

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.07.2008

+ **WP(C) 1005/2007**

Ramee Hotels Private Ltd.

...

Petitioner.

—versus—

IFCI and Others

...

Respondents.

Advocates who appeared in this case:-

For the Petitioner Mr Dushyant Dave and Mr Parag Tripathi Sr Advocates with
Ms Jayashree Shukla and Mr Punish Arora

For the Respondents Dr A.M. Singhvi Sr Advocate with Mr Rajiv Nayar Sr
Advocate Mr Dinkar Singh, Mr Neeraj Sharma and Ms Roopali
Singh.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed
to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J

1. This writ petition seeks the setting aside of the alleged assignment in favour of respondent No.3 made by respondent No.1 with respect to the financial assets of Balaji Hotels Enterprises (Private) Limited which in turn owned property at Mount Road, Chennai. The petition also seeks the issuance of directions to respondents 1 and 2 to consider the purported bid of the petitioner in a transparent manner and in line with the CVC guidelines after holding that the process by which the financial assets have been assigned to

respondent No 3 was illegal and invalid.

2. The facts are that the respondent No.1 (IFCI) and Respondent No. 2 (TFCI) had extended financial assistance of a total amount of approximately Rs 187.3 crores and Rs 29.9 crores respectively to Balaji Hotels and Enterprises (Private) Limited (hereinafter referred to as 'Balaji Hotels'). Apart from the principal amount of the financial assistance, substantial interest had also accumulated on those amounts. Balaji Hotels defaulted in making the re-payment and consequently, the financial assistance, which was in the shape of loan and debentures, came to be, declared as non-performing assets.

3. The respondent No.1 gave Balaji Hotels several opportunities to make the repayments and to revive the assets. An offer for a one time settlement of dues was made by the respondent No.1 on 6.11.2000 but that was not accepted by Balaji Hotels. Several options for recovery of the amount due under the said financial assistance were considered from time to time by the Board of Directors of respondent No.1. Apparently, sometime in May, 2005, the Asset Reconstruction Company (India) Ltd. (ARCIL), which had also extended financial assistance to Balaji Hotels, entered into an agreement to assign its debt in favour of the petitioner and the said debt was cleared by the

commercial area of the property which was belonging to Balaji Hotels.

4. Thereafter, the petitioner became interested in taking over and reviving the assets of Balaji Hotels. Formal communications in this regard were sent by the petitioner on 19.12.2005 and 3.3.2006 to the respondents 1 and 2 submitting its proposal for reviving the assets of Balaji Hotels by offering a sum of Rs 175 crores to respondent No.1 and Rs 32 crores to respondent No. 2.

5. However, independent of this, on 16.3.2006, the respondent No 1 issued a memorandum to the Board of Directors for the meeting to be held on 25.3.2006. In that memorandum, under the head “background”, it was stated that in order to increase the options available to banks/FIs/NBFCs for resolving their non-performing assets (NPAs) and to develop a healthy secondary market for NPAs, where securitization companies and reconstruction companies are not involved, Reserve Bank of India (RBI) had issued guidelines to banks/FIs/NBFCs on purchase/sale of NPAs vide circular No. RBI/2005-06/54, DBOD No.BP.BC.16/21.04.048/2005-2006 dated 13.7.2005. The memorandum further indicated that the guidelines were applicable to banks, FIs and NBFCs in respect of purchase/sales of NPAs from other banks/FIs/NBFCs (excluding Securitization/Reconstruction Companies). It was recommended that

the Board of Directors may approve the policy and procedure to be followed for sale of Non-Performing Assets of IFCI to Banks/FIs/NBFCs. Thereafter, in the meeting held on 25.3.2006 the Board of Directors of respondent No.1 approved the policy and procedure for sale of Non-Performing assets based on the said RBI Circular dated 13.7.2005 as applicable for the sale of NPAs. It must be mentioned that in the meanwhile, the Board of Directors of respondent No.1 held a meeting on 20.3.2006 and considered the one time settlement proposal, proposed by Balaji Hotels for the discharge of the debt of respondents 1 and 2 and passed a resolution accepting the proposal. But that proposal fell through inasmuch as Balaji Hotels failed to honour its commitment.

