

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On :October 24, 2016*
Judgment Delivered On :October 27, 2016

+ **RFA (OS) 67/2016**

THE INDIAN HOTELS COMPANY LTD.Appellant

Represented by: Mr.Harish N.Salve, Sr.Advocate
Mr.Rajiv Nayar, Sr.Advocate
instructed by Mr.Rishi Agrawala,
Mr.Karan Luthra and Ms.Niyati
Kohli, Advocates

versus

NEW DELHI MUNICIPAL COUNCILRespondent

Represented by: Mr.Sanjay Jain, Additional
Solicitor General instructed by
Mr.Akshay Makhija, Advocate
with Mr.Vidur Mohan, Ms.Rhea
Verma, Ms.Malina Bahal and
Ms.Bani Dikshit, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Since the documents exhibited at the trial have been admitted by the appellant and the respondent, save and except letter dated November 09, 2011 which has been denied by the NDMC, we shall be referring to the documents with reference to their caption and recording the date of the

document and not with reference to the exhibit number put on the document.

2. The dispute in the present lis revolves around land bearing No.1, Man Singh Road, New Delhi ad-measuring 3.78 acres and the hotel building constructed thereon : '*Taj Man Singh Hotel*'. The land had been allotted on a perpetual lease by the Government of India, L&DO (Land and Development) office vide allotment letter dated July 13, 1976 to the then New Delhi Municipal Committee now renamed as New Delhi Municipal Council (hereinafter referred to as 'NDMC') for the purpose of setting up a hotel.

3. Pursuant to an offer to construct a hotel building on the land by the Indian Hotels Company Limited (hereinafter referred to as 'IHCL'), vide letter dated March 31, 1976, which was accepted by the NDMC vide resolution dated April 02, 1976, the NDMC and IHCL entered into a written agreement, which the parties christened : '*Collaboration Agreement*', on December 18, 1976 containing the terms on which a hotel building would be constructed. According to the terms of the Collaboration Agreement, NDMC was to bear the cost of the construction of the hotel building up to a sum of ₹425 lakhs and IHCL was to bear costs of construction beyond ₹425 lakhs. Additionally the costs towards furnishing and equipping the hotel building to make it fit for running a five star hotel and landscaping surrounding the hotel building had to be borne by IHCL. On December 18, 1976, the parties executed another agreement, christening it : '*License Deed*', by which the NDMC granted a licence to IHCL to operate the hotel to be constructed pursuant to the Collaboration

Agreement dated December 18, 1976 for a period of 33 years from the date of the first paying guest occupying the hotel. The terms and conditions of the licence are enumerated in the License Deed. It is the admitted position that the period of licence commenced on October 10, 1978 on the occupation of the hotel by the first paying guest.

4. On September 25, 1979, an agreement christened :‘*Supplemental Agreement*’, was executed by the parties by which the total contribution of the NDMC to the project was enhanced to ₹626 lakhs which included the cost of construction in the sum of ₹475 lakhs, the cost of acquiring land bearing No.1, Man Singh Road, New Delhi, which was valued at ₹106.64 lakhs, which sum included the cost of land in the sum of ₹91.48 lakhs, and a sum of ₹10.66 lakhs as arrears of ground rent and a sum of ₹4.5 lakhs as depreciated value of the building on the property which had been demolished to construct the hotel under the Collaboration Agreement dated December 18, 1976.

5. Clause (ii) of this Supplemental Agreement provided that the IHCL would pay the NDMC a sum of ₹12 lakhs per annum in lieu of house tax payable in respect of the hotel building. The Supplemental Agreement dated September 25, 1979, also changed the basis to calculate the licence fee from ‘Gross Receipts’ to ‘Gross Income’.

6. The licence period of 33 years as per the License Deed dated December 18, 1976, which commenced on October 10, 1978, expired on October 10, 2011. It is the admitted position that on February 15, 2010, IHCL sought an extension of the licence granted to operate the hotel, which was well within the period of 60 days before the expiry of the licence

period, as was required by the License Deed dated December 18, 1976. It is also the admitted position that thereafter, the NDMC constituted an Internal Committee as contemplated by Section 9 of the New Delhi Municipal Council Act, 1994 (hereinafter referred to as 'NDMC Act, 1994') on September 21, 2010 to consider the request by IHCL to extend the period of the licence. The Committee raised an issue regarding the applicability of Section 141(2) of the NDMC Act, 1994 as well as the mode and manner of operationalizing the renewal provisions in the License Deed dated December 18, 1976.

7. IHCL addressed the issues raised by the Committee constituted by the NDMC vide letter dated January 06, 2011, claiming that Section 141(2) of the NDMC, 1994 was not attracted. Thereafter, two meetings were held between the representative of IHCL and the Estate Department of the NDMC on May 09, 2011 and June 03, 2011, wherein it was decided by the parties that the licence to operate the hotel would be extended for a period of 30 years on a revised licence fee schedule as per which IHCL would pay 17.25% of the gross turnover of the hotel for the first 10 years with a minimum guaranteed amount of ₹21 crores per annum; 18.25% of the gross turnover of the hotel for the next 10 years with a guaranteed amount of ₹25 crores per annum; and 19.25% of the gross turnover of the hotel for the final 10 years with a guaranteed amount of ₹30 crores per annum.

8. A report recommending the extension of the licence on these revised terms was submitted by the Committee to the Council of the NDMC, but before the recommendations of the Committee could be examined by the Council, the representatives of the Ministry of Urban Development advised

the NDMC to invite open bids by way of licence to operate the hotel with IHCL to be given a first right of refusal to match the highest bid, which was stated to be in terms of a decision taken on August 01, 2011 by the Ministry of Urban Development. Vide letter dated September 08, 2011, addressed by the NDMC to the Ministry of Urban Development, it sought a re-examination of the advise to invite open bids and sought approval of its recommendations to extend the licence granted to IHCL on the revised terms agreed between the parties. A similar request for reconsideration was made by IHCL vide letter dated September 30, 2011 to the Secretary, Ministry of Urban Development.

9. In a meeting held on November 14, 2011, the Additional Secretary (UD & DL), Ministry of Urban Development and JS (FA), Ministry of Urban Development opined that the NDMC ought to negotiate with IHCL, if necessary, in order to secure licence fees as close to the market rent as possible for the period for which any extension was to be granted.

10. The NDMC vide letter dated November 08, 2011 informed IHCL that its Council had decided to accord approval for extension of the existing Collaboration Agreement and License Deed dated December 18, 1976 for a period of year up to October 10, 2012, subject to IHCL agreeing to pay Licence fee as per the License Deed dated December 18, 1976 retrospectively from October 11, 2011. It is claimed by IHCL that vide letter dated November 09, 2011 it agreed to the extension of one year on the understanding that the one year extension had been granted to facilitate the formalization of the extension of the licence for a period of 30 years. The said letter dated November 09, 2011 has been denied by the NDMC.

11. In pursuance of a meeting between the representatives of the parties on July 12, 2012, one year extension of the licence was granted by the Council of the NDMC to IHCL and this decision of grant of extension of licence up till October 10, 2012 with IHCL to pay licence fee at 17.25% of the gross turnover of the hotel or ₹21 crores whichever was higher for the period between October 11, 2011 to October 10, 2012 was communicated to IHCL vide letter dated August 16, 2012. On August 17, 2012 IHCL made requisite payment as per letter dated August 16, 2012.

12. IHCL vide letter dated September 26, 2012 addressed by IHCL to the NDMC it reiterated that Section 141(2) of the NDMC Act, 1994 would not be attracted to the extension of the License Deed dated December 18, 1976 and forwarded a legal opinion obtained by it from a Senior Advocate reflecting this view. But vide letter dated November 05, 2012 the NDMC informed IHCL that its Council in its meeting held on September 27, 2012, had decided to auction the property with right of first refusal to be that of IHCL. Vide letters dated November 20, 2012, and March 25, 2013 IHCL sought a reconsideration of the decision of the Council to conduct a public auction

13. Thereafter, having not received a satisfactory reply from the NDMC, IHCL filed CS(OS) No.651/2013 on April 04, 2013 seeking a decree of permanent injunction restraining the NDMC from interfering with the possession, right to operate, run and maintain the hotel premises at 1 Man Singh Road, New Delhi as well as a permanent injunction restraining the NDMC from conducting a public auction for

running/operating/maintaining the hotel premises at 1, Man Singh Road, New Delhi.

14. NDMC filed a written statement on May 08, 2013. Thereafter Ministry of Home Affairs Government of India issued directions to NDMC on May 10, 2013, and June 27, 2013, in purported exercise of power conferred upon the Union of India under Section 395 of the NDMC Act, 1994 directing that the public auction should be sans the right of first refusal to IHCL; for such a right of first refusal would not fetch the best offer. Thus, NDMC amended the written statement filed by it upon leave being granted by the Court to incorporate said fact.

15. On October 11, 2013, NDMC informed IHCL that it had not received instructions from the Ministry of Home Affairs consequent upon the advice of the Solicitor General of India on the action to be taken regarding the property as sought by the Council pursuant to resolution dated September 27, 2012 and therefore, it had decided to extend the licence on the revised terms communicated to IHCL vide letter dated August 16, 2012, till March 31, 2014, or till such time a decision, based on the advise of the Ministry of Home Affairs, would be taken, whichever date was earlier. On March 24, 2014, another extension of the licence was granted by the NDMC to IHCL. Vide letter dated April 07, 2015, the NDMC informed IHCL that on March 25, 2015, its Council had decided to grant a three month extension of the licence to IHCL and had directed that the auction was to be completed within this three month period. The NDMC also informed IHCL that the right of first refusal offered to it vide letter dated November 05, 2012 stood withdrawn. As a consequence, IHCL

filed IA No.8099/2015 on April 18, 2015 seeking a stay of the proposed auction. Vide letter dated January 29, 2016 NDMC extended the Licence up till January 31, 2016 and directed IHCL to vacate the property by February 29, 2016. On February 01, 2016 IHCL filed IA No.1530/2016 impugning letter dated January 29, 2016.

