was enclosed. He has alluded to the covering letter dated 18.03.2008 as also the application form. He has drawn our attention to information supplied in paragraph 10 (a) and (h) of the application form. What is not, however, refuted that an undated application was filed on 21.05.2008. The copy of the said undated application is not on record. During the course of the arguments as well as in his written submissions, Mr Talesara has taken the stand that a clarificatory document, if any, submitted would not make the initial application incomplete or ineligible.

24.2 In our view, while Mr Talsera has not disputed the fact that a second undated application was filed, which was received by the concerned authority on 21.05.2008, he has chosen not to place the said document on record. If, as contended by Mr Talesara, the said documents were already on record then, where was the need to re-file them with the second undated application for re-classification. Mr Talesara's explanation that the application was clarificatory in nature could have been accepted if, he had demonstrated that both documents were on record. The said documents are in power and possession of the applicant-hotel and it was for Mr Talesara to bring the said documents on record. This is specially so, in the circumstances that we had made it clear in our order dated 20.03.2012 that the learned counsel for applicant-hotels should respond to the note submitted by the UOI. Furthermore, Mr.Talesara's written response does not even remotely suggest as to what clarifications were provided qua the documents purportedly filed earlier. In view of the G.T.C. being applicable to the 2007 scheme, in particular, clause 6 (viii), it was incumbent on the applicant-hotel to file alongwith its application for classification, all approvals/NOCs required in the matter. The terms and conditions, as noticed by us hereinabove, quite clearly, stated that the application for classification would be rejected if, the necessary approvals/NOCs did not accompany it. In this case,

the applicant will have to bear the blame, as it has not been able to satisfy us, as regards its submission that the aforementioned documents along with the initial application for classification, was filed on 18.03.2008. Therefore, the only inference one can draw is that a complete application for classification was filed beyond 31.03.2008. Having concluded so, we would have to agree with the UOI that this LPA would have to be allowed. It is ordered accordingly.

LPA No. 36/2012

25. In this case the applicant-hotel was commissioned on 22.09.2007; within the tenure of the 2007 scheme. By an undated application, which was received by the designated authority on 28.03.2008, the applicant-hotel sought classification under three star category. We must point out though, in the list of dates filed with the writ petition, from which this LPA arises, it is indicated that the applicant-hotel became operational on 28.04.2007, and that, the application for classification was dated 27.03.2008. Either way, it would not make much difference as, both sets of date fall within the tenure of the 2007 Scheme.

25.1 Reverting to narrative, the applicant-hotel was inspected for the purpose of classification on 01.09.2008 whereupon, it was recommended for classification as a two star hotel. A communication dated 19.12.2008 was sent in that regard, followed by a reminder dated 13.01.2009, whereby the applicant-hotel's acceptance qua the recommended classification was sought. The applicant-hotel conveyed its acceptance of the recommendation made, vide letter dated 12.01.2009, which was, received by the concerned authority on 23.01.2009. Thus, the applicant-hotel received a two star classification vide communication dated 23.02.2009 w.e.f. 10.02.2009 for a period of five (5) years ending on 09.02.2014. The applicant-hotel filed an undated application for capital subsidy, which was received by the concerned authority on 01.09.2008. In this case, the UOI contended that capital subsidy could not be granted to the applicant-hotel as, it was classified after 31.03.2008.

In addition, it was also argued that even the application for capital subsidy was submitted post 31.03.2008 and, therefore, the benefits under the scheme could not be made available to the applicant-hotel. Apart from the above, the learned ASG also adverted to clause 19 of the G.T.C., to contend that classification had to be completed within a period of three (3) months, which could not have been done as, the application for classification was submitted belatedly.

