

ROBUST HOTELS LIMITED

CIN: L55101TN2007PLC062085

Registered Office: No. 365, Anna Salai, Teynampet, Chennai – 600 018.

☎ 044 6100 1256 ✉ info_rhl@sarafhotels.com 🌐 www.robusthotels.in

04th February, 2025

To

The Manager
Listing Department
BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street, Mumbai- 400001

The Manager
Listing Department
National Stock Exchange of India Ltd.
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex,
Bandra (E), Mumbai-400 051

Type of Security: Equity shares
Scrip Code : 543901

Type of Security: Equity shares
NSE Symbol : RHL

Dear Sir/Madam,

Subject : Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. (“Listing Regulations”)

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (‘SEBI Listing Regulations’) and in accordance with the requirements of sub- para 20 (c) of Para A of Part A & sub-para 8 of Para B of Part A of Schedule III of SEBI Listing Regulations;

We hereby inform that the Company, pending trial, had earlier deposited Rs.15.12 crores with the Registrar (Administration), High Court Madras in the litigation initiated against the Company by EIH Limited & Oberoi Hotels Private Limited (“other party”) as per the order of the supreme court in the civil appeal no 11886-1187 of 2016 and Civil appeal no 11888-11889 of 2016. Though the Company could get the order in its favour by the single judge of Madras High Court, the other party preferred an appeal before the division bench vide *OSA(CAD) No.55 of 2021 and OSA(CAD) No.56 of 202*. The appeal was heard and dismissed by the division bench on 17.12.2024. The company is yet to receive the certified copy of the order.

Based on the order, the Registrar (Administration), High Court Madras issued cheque for Rs.20.87 crores towards refund of the above mentioned deposit including interest of Rs 5.75 crores to the company on 03.02.2025.

The web version of the above mentioned order is enclosed herewith.

Kindly take the above on record.

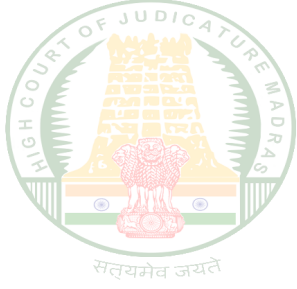
With regards,

FOR ROBUST HOTELS LIMITED



Yasotha Benazir N
Company Secretary & Compliance Officer





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O.S.A. (CAD) Nos.55 & 56 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	06.12.2024
Judgment pronounced on	17.12.2024

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A. (CAD) Nos.55 & 56 of 2021
and C.M.P.Nos.12418 & 12857 & 12407 of 2021

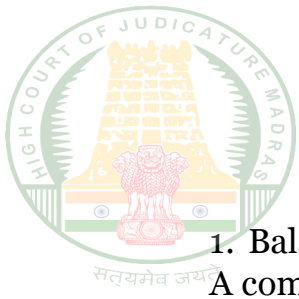
OSA(CAD) No.55 of 2021

1. EIH Limited, an existing company incorporated within the meaning of the Companies Act, 1956 and having its Registered office at No.4, Mangoe Lane, Kolkata-700 001
Rep by its Authorised Signatory
Mr.Gautam Ganguly.

2.Oberoi Hotels Private Limited
an existing company incorporated within the meaning of the Companies Act, 1956 and having its Registered office at No.4, Mangoe Lane, Kolkatta-700 001.

.. Appellants

vs



O.S.A. (CAD) Nos.55 & 56 of 2021

1. Balaji Hotels & Enterprises Ltd.

A company incorporated under the Companies Act, 1956 and having its registered office at 365 (old No.267), Anna Salai, Teynampet, Chennai-600 018 and Corporate Office at No.9, Bazullah Road, T.Nagar, Chennai-600 017.

2. Balaji Industrial Corporation Ltd.

A company incorporated under the Companies Act, 1956 and having its corporate office and carrying on business at No.9, Bazullah Road, T.Nagar, Chennai-600 017.

3. IFCI Ltd.,

a company incorporated under the Companies Act, 1956 and having its office at Continent Towers, 142, M.G.Road, Chennai-600 034.

4. Tourism Finance Corporation of India Ltd.

A company Incorporated under the Companies Act, 1956 and having its registered office at Tower 1, 4th Floor, NBCC Plaza, Pushp Vihar Sector 5, Saket, New Delhi-110 017.

5. Robust Hotels Pvt. Limited,

a company incorporated under the Companies Act, 1956 and having its registered office at 365, Anna Salai, Teynampet, Chennai, Tamil Nadu.

... Respondents



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O.S.A. (CAD) Nos.55 & 56 of 2021

OSA(CAD) No.56 of 2021

1. EIH Limited, an existing company incorporated within the meaning of the Companies Act, 1956 and having its Registered office at No.4, Mangoe Lane, Calcutta-700 001.

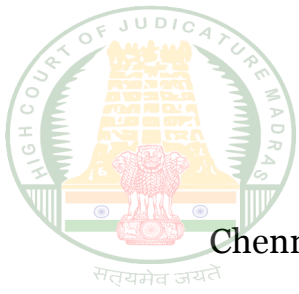
2.Oberoi Hotels Private Limited an existing company incorporated within the meaning of the Companies Act, 1956 and having its Registered office at No.4, Mangoe Lane, Calcutta-700 001.

.. Appellants

vs

1. Balaji Hotels & Enterprises Ltd.
A company incorporated under the Companies Act, 1956 and having its registered office at 365 (old No.267), Anna Salai, Teynampet, Chennai-600 018

2. Balaji Industrial Corporation Ltd.
A company incorporated under the Companies Act, 1956 and having its corporate office and carrying on business at No.9, Bazullah Road, T.Nagar,



O.S.A. (CAD) Nos.55 & 56 of 2021

Chennai-600 017.