16. Since evidence had been led when IA No.8099/2015 was filed, the learned Single Judge has decided the suit itself and vide impugned order dated September 05, 2016 has dismissed the suit.

17. From the pleadings of the parties and the documentary evidence it can be gathered that the case of IHCL is that the relationship between IHCL and the NDMC in respect of the construction and operation of the hotel was in the nature of a '*Joint Venture*' and as a consequence, IHCL had a long term interest in the hotel building and the land upon which it was built and therefore, had a vested right to claim an extension of the licence. IHCL pleaded that a number of documents prepared by the NDMC throughout the subsistence of the relationship between the parties clearly recorded that the nature of the relationship was a '*Joint Venture*'. The Resolution dated April 02, 1976 of the NDMC accepting the offer of IHCL to construct a building on the land, recorded that offer for joint participation in the construction and the running of the hotel was being accepted; the Collaboration Agreement dated December 18, 1976 which used the term 'collaborate'; letter dated February 28, 1977 by which the NDMC granted approval to the building plans of the proposed hotel building, which recorded that IHCL was a 'Collaboration Partner'; letter dated September 08, 2011 from the Chairperson of the NDMC which

recorded that the nature of the relationship between the parties was a '*Joint Venture/Collaboration*' and that a unique PPP model had been followed in the construction and operation of the hotel as well as the Resolution dated October 07, 2011 of the NDMC which recorded that the project was a '*Joint Venture*' in which the NDMC had '*invested land and building*' were highlighted. IHCL pleaded that the nature of the relationship as well as the long term interest of IHCL in the hotel project could also be inferred from the terms of the Collaboration Agreement dated December 18, 1976, the License Deed dated December 18, 1976 and the Supplemental Agreement dated September 25, 1979. IHCL additionally pleaded that the terms of the Collaboration Agreement, dated December 18, 1976, clearly reflect that the Hotel project, which was a joint venture, comprised two components: the construction of the hotel building and the furnishing and operation of the constructed hotel. Thus, according to IHCL, the Collaboration Agreement dated December 18, 1976 was not a contract envisaging co-operation between the parties only in the construction of the hotel building and made a clear distinction between the 'hotel building' which is the construction component of the contract and the complete 'hotel' which is the object of the joint venture and included both components, that is, the hotel building and the operation of the hotel. According to IHCL, this distinction reflects that the 'Hotel' is the result of the joint venture between the parties, wherein the NDMC contributed the Hotel Building while IHCL contributed planning, designing, construction, equipment, commissioning and operation of the 'Hotel'. To take its case forward IHCL pleads that the Collaboration Agreement dated December 18, 1976 was still subsisting

between the parties since the contract did not mention any expiry date and therefore, IHCL had a right to claim renewal of licence in order to be able to perform its part of the obligations, that is, operating the hotel under the Collaboration Agreement dated December 18, 1976. As per IHCL as a consequence of the Supplemental Agreement dated September 25, 1979 by which the contribution of the NDMC in the project was increased from ₹475 lakhs as under the Collaboration Agreement dated December 18, 1976, to ₹626 lakhs to include the cost of the property bearing No.1, Man Singh Road, New Delhi, even the land on which the hotel was constructed was contributed to the joint venture by the NDMC. According to IHCL, this conclusion i.e. that the property bearing 1, Man Singh Road, New Delhi was contributed by the NDMC to the joint venture was buttressed by the existence of Clause 4 in the Supplemental Agreement dated September 25, 1979, by which the responsibility to pay 'house tax' was placed on IHCL. According to IHCL, while the Punjab Municipal Act, 1911, which governed the New Delhi Municipal Committee, the predecessor-in-interest of the NDMC, clearly provided vide Section 61 that the liability of payment of house tax in buildings vested in the New Delhi Municipal Committee was only on '*tenants in perpetuity*' and the owner of the land, and Section 62 of the NDMC Act, 1994 which governed the operations of the NDMC after 1994, provided for an exemption to pay House Tax on buildings vested in the Council; since IHCL was made liable for payment of house tax by the Supplemental Agreement dated September 25, 1979 and had made payments towards house tax since 1979, IHCL claims that in light of the contribution of 1, Man Singh Road, New Delhi to the joint

venture vide the Supplemental Agreement dated September 25, 1979, Article III of the Collaboration Agreement dated December 18, 1976 which provided that the existence of the contract did not imply any demise of 1, Man Singh Road, New Delhi in favor of IHCL stood diluted.

18. Relying on the decisions of the Supreme Court reported as (2012) 1 SCC 578 Suresh Dhanuka Vs. Sunita Mohapatra, AIR 1966 SC 1300 Addanki Narayanappa & Anr. Vs. Bhaskara Kristappa & Ors., (1985) 4 SCC 519 Sunil Siddharthbhai Vs. Commissioner of Income Tax, (2006) 13 SCC 481 Shreedhar Govind Kamekar v. Yesahwant Govind Kamerkar & Anr., the judgment of this Court reported as (2001) 91 DLT 730 (DB) Vidhi Constructions Pvt. Ltd. Vs. Baljit Kaur, and the judgment of House of Lords reported as (1873) XX LR 25 (HL) Robinson Vs. Ashton as per IHCL when any party contributes assets to a joint venture with the motive of earning common and mutual profit, such property assumes the character of a joint venture property, giving rise to rights in the property in favour of all the parties in the joint venture.

19. With respect to Section 91 and 92 of the Evidence Act 1872 it is the case of IHCL that the same would not bar Courts from looking beyond the Collaboration Agreement dated December 18, 1976, the License Deed dated December 18, 1976 and the Supplemental Agreement dated September 25, 1979 in order to interpret the terms therein, since it had been settled by the Supreme Court in the decisions reported as (1975) 1 SCC 199 Godhra Electricity Co. Ltd. Vs. State of Gujarat, (2003) 8 SCC 593 Pure Helium India (P) Ltd. Vs. Oil & Natural Gas Corporation, AIR 1950 SC 9 Modi & Co. Vs. Union of India and AIR 1950 SC 15 Abdulla Ahmed

Vs. Animendra Kissen Mitter that Courts can rely on extrinsic evidence to resolve ambiguities in agreements. It is the case of IHCL that while the terms of Collaboration Agreement dated December 18, 1976, the License Deed dated December 18, 1976 and the Supplemental Agreement dated September 25, 1979 are unambiguous and clearly record the joint venture between the parties, however, in light of the ambiguity introduced into the terms of the agreements by the NDMC's denial to acknowledge the joint venture between the parties, the Court could rely on other documents to ascertain the nature of the relationship between the parties. It is pleaded by IHCL that the terms of the License Agreement dated December 18, 1976 are to be interpreted in light of the terms of the Collaboration Agreement dated December 18, 1976 and the Supplemental Agreement dated September 25, 1979, and thus, Clause II(2) of the License Deed, which provides that the NDMC would have the option to renew the licence for a further period on terms mutually agreed between the parties was to be read as implying that while the NDMC would have the right to negotiate the terms of renewal, the renewal itself could be demanded as a matter of right by IHCL, given that the nature of the project was a joint venture and the consequent right of IHCL on the land and hotel building. According to IHCL, such an interpretation was supported by Clause IX of the License Deed which used the term '*the renewed period of Licence*', and clearly implied that IHCL was entitled to an extension of the License Deed. Relying upon the judgment of the Supreme Court reported as (1976) 4 SCC 535 New Delhi Municipal Committee Vs. M.N.Soi, IHCL pleaded that the revised licence fees agreed between the parties in meetings held on May

09, 2011 and June 03, 2011 for the extension of the licence for a further period of thirty years was ‘*reasonable market rate*’ as determined under the NDMC (Determination of Annual Rent) Bye-laws, 2009 and therefore, a public auction was not required in order to determine a fair market rate. IHCL further pleaded that given its substantial investment in the project, the scale of profits earned by the NDMC, the admittance by the NDMC that IHCL did not commit any default of any nature under the Collaboration Agreement dated December 18, 1976, the License Deed dated December 18, 1976 or the Supplemental Agreement dated September 25, 1979 and the agreement between the Internal Committee of the NDMC and IHCL to extend the lease for 30 years on revised terms, IHCL was entitled to an extension under Equity. It was also pleaded by IHCL that NDMC had extended the licence of a third party, in relation to property owned by NDMC through mutual negotiations, without resorting to a public auction and therefore the same procedure ought to be followed in the instant case. Relying upon the decision of the Supreme Court reported as (2008) 8 SCC 765 NDMC Vs. Tanvi Trading & Credit Pvt. Ltd., IHCL pleaded further that directions of the Additional Secretary (UD & DL) and JS (FA) to the NDMC in the meeting of the Ministry of Urban Development dated November 14, 2011, to negotiate with IHCL, if necessary, in order to get as close to the market rent as possible amounted to a binding direction under Section 235 of the NDMC Act read with the Government of India (Allocation of Business Rules), 1961 and therefore, the decision of the NDMC to conduct a public auction for the licence to operate the hotel was *ultra vires* the NDMC Act, 1994.