6. On 28.3.2006 the Board of Directors of respondent No. 1 gave another opportunity to Balaji Hotels for settlement of dues. This time also, Balaji Hotels failed to honour its commitment. On 4.9.2006 the respondent No. 2 in its Board meeting passed a resolution that Balaji hotels could be given time for payment under the one-time-settlement scheme till 30.9.2006 and that in case the payment was not received by then, steps would be taken against Balaji Hotels under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the Securitization Act”) would be considered in line with the steps that

might be taken by the IFCI. On 28.9.2006 the Board of Directors of respondent No. 1 granted approval for realization of the loan amount by way of assignment of non-performing assets as per the policy approved by it on 25.3.2006. On 31.10.2006 an advertisement was published by the respondent No.1 in major Metro Cities to the following effect:-

“IFCI Ltd. has decided to put on sale certain non-performing financial assets including projects in textile hotel, chemical and edible oil sectors etc., in terms of RBI Guidelines issued vide Circular No.DBOD No. PB.BC.16/21.04.048/2005-06 dated 13.7.2005 to eligible purchaser(s), i.e., Banks/FIs/NBFCs registered with RBI. The sale process would also be open for participation by Registered Securitization/Reconstruction Companies. Parties interested for purchasing the assets may express their interest in writing to the General Manager DRO/LNRC, IFCI Ltd., 61, Nehru Place, New Delhi – 110019 (Telephone No.011-26230200/26230466) by 10th November, 2006. The interested parties will have to execute a Confidentiality Agreement with IFCI and to agree with the General Terms & Conditions stipulated in this regard after which the details of the assets will be disclosed and inspection of documents will be allowed for the purpose of due diligence. Offer(s) may be submitted for purchase of one/more number of assets in cash and should be accompanied by stipulated non-interest bearing Earnest Money Deposit, which would be refundable to unsuccessful bidders. However, offer(s) will be evaluated for each asset / loan separately. IFCI reserves the right to reject any offer or to withdraw any asset / loan from the list of assets on sale without assigning any reason thereof and the decision of IFCI’s Competent Authority in all matters in respect of the offers would be final.

Interested parties may contact the undersigned before the due date at the above address.

Place: New Delhi

Dated: 31st October,
2006

Sd/-
(S. Lahiri)
General
Manager”

Sd/-
(Sujit K. Mandal)
General Manager

It is pertinent to note that the above advertisement was not limited to the non-performing assets of Balaji Hotels but related other projects also. This is apparent from the first line of the advertisement which indicates that “IFCI Ltd. has decided to put on sale certain non-performing financial assets including projects in textile, hotel, chemical and edible oil sectors etc.....” The second important aspect of the said advertisement is that the respondent No.1 had decided to sell the said non-performing financial assets in terms of the RBI Guidelines of 13.7.2005 to “eligible purchaser(s) i.e., Banks/FIs/NBFCs registered with RBI.” The sale process was also opened for participation by “Registered Securitization/Reconstruction Companies.” The third important aspect of the said advertisement is that the parties interested in purchasing the assets were required to express their interest in writing by 10.11.2006 and that such parties would have to execute Confidentiality Agreements with respondent No.1 to agree with the general terms and conditions stipulated with regard to the sale, after which the details of the assets would be disclosed and inspection of documents etc. would be allowed.

7. Consequent upon the said advertisement, the respondent No.1 received two written expressions of interest before 10.11.2006 in respect of Balaji Hotels. One was from the respondent No.3 and the

other was from ARCIL. It is important to note that the petitioner did not respond to this advertisement.

8. Pursuant to the expression of interest by the parties the respondent No.3 made its offer on 26.12.2006 of Rs 198 crores to IFCI and a sum of Rs 30 crores to TFCI for the transfer of the non-performing assets along with the securities and/or the hotels free from any encumbrance and full and final settlement of Balaji Hotels' dues. The said amount was agreed to be paid in the form of an advance amount of Rs 3 crores and the balance amount (Rs 225 crores) before the cut-off date specified therein. On the other hand ARCIL had made an offer of Rs 187.29 crores to FCI plus Rs 30 crores to respondent No.2. ARCIL had also offered that a substantial portion of the amount would be paid after subscription to securities receipts by IFCI. Consequently, in the Board meeting of respondent No.1 held on 28.12.2006, the proposal for settlement of IFCI's loan in respect of Balaji Hotels by way of assignment in favour of respondent No.3 for a minimum amount of Rs 198 crores was approved. It was so approved because respondent No. 3's proposal for purchase of the respondent No.1's loans was preferable in view of the higher amount offered as well as the payment terms envisaging cash payment by 24.1.2007 rather than issuance of securities receipts envisaged by ARCIL.