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3. Asset Reconstruction Company (India) Limited
a company incorporated under the
Companies Act, 1956
and having its office and carrying on business at
17th Floor, Express Towers,
Nariman Point, Mumbai-400 021.

4. ICICI Bank Limited
Having its Office at ICICI Bank
Towers, Bandra-Kurla Complex,
Mumbai-400 051.

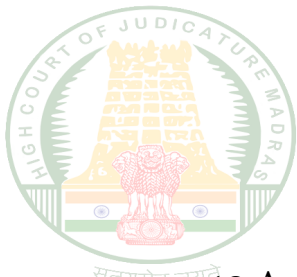
5. IFCI Ltd.
A company incorporated under the
Companies Act, 1956
and having its registered office at
IFICI Tower 61, Nehru Place,
New Delhi-110 019.

6. Tourism Finance Corporation of India Limited
a company incorporated under the
Companies Act, 1956
and having its office at IFICI Tower
61, Nehru Place, New Delhi-110 019

7. Anand Rathi Securities Private Limited,
54-55, Mittal Court, "B", Nariman Point, Mumbai-400 021.

8. Robust Hotels Pvt. Limited
Having its registered office at 365,
Anna Salai, Teynampet, Chennai,
Tamil Nadu.

9. Avali Srinivasan



O.S.A. (CAD) Nos.55 & 56 of 2021

10.Arun Kumar Saraf

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11.Amit Saraf

12.Hyatt Hotels Corporation, a company incorporated under the appropriate laws of the USA and having its office at 71S, Wacker Dr.Chicago, IL 60606-4637, United States

.. Respondents

Prayer in OSA(CAD) No.55 of 2021 : Appeals under Order 36 Rule 91 of the Original Side Rules read with Clause 15 of the Letters Patent and the provisions of Section 13(1) of the Commercial Courts Act, 2015 to set aside the impugned judgment and decree dated 30.07.2021 dismissing the suit in C.S.No.164 of 2011.

Prayer in OSA(CAD) No.56 of 2021 : Appeals under Order 36 Rule 91 of the Original Side Rules read with Clause 15 of the Letters Patent and the provisions of Section 13(1) of the Commercial Courts Act, 2015 to set aside the impugned judgment and decree dated 30.07.2021 dismissing the suit in Tr.C.S.No.108 of 2017.

In Both Appeals

For Appellants : Mr.Siddharth Mitra,
Senior Advocate,
for Mr.H.Karthik Seshadri
Roopa Mitra
Elizabeth Seshadri



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O.S.A. (CAD) Nos.55 & 56 of 2021

For Respondents

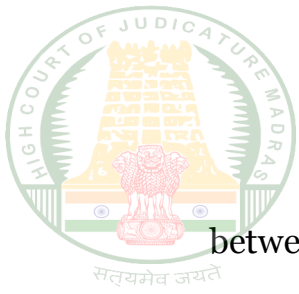
: Mr.AR.L.Sundaresan,
Senior Advocate,
for Mr.K.Harishankar
for R5 in OSA(CAD).No.55
of 2021
for R8 to R11 in
OSA(CAD) No.56 of 2021
No appearance for R1 to
R5 in OSA(CAD) No.55 of
2021
No appearance for R1 to
R7, R10 & R11 in
OSA(CAD) No.56 of 2021
R9 – unclaimed (Not
ready in notice) in OSA
(CAD) No.56 of 2021

COMMON JUDGMENT

(Delivered by Justice Senthilkumar Ramamoorthy)

Background

Balaji Constructions Private Limited (Balaji Constructions) and The East India Hotels Limited (East India Hotels) entered into Technical Services Agreement dated 26.10.1988 in relation to the establishment of a hotel by Balaji Constructions. On the same date, Project Consultancy Service Agreement and Royalty Agreement were entered into by and



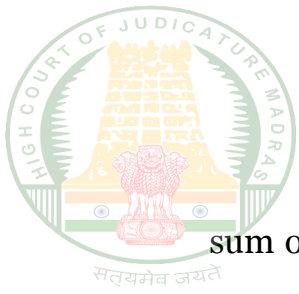
O.S.A. (CAD) Nos.55 & 56 of 2021

between Balaji Constructions and Oberoi Hotels Pvt. Ltd. (Oberoi Hotels).

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Balaji Constructions was subsequently reconstituted as Balaji Hotels and Enterprises Limited (Balaji Hotels) and East India Hotels was renamed as EIH Limited (EIH). By a later agreement dated 12.01.2000 between Balaji Hotels and EIH, it was recorded that the hotel unit would be transferred by Balaji Hotels to a separate company and that the sum of Rs.9 crore, which had been paid by EIH to Balaji Hotels, would be repaid by issuance of equity shares or fully convertible debentures to EIH in the transferee company.