25.2 In our view, the first two grounds put forth by the UOI deserve to be rejected. The fact that classification took place after 31.03.2008 or that the application for capital subsidy was filed after 31.03.2008 cannot simplicitor form the basis for denying benefits under the 2007 scheme de hors other terms and conditions of the 2007 scheme to which we will advert shortly. The third ground has to be dovetailed with clause 7 of the G.T.C. In terms of the provisions of the said clause the applicant-hotel has to submit the application for classification within three months from it becoming operational. Admittedly, the applicant-hotel was commissioned on 22.09.2007, and the application for classification was made on 28.03.2008, well beyond the period of three (3) months. Had the applicant hotel made the application for classification within the time frame accorded under the terms and conditions of the scheme, it could hardly be said that delay beyond three months in finalization of the classification by the designated authority could be used to exclude it from the benefit of the 2007 scheme. However, in this case the applicant-hotel is to blame itself for delay in the submission of the application for classification. Had the applicant-hotel done the needful, the fact that the classification was carried out after 31.03.2008, could not have been used to deny it, the benefit under the scheme. But, as stated hereinabove, it is the lapse on the part of the applicant-hotel which has caused, at least, some part of the delay in classification being carried out beyond 31.03.2008. For this

reason, we are of the view that the appeal will have to be allowed. It is ordered accordingly.

25.3 Qua this case one would also notice that even though the applicant had applied for classification under three star category, the designated authority had recommended that the applicant-hotel be classified as two star hotel after inspecting the hotel premises and the facilities available therein.

LPA No. 74/2012

26. In this case the applicant-hotel was commissioned on 01.09.2007. On 26.09.2007 application for classification was made by the applicant-hotel. The applicant-hotel applied for a three star rating. It appears that an inspection was carried out by the designated authority of the applicant-hotel on, 13.02.2008. Thereupon, a deficiency notice was sent to the applicant-hotel which included, defects with regard to the kitchen; requiring its re-doing and, the suggested change of cutlery and crockery provided in the hotel. The applicant-hotel evidently on 25.03.2008, submitted its compliance report qua the deficiencies pointed out.

26.1 By a letter dated 16.04.2008, it was communicated to the applicant-hotel that re-inspection would be carried out on 27.04.2008. Upon re-inspection of the hotel, the sub-committee appointed by the designated authority noticed the following discrepancies:

- "1. The kitchen flooring has been done partly. The work of working tables is still pending. Refrigerators have not been provided as per 3-star requirements. Storage has not been provided in conformity with 3-star.
2. Old cutlery and crockery have not been replaced with new one in conformity with 3-star."

26.2 Based on the above, a recommendation was made that, the applicant-hotel be classified as two star hotel as against its request for classification as a three star hotel. In view of the findings of the sub-committee, a communication dated 28.05.2008 was sent to the MOT to the same effect, recommending a

two star rating for the applicant-hotel. This was followed by a letter of the chairman of the designated authority, conveying its concurrence to the communication dated 28.05.2008. Accordingly, on 02.07.2008 a formal order was issued in that behalf, according a two star rating to the applicant-hotel, for a period of five (5) years, i.e., from 13.06.2008 to 12.06.2013.

26.3 The aforesaid facts have not been refuted before us, by the learned counsel for the applicant-hotel. In this case even though the applicant-hotel had been commissioned within the tenure of the scheme, and the first inspection had been carried out also within the tenure of the scheme, i.e., on 13.02.2008 there were several deficiencies noticed. Despite, the compliance report having been filed by the applicant-hotel on 25.03.2008, as noticed hereinabove by us, the deficiencies remained outstanding which, on re-inspection were made known to the applicant-hotel. It is because of these facts that the applicant-hotel was finally recommended for a rating of two star against the desired rating of a three star hotel. Given these facts, we are of the opinion that the applicant-hotel could not have contended that it had fulfilled the criteria for classification within the prescribed date. As a matter of fact the objection taken on re-inspection clearly indicated that even on 25.03.2008 when, it had submitted a compliance report the shortcomings pointed out had not been attended to. The argument that it should get subsidy at least as per the rating granted, cannot be countenanced in this case, as till the last date of the expiry of the scheme the applicant-hotel was contending that it ought to be granted the higher rating of three star hotel. It is only after re-inspection that the designated authority came to the conclusion that the rating sought could not be granted to the applicant-hotel.

26.4 In our view, the applicant-hotel cannot contend that its application for classification was complete in all respects, within the designated time frame, and when it is found not to be so, it could still seek the benefits under the scheme. If this argument is accepted then, the scheme would run interminably. As noticed

by us hereinabove, the 2007 scheme was co-terminus with the first year of the eleventh (11th) Five Year plan and that too on an experimental basis. Subsidization by the State, has to find sources for financing such schemes. While such schemes should be construed liberally, at the same time it cannot be construed, in a manner, which would stretch the resources of the State way beyond the time frame envisaged; specially when, the blame for not adhering to this time frame falls squarely on the claimant. The LPA in this case would also have to be allowed. It is ordered accordingly.