9. Thereafter, on 3.1.2007 respondent No.1 confirmed that it had received a sum of Rs 3 crores towards advance from respondent No 3. By a letter dated 15.1.2007 ARCIL revised its offer from Rs 187.29 crores to Rs 205 crores. On 22.1.2007 the petitioner wrote to Citibank (Respondent No.3) objecting to the purchase of financial assets by respondent No.1 in relation to Balaji Hotels on the ground that the petitioner owned certain debentures which were secured by the commercial complex which was the ground floor and the first floor of the hotel property and that there was no demarcation of common facilities in building. On 24.1.2007 the respondent No.3 and its nominee Robust Hotels (Private) Ltd. jointly wrote a letter to respondents 1 and 2 that they are agreeable to pay a total sum of Rs 235 crores out of which Rs 205 crores would be paid to respondent No.1 and the balance Rs 30 crores to respondent No.2. On 24.1.2007 itself, the petitioner sent another communication to respondent No.1 wherein it indicated that it had been vigorously pursuing the purchase of the subject assets from respondent No.1 through its letters dated 3.3.2005, 26.11.2005, 10.12.2005 and 19.12.2005 and various personal visits. In the said letter it is further stated:-

“We have now been informed that you are in the process of finalization of sale of the subject assets to another party without having invited us for negotiations despite the fact that you know that we have repeatedly expressed keen interest in the assets and are the most logical bidders for it as we are holding a part of the asset which by its nature is indivisible due to common utilities, common areas, undivided public areas, and undivided interest in the land.

We once again confirm our keen interest in purchasing the subject assets from your company and would like to make a firm offer of Rs 205 crores for the same. We confirm that if our bid is accepted then we would immediately make a deposit of 20% of the bid amount in a no lien account pending finalization of bid documentation. We further confirm that we will make entire payment and conclude the deal as finalized within 21 days of the same. We are bidding separately for Tourism Finance Corporation of India Limited ('TFCI') assets in the same property.

We once again urge you to give our repeated bids for the subject assets serious consideration and invite us for negotiations at the earliest. This would only be the fair and just way to finalise the bid and to maximize the value to be received by your organization.”

10. The petitioner then sent a legal notice through its advocate on 25.1.2007 to the respondent No.1 indicating that the petitioner had Secured Redeemable and Non-Convertible Debentures in Balaji Hotels and that any attempt to take any enforcement action against the hotel property or to demarcate any common areas and facilities entrances may affect the commercial property thus violating the rights, interests and security of the petitioner. It was suggested that, therefore, it would be equitable that the ownership of the entire property is vested in a single owner. It was also mentioned in the said notice that it had come to the knowledge of the petitioner that Citibank (respondent No.3) was in the process of acquiring the secured debt of respondent (IFCI) in Balaji Hotels and that this had come as a shock inasmuch as the petitioner had all along been interested in the purchase of the said asset but the petitioner had not even been called for negotiations. It was

alleged that the respondent No.1 was in default of its various obligations as a public financial institution by not adhering to the principles of transparency and fair play in its dealings. The respondent No.1 was put to notice that on account of the failure to offer the secured debt of Balaji Hotels through the bidding route would amount to default on the part of the respondent No.1 and that the petitioner would be constrained to resort to legal action in this regard.

11. Again, on 27.1.2007, the petitioner sent a letter to respondent No.1 to consider its offer for Rs 208 crores and its willingness to deposit a sum of Rs 7.25 crores as earnest money to substantiate the offer. The petitioner requested respondent No.1 to invite it for negotiations at the earliest. On 29.1.2007 the respondents 1 and 2 approved the proposal of respondent No.3 to pay the higher price of Rs 240 crores as offered by it on 24.1.2007. Thereafter, this writ petition is filed.