2. Thereafter, an agreement dated 04.02.2002 was entered into between EIH and Oberoi Hotels, on the one hand, and Balaji Hotels and Balaji Industrial Corporation Limited (BICL), on the other. Under this agreement, Balaji Hotels agreed to pay a sum of Rs.15.12 crore to EIH as consideration for EIH not objecting to Balaji Hotels selling, leasing or otherwise transferring the hotel unit to any other company and for the termination of all earlier agreements. BICL extended a corporate guarantee in respect of obligations undertaken by Balaji Hotels under this agreement. Subsequent thereto, admittedly, Balaji Hotels failed to pay the

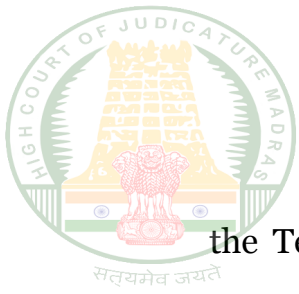


O.S.A. (CAD) Nos.55 & 56 of 2021

sum of Rs.15.12 crore to EIH as agreed upon and EIH did not make a call on the corporate guarantee.

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3. In the facts and circumstances set out above, EIH and Oberoi Hotels filed a civil suit (later renumbered as Tr.C.S. No.108 of 2017) seeking a declaration that all the agreements referred to above are valid, legal and subsisting. The plaintiffs also prayed for permanent injunctions to restrain Balaji Hotels, BICL and the secured creditors of the above mentioned defendants from selling, encumbering or disposing of the property described in the schedule to the plaint without disclosing and or recognizing the rights of the plaintiffs to operate and manage the hotel under the agreements referred to earlier. The suit was subsequently amended to implead Robust Hotels (P) Ltd., which is the entity to which the property described in the schedule to the plaint was transferred, its directors, and Hyatt Hotels Corporation (Hyatt Hotels), as Defendants 8 to 12. The reliefs claimed were also amended by seeking a permanent injunction to restrain the newly impleaded defendants from acting in a manner inimical to and/or in derogation of the rights of the plaintiffs in

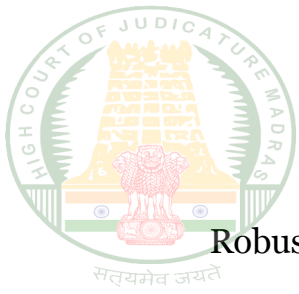


O.S.A. (CAD) Nos.55 & 56 of 2021

the Technical Services Agreement dated 26.10.1988, Project Consultancy Service Agreement dated 26.10.1988 and Royalty Agreement dated 26.10.1988.

4. About one year later, EIH and Oberoi Hotels filed a second suit (C.S.No.164 of 2011) against Balaji Hotels, BICL, IFCI Ltd, Tourism Finance Corporation of India Ltd. and Robust Hotels Pvt. Ltd. In this suit, the plaintiffs prayed for a declaration that the Deed of Transfer dated 05.07.2007 and the certificate of sale of immovable property dated 05.07.2007 are illegal, null and void and for a permanent injunction to restrain the defendants from giving effect to or taking steps in furtherance of the deed of transfer and the above mentioned certificate of sale.

5. Issues were framed separately in the two suits, but evidence was recorded in common. The plaintiffs examined Mr.Singanellore Natesan Sridhar as PW1 and exhibited 14 documents through PW1 as Exs.P1 to P14. PW1 was cross-examined by learned counsel for Balaji Hotels and BICL; learned counsel for secured creditors; and by learned counsel for



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Robust Hotels and its directors. Robust Hotels adduced evidence by examining T.N.Thanikachalam as DW1. 13 documents were exhibited through DW1 as Exs.D1 to D13. DW1 was cross-examined by learned counsel for the plaintiffs. Both the suits were dismissed by the impugned common judgment and decree dated 30.07.2021. These appeals arise in the above facts and circumstances.

Counsel and contentions

6. Oral arguments on behalf of the appellants were advanced by Mr.Siddarth Mitra, learned senior counsel, assisted by Mr.H.Karthik Seshadri, learned counsel. Oral arguments on behalf of Robust Hotels and its directors were advanced by Mr.AR.L.Sundaresan, learned senior counsel, assisted by Mr.K.Harishankar, learned counsel. Leave was granted to the contesting parties to file written submissions within one week from 06.12.2024, and written submissions were filed. The other respondents did not contest the appeals. For ease of reference, the contesting parties to these appeals are referred to as appellants and Robust Hotels, respectively, except where only the first appellant, EIH, is being referred to.



Arguments in O.S.A. (CAD) No.56 of 2021 (Corresponding to Tr.C.S.No.108 of 2017)

7. The first contention of Mr.Mitra was that the agreements entered into by and between Balaji Hotels and the appellants are binding on Robust Hotels because Robust Hotels agreed to purchase the property with full knowledge of the rights created in favour of EIH under the agreements executed earlier. In particular, learned senior counsel contended that Robust Hotels had entered into an agreement for settlement of creditors with Balaji Hotels and had paid a sum of about Rs.47 crore towards the discharge of liabilities to Balaji Hotels. By referring to a communication dated 10.02.2009 from Mr.Rahul Balaji, Advocate for Balaji Hotels, to Robust Hotels (Ex.D9), he pointed out that the said communication states that Balaji Hotels had entered into a one time settlement with EIH. He also referred to a communication dated 06.01.2017 from Balaji Hotels to Robust Hotels (Ex.D13), wherein the agreement for settlement of creditors was referred to. He pointed out that Balaji Hotels asserted in the said



communication that it had made full disclosure of all liabilities to Robust Hotels, including the liability arising out of claims made by EIH.