20. IHCL further pleaded that the directions dated May 10, 2013, June 27, 2013 and January 01, 2015 under Section 395 and Section 396 of the NDMC Act, 1994 from the Ministry of Home Affairs to the NDMC to conduct a public auction of the licence to run the hotel suffer from several legal infirmities. According to IHCL, (i) while under Section 395 and Section 396 of the NDMC Act, 1994, the Central Government is empowered to issue directions to the NDMC only upon receipt of a report or information from the NDMC under Section 393 or 394 or upon receipt of information through some other source, directions dated May 10, 2013, June 27, 2013 and January 01, 2015 do not disclose the basis upon which they have been formulated and no evidence of any information being received either under Section 393 and Section 394 of the NDMC Act, 1994 or through any other source have been brought on record, and since the law laid down by the Supreme Court in the decision reported as (2005) 1 SCC 368 State of Jharkhand Vs. Ambay Cements stipulates that in case an Act prescribes the manner of performing an act, said act must be performed in that manner alone, directions dated May 10, 2013, June 27, 2013 and January 01, 2015 are ultra vires of the New Delhi Municipal Act, 1994; (ii) Section 141(2) of the NDMC Act, 1994 is not applicable in cases of grant of Licences and has been erroneously relied upon by the Ministry of Home Affairs to direct the NDMC to conduct public auctions vide letters dated May 10, 2013, June 27, 2013 and January 01, 2015, in the mistaken view that the Collaboration Agreement dated December 18, 1976 and License Deed dated December 18, 1976 are in the nature of lease-deeds. IHCL highlights that the witnesses of the NDMC in cross examination

acknowledged that the term '*lease*' in letters dated May 10, 2013, June 27, 2013 and January 01, 2015, were erroneously used in place of '*Licence*'; (iii) under the NDMC Act, 1994, the power of the Central Government to exercise superintendence over the NDMC is divided between the Ministry of Urban Development and Ministry of Home Affairs, with the Ministry of Home Affairs exercising power of superintendence in matters relating to 'duties' of the NDMC, with 'duties' being functions requiring the NDMC to incur expenditure as defined under Section 20 of the NDMC Act, 1994, while the Ministry of Urban Development exercises power of superintendence in matters relating to 'Land and Building Bye Laws' as well as over all matters related to property owned by the Government of India as provided under the Government of India (Allocation of Business) Rules, 1961. It is the further case of IHCL that since the Ministry of Urban Development is solely responsible to issue directions to the NDMC in respect of use of properties owned by the Government of India, which did not require incurring of expenses by the NDMC, and since the Government of India is the owner of Property bearing No.1, Man Singh Road, New Delhi, the directions issued by the Ministry of Urban Development under Section 235 of the NDMC Act, 1994 dated November 14, 2011 were bound to be followed by the NDMC and directions issued by the Ministry of Home Affairs under Section 395 and 396 of the Act were ultra vires of the NDMC Act, 1994; (iv) as per the judgment of this Court reported as AIR 1983 Delhi 1 Satish Chandra Vs. Union of India, the Ministry of Home Affairs cannot invoke its power of superintendence under Section 395 and 396 of the NDMC Act, 1994 to issue directions related to a single

transaction and can only issue directions when there is repeated infraction of a duty by the NDMC; (v) Regulation 34(v) of the NDMC (Procedure and Conduct of Business) Regulations, 1997 clearly provides that the NDMC is barred from deciding issues which are *sub judice*, therefore, the directions of the Ministry of Home Affairs dated May 10, 2013, June 27, 2013 and January 01, 2015 and acceptance of the same by the NDMC after CS (OS) No.651/2013 had been filed on April 04, 2013 are to be ignored, and the rights of the parties are to be decided on the basis of the directions dated November 14, 2012 issued by the Ministry of Urban Development; and (vi) the NDMC ignored the contrary advice of the Learned Solicitor General of India, the Learned Attorney General as well as independent consultants while issuing directions to conduct a public auction on January 01, 2015 and therefore, these directions are liable to be set aside.

21. It is the further case of IHCL that without prejudice to any of its pleadings, the NDMC Act, 1994 would not govern the contracts executed between the parties since the Collaboration Agreement dated December 18, 1976, the License Deed dated December 18, 1976 and the Supplemental Agreement dated September 25, 1979 were executed prior to the enactment of the NDMC Act, 1994. Relying on the judgments of the Supreme Court reported as (2003) 10 SCC 297 Grid Corporation of Orissa & Ors. Vs. Rasananda Das (2003), and 1963 Suppl (2) SCR 127 Mysore State Electricity Board Vs. Bangalore Woolen Cotton and Silk Mills Ltd., IHCL has pleaded that Section 416(2)(b) of the NDMC Act, 1994 which ousts the operation of the Punjab Municipal Act, 1911, cannot be interpreted to make the NDMC Act, 1994 applicable to contracts entered into prior to the

enactment of the Act and thus, the Punjab Municipal Act, 1911 would continue to be applicable to the contracts entered into between the parties and since there is no Section in the Punjab Municipal Act, 1911 *pari materia* to Section 141(2) of the NDMC Act, 1994, the same cannot be relied upon by the NDMC to direct the conduction of a public auction. IHCL has pleaded that Section 141(2) of the NDMC Act, 1994 is only applicable in the case of '*lease, sale or otherwise transfer*' of immovable property by the NDMC. Relying upon the judgments of the Supreme Court reported as (2009) 8 SCC 605 Union Bank of India Vs. Pijush Kanti Nandy and (1998) 3 SCC 45 Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta, the IHCL has pleaded that the term '*otherwise transfer*' must be read as *ejusdem generis* to the terms *Sale* and *Lease*. According to IHCL, the essential characteristic of sale and lease is that they are transfers of immovable property, which create an interest in the immovable property, and therefore the term '*otherwise transfer*' would include those transactions which create an interest in an immovable property through transfer of property. Relying on the judgment of the Supreme Court reported as (1991) 2 SCC 180 Puran Singh Sahni Vs. Sundary Bhagwandas Kripalani and (2012) 11 SCC 713 Mangal Amusement Park (P) Ltd. Vs. State of M.P., IHCL has pleaded that under a Licence, no transfer of immovable property or creation of interest in the immovable property in favor of the Licencee is said to take place, therefore, Section 141(2) of the NDMC Act, 1994 would not be applicable in the case of grant/extension/renewal of Licences. According to IHCL, this view, of the inapplicability of Section 141(2) of the NDMC Act, 1994 in the case of

licences, is furthered by a reading of Section 141(1) of the NDMC Act, 1994 wherein the legislature has used the term '*let out on hire*' in addition to '*lease, sale or otherwise transfer*' while enumerating the modes by which the NDMC can deal with immoveable property, while the expression '*let out on hire*' has been excluded from Section 141(2) which deals with manner of arriving at consideration for certain modes of disposal of property. According to IHCL, the term '*let*' has been interpreted as including licences by the Supreme Court in the decision reported as AIR 1962 SC 554 H.S.Rikhy Vs. New Delhi Municipal Committee as well as Explanation to Bye Law 2 of the NDMC (Determination of Annual Rent) Bye Laws, 2009. It has been pleaded by IHCL that this omission of '*let out on hire*' from Section 141(2) is deliberate and the intention of the legislature was to exclude licences from the operation of Section 141(2). IHCL has pleaded that the judgment of the Supreme Court reported as (2007) 8 SCC 75 Aggarwal & Modi Enterprises (P) Ltd. & Anr. Vs. NDMC, wherein the Court held that under Section 141(2) the NDMC was required to '*sell, lease, licence and transfer immoveable property*' belonging to it at a consideration which is not less than '*the value at which the property could be sold, leased or transferred in fair competition*', and that a public auction would be an acceptable methodology of disposing off property under the Section, would not be applicable to the instance case since (i) the judgment in Aggarwal & Modi Enterprises (P) Ltd. & Anr. (supra) applies only to cases where there was fresh disposal of immoveable property arising either from change in the nature of property or where no existing transaction in respect of the immoveable property between the

parties was subsisting; and (ii) the use of the term '*licence*' by the Court in the second line of paragraph 22 of the judgment along with the terms '*lease, sale and transferred*' while discussing the scope of Section 141(2) of the NDMC Act, 1994 was a mistake as was evidenced by the omission of the word '*licence*' from the fourth line where only '*lease, sale and transfer*' had been mentioned in respect of the scope of Section 141(2) of the NDMC Act, 1994. According to IHCL, the judgment in Aggarwal & Modi Enterprises (P) Ltd. (supra) used the terms '*lease*' and '*Licence*' interchangeably and did not in fact expand the scope of Section 141(2) of the NDMC Act, 1994 to include within its ambit grant of Licences, especially since the issue before the court in that case was the manner to be adopted while executing a fresh lease.