LPA 952/2011

27. In this particular case the applicant-hotel was purportedly commissioned on 15.03.2008. The applicant-hotel applied for classification within five (5) days of its claimed commissioning, i.e., 20.03.2008. This application was received in the office of the MOT on 25.03.2008. The applicant-hotel was inspected by the designated authority on, 06.11.2008. On 02.12.2008, the designated authority recommended a two star classification qua the applicant-hotel. This was communicated to the applicant-hotel vide a letter dated 05.12.2008; stating therein, that the classification would be valid for a period commencing on 01.12.2008 and ending 30.11.2013. On 28.01.2009, the applicant-hotel made an application for grant of capital subsidy. This application was received apparently in the MOT on 03.02.2009. By an order dated 02.07.2010, which was impugned in the writ petition filed before the learned Single Judge, the applicant-hotel's request for grant of capital subsidy was rejected. It is contended on behalf of the UOI that, the capital subsidy could not be granted to the applicant-hotel for the reason that, the application for classification was filed on 20.03.2008, which was received only on 25.03.2008 and hence, leaving very little time for the designated authority to complete the exercise of classification before 31.03.2008.

27.1 This apart, two additional submissions were advanced. The first one being that, the application for grant of the subsidy was filed as late as WP(C) No. 7150/11 with LPA Nos. 952/11, 33-36/12 & 74/12

28.01.2009. The second submission was that even the application for classification was not complete in all respects as the mandatory clearance from the health officer/sanitary inspector had not been received on the date of filing of the application. Therefore, the claim of the applicant-hotel that, it had actually been commissioned on 15.03.2008, according to learned ASG, was very much in doubt.

27.2 In rebuttal, Mr Talesara argued that, as long as the application was made before 30.03.2008, it should suffice. The allegation with regard to the fact that, approval/certificate of the municipal health inspector/sanitary inspector was not available, was not refuted by Mr Talesara. It was, however, submitted that, the applicant-hotel was granted classification on the very same application without any objection having been raised, in the first instance. As a matter of fact, our attention was drawn to the letter of rejection dated 02.07.2010, which did not advert to this aspect of the matter. As regards the objection of the UOI to the grant of capital subsidy, based on delay in filing the application for grant of the said subsidy, Mr Talesara submitted that firstly, there was no period prescribed for filing such an application, and secondly, clause 6 of the 2007 scheme made it quite clear that, the capital subsidy would be released to an applicant-hotel only after the classification exercise was completed. Mr Talesara submitted that, the communication vis-à-vis classification having been sent only on 05.12.2008, there was no delay in making an application for release of capital subsidy.

27.3 Having examined the arguments and the documents, we are of the view that while the applicant-hotel is right in its contention that the grant of capital subsidy cannot be denied only for the reason that enough time was not available to carry out the inspection, and the consequent classification before 31.03.2008, the fact remains that the application for classification was not complete in all respects as per the provisions of the 2007 scheme. Clause 6 (viii) (c) of G.T.C. under the head '**hotel classification**' quite clearly

mandated the filing of a clearance certificate from the municipal health inspector/ sanitary inspector, giving clearance to the applicant-hotel from the sanitary/ hygiene point of view. The fact that an application had been made in this regard is not in dispute as, in the classification application filed, against information sought under (X)(c), the applicant-hotel has clearly indicated that it had, at the relevant point of time, '*applied*' for such a certificate.

27.4 Mr Talesara is, however, right in contending that the order of rejection dated 02.07.2010 does not advert to this aspect of the matter. The impugned order of rejection proceeds on the basis that the classification was carried out post 31.03.2008. It appears that this ground was not taken by the UOI before the learned Single Judge or even in the grounds of appeal before us. Though the point raised by the UOI is valid, since the issue involved relates to use of public funds, it would be appropriate for the concerned authorities under the UOI to revisit the issue and ascertain as to whether, the applicant-hotel was actually in operation as claimed on 15.03.2008, when it admittedly did not have requisite clearance from the municipal health inspector/ sanitary inspector. Therefore, the best course, according to us in these circumstances would be, to set aside the impugned order dated 02.07.2010 and, direct the MOT, GOI to carry out a de novo exercise on this aspect of the matter and thereafter, pass a suitable order on the applicant-hotel's request for grant of capital subsidy.