8. The next contention of learned senior counsel was that the learned single Judge completely misconstrued the agreement dated 04.02.2002 between the appellants, on the one hand, and Balaji Hotels and BICL, on the other(Ex.P8). By referring to paragraphs 10.18 and 10.19 of the impugned judgment, learned senior counsel submitted that the learned single Judge erroneously concluded that the plaintiffs/appellants herein relinquished their rights under the agreements dated 26.10.1988. In so concluding, learned senior counsel contended that learned single Judge overlooked clauses 5 and 6 of the agreement by focusing exclusively on recitals D, E and F and clause 4. By drawing our attention to clauses 5 and 6, learned senior counsel submitted that the agreements executed on 26.10.1988 would stand terminated / cancelled only upon receipt of the payment of Rs.15.12 crore from Balaji Hotels by EIH. In view of the admitted non-receipt thereof, he contended that the agreements continued to subsist.



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9. Learned senior counsel also contended that the implied negative covenant in these agreements to restrain the operation of the hotel unit through any person, other than EIH or Oberoi Hotels, may be enforced even if the positive covenants therein cannot be specifically enforced. In order to substantiate this submission, learned senior counsel referred to sections 14, 41(e) and 42 of the Specific Relief Act, 1963 (the Specific Relief Act). Since the appellants seek to enforce the implied negative covenant in the agreements between Balaji Hotels and the appellants, he submitted that the appellants are entitled to such reliefs. He relied upon the judgment of the Hon'ble Supreme Court in *Gujarat Bottling Co. Ltd. and others v. Coca Cola Co. and others, 1995 (5) SCC 545*, particularly paragraph 42 thereof, in support of this contention.

10. In response to these contentions, learned senior counsel for Robust Hotels submitted that EIH conveyed its 'no objection' to the sale, lease or transfer of the hotel unit to any other company under Ex.P8. He



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also pointed out that Ex.P8 provides for a guarantee from BICL and for such guarantee to be invoked by EIH if the agreed payment was not made by Balaji Hotels on or before 31.12.2002. Since the agreement provided for a remedy in case of breach, learned senior counsel submitted that EIH was not entitled to seek any relief other than that provided for in the agreement.

11. His second contention was that no charge was created over the immovable property in favour of the appellants. By referring to the cross-examination of PW1, learned senior counsel pointed out that PW1 admitted categorically, in course of cross-examination by learned counsel for the first and second defendants on 10.08.2018, that the plaintiffs do not have a charge over the properties of D1 and D2. He further submitted that a similar admission was made by PW1 in course of cross-examination by learned counsel for the fifth and sixth defendants in Tr.C.S.No.108 of 2017.

12. The third contention of learned senior counsel was that PW1



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admitted that the agreements between the appellants and Balaji Hotels were not assigned to any other entity. In the light of such admission, he submitted that there is no infirmity in the findings in the impugned judgment that the agreements cannot be enforced against Robust Hotels. Learned senior counsel countered the contention with regard to Section 42 of the Specific Relief Act by submitting that the alleged implied negative covenant cannot be enforced against Robust Hotels. The last submission of learned senior counsel was that EIH failed to prove that it had paid Rs.15.12 crore to Balaji Hotels. By referring to the cross-examination of PW1 on behalf of Robust Hotels on 17.09.2018, learned senior counsel pointed out that PW1 was unable to specify the mode of payment or produce records to substantiate that a sum of Rs.15.12 crore was paid by EIH to Balaji Hotels.

Discussion, analysis and conclusions in O.S.A. (CAD) No.56 of 2021

(corresponding to Tr.C.S.No.108 of 2017):

13. The plaintiffs/appellants herein prayed for the following reliefs:

“(a) *Declaration that the Technical Services*



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Agreement dated 26th October, 1988 and the Project Consultancy Agreement and Royalty Agreement both dated 26th October, 1988 and the Agreements dated 12th January, 2000 on 10th June, 2000 and 4th February, 2002 are valid, legal and subsisting and are binding and enforceable on the defendant Nos.3 to 7 and the added defendants Nos 8 to 12 and /or its assigns. (Amended as per Order dated 12.04.2010 in Application No.6723 of 2010)

(b) Permanent injunction restraining the defendant Nos.3 to 7 whether by itself, its servants, agents and/or assigns or otherwise howsoever from selling, encumbering and/or disposing of in any manner howsoever, the Schedule property of the defendant No.1 situated at Mount Road, Chennai, in favour of any persons without disclosing and/or recognizing the rights of the Plaintiff to operate and manage the hotel as provided for under the Technical Services Agreement dated 26th October, 1988 and the Project Consultancy Agreement and Royalty Agreement both dated 26th October, 1988 and the Agreements dated 12th January, 2000, 10th



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June, 2000 and 4th February, 2002.

(bb) Permanent Injunction restraining the Defendants Nos 8 to 12 whether by itself its servants, agents and/or assigns or otherwise howsoever from taking any steps or acting in a manner inimical to and/or in derogation of the rights of the Plaintiffs as embodied in the Technical Services Agreement dated 26th October, 1988 and the Project Consultancy Agreement and Royalty Agreement both dated 26th October, 1988. (Amended as per Order dated 2.04.2010 in Application No.6723 of 2010)

(c) Costs

(d) Such further and other reliefs”

14. The Court framed the following issues:

- “1. Whether the suit is maintainable?*
- 2. Whether there is cause of action to the suit?*
- 3. Whether the suit is barred under the provisions of SARFAESI Act?*
- 4. Whether this Court has got jurisdiction to try the case?*



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5. *Whether the 12th defendant is unnecessary party to the suit?*
6. *Whether the suit is barred by limitation?*
7. *Whether the plaintiffs are entitled to relief of declaration as prayed for?*
8. *Whether the plaintiffs are entitled to the reliefs sought for in prayer (b) and (bb)?*
9. *To what other reliefs the parties are entitled to?"*

Out of the above issues, issues 1 to 6 were decided in favour of the plaintiffs. Therefore, the only material issues for the purpose of this appeal are issue Nos.7 to 9.