22. The case of the NDMC is that (i) IHCL had no vested right to claim an extension either under the Collaboration Agreement dated December 18, 1976 or under the License Deed dated December 18, 1976; (ii) that the suit filed by IHCL is barred under Section 385 of the NDMC Act, 1994; (iii) the suit is barred on account of the operation of Section 141(2) of the NDMC Act, 1994; (iv) the IHCL has no right, title or interest in the property bearing No.1, Man Singh Road, New Delhi, and therefore has no legally enforceable right to claim relief in respect of the property. The NDMC has pleaded that the terms of the Collaboration Agreement dated December 18, 1976, the License Deed dated December 18, 1976 and the Supplemental Agreement dated September 25, 1979, clearly evince the position that the property bearing No.1, Man Singh Road, New Delhi as well as the hotel built therein continues to vest in the NDMC and no right

or interest of the IHCL over the property in question or the building therein was ever envisaged under these contracts. According to the NDMC, Article II clause 5, Article III clause 2 and Article III clause 8 of the Collaboration Agreement dated December 18, 1976 clearly provide that the land and the building therein would continue to vest in the NDMC; Clause II of the License Deed dated clearly provides that the option to grant a renewal of licence would rest with the NDMC with the IHCL only being provided the right to apply for an extension while Clause VI(2) reiterates that the ownership of the hotel vested with the NDMC; the changes made to the provisions of the License Deed dated December 18, 1976 by the Supplemental Agreement dated September 25, 1979, namely the enhancement of NDMC's contribution from ₹475 lakhs to ₹626 lakhs was to ensure that the minimum guaranteed amount payable by the IHCL to the NDMC was higher since Clause III of the License Deed dated December 18, 1976 specified the minimum amount to be paid by the IHCL to the NDMC as 10.5% of the IHCL's gross income for every financial year or 15% of the NDMC's investment, whichever is higher. It was for the same purpose i.e. of securing a higher minimum guaranteed payment that Clause III was changed to include 'Gross Receipt' in place of 'Gross Income'. Thus, no right or interest of the IHCL in the property in question was envisaged by any of the three contracts executed between the parties. The NDMC pleaded that use of the terms Joint Venture or Collaboration by officers of the NDMC in documents would not change the nature of the agreements executed between the parties, which was a collaboration for the construction of a Hotel building on No.1, Man Singh Road, New Delhi

with a right to operate the hotel being provided to the IHCL for a 33 year period upon completion of the hotel. Relying upon the judgment of the Supreme Court reported as 2008 (10) SCC 345 Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd., NDMC pleaded that the defining characteristics of a joint venture are that (i) the parties agree to share profits and losses from the venture; (ii) there is joint ownership and control of property; (iii) parties mutually decide the determination and division of net earnings; and (iv) there is a community of control and active participation in management of the enterprise, which were all missing in the business relationship between NDMC and IHCL. It is the further case of NDMC that as per the License Deed dated December 18, 1976 and the Supplemental Agreement dated September 25, 1979 the parties did not agree to share the losses, if any, arising from operating the hotel, with NDMC entitled to receive a minimum guaranteed amount yearly regardless of whether the hotel was being run in profits or loss. In the alternative, relying upon the judgment of the Supreme Court reported as 2009 (5) SCC 313 Bank of India Vs. K. Mohandas, the NDMC has pleaded that even if it is accepted that the contracts between the parties gave rise to a joint venture, the terms of the contracts would govern the joint venture and hence, IHCL would have no interest in the land or the hotel building nor any vested right to claim an extension of the licence. In addition, according to the NDMC, Section 1 and 92 of the Indian Evidence Act bar recourse by the Court to any external evidence where the terms of the contract are clear and unambiguous, and hence, only the terms of the Collaboration Agreement dated December 18, 1976, the License Deed dated December 18, 1976 and

the Supplemental Agreement dated September 25, 1979 could be relied upon to ascertain rights of the IHCL in the joint venture. Relying upon the judgment of the Supreme Court reported as 2012 (5) SCC 370 Maria Margarida Sequeira Fernandez & Ors. Vs. Arasmo Jack Ded Sequeira, the NDMC has pleaded that the occupation by a licensee is merely permissive and does not create any right or interest in the property. It is the case of the NDMC that since S.K. Bhatia PW-1 admitted that the IHCL was a Licencee during cross-examination and since it has not been contended by IHCL that a contract providing for extension of the licence was ever concluded between the parties, IHCL had no legally enforceable right in the property. Relying upon the judgments of the Supreme Court reported as 1996 (2) SCC 667 U.P. Rajkiya Nirman Nigam Vs. Indure Pvt. Ltd, AIR 1963 SC 395 Bachhittar Singh Vs. State of Punjab and 2009 (1) SCC 180 Sethi Auto Service Station Vs. DDA, NDMC further pleaded that any communications between IHCL and its officers as well as internal discussions of the NDMC or the Central Government in exercise of its power of superintendence over the NDMC could not be relied upon by IHCL to claim any rights in the property in question since no contract can be concluded by the NDMC without the sanction of its Council. Further, it was pleaded by NDMC, that in the absence of any communication from NDMC to IHCL conveying its decision to grant renewal of licence for an additional period, no contract can be said to have concluded between the parties.

23. It has been further pleaded by the NDMC that the Allocation of Business Rules, 1961 clearly provide that all the powers of the Central

Government as per provisions of the NDMC Act, 1994 were to be vested in the Ministry of Home Affairs except matters pertaining to Land and Building Bye-laws, and thus, the plea of the IHCL that the power of superintendence over matters related to land owned by the Government of India was vested in the Ministry of Urban Development was liable to be rejected. According to the NDMC, this erroneous view of IHCL was based upon a disjoint reading of the expression '*Land and Building Bye-Laws*' whereby IHCL was were seeking to interpret *Land and Buildings* without reading the limiting words *Bye-laws* and thereby seeking to limit the scope of the powers of superintendence of the Ministry of Home Affairs, which was impermissible. It is pleaded by the NDMC that a conjoint reading of the Allocation of Business Rules, 1961 clearly reveals that the Ministry of Urban Development exercises control over issues related to urban planning, transportation and allied subjects only. Relying upon the judgment of this Court reported as 215 (222) DLT 426 Tajdar Babbar Vs.. Union of India, wherein this Court had upheld the notification of dissolution of the NDMC issued by the Ministry of Home Affairs, NDMC pleaded that it was evident that the Ministry of Home Affairs was the controlling Ministry of the NDMC. According to the NDMC, the view of IHCL that directions dated May 10, 2013, June 27, 2013 and January 01, 2015 issue by the Ministry of Home Affairs were premised on the erroneous view that the nature of transactions between the parties was that of a lease would not be relevant in light of the judgment of the Supreme Court reported as (2007) 8 SCC 75 Aggarwal & Modi Enterprises (P) Ltd. & Anr. Vs. NDMC, wherein the Supreme Court categorically laid down

that the scope of Section 141(2) of the NDMC Act, 1994 included within its ambit grant of licences by the NDMC, and therefore, the power of superintendence vested in the Ministry of Home Affairs under Section 395 and 396 of the NDMC Act, 1994 would empower it to issue directions to the NDMC to follow the mandate of Section 141(2) of the NDMC Act, 1994 and conduct a public auction for the grant of licences. According to the NDMC, the plea of IHCL that the term '*otherwise transfer*' did not include within its ambit grant of licences was erroneous given the judgment to the contrary of the Supreme Court in Aggarwal & Modi Enterprises (P) Ltd. (supra). NDMC has further pleaded that since the Transfer of Property Act, 1882 envisages only four modes of transfer of property, namely, sale, lease, gift/exchange and succession, and since transfer by gift/exchange or succession cannot be read into the provisions of the NDMC Act, 1994 the words '*otherwise transfer*' would necessarily include within its ambit right of occupation created by licence, tehbazari etc. since both sale and lease had already been specifically enumerated in the provision. According to the NDMC, the words '*otherwise transfer*' as provided under Section 141(2) of the NDMC Act, 1994 was to be interpreted with reference to the definition of '*occupier*' under Section 2(29) of the Act wherein licensees in occupation of buildings or land were deemed to be occupiers. It has been pleaded by the NDMC that NDMC (Determination of Annual Rent) Bye-laws, 2009 could not be relied to interpret Section 141(2) of the NDMC Act, 1994 since the Bye-laws had been enacted only for the purpose of determination of annual rent for assessing property tax under Section 63 of the NDMC Act, 1994.

Regarding the applicability of Section 141(2) of the NDMC Act, 1994, NDMC further pleaded that no distinction between fresh disposal and extension has been made in Section 141(2) of the NDMC Act, 1994 and even if such a distinction was existing, the case of the IHCL would fall under the bracket of '*fresh disposal*' since it is the admitted position that the licence of IHCL expired on October 10, 2011 and only *ad hoc* extensions of the licence had been granted to IHCL by the NDMC thereafter. According to NDMC, unless IHCL could prove a vested right of renewal of the License Deed dated December 18, 1976, in the absence of a renewal being granted by the NDMC, by October 10, 2011, the grant of licence in respect of Property bearing No. 1, Man Singh Road, New Delhi would become a case of fresh disposal. It is the further case of the NDMC that the renewal of Dilli Haat's licence was on a completely different footing and could not be relied upon by IHCL to plead against the conduction of a public auction as required by Section 141(2) of the NDMC Act, 1994.

24. We note that with respect to the pleadings of the parties the following issues were settled:-

"1. Whether the Plaintiff is entitled to the extension of licence as claimed in the Suit? OPP

2. Whether the Suit is barred by Section 385 of the NDMC Act, 1994? OPD

3. Whether Section 141 of the NDMC Act, 1994 is applicable to the contracts and transactions between the Plaintiff and the Defendant in respect of the extension of the License Deed dated 18.12.1976? OPD

4. Whether the Plaintiff is entitled to relief claimed in the present Suit? OPP

5. Any other Relief.”

25. Impugned decision reveals that NDMC did not press the second issue i.e. the suit being barred under Section 385 of the NDMC Act 1994.