12. In the background of the above facts, the decision to sell the said non-performing Assets has been challenged by the petitioner primarily on the ground that it submitted offers since 2005 and while it was ready to give a higher offer of Rs 240 crores (Rs 208 crores to IFCI and Rs 32 crores to TFCI), it had not been called for negotiation and the deal was sought to be settled in a non-transparent manner and

through private negotiations with the respondent No.3 and/or its nominee Robust Hotels (Private) Ltd. It was also contended on behalf of the petitioner that the impugned actions of respondents 1 and 2 are clearly arbitrary and violative of Article 14 of the Constitution of India. It was also contended that the Reserve Bank of India Guidelines stood violated because the sale of the non-performing asset is not to a bank but to a private party i.e., Robust Hotels (Private) Ltd. It is the petitioner's case that if the offer of Robust Hotel (Private) Ltd. could be considered, and then the petitioner also ought to have been invited for negotiations inasmuch as it was willing to offer a higher price. It was also contended that though both the respondents say that the contract stood concluded on 27.12.2006 and on 24.1.2007, the respondent No.1 issued a notice under Section 13 (2) of the Securitization Act on 7.2.2007 in respect of the said assets. It was contended that if the contract stood concluded on 27.12.2006 and 24.1.2007, how could the respondent No.1 issue a notice under the Securitization Act. This circumstance, according to the learned counsel for the petitioner, meant that the contract had not been concluded. If that were to be the case then, it was contended, the petitioner's offer of 24.1.2007 and further offer of 27.1.2007 also ought to have been considered by the respondents 1 and 2 before finalization of the sale transaction.

13. In response Dr Singhvi, who appeared on behalf of the

respondents 1 and 2, after going through the sequence of events in detail, submitted that the petitioner did not participate in the invitation for offer extended by the respondents by virtue of their advertisement dated 31.10.2006. It was also contended that the eligibility criteria set out in the advertisement was based on the RBI Guidelines and that there was a rationale behind the scheme of limiting the eligibility to a species namely, banks, FIs and NBFCs registered with Reserve Bank of India as well as registered securitization/reconstruction companies. It was contended that since the petitioner did not express its interest in writing in response to the said advertisement, there is no question of the petitioner's offer, which has been made outside the said advertisement, being considered or the petitioner being called for negotiations. It was also contended by Dr Singhvi that the petitioner was ineligible to offer because it did not fall in any of the categories of eligible institutions. Therefore, its offer made in late January, 2007 is of no consequence. He also indicated that the petitioner's letter dated 3.3.2006 was the last communication by it before the advertisement, the expression of interest on the part of the respondent No.3 and ARCIL, and the acceptance of respondent No. 3's offer. The next letter which was written by the petitioner was only of 22.1.2007, after the bid was over. It was then followed by the letter of 24.1.2007, the legal notice of 25.1.2007 and the reminder of 27.1.2007. It was contended that the petitioner remained dormant and silent from 3.3.2006 and

suddenly woke up to a frenetic activity ten months later on 22.1.2007. According to Dr Singhvi, the petitioner was nothing but a spoiler. He submitted that the petition deserves to be dismissed inasmuch as the petitioner is seeking a change in the rules of the game. The petitioner has not alleged any mala fides, nor have the Reserve Bank of India Guidelines or the terms of the advertisement dated 31.10.2006 been challenged. It was contended that in fact, the Reserve Bank of India Guidelines restricting sales of NPAs to species of institutions had been upheld by this Court in *Haryana Steel and Alloys Ltd. v. FCI Ltd and Another: 137 (2007) DLT 554 (DB)*.

14. Mr Rajiv Nayyar, the learned senior counsel appearing on behalf of the respondent No.3 submitted that the petitioner had no locus standi inasmuch as the petitioner did not fall within the category of “eligible purchasers” in terms of the advertisement of 31.10.2006. The petitioner was not eligible and, therefore, did not submit any written expression of interest within the stipulated date, i.e. 10.11.2006. Only two entities, responded – respondent No.3 and ARCIL. The respondent No 3’s offer was accepted, being the higher of the two as also providing for better payment terms. He submitted that there was no bar to a bank or a financial institution reselling the assets and, therefore, the transaction with Robust Hotels (Private) Ltd cannot be faulted. He submitted that it is not true that respondent No.3 had been set up by the

private party for the purchase of the said assets.