15. In order to determine whether interference is called for as regards the conclusions of the learned single Judge, it is necessary to examine the agreements entered into by and between the appellant(s), on the one hand, and Balaji Hotels and BICL, on the other. On examining the Technical Services Agreement, Project Consultancy Service Agreement and Royalty Agreement, it is evident that each of these agreements was



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executed on 26.10.1988 by and between Balaji Constructions and East India Hotels or Oberoi Hotels. The subsequent agreements 12.01.2000 and 10.06.2000 are between Balaji Hotels and EIH.

16. An Agreement dated 04.02.2002 (Ex.P8) was entered into by and between Balaji Hotels and BICL, on the one hand, and EIH and Oberoi Hotels, on the other. As discussed earlier, by interpreting this agreement, learned Judge of first instance held that the plaintiffs had relinquished their rights under the earlier agreements by agreeing to receive a sum of Rs.15.12 crore under this agreement. The tenability of this conclusion warrants examination. Learned senior counsel for Robust Hotels contended that EIH had provided a 'no objection' for the sale, lease or transfer of the hotel unit under this agreement. The relevant covenant is as under:

“EIH hereby conveys no objection to BH&EL for selling, leasing or otherwise transferring the Hotel Unit to any other company whether a subsidiary or not or to any other company or entity either directly or indirectly or otherwise



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*owned, controlled by any Indian or any international hotel chain or otherwise **subject to the following conditions**”*

(emphasis added)

From the above clause, it is noticeable that the no objection is subject to the conditions specified thereafter. Conditions 5 to 7 are as under:

“5. Upon receipt of the payments of Rs.15.12 crores along with interest as applicable either from BH&EL or BICL, the Technical Service Agreement dated 26th October 1988 or any modification thereof between the parties hereto shall stand terminated.

6. Upon such payment the Royalty Agreement and the Project Consultancy Agreement both dated 26th October 1988 entered into between BH&EL and OHPL shall stand cancelled.

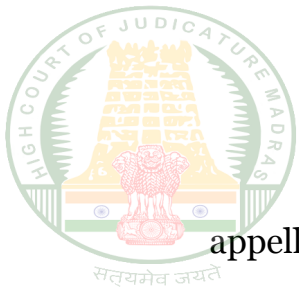
7. Upon such payment, the agreements dated 12th January, 2000 and the supplemental agreement dated 10th June, 2000 or any modification thereof between BH&EL and EIH shall stand cancelled.”



17. Each clause, extracted above, makes it abundantly clear that the

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termination/cancellation of the agreements referred to therein is subject to the receipt of the sum of Rs.15.12 crore by EIH. In view of the admitted position that the sum of Rs.15.12 crore was not paid by Balaji Hotels or BICL to EIH, it cannot be concluded that the agreements stood terminated or substituted by the agreement dated 04.02.2022. In the impugned judgment, at paragraphs 10.18 and 10.19, the conclusion of learned Judge of first instance that the plaintiffs gave up their rights under the agreements dated 26.10.1988 notwithstanding the non-receipt of a sum of Rs.15.12 crore is not correct. Nonetheless, in view of the appellants seeking a declaration that the agreements are valid and binding on the secured creditors and Robust Hotels, its Directors and Hyatt Hotels and a permanent injunction to restrain Robust Hotels, its Directors and Hyatt Hotels from acting in derogation of the appellants' rights under these agreements, the above conclusion would have no impact on the outcome of this appeal unless it can be further concluded that the agreements dated 26.10.1988 or even the agreement dated 04.02.2022 are enforceable against non-signatories, particularly Robust Hotels, or that the



appellants had a mortgage or charge enforceable against the property, and these questions are examined next.

18. Learned senior counsel for appellants referred to the assignment clauses in the above mentioned agreements. Such assignment clauses restrain the parties to such agreements from assigning their rights under the relevant agreement without the consent of the counter party thereto. Therefore, the assignment clauses do not advance the cause of the appellants. The appellants also failed to adduce any documentary evidence, by way of correspondence or otherwise, to establish that Robust Hotels was assigned the rights and obligations under those agreements. In fact, in course of cross-examination by learned counsel for Robust Hotels and its Directors on 17.09.2018, PW1 stated as under:

“Q: have the agreements between plaintiffs and defendants 1 and 2 been assigned to any other entity?”

A. No.”

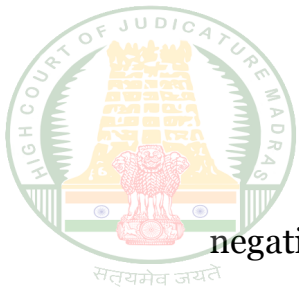
In effect, there is a clear admission that the agreements were not assigned



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to any other entity, including Robust Hotels. The contention of the appellants, in this regard, that an encumbrance was created over the rights of management cannot be countenanced because such contractual rights, unlike an interest/mortgage over property, in the absence of an assignment, cannot be enforced against a non-signatory/third party. Consequently, the appellants were not entitled either to a declaration that the agreements are valid and binding on non-signatories, including Robust Hotels and its Directors or to a permanent injunction restraining Robust Hotels and its Directors or Hyatt Hotels from acting in derogation of agreements to which the said persons/entities are not parties.