26. On the issue of whether IHCL was entitled to the extension of the licence as claimed by them, relying upon the judgments of the Supreme Court reported as 2008 (10) SCC 345 Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd. and 1995 SCC (1) 478 New Horizons Ltd. Vs. Union of India as well as the judgment of the Gujarat High Court reported as AIR 1986 Guj 185 Asia Foundations & Constructions Ltd. Vs. State of Gujarat, the Learned Single Judge has opined that in order to be construed as a joint venture a business relationship should have 5 basic characteristics: (i) contribution of resources by the parties to common undertaking; (ii) joint property interest in the object of the joint venture; (iii) mutual control of management; (iv) expectation of profit; and (v) agreement between the parties to share profits as well as losses. The Learned Single Judge has held that the Collaboration Agreement dated December 18, 1976, the License Deed dated December 18, 1976 and the Supplemental Agreement dated September 25, 1979 did not contain any of the elements of a joint venture. According to the Learned Single Judge, the Collaboration Agreement dated December 18, 1976 was an agreement whereby IHCL was to provide services to the NDMC for the construction of the hotel building on 1, Man Singh Road, New Delhi and clauses 2 and 8 of Article III of the agreement clearly specified that the land was to continue to vest in the NDMC with no right or interest accruing to IHCL. It has also been held by the Learned

Single Judge that Article III of the Collaboration Agreement dated December 18, 1976 clearly records that the property and the hotel building therein would at all times be regarded as public premises as defined under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The Learned Single Judge has highlighted that under the Collaboration Agreement dated December 18, 1976 the authority to evict IHCL from the property upon breach of any term of the contract vested with the NDMC and that IHCL was barred from encumbering, letting or parting possession with any part of the property. Further, the Learned Single Judge has held that since NDMC paid for the construction of the Hotel building, the building would belong to the NDMC. In addition, the Learned Single Judge has opined that the execution of the License Deed dated December 18, 1976 clearly demonstrated that the relationship between the parties was that of a licensor and licensee, with no right or interest in the property or hotel building therein being transferred to IHCL. The Learned Single Judge has opined that this conclusion was supported by the terms of the License Deed dated December 18, 1976 wherein it was clearly recorded that renewal of licence for a further period, after the expiry of the original licence period of 33 years, would be at the discretion of the NDMC and that the ownership of the hotel building would vest solely with the NDMC with the IHCL having an interest only in the assets paid for by it as per Schedule III of the Collaboration Agreement dated December 18, 1976. The Learned Single Judge has highlighted that even the assets enumerated in Schedule III of the Collaboration Agreement dated December 18, 1976 in which IHCL had a right, could be purchased by NDMC upon

termination of the License Deed dated December 18, 1976. It has been noted by the Learned Single Judge, that upon expiry of the period of licence under the License Deed dated December 18, 1976, IHCL was to hand over possession of the hotel building along with all fittings and fixtures belonging to the NDMC, to the NDMC. With regard to the construction of the Supplemental Agreement dated September 25, 1979, the Learned Single Judge, has held that the purpose of the Supplemental Agreement was to record changes in the Collaboration Agreement in order to increase the minimum guaranteed amount payable yearly by IHCL to NDMC, as provided under clause III of the License Deed dated December 18, 1976. The Learned Single Judge has opined that since a minimum guaranteed payment was to be made to the NDMC by the IHCL yearly under the License Deed dated December 18, 1976, regardless of whether IHCL was recording a profit in the operation of the Hotel clearly evinced the lack of an agreement between the parties to share in the profits and losses, which was a basic ingredient of a joint venture. Relying upon the decision of the Supreme Court in K.Mohandas's case (supra), the Learned Single Judge has held that internal documents of the NDMC as well as letters exchanged between the parties wherein NDMC has referred to the project as a Joint Venture would have no bearing on the clear and unambiguous terms of the contracts executed between the parties, where the relationship between NDMC and IHCL was clearly recorded as that of a licensor and licensee. The Learned Single Judge has noted that P.K.Bhatia PW-1 had admitted during cross-examination that the status of IHCL under the agreements was that of a licensee. In view of his finding

that the terms of the agreements executed between the parties unambiguously recorded that the relationship between the parties was not in the nature of a joint venture, the Learned Single Judge negatived the reliance by IHCL on judgments of the Supreme Court wherein the Court had held that all parties in a joint venture acquire rights in the property contributed by any one party towards furthering the joint venture, and also negatived the plea of IHCL that the distinction in the use of the terms '*Hotel building*' and '*Hotel*' in the Collaboration Agreement dated December 18, 1976 pointed towards the existence of a joint venture between the parties.

27. The plea of IHCL that the liability placed upon IHCL by Clause 4 of the Supplemental Agreement dated September 25, 1979 to pay the House Tax in respect of the hotel building amounted to a recognition of the rights of IHCL on the land, was rejected by the Learned Single Judge with the opinion that Clause 4 of the Supplemental Agreement which merely provided that payment of ₹12,00,000/- was to be made by IHCL to NDMC in lieu of House Tax payable in respect of the Hotel Building, did not imply that the liability to pay House Tax had actually been placed upon IHCL and was a provision incorporated in the contract purely from a commercial angle, with the intention of raising additional revenue for NDMC.

28. In view of his finding that the terms of the contracts executed between the parties were clear and unambiguous, the Learned Single Judge accepted the plea of NDMC that Sections 91 and 92 of the Indian Evidence Act, 1872 barred the Court from referring to extrinsic evidence to interpret

the terms of contract. The Learned Single Judge has opined that the reliance by IHCL on judgments of the Supreme Court, wherein the Supreme Court had looked into extrinsic evidence in order to interpret the terms of contracts were not relevant since in all those cases it had been the view of the Court that the terms of the Contract were ambiguous.

29. The Learned Single Judge has opined that Clause II(2) of the License Deed clearly vested NDMC with the exclusive right to grant extension of the licence and therefore, the plea of IHCL that the a conjoint reading of Clause II (2) and Clause IX, which mentioned the phrase '*the renewed period of licence*', implied that the parties always contemplated that the licence would be renewed and thus the claim by IHCL that it had a vested right of claiming renewal was not legally tenable. The Learned Single Judge has opined that the phrase '*the renewed period of licence*' mentioned in Clause IX of the License Deed was conditional upon grant of renewal by NDMC under Clause II (2) of the License Deed and did not presuppose that a renewal would be granted as a matter of right.

30. Relying upon the decision of the Supreme Court in U.P. Rajkiya Nirman Nigam's case (supra), Sethi Auto Service Station's case (supra) and Bachhittar Singh's case (supra), the learned Single Judge, accepting the contention of NDMC, has held that no reliance on internal discussions or notings by officers in the internal files of the NDMC or communications from officers of the NDMC to IHCL could be placed by IHCL to claim acceptance of request for renewal of the licence, because as per the learned Single Judge a concluded contract granting extension of the licence could only have come into existence between the parties on the approval of the

terms of extension by the Chairperson of the NDMC and a communication of this approval to the IHCL by the NDMC. The Learned Single Judge has held that since it was not the case of IHCL that any such approval had been accorded by the Chairperson of the NDMC or any communication conveying such approval had been sent to it by the NDMC, the plea of IHCL that there existed a concluded contract for extension of the licence period was liable to be rejected.

31. Regarding whether opinion by the Ministry of Urban Development was binding on the NDMC, the Learned Single Judge has opined that in order to ascertain the ambit of the Ministry of Urban Development's power of superintendence over the NDMC, it was necessary to interpret Section 235 of the NDMC Act, 1994 in light of the Allocation of Business Rules, 1961. According to the Learned Single Judge, Section 235 provides that the scope of the Ministry of Urban Development's power of superintendence was limited to Chapter XIV of the NDMC Act, 1994, which deals with building regulations and does not extend in respect of lease, sale, let out, licence or otherwise transfer of the property owned by the NDMC, while under the Allocation of Business Rules, 1961 the Ministry of Urban Development is competent to deal with the properties owned by the Union which have not been made over to other Ministries or departments. The Learned Single Judge has thus opined that in view of the Ministry of Home Affairs being entrusted with all powers of the Central Government as per the NDMC Act, 1994, land owned by the NDMC was deemed to be made over to the Ministry of Home Affairs and therefore, was outside the scope of superintendence of the Ministry of Urban Development. Thus, according

to the Learned Single Judge, the power of the Ministry of Urban Affairs regarding superintendence extended only to 'Land and Building Bye-laws' with all other provisions of the NDMC Act, 1994 coming within the superintendence of the Ministry of Home Affairs. The Learned Single Judge held that this view i.e. that the Ministry of Home Affairs was the Central Government in respect of all provisions relating to the NDMC Act, 1994, except Chapter XIV had been affirmed by this Court in Tajdar Babbar's case (supra) wherein this Court had upheld two notifications, dated September 05, 2014 issued by the Ministry of Home Affairs dissolving the NDMC in exercise of power conferred upon the Central Government under Section 398(1) of the NDMC Act, 1994.

