

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.43 of 2015**

1. M/s Aum International Inc.,
Through its Regional Director for
South Asia,
Shri Apurva Suresh Chaphekar,
Son of Shri Suresh Chaphekar,
Aged 40 years,
Indian national, having office
at Evershine Millenium Park 40,
Uranus Co-op. Hsg Society Ltd.,
Flat no.801, near Dream Park,
Thakur village, Kandivali (E),
Mumbai-400 101

2. Shri Apurva Suresh Chaphekar,
Regional Director for South Asia
M/s Aum International Inc.,
Son of Shri Suresh Chaphekar,
Aged 40 years,
Indian national, having office at
Evershine Millenium Park 40,
Uranus Co-op. Hsg Society Ltd.,
Flat No.80, near Dream Park,
Thakur village, Kandivali(E),
Mumbai-400101 .. Petitioners

Versus

1. The Indian Hotels Company Ltd.,
A Public Limited Company,
Carrying on the business of
Hoteliers, with their registered
office at Mandlik House,
Mandlik Road, Mumbai, 400001
and Having a hotel of five star
standard, named and styled as
"Taj Exotica" at Culwaddo,
Benaullim, Salcete-Goa.
Through its Authorised Signatory
() name not known as not mentioned
in the cause title of the complaint

2. States of Goa
Through Public Prosecutor
High Court of Bombay,
at Panaji-Goa
High Court Complex,
Panaji-Goa .. Respondents

Mr. G. Agni, Advocate for the petitioners.

Mr. V. P. Thali, Advocate for the respondent no.1.

CORAM :- S. B. SHUKRE, J.

Date : 15th January, 2016.

ORAL JUDGMENT :

Heard.

2. Rule. Rule made returnable forthwith. Heard finally, by consent of the learned Counsel for the parties.

3. The learned Counsel for the petitioners submits that the learned Magistrate has committed serious illegality by not considering the objections taken by the petitioners with regard to admissibility of documents in the nature of electronic or computer record. All these objections related to non-compliance with the mandatory conditions of subsection (2) as well as subsection (4) of Section 65-B of the Indian Evidence Act. He submits that now it is well settled law as can be seen from the judgment of the Hon'ble Apex Court in the case of **Anvar P. V. Vs. P. K. Basheer**, (2014)10 SCC 473 that Section 65-B conditions being mandatory

in nature, must be fulfilled by the party seeking to place reliance upon the documents in the nature of electronic or computer record. The learned Counsel further submits that the learned Magistrate has completely ignored the law settled by the Hon'ble Apex Court in respect of the documents in the nature of electronic or computer record.

4. Shri Thali, the learned Counsel for the respondent no.1 states that when the documents were exhibited, the petitioners did not take any objection and that even the impugned order shows that the learned Magistrate has considered all the objections of the petitioners.

5. On going through the impugned order as well as the copy of the deposition, in particular the cross-examination of PW2 Navratan Singh, I find that certain aspects of Section 65-B of the Indian Evidence Act ought to have been considered by the Trial Court and even if they were considered by the Trial Court, at least, there is no reflection of the same in the impugned order or in the recording of the evidence of PW2, Navratan Singh. The objections raised by the petitioners purely relate to the law points, which are required to be appropriately dealt with by the Trial Court. However, considering the fact that the cross-examination of PW2, Navratan Singh is still underway, it would be appropriate to make

order of the Trial Court exhibiting the documents in the nature of electronic or computer record at Exhibit 137 colly as subject to objections raised by the petitioners in the light of the provisions of Section 65-B of the Indian Evidence Act. In my opinion, such an order should serve the ends of justice.

6. In the circumstances, Writ Petition is allowed. It is directed that the order of the Trial Court in directing marking of the documents in the nature of electronic or computer record as Exhibit 137 colly shall be subject to objections of the petitioners taken by them under Section 65-B of the Indian Evidence Act and same shall be dealt with by the Trial Court at the time of final hearing in accordance with law. It is made clear that exhibiting these documents shall not come in the way of the petitioners in putting questions to PW2, Navratan Singh in his cross-examination touching upon the admissibility of these documents in evidence, in view of various conditions laid down in Section 65-B of the Indian Evidence Act.

7. Writ Petition is disposed of.

8. Rule is made absolute in these terms.

S. B. SHUKRE, J.

SMA