19. In this connection, it was also contended that the implied negative covenant in the agreements between Balaji Hotels and the appellants not to operate or manage the hotel to be constructed by Balaji Hotels was enforceable as per Section 42 of the Specific Relief Act, 1963 read with Sections 14 and 41(e) thereof. As discussed in the preceding paragraph, admittedly, such agreements were not assigned to any other entity, including Robust Hotels. In view thereof, neither the positive nor



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negative covenants in such agreement can be enforced against non-signatories, particularly Robust Hotels. Hence, Section 42 of the Specific Relief Act does not come to the aid of the appellants. In this context, it is pertinent to point out that, in the impugned judgment, the learned Judge took note of the fact that the appellants herein merely sought declaratory relief although other relief, such as damages for breach, could have been sought and, therefore, also concluded that the relief of declaration would be barred under Section 34 of the Specific Relief Act. We concur.

20. The only other basis on which the appellants could have claimed rights in respect of the immovable property is if an encumbrance had been created thereon. Whether such an assertion was made and established by the appellants should be considered. When PW1 was cross-examined on 10.08.2018 by learned counsel for Balaji Hotels and BICL, he stated as follows:

“The plaintiffs have not created any charge over the properties of D1 and D2”

Similarly, when PW1 was cross-examined by learned counsel for two



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secured creditors (D5 and D6) on 31.08.2018, he stated as follows:

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“ Our company did not have any mortgage interest over the immovable property of D1 and D2, where the Hotel is situated.”

In the absence of either an assignment of the agreements to Robust Hotels or the creation of a mortgage over the property in favour of the appellants, the reliefs prayed for in Tr.C.S.No.108 of 2017 were liable to be rejected. Hence, no interference is warranted with the dismissal of the suit.

Arguments in O.S.A. (CAD) No.55 of 2021 (corresponding to C.S.No. 164 of 2011):

21. Learned senior counsel for the appellants invited our attention to Section 34 of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act)



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and contended that the said provision bars the jurisdiction of civil courts only in respect of matters that the Debts Recovery Tribunal or Debts Recovery Appellate Tribunal are empowered to adjudicate under the provisions of the said enactment. By referring to sub-sections (2) and (3) of Section 17 of the said enactment, learned senior counsel contended that any person aggrieved is only entitled to challenge the measures taken by a secured creditor under sub-section (4) of Section 13 if such measures are not in accordance with the SARFAESI Act or the rules framed thereunder.

22. In this case, learned senior counsel contended that the appellants challenged the transfer deed on account of such transfer deed not being in compliance with the order dated 18.03.2005 of this Court in O.A.No.300 of 2005 in Tr.C.S.No.108 of 2017, and not on the ground that the sale was in breach of provisions of the SARFAESI Act or the rules framed thereunder. By the said order, learned senior counsel pointed out that the Asset Reconstruction Company (India) Limited, ICICI Bank



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Limited, IFCI Limited, Tourism Finance Corporation of India Limited and Anand Rathi Securities Private Limited (i.e. the secured creditors of Balaji

Hotels) were restrained from disposing of, selling and/or encumbering the hotel unit of Balaji Hotels without disclosing the rights of the appellants herein to operate and manage the hotel in terms of the Technical Services Agreement, Project Consultancy Agreement and Royalty Agreement. By referring to the transfer deed, learned senior counsel submitted that the said transfer deed does not disclose the appellants' rights under the said agreements. According to learned senior counsel, the violation of an order of this Court can only be examined by this Court and not by the Debts Recovery Tribunal.

23. By referring to the judgment of the Hon'ble Supreme Court in *Anita International v. Tungabhadra Sugar Yadav Sadashiv Mule (dead) through Lrs, 2016 (9) SCC 44*, particularly paragraphs 48 to 51 thereof, learned senior counsel submitted that the Supreme Court, in spite of a statutory remedy being available before a statutory tribunal, refused to interfere with the order of the Companies Court directing the secured



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creditors not to bring the property for sale without the involvement of the Official Liquidator and not to take coercive steps against the assets of the company. According to learned senior counsel, the ratio of the judgment leads to the conclusion that the suit challenging the transfer deed is maintainable before this Court.

24. In response to this contention, Mr.Sundaresan submitted that the jurisdiction of the Debts Recovery Tribunal under Section 17 of the SARFAESI Act is extremely wide and takes within this fold even matters wherein an assignment deed is challenged as being fraudulent. In support of this contention, he relied upon the judgment of the Hon'ble Supreme Court in *Electrosteel Castings Limited v. UV Asset Reconstruction Company Limited*, 2021 SCC OnLine SC 1132, particularly paragraphs 10 to 12 thereof. He also relied upon the impugned judgment, wherein the judgments of the Hon'ble Supreme Court in *Jagadish Singh v. Heeralal and Others*, (2014) 1 SCC 479 (*Jagadish Singh*) and *Sree Anandhakumar Mills Limited v. Indian Overseas Bank and Others*, (2019) 14 SCC 788 (*Sree Anandhakumar Mills*) were relied upon to conclude that even



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partition suits challenging measures under section 13(4) of the SARFAESI

Act are barred under Section 34 thereof. In conclusion, he contended that

the reliefs claimed in the suit are undoubtedly targeted at measures taken

by secured creditors under section 13(4) of the SARFAESI Act and are,

therefore, barred under section 34 thereof.