15. Considering the facts and circumstances of the case as also the arguments of counsel for the parties, I am of the view that the question of locus standi is itself an insurmountable hurdle for the petitioner. It is an admitted position that the Reserve Bank of India Guidelines circulated on 13.7.2005 is not under challenge. Also not under challenge is the advertisement dated 31.10.2006. Consequently, when the respondent No.1 had decided to put its non-performing financial assets on sale and had specified the category of eligible purchasers, which has not been challenged by the petitioner, then, the petitioner, not belonging to the category of eligible purchasers, cannot make any grievance with regard to the sale finalized pursuant to the said advertisement to an eligible purchaser. The respondent No.3 and ARCIL were the only two entities which expressed interest in the purchase of the non-performing assets relating to Balaji Hotels. Their offers were considered. The respondent No. 3's offer was higher as well as on better payment terms and, therefore, it was accepted. Subsequently, revised offers were made both by ARCIL and respondent No.3 and the highest offer of Rs 240 crores of respondent No.3 was accepted by the respondents 1 and 2. The entire amount of Rs 240 crores also stood paid by the respondent No.3 on 24.01.2007. It is clear that the petitioner was in-eligible to participate in the sale

process. The petitioner has not challenged the Reserve Bank of India Guidelines or the eligibility criteria set out in the said advertisement dated 31.10.2006. That being the case, the petitioner has no locus standi to challenge the sale which has been finalized in favour of the respondent No. 3.

16. It is also pertinent to note that the petitioner had shown some interest in purchasing the assets of Balaji Hotels but this was in late 2005 and early 2006 as evidenced by the said letters dated 19.12.2005 and 3.3.2006. After that there was a complete silence on the part of the petitioner right upto 22.1.2007 when the sale process was over. It is impermissible for a party who does not fit within the rules to side step the same and to make offers at the final stages when everything is over and the highest offer has already been accepted. If that was to be permitted, it would amount to negating the rules for the bidding process and that, too, when the eligible purchasers have already participated and submitted their offers. Such a course of action would lead to highly unfair results.

17. It must also be noted that when Balaji Hotels was repeatedly given opportunities for entering into a one-time settlement and when the petitioner was making offers for acquiring the assets, the respondent No.1 was also simultaneously considering the question of

selling non-performing assets of not just Balaji Hotels but of other projects in keeping with the Reserve Bank of India Circular of 13.7.2005. It is, therefore, clear that if the respondent No.1 was not able to work out a specific proposal through one-time settlement or otherwise in respect of a project, such as Balaji Hotels, the respondent No. 1 was also simultaneously contemplating the sale of all non-performing financial assets generally, involving several projects. Had the specific proposal for one-time settlement with Balaji Hotels, with or without the petitioner, succeeded, then, the question of putting the non-performing financial assets in relation to Balaji Hotels to sale would not have arisen. It is, therefore, clear that the earlier offers which the petitioner had been making in 2005 and early 2006 were with regard to a specific sale in relation to Balaji Hotels. Unfortunately, that did not materialize. Consequently, the non-performing financial assets relating to Balaji Hotels were put up for sale along with respondent No.1's other non-performing financial assets involving other projects by virtue of the said advertisement dated 31.10.2006. The petitioner's offers of 2005 and early 2006 must be seen in this light. Considered in this manner, it is apparent that the petitioner's said offers had no bearing on or connection with the offers made by respondent No.3 and ARCIL consequent upon the said advertisement of 31.10.2006.

18. Lastly, as regards the issuance of the notice under Section 13

(2) of the Securitisation Act, the petitioner cannot make much capital out of this inasmuch as the actual assignment of the debt took place in favour of the respondent No.3 in July 2007 and till then, the respondents 1 and 2 retained their rights to employ measures available under the Securitization Act for realization of their debts. Therefore, the issuance of the notice under Section 13 (2) to Balaji Hotels on 7.2.2007 would not be of any help to the petitioner's case.

19. In view of the foregoing discussion, the writ petition is dismissed. No orders as to costs.

July 04, 2008
J.

(BADAR DURREZ AHMED)
JUDGE