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28. In this case the applicant-hotel was commissioned on 30.04.2007. An application dated 20.02.2008 was filed with the designated authority for classification by the applicant-hotel under three star category. Since, the application was incomplete, vide communication dated 28.02.2008, the following documents were sought on an urgent basis, to enable further processing of the matter:

"1. A copy of the No Objection Certificate from the local authority in respect of fire fighting arrangements in your hotel.

- 2. Licence from the Police Department authorizing the running of the hotel.**
- 3. Checklist for facilities/ service available under 3 star category, as per copy enclosed."**

28.1 This information was sought by the India Tourism Department, under the MOT, GOI. It appears that on 14.03.2008, another communication was issued, once again, by the India Tourism Department of the MOT, GOI intimating that they would inspect the hotel premises on, 21.03.2008. Under the cover of a communication dated 18.03.2008, the applicant-hotel supplied the deficient documents. It is not in dispute that an inspection report concerning the applicant-hotel was forwarded under the cover of the letter dated 25.03.2008, to the MOT which was received by it on, 01.04.2008. Consequent thereto, the applicant-hotel was classified as a three star hotel for a period of five years w.e.f. 15.04.2008 till 14.04.2013; by a communication dated 15.04.2008.

28.2 In these circumstances, on behalf of UOI, it was argued that since the classification was carried out post 31.03.2008, the applicant-hotel was not entitled to grant of capital subsidy. In this case also recourse was taken to the provisions of clause 19 of the G.T.C., to contend that, the time frame for finalization of classification was three (3) months and because the application for classification was incomplete, in no way the designated authority could have completed the classification before 31.03.2008. It was further contended that in this particular case, the designated authority had completed the classification as a matter of fact within less than one month of the deficient information being supplied. Therefore, the argument was — had the first application for classification been complete in all respects, perhaps the exercise for classification could have been completed before 31.03.2008.

28.3 There appears to be merit in the argument of the UOI, though as indicated hereinabove, the timelines in our view operate in a different manner. Clause 7 of the G.T.C. required the applicant-hotel to file their application for classification within three (3) months of its hotel having been commissioned.

Undisputedly, the hotel was commissioned on 30.04.2007, and after nearly nine (9) months the first application for classification was made, i.e., on 20.02.2008. In this case, even if we were to assume in favour of the applicant-hotel that the 2007 scheme was notified only on 07.12.2007, a complete application ought to have been filed on or before 07.03.2008. The application which was filed on 20.02.2008, was wholly deficient. The deficiency was cured on 18.03.2008, even though, in the communication dated 28.02.2008, it was made clear that the deficient information/documents should be supplied pro-tanto. It was only after the applicant-hotel was informed vide communication dated 14.03.2008 that an inspection of the hotel would take place on 21.03.2008, that the deficient information was supplied by the applicant-hotel under the cover of letter dated 18.03.2008. Therefore, then to expect that, the filing of the application in these circumstances, even though deficient, should enable it to obtain capital subsidy for itself would, in our view, be going contrary to the construct of the 2007 scheme. The designated authority was entitled to take three (3) months from the date a complete application being filed with it. As a matter of fact, they completed the exercise within less than a month, though post 31.03.2008. Therefore, denial of capital subsidy to the applicant-hotel in this case, to us, is in order. The writ petition is accordingly dismissed.

29. Having examined each case, the final result is as follows:

- (i) WP(C) No. 7150/2011 — Dismissed.
- (ii) LPA No. 952/2011 — Impugned order dated 02.07.2010 is set aside and the concerned agency under GOI is directed to carry out a de novo exercise and pass a suitable order on the applicant-hotel's request for grant of capital subsidy.
- (iii) LPA No. 33/2012 — Dismissed.
- (v) LPA No. 34/2012 — Dismissed.
- (vi) LPA No. 35/2012 — Allowed.
- (vii) LPA No. 36/2012 — Allowed.
- (viii) LPA No. 74/2012 — Allowed.

30. The appeals and the writ petition are disposed of in terms of the directions set out above.

31. The parties, however, shall bear their own costs.

RAJIV SHAKDHER, J

SANJAY KISHAN KAUL,J

MAY 02, 2012
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