Discussion, analysis and conclusions in O.S.A. (CAD) No.55 of 2021

(corresponding to C.S.No. 164 of 2011):

25. As briefly stated earlier, in this suit, the plaintiffs prayed for a declaration that the deed of transfer dated 05.07.2007 and the certificate of sale issued on such basis are illegal, null and void and for a permanent injunction restraining the defendants from taking any steps in furtherance of the said documents. Upon pleadings being filed in this suit, the following issues were framed:

- “1. Whether the plaintiffs have any cause of action to file the present suit?*
- 2. Whether the suit has been properly valued in terms of Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955?*



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3. *Is the suit barred by limitation?*
4. *Is not the suit barred under the provisions of Order II Rule 2 of CPC?*
5. *Whether the suit is maintainable in view of the provisions of the SARFAESI Act, 2002?*
6. *Whether the suit for a declaratory relief without seeking specific performance maintainable?*
7. *Is the suit liable to be dismissed for non joinder of necessary parties?*
8. *Whether the plaintiff can claim any charge over the suit property or the monies allegedly advanced by them to the 1st defendant?*
9. *In the absence of invoking the corporate guarantee given by the 2nd defendant and in the absence of claiming recovery of money against the 1st defendant, are the plaintiffs entitled to any reliefs?*
10. *Are the plaintiffs entitled to any claims against the 5th defendant and over the property at No.365, Anna Salai, Chennai 600 018?*
11. *Has not the 1st defendant indemnified the 5th defendant against any claims made against them by any third party including the plaintiffs?*



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12. *Is not the 1st defendant alone liable for any monetary claim made by the plaintiffs?*
13. *To what other reliefs are the parties entitled to?*

Although 13 issues were framed, learned Judge of first instance adjudicated issue No.5 relating to the maintainability of the suit in view of Section 34 of the SARFAESI Act and concluded that the suit was not maintainable. On account of such conclusion, the other issues were not dealt with. Therefore, the sustainability of this conclusion warrants close examination.

26. Section 34 of the SARFAESI Act is as under:

“34. Civil court not to have jurisdiction:

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and



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Financial Institutions Act, 1993 (51 of 1993).

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On examining the above provision, it is noticeable that the jurisdiction of civil courts is barred in respect of any suit or proceeding which the Debts Recovery Tribunal or the Appellate Tribunal is empowered by and under the SARFAESI Act to determine.

27. The jurisdiction of the Debts Recovery Tribunal under the SARFAESI Act is largely contained in Section 17 thereof. In relevant part, sub-section (1) of Section 17 reads as under:

“17.[Application against measures to recover secured debts.]-(1)Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:



The conclusion that follows from sub-section (1) is that any person aggrieved by any of the measures under sub-section (4) of Section 13, if taken by a secured creditor or its authorised officer, may make an application before the Debts Recovery Tribunal. The transfer deed was executed by the authorised officer of the secured creditor. Sub-section (4) of Section 13 enables a secured creditor to take possession and sell the secured assets. Therefore, the execution of the transfer deed and certificate of sale are undoubtedly measures under sub-section (4) of Section 13.

28. All that remains to be considered is whether the Debts Recovery Tribunal is empowered to deal with the grievance canvassed by the appellants. For this purpose, it is necessary to set out sub-sections (2) and 3 of Section 17, which read, in relevant part, as under:

“(2)The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.]

[(3) If, the Debts Recovery Tribunal, after



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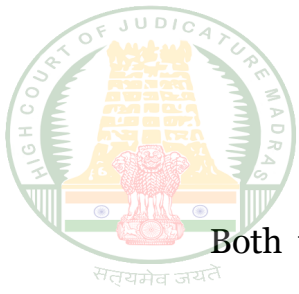
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examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]”



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Both these sub-sections enable the Debts Recovery Tribunal to consider whether any of the measures referred to in sub-section (4) of Section 13 were in accordance with the provisions of the SARFAESI Act and the rules framed thereunder. These provisions were interpreted in several judgments of the Supreme Court, and some of these judgments were referred to in the impugned judgment.

29. In paragraphs 17.8 and 17.9 of the impugned judgment, learned Judge of first instance referred to the judgments in *Jagadish Singh and Sree Anandhakumar Mills* to conclude that even a suit for partition in respect of a secured asset was barred under Section 34 of the SARFAESI Act. In this case, the primary ground on which the appellants contend that the suit is maintainable is that a violation of this Court's order should be dealt with only by this Court.

30. In respect of the alleged violation of the order of this Court by failing to disclose the agreements, the appellants filed Contempt Petition No.263 of 2011. By common judgment dated 08.08.2011, the contempt



petition was dismissed. In paragraphs 35 to 37 of the common judgment,

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“35. The contempt is filed by the petitioners on the presumption that the respondents have not disclosed their rights, while selling the property to the fifth defendant in C.S.No.164 of 2011. This presumption is drawn on the basis that the Deed of Transfer dated 5.7.2007 contains a recital to the effect that the sale was free of all encumbrances.

36. But a careful reading of the Deed of Transfer would show that what was sold was described as the proportionate undivided share of land admeasuring 1,35,294 sq.ft., out of the total extent of 1,79,403 sq.ft., together with all unfinished buildings, structures, erections etc., pertaining to the hotel complex along with the plant and machinery attached to the earth or permanently fastened to anything attached to earth, fixtures and fittings etc., excluding certain constructed portions earmarked for shopping complex. In Clause (i) of the Deed of Transfer, which contained the recital for the transfer of the



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property, it was made clear that in consideration of a sum of Rs.204 crores paid, the land and building and plant and machinery attached thereto was sold and in consideration of a sum of Rs.4 crores paid the movable property, was sold. Thus only the secured assets more fully described in the schedule have been sold to the purchaser. In other words, there was no sale of a running hotel business. What was sold was only the land and building, plant and machinery and an immovable property which were intended for the development of a hotel complex. The rights of the petitioners under all their 3 Agreements dated 26.10.1988 were to get crystallised only upon the purchaser actually putting up a hotel unit on the property and until then, their rights were to be in a state of limbo. Suppose the purchaser had put the property to a different use, the only remedy that the petitioners would have had was to seek recovery of money.