32. With respect to the plea of IHCL that the Ministry of Home Affairs had violated, as regards the manner of issuing directions, Section 395 and 396 of the NDMC Act, 1994 i.e. by issuing the directions without any basis, the Learned Single Judge has opined that the term '*or otherwise*' used in Section 395, while referring to sources of information on the basis of which directions under Section 395 of the NDMC Act, 1994 could be issued, was to be interpreted in the widest possible terms to include any information received by the NDMC and this information need not be information received under Section 393 or 394 of the NDMC Act, 1994. In light of this interpretation of Section 395, the Learned Single Judge has held that the letter dated May 10, 2012, by which the Ministry of Home Affairs had issued its first direction under Section 395 recorded the minutes of the meeting of the Council of the NDMC dated September 27, 2012, and this was sufficient to constitute receipt of information under Section 395 of

the NDMC Act, 1994. The Learned Single Judge has held that the source of the information was irrelevant and so was the fact that the opinions of the Learned Solicitor General of India and the Learned Attorney General of India had not been taken into account by the Ministry of Home Affairs before issuance of OM dated January 01, 2015, which contained directions under Section 396 of the NDMC Act, 1994; since the opinions could not be relied upon by IHCL to claim benefit till such time as they culminated in a decision of the competent authority. The Learned Single Judge has also held that in the absence of a restraint order, pendency of CS (OS) 651 of 2013 was no bar for the Ministry of Home Affairs or the NDMC from taking a decision.

33. Regarding the plea of IHCL that the direction dated January 01, 2015 was ultra vires to the NDMC Act, 1994, the Learned Single Judge defined a duty as '*what is expected of one by legal or moral obligation*' and has held that under Section 141(2) of the NDMC Act, 1994 it was clear that a duty had been imposed on the Chairperson and the Council to ensure the consideration for which immoveable property was to be sold, leased, licenced or otherwise transferred, would not be less than the value at which these properties would be sold, leased, licenced or otherwise transferred in a normal and fair competition. The Learned Single Judge has held that given the existence of this duty under Section 141(2) of the NDMC Act, 1994, it was within the power of the Ministry of Home Affairs to issue directions under Section 395 and 396 of the NDMC Act, 1994 directing the NDMC to conduct a public auction in order to fulfill its duty under Section

141(2) of obtaining consideration for grant of licence which would be equivalent to that which is obtainable under free and fair competition.

34. The learned Single Judge has also rejected the plea of IHCL that directions under Section 395 and 396 could not be issued for a single transaction holding that Section 141(3) of the NDMC Act, 1994 clearly provided that the sanction of the Council of the NDMC for transfer of immoveable property may be granted either generally for any class of cases or specially for any particular case. It has been opined by the Learned Single Judge that it was apparent from a conjoined reading of Section 141(2) and 141(3) that the duty of the NDMC to obtain consideration equivalent to that which is obtainable under free and fair competition would extend to even single transactions and since it was the responsibility of the Ministry of Home Affairs to issue directions under Section 395 and 396 of the Act in order to ensure performance of duties by the NDMC, directions could be issued even in the case of single transactions. The Learned Single Judge has opined that this view was buttressed by the decision of the Supreme Court in Aggarwal & Modi Entreprises Pvt. Ltd.'s case (supra) wherein the Supreme Court had upheld a resolution by the NDMC to conduct an auction in a single case. It has been held by the Learned Single Judge that the decision of the NDMC to extend the licence of a third party without conducting a public auction would not invalidate the decision of the NDMC in the case of IHCL since the decision had been taken according to the terms of the agreement executed between the parties and as per the provisions of the NDMC Act, 1994. The plea of IHCL that the NDMC Act, 1994 would not be applicable to contracts executed prior

to the coming into the force of the Act on May 25, 1994 has been rejected by the Learned Single Judge who has opined that sub-Sections (2a) and (2b) of Section 416 of the NDMC Act, 1994, clearly provided that all contracts subsisting on May 25, 1994 were to be construed as having been entered under the NDMC Act, 1994 and all licences granted under the Punjab Municipal Act, 1911 would be deemed to have been granted under the provisions of the NDMC Act, 1994, as long as there was no inconsistency between the terms of the licence and the provisions of the NDMC Act, 1994, and in case of any inconsistency, the terms of the NDMC Act, 1994 would supersede the terms of the licence.

35. The plea of IHCL that the revised licence fees agreed between the parties in the meetings held on May 09, 2011 and June 03, 2011 was '*reasonable market rate*' as determined under the Rateable Value Bye Laws and therefore, a public auction was not required in order to determine a fair market rate has been rejected by the Learned Single Judge by accepting the plea of the NDMC that NDMC (Determination of Annual Rent) Bye-laws, 2009 could not be relied upon to interpret Section 141(2) of the NDMC Act, 1994, since the Bye-laws had been enacted only for the purpose of determination of annual rent for assessing property tax under Section 63 of the NDMC Act, 1994. The Learned Single Judge has opined that the determination of annual rent under the NDMC (Determination of Annual Rent) Bye-laws, 2009 has no correlation to the consideration required to be obtained by the NDMC under Section 141(2) of the Act. The learned Single Judge has opined that Regulations enacted under Section 388 of the NDMC Act, 1994 could not override the mandate of Section

141(2) of the Act, in light of the wording of Section 388, which provides that bye-laws are subject to the provisions of the Act.

36. The Learned Single Judge has held that the case of IHCL was liable to be rejected on the ground that in Aggarwal & Modi Entreprises Pvt. Ltd.'s case (supra) it had been clearly held that Section 141(2) would be applicable to licences. In addition, the Learned Single Judge has held that Section 141(2) of the NDMC Act, 1994 makes no distinction between extension/renewal/fresh licence and no such distinction has been introduced by the Supreme Court in Aggarwal & Modi Entreprises Pvt. Ltd.'s case (supra).

37. The prolix appeal spanning 47 pages urges 20 grounds to challenge the impugned decision, which could be converted into 8 as under:-

- i). Whether the appellant and the respondent 'jointly participated' in the 'construction and running' of the 'Hotel' at 1, Mansingh Road, New Delhi, known as the Taj Mahal Hotel and, in this respect, whether the resolutions passed by the respondent and other admitted documents of the respondent could have been ignored while construing the contracts executed between the parties in an isolated manner?
- ii). Whether Section 141(2) of the NDMC Act, 1994 is applicable to contracts regarding immovable property which are neither 'lease' nor 'sale' nor involve a 'transfer' of immovable property, but is a mere licence (temporary or long term) and therefore whether the learned Single Judge could have ignored the juristic distinction between a 'licence' and a 'lease' by simply using the Latin adverb 'sic.'?

- iii). Whether a deliberate omission of the phrase ‘let out on hire’ from Section 141(2) of the NDMC Act, 1994, by the legislature, when such a phrase exists in Section 141(1) of the said Act, indicates the intention of the legislature to exclude ‘licensing activity’ from competitive bidding?
- iv). Whether the judgment of the Supreme Court of India in the case reported as 2007 (8) SCC 75 Aggarwal & Modi Enterprises (P) Ltd. Vs. NDMC could at all have been applied by the learned Single Judge to the case of ‘licensing’ by the NDMC, even though the said judgment deals with Section 141(2) of the Act, 1994 in relation to ‘renewal of leases’, just because in paragraph 22 of the said judgment the Supreme Court has used word ‘licence’ indicating that the said paragraph was not the *ratio decidendi*?
- v). Whether Section 141(2) of the NDMC Act, 1994 could be invoked even where the extension of licence had already been confirmed through grant of a Right of First Refusal, only for determining the licence fees, when the said provision cannot be invoked for (i) grant of a licence (ii) extension of a licence (iii) extension of a licence granted under the Punjab Municipal Act, 1911 (iv) since the appellant was already paying a higher licence fees for the extended period as fixed under the NDMC (Determination of Annual Rent) Bye-Law 2009?
- vi). Whether the decision of the Ministry of Urban Development (MoUD) dated 14.11.2011, could have been held to be non-binding on the NDMC by learned Single Judge, by holding that with regard to ‘disposal of property’ it is only the Ministry of Home Affairs which would have jurisdiction, even though under the Allocation of Business Rules, 1961,

‘properties owned by the Union’ and the matters pertaining to ‘land’ were within the exclusive jurisdiction of the MoUD?

vii). Whether Section 395 and 396 of the NDMC Act, 1994 could have been invoked by the Ministry of Home Affairs as the ‘Central Government’, for a single transaction i.e. in respect of a contract between the appellant and the respondent, having no element of policy-making especially when it is the MoUD who has already decided on this issue?

viii). Whether the Single Judge could have discarded the appellant’s contention in respect of Section 416(2)(b) of the NDMC Act, 1994 which preserved contracts executed under the Punjab Municipal Act, 1911 and the rights arising therefrom, as evidenced by the respondent’s own conduct of extension/renewal of licence of Dilli Haat and various shops in various markets without resorting to an auction?

38. Now, if ‘A’, who is the owner of a piece of land enters into an agreement (by whatever nomenclature it may be called) with ‘B’; and the term of the agreement is that on ‘A’'s land, with ‘A’ contributing ₹‘X’, a building would be constructed by ‘B’, who would also spend further amount beyond ₹‘X’ required to complete the construction and further amount to furnish the building to render it fit for the purpose for which the building is constructed and thereafter for a period of 30 years ‘B’ shall use the building for the purpose for which it was erected and shall pay to ‘A’ a minimum sum of ₹‘Y’. Further, term of the agreement is that money required to maintain the building fit to be used for the purpose whereof it was constructed shall be spent by ‘B’. The agreement stipulates that after 30 years, ‘B’ shall have no right, title or interest in the land and the

building and shall handover the land and the building to 'A'. At the end of 30 years 'B' shall have no right, title or interest in the land and the building because the agreement between the parties is such. It being settled law that a label of a document does not matter. It is the content which matters, and if during the validity of an agreement parties loosely refer to the agreement by giving it a label, that would be irrelevant. The rights and liabilities flow from the terms of the written agreement.