37. To put it differently, the petitioners did not have a right to compel either the purchaser or the financial institutions to ensure that only a hotel complex and nothing else was put up on



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the property. Therefore, the rights that they had as and when a hotel complex was to be put up, was actually not an encumbrance on the property. In other words, the petitioners neither had a charge or mortgage over the property. Only if the petitioners have had either a mortgage or charge over the properties, it can be said that the properties were encumbered. If the properties were not encumbered, there was no question of incorporating a stipulation in the Deed of Transfer, about the rights of the petitioners under the Agreements dated 26.10.1988. Therefore, the covenant contained in the Deed of Transfer that the properties were sold free of all encumbrances is actually a matter of fact and it would not amount to a violation of the order of injunction dated 18.3.2005. In other words, the rights flowing out of all the 3 Agreements dated 26.10.1988 in favour of the petitioners did not create a clog on the title of the original owners or the purchaser. The rights that the petitioners have under all the 3 Agreements dated 26.10.1988 are actually rights over persons viz., the companies which are defendants 1 and 2



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herein and their successors. These rights are not rights over the properties, though the exercise of such rights may be with reference to a property. Only those rights which create a cloud over the title to a property, could be considered to be encumbrances. Therefore, I am of the view that merely because of the covenant contained in the Deed of Transfer that the property was sold free of encumbrances, it cannot be presumed that the order of injunction dated 18.3.2005 had been violated.”

31. Thus, this Court concluded that the order dated 18.03.2005 had not been wilfully disobeyed by any of the respondents therein, including Robust Hotels. The matter was carried in appeal before the Division Bench and such appeal was dismissed by judgment dated 13.03.2011. The Special Leave Petition against the dismissal of the contempt petition also came to be dismissed. In paragraph 33, in relevant part, the Hon'ble Supreme Court held as under:

“... There can be no doubt that IFCI and Tourist Finance Corporation who had executed the deed of transfer in favour of Robust Hotels



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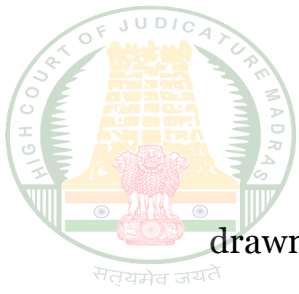
and were parties to suit, were bound by the said interim injunction. The interim injunction was only to the effect that the liability of BHEL to repay the amount of Rs.15.21 crores up to particular date was to be communicated and recognised to any subsequent purchaser. The recognition of right of the plaintiff of receiving of Rs.15.21 crores was with the object that anyone purchasing the hotel unit should be aware of the liability and said liability should also be adverted and taken care of.”

Hence, it is no longer open to the appellants to contend that there was wilful disobedience of order dated 18.03.2005. Whether a challenge to the transfer deed and certificate of sale on the ground of alleged non-disclosure, as mandated by this Court, may, nonetheless, be maintained before this Court remains to be examined.

32. Exclusive jurisdiction has been vested in the jurisdictional Debts Recovery Tribunal to test the validity of measures taken by secured creditors under sub-section (4) of Section 13 of the SARFAESI Act. By the transfer deed and certificate of sale impugned in the suit, the secured



creditors enforced their security interest by selling the secured asset. As stated earlier, this is, without doubt, a measure under section 13(4). In our view, the authority to determine the validity of measures taken by secured creditors under sub-section (4) of Section 13 would clearly embrace determination of the validity of the documents (i.e. the transfer deed and certificate of sale) under which the secured asset was transferred. Since the exercise of such jurisdiction is not contingent on the grounds of challenge to the transfer documents, the jurisdictional ambit cannot be whittled down or fettered on such basis. Contrary to the contentions of the appellants, such jurisdiction is not impaired either because the sale was by private treaty or on account of failure to disclose information, as directed by this Court. In effect, therefore, the reliefs claimed in the suit forming the subject of this appeal fall squarely within the remit of the jurisdictional Debts Recovery Tribunal. As a corollary, the suit challenging the transfer deed and certificate of sale is barred under section 34 of the SARFAESI Act especially in the light of judgments relating to the jurisdiction of Debts Recovery Tribunals under the SARFAESI Act. At first instance, substantially similar conclusions were



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drawn by the learned Judge and we find no reason to disagree.

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33. In the result, both the appeals are dismissed with costs in a sum of Rs.5 lakhs to be paid by the appellants to Robust Hotels towards lawyer's fees and other expenses. Consequently, Robust Hotels is entitled to a refund of the sum of Rs. 15.12 crores along with interest accruals, which was deposited to the credit of Tr.C.S.No.108 of 2017. Such sum shall be refunded to Robust Hotels, along with interest accruals thereon, without any deductions, within four weeks from the date of receipt of a copy of this judgment. All interim petitions are closed.

(K.R.SHRIRAM, C.J.)

(SENTHILKUMAR RAMAMOORTHY,J.)

.12.2024

Index : Yes/No
NC : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMARRAMAMOORTHY J.

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Pre-delivery Judgment made in
O.S.A. (CAD) Nos.55 & 56 of 2021
and
C.M.P.Nos.12418 & 12857 & 12407 of 2021



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17.12.2024