39. At the hearing of the appeal Sh.Harish N.Salve learned Senior Counsel for the appellant conceded as above and also to the fact that the collaboration agreement as also the License Deed clearly stipulated that neither would the appellant have any interest in the land nor the building at the expiry of the period of Licence and thus the eight questions of law which were projected for being debated in the twenty grounds urged in the appeal need not be decided. The additional reason thereof was that when the suit was instituted on April 04, 2013, NDMC had not taken any firm decision. It was in communication with IHCL on the one hand and with the Government of India on the other. Events post April 04, 2013 which we have noted in paragraph 14 and 15 above had not come into being. The plaint was never amended and issues arising out of said events were never made a part of the lis, notwithstanding NDMC amending the written statement to incorporate said facts. Sh.Harish N.Salve learned Senior Counsel very fairly conceded that the only issue which arose for determination was whether IHCL was entitled to a declaration that it had a right of renewal of the licence, which right had to be considered fairly and thus permanent injunction had to be granted as prayed for till the right of

renewal was worked out between the parties; or alternatively the Court to settle the licence fee payable for the renewed period of the lease.

40. Relying upon the decision reported as (2002) 6 SCC 331 Naveen Chand & Anr. Vs. Nagarjuna Travels & Hotels Pvt. Ltd., Sh.Harish N.Salve learned Senior Counsel for IHCL urged that as per said decision right of renewal of a lease or a licence is an important and an integral right of the grant and has to be given effect to. With reference to the decisions reported as (1815) 19 Ves 429 Gourlay Vs. The Duke of Somerset, (1880) LR 71A 107 The New Beerbhoom Coal Co.Ltd. Vs. Boloram Mahata & Ors., (1926) ILR 50 Mad 595 Secretary of State for India in Council Vs. Volkart Brothers, AIR 1959 SC 639 Damodhar Tukaram Mangalmurti & Ors. Vs. State of Bombay and (2011) 6 SCC 714 Karnataka Industrial Areas Development Board & Anr. Vs. Prakash Dal Mill & Ors. learned Senior Counsel urged that if parties cannot work upon the financial terms pertaining to a grant it is permissible for a Court to do so.

41. There is no quarrel with the proposition(s) of law relied upon by learned Senior Counsel for IHCL and undoubtedly a renewal clause in a lease or a licence is an important term of the agreement and has to be given effect to. Further, it is also permissible for a Court to determine a reasonable price or a reasonable rate if parties are unable to do so, and the only requirement would be that the Court would be guided by evidence or expert opinion in settling the reasonable price or the reasonable term.

42. This takes us straight to the relevant clause in the licence. It is clause II(2) which reads as under:-

“In the expiry of the period of licence of the said hotel building hereby granted, the Licensor shall have the option to grant the

licence for a further period on such terms and conditions as may be mutually agreed upon between the Licensor and the Licensee. If the Licensee shall be desirous of obtaining a licence for a further period after the expiry of the present licence, it shall give to the licensor, a notice in writing of not less than sixty (60) days prior to the date of expiry of the present licence for the consideration of the Licensor.”

43. Before penning our opinion on the interpretation of the clause it would be our obligation to note the contours of the argument advanced by Sh.Harish N.Salve, learned Senior Counsel concerning the interpretation of the clause. Notwithstanding land made available by NDMC and entire money to construct the hotel building being made available by NDMC, IHCL contributed to the hotel building being rendered fit for use as a five star hotel by providing the requisite money. When, vide letter dated February 15, 2010 IHCL requested for the licence to be renewed it predicated the request on the right to have the licence renewed. This right was never refuted and as a matter of fact was accepted and the evidence thereof are the meeting notice dated September 21, 2010, the minutes of the Committee meeting dated June 03, 2011 and July 14, 2011 as also the directive dated November 14, 2011 issued by the Ministry of Urban Development. The resolution by the Council passed on October 07, 2011, July 25, 2012 and September 27, 2012 also recognize said right to seek renewal of the licence. Learned Senior Counsel relied upon letter dated July 13, 2012 written by NDMC indicating the higher revenue it desired for the licence to continue, pending a final decision for extending the licence for a further period of 30 years which was accepted by IHCL. Referring to a public interest petition filed in this Court and registered as W.P.(C)

No.6615/2012 Mithiliesh Kumar Pandey Vs. NDMC resulting in the order dated October 17, 2012 being passed dismissing the writ petition, learned Senior Counsel urged that one reason which weighed with the Court to dismiss the petition was, as recorded in paragraph 2 of the order, NDMC informing the Court that it had decided to opt for public auction of the property in a fair and transparent manner, with right of refusal to IHCL. As per learned Senior Counsel this land accepted the right of IHCL to have the licence extended for a further period of 30 years.

44. Clause II(2) provides that the licensor '*shall have the option to*' grant renewal of the licence for a further period upon the expiration of the initial licence period, subject to a notice in writing by the licensee not less than 60 days prior to the date of expiration of the initial licence period '*for the consideration of the Licensor*'. The use of the expressions '*shall have the option to*' and '*for the consideration of the Licensor*' clearly evinces the intention of the parties that the discretion to grant extension of the licence would vest with the NDMC. Under Clause II(2), IHCL has merely been provided with the right to request for an extension vide a notice in writing to the NDMC not less than sixty days prior to the expiry of the initial period of the licence. It is evident that if a notice requesting extension was issued by IHCL to the NDMC within the time provided under the License Deed dated December 18, 1976, it would be up to the NDMC to extend the licence beyond the initial period of 33 years and if the NDMC opted to extend the licence, then the licence would be extended on such terms and conditions as may be mutually agreed between the parties.

45. Such a construction of Clause II (2) of the License Deed dated December 18, 1976 is supported by the opinion of the Supreme Court reported as (2015) 12 SCC 1, Bharti Airtel Ltd. v. UOI, wherein the Supreme Court interpreted the renewal clauses in telecom licences, namely the Cellular Mobile Telephone Service (CMTS) License and the Unified Access Service (UAS) License, granted by the Government of India to different telecom companies. The renewal clauses in the telecom licences read as under :-

CMTS License	UAS License
<i>‘Period of Licence: The period of Licence shall be twenty years from the effective date of the existing License Agreement unless terminated for the reasons stated therein. The Licensor may extend the period of Licence, if requested during 19th year from the effective date for a period of 10 years at a time on mutually agreed terms and conditions. The decision of licensor shall be final in regard to grant of extension.’</i>	<i>‘The LICENCE shall be valid for a period of 20 years from the effective date unless revoked earlier for reasons as specified elsewhere in the document. The LICENSOR may extend, if deemed expedient, the period of LICENCE by 10 years at one time, upon request of the LICENCEE, if made during 19th year of the Licence period on terms mutually agreed. The decision of the LICENSOR shall be final in regard to the grant of extension.’</i>

46. A perusal of the language of the two clauses considered by the Supreme Court and the language of the clause at hand would show that they are substantially similar. The Supreme Court categorically opined that the renewal clauses in question before the Court did not provide the licensees

with any vested right to claim extension/renewal and held that '*extension of the period of licence would be at the sole discretion of the LICENSOR subject to the condition that the LICENCEE makes an application seeking an extension during the 19th year of the currency of the licence*'. The Supreme Court reasoned that this view was buttressed by the inclusion of the term '*on mutually agreed terms and conditions*' in the renewal clause, which implied that neither party could compel the other to extend the contract and the contract could only be extended if both parties were agreeable to the extension and had mutually agreed the terms and conditions of the extension.

47. As regards the contentions advanced by Sh.Harish N.Salve on this aspect of the matter which we have noted hereinabove in paragraph 43, it hardly matters that IHCL contributed funds to render the building fit to be used as a five star hotel for the reason it was agreed between the parties that in lieu of said consideration with further obligation to maintain the building fit for use as a five star hotel for the period of the licence IHCL shall have the exclusive right to run the hotel therefrom and pay to NDMC the agreed licence fee. Of course, the licence fee, having a minimum assured amount had an element of profit sharing, but it cannot be ignored that IHCL was retaining the major revenue generated. The fact of the matter remains that with open eyes IHCL agreed that it would have no right, title or interest either in the land or the building on the expiry of the licence period. It being a case of a free bargain between the parties the question of any equity permeating the agreement does not arise. That NDMC looked into the request for licence to be renewed does not mean that it accepted IHCL's

interpretation of clause II(2) of the License Deed. Whilst it may be true that in some communications the language used could be suggestive of NDMC accepting such an interpretation, but it cannot be overlooked that these were expressions used by officers or members of internal committee constituted by the Council and could not be said to be the final view taken by the Council. When a corporate body takes a decision at different hierarchical levels living human beings discuss the issue. It is inherent in the decision making process by a corporate body that such decision making process exists. It is trite that these decisions are decisions improperly so called or perhaps would be labeled as inchoate decisions. Unless the competent authority of the statutory body takes the decision and communicates it to the party concerned it cannot be said in law that a decision binding the statutory/corporate body has been taken. Regarding what weighed with the Division Bench of this Court when vide order dated October 17, 2012 W.P.(C) No.6615/2012 was dismissed, IHCL cannot take advantage of the fact that as of then NDMC represented to the Court that it was in the process of finalizing the issue of licence fee in a fair and a transparent manner with right of first refusal granted to IHCL for the reason at that point of time the matter was under consideration as to how should NDMC proceed further ahead to exploit its asset.

48. The obligation cast upon the NDMC by Clause II(2) at best would be to consider the request by IHCL for extension and the consideration would be fair. We hasten to add that whenever one talks of an obligation it automatically follows that there is a right in somebody else because there cannot be an obligation sans a right. The sweep of the obligation would be

a measure of the span of a right. The right therefore of IHCL would be only to a fair consideration of its request and not spanning the right to have the licence renewed.

49. Being a statutory authority NDMC would be bound by its statute. Section 3 of the NDMC Act, 1994 reads as under:-

“3. *Establishment of the Council-*

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be a Council charged with the municipal Government of New Delhi, to be known as the New Delhi Municipal Council.

(2) The Council shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued.”

(3)

50. Sub-Section (1) and (2) of Section 141 of the Act read as under:-

“141. *Disposal of immovable property-*

(1) The Chairperson may, with the sanction of the Council, lease, sell, let out on hire or otherwise transfer any immovable property belonging to the Council.

(2) The consideration for which any immovable property may be sold leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition.”

51. The Council as a juristic entity would be the New Delhi Municipal Council and having perpetual succession and common seal, this juristic

entity would have the power to acquire, hold and dispose of property. The members referred to as the Council under Section 4 would not be the juristic entity. They would be akin to the Board of Directors or the Governing Council of a company/society. The Chairperson of the Council is the one who performs the ministerial act of executing the required document concerning the immoveable property belonging to the Council : the juristic entity. But this would be subject to the sanction of the Council i.e. the members referred to under Section 4. The consideration would be the one which would be fetched at a fair competition. Now, the expression ‘*let-out on hire*’ which finds reference in sub-Section (1) of Section 141 is missing in sub-Section (2), but that in our opinion is irrelevant for the reason a statutory authority and especially a Municipal Statutory Authority would be obliged on the principle of a Trust to obtain the best price while creating any interest in its property in favour of a third party. It is the inherent right of every proprietor to secure maximum consideration for his property in all transactions, apart from transactions where the law limits consideration that can be charged by the proprietor, for any public purpose or in public interest. In the case of governmental bodies like the NDMC, the implicit right of a proprietor to maximize consideration for its property is also a duty since these bodies own and transact property in a fiduciary capacity for the general public. A similar view has been expressed by the Supreme Court in the decision reported as (2012) 3 SCC 1 *Centre for Public Interest Litigation & Others v. Union of India & Others*, wherein the Supreme Court held that the doctrine of equality enjoins that the public is adequately compensated for the transfer of natural resources and/or their

products to the private domain. Thus, in exercising its right/discharging its duty to secure maximum consideration for grant of licence in relation to property bearing No.1, Man Singh Road, New Delhi, NDMC is within its power to ensure that such measures are adopted by it which fetch the maximum revenue. As a consequence of NDMC's proprietary right and fiduciary duty to secure maximum consideration for public property, Section 141(2) of the NDMC Act, 1994 must be interpreted to include within its ambit all transactions involving immoveable property and the grant of licences cannot be de hors Section 141 (2) of the NDMC Act, 1994. A harmonious construction of Section 141(1) and 141(2) of the NDMC Act, 1994 supports the view that it is incumbent on the NDMC to sell, lease, let out or otherwise transfer any immoveable property at the value at which such immovable property could be sold, leased, let out or otherwise be transferred in normal and fair competition. The omission of the word '*let out*' in Section 141(2) of the NDMC Act, 1994 is clearly on account of an error in legislative drafting. Section 141(1) lists the modes and the manner in which the immoveable property belonging to the NDMC may be disposed off while Section 141(2) of the NDMC Act, 1994 provides the necessary condition of securing adequate compensation, which represents the fiduciary duty of the NDMC to the general public, to be fulfilled while disposing off the property as per Section 141(1) of the NDMC Act, 1994.

52. As held in the decisions reported as AIR 1973 SC 2609 DDA Vs. Durga Chand Kaushik, AIR 1989 SC 1834 Provash Chandra Dalui & Anr. Vs. Biswanath Banerjee & Anr., (2004) 1 SCC 1 State of U.P. & Anr. vs. Lalji Tandon (Dead) Through LRs. and (2015) 8 SCC 655 State of West

Bengal & Anr. vs. Calcutta Mineral Supply Co. & Anr. a renewal of a grant amounts to a fresh grant. Add thereon, the law declared in the decisions reported as AIR 1987 SC 1073 Ambica Quarry Works etc. vs. State of Gujarat & Ors., 1995 Supp (1) SCC 587 State of M.P. & Ors. vs. Krishandas Tikaram, and (1997) 1 SCC 650 Gajraj Singh & Ors. vs. State Transport Appellate Tribunal & Ors. that a term of a grant would be subject to the legislation in force at the time when the grant calls for renewal. Thus, NDMC would be entitled to the stand that it is entitled to determine the value of its property for purposes of grant of a licence by way of a fair competition.

53. On the interpretation of Section 141 of the NDMC Act, 1994 Sh. Harish N. Salve learned senior counsel referred to two decisions, Ex.DW-1/P6 and Ex.DW-1/P7 of the Council, the first dated September 13, 2011 extending the Licence to Delhi Tourism and Transportation Development Corporation (DTTDC) and the second dated July 14, 2014 pertaining to shops licenced in rehabilitation markets. The resolutions of the Council were to increase the licence fee and renew the licence for a further period of 10 years without resorting to public auction. The argument was that the Council itself interpreted sub-Section 2 of Section 141 of the NDMC Act, 1994 as not applicable to licences.

54. Now, in the plaint there is no specific pleading qua these resolutions. The only plea, in paragraph 3.8 of the plaint is : *‘The plaintiff submits that any method outside the License Deed, after assessing other similar properties leased/licenced by the defendant for 99 years, would show that the decision of the defendant to determine the rate through auction for the*

extended period, warps the level playing field and is discriminatory, arbitrary and violates Article 14 of the Constitution’.

55. The learned Single Judge has dealt with this issue in paragraph 205 of the impugned decision on the reasoning that the relationship between the parties was governed by an agreement and the case of Delhi Haat has no comparison.

56. Reference to Delhi Haat by the learned Single Judge concerns the decision to extend the licence in favour of DTTDC. In the absence of pleadings it would be inadvisable to render any firm opinion on comparability or non-comparability with the case of IHCL and DTTDC and thus we rest our opinion on the reasoning that unless a point is pleaded with sufficient particulars it would not become a point in issue and neither party would be entitled to predicate a right thereon. For record we may note that the contents of Ex.DW-1/P-6 evince that on a parcel of land belonging to NDMC, DTTDC from its own funds constructed a complex popularly known as Delhi Haat. It was a tourist oriented venture on the pattern of the one in Singapore. Artisans and craftsmen would display the wealth of arts and crafts in India. The fact that acting under the licence DTTDC executed works of a permanent character from their own funds could have attracted the applicability of clause (b) of Section 60 of the Indian Easement Act, 1882. What form the ultimate lis would take in the instant case, with reference to Ex.DW-1/P6 would have depended upon proper pleadings in the plaint by relying upon said decision of the Council by IHCL giving the Council a right to plead its defence. We have noted the preceding facts to bring home the point that a possible justification for the Council to extend

the licence in public interest sans an auction looms large in the realm of a justifiable legal decision and therefore in the absence of clear pleadings it would be inadvisable to note the same and take a decision. As regards the decision Ex.DW-1/P7 it would be profitable to note that at the time of partition large number of people got displaced from the territories which form now part of Pakistan. Many of them settled in Delhi and, as a welfare state ought to do, the Government of India through the Ministry of Rehabilitation or through the erstwhile New Delhi Municipal Committee allotted on licence basis shops to a large number of displaced persons. Later on, from time to time under rehabilitation policies when land was acquired in Delhi on which persons were carrying on trade in business shops were allotted on licence. Entitlement of these persons for renewal of the licence sans an auction could well be argued to be on an entirely different footing vis-à-vis cases where a commercial asset owned by a municipality is commercially exploited, and there is no other public interest involved. A municipality should generate maximum revenue as already held by us above would not be the argument available to the municipality because it serves public good. Thus, even qua Ex.DW-1/P7, sans a proper pleading it would not be permissible to enter into a debate on the plea of discrimination or on the plea that the same is an evidence of NDMC's understanding of Section 141 of the NDMC Act, 1994.

57. Lastly a statute has to be interpreted on its language and not with reference to the conduct of a person.

58. To put it pithily, IHCL has no right under the licence for a renewal thereof and therefore no further issue needs to be considered and decided.

Further, keeping in view clause II(2) of the License Deed as interpreted by us hereinabove, while considering the request (sans a right) from IHCL to renew the licence, the NDMC would be bound to secure the price which would be fetched at a fair competition and the fair competition would be the one contemplated by the Supreme Court in Centre for Public Interest Litigation case (supra) i.e. an auction. It being settled law as per said judgment that unless there is a social or a welfare purpose or any other public interest which is served an asset held for the benefit of the public, if commercially exploited should be by way of an auction or an open competitive bidding because it would then fetch the maximum revenue.

59. As regards contention of IHCL that even if the fair consideration is determined at a public auction it must be with right of first refusal to it, it overlooks that such a negative stipulation qua the right of the highest bidder would obviously have an adverse impact on the bid amount for the reason the right of the highest bidder would be subject to a right created in favour of IHCL and common sense and logic dictates that why would a person bid for something which he is told is to be his subject to somebody else not matching his bid price.

60. The appeal is accordingly dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

OCTOBER 27, 2016
mamta/skb