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

Judgment Reserved on: February 03, 2016
%   *Judgment Delivered on : February 05, 2016*

\+   **FAO(OS) 570/2015**

BLUE COAST HOTELS LIMITED ..... Appellant
Represented by: Mr.Bharat Bhushan Prasoon, Advocate with Mr.Kunal Godhwari, Advocate

versus

KAMAL SHARMA & ORS ..... Respondents
Represented by: Mr.T.K.Ganju, Sr.Advocate instructed by Mr.Aquib Ali, Mr.Manik Ahluwalia and Mr.Abhishek Bhardwaj, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. 81 plaintiffs got together and filed a suit seeking declaration, permanent injunction and mandatory injunction. 9 defendants were impleaded in the suit : (i) Blue Coast Infrastructure Development Pvt.Ltd.; (ii) Silver Resort Hotel Pvt.Ltd.; (iii) Blue Coast Hotel Ltd.; (iv) Sh.P.L.Suri; (v) Sh.Sanjay Suri; (vi) Ms.Anju Suri; (vii) Ms.Sunita Suri; (viii) Sh.Sushil Suri; and (ix) M/s Delhi International Airport Pvt. Ltd.

2. Succinctly stated, the plaintiffs claimed that defendants No.1 to 3 were companies under a common management of the 'Suris' and the plaintiffs had invested money in a project named *'**MGM GRAND NEW***

DELHI'. It was pleaded that defendant No.9 was given a right by the Airport Authority of India to develop land in ***'Asset Area 3'***, which right was assigned by defendant No.9 in favour of defendant No.3 (Blue Coast Hotels Ltd.) which in turn created a special purpose vehicle : Silver Resort Hotel Pvt. Ltd.(defendant No.2), which in turn had some kind of an internal agreement with Blue Coast Infrastructure Development Pvt. Ltd. (defendant No.1) concerning the Asset Area 3. A reference was made to **Assured Return Agreement** and a **Space Agreement** of even date entered into between the plaintiffs and Blue Coast Infrastructure Development Pvt.Ltd. and Silver Resort Hotel India Pvt.Ltd.; albeit on different dates. As per the plaint, the 81 investors had paid ₹84,03,54,452/- (Rupees Eighty Four Crores Three Lacs Fifty Four Thousand Four Hundred and Fifty Two only) under the Assured Return Agreement and Space Agreement. It was pleaded that under the Assured Return Agreement the plaintiffs were entitled to receive as of November, 2014, ₹11,79,96,192/- (Rupees Eleven Crores Seventy Nine Lacs Ninety Six Thousand One Hundred and Ninety Two only). It was pleaded that defendants No.1 to 3, under the operational control of the Suris, were holding out that all their projects are group projects, one of which was in Goa called **Park Hyatt Goa** situated Arossim Beach, Cansaulim in South Goa. Reference was made to Sheraton Hotel in Chandigarh and at Amritsar.

3. Reliefs prayed in the suit are as under:-

> *(a) Pass a decree for rendition of accounts of defendants in respect of amounts received by them from plaintiffs and other investors, and after enquiry is made pass a decree for such sum as may be found to be payable to each of the plaintiffs including at least for the amounts*

due to the plaintiffs for which the defendants No.1 & 2 have issued post dated cheques as shown in the statement annexed hereto and marked as ANNEXURE P-1 against defendants jointly as well as severally, alongwith interest @ 18% p.a. from the date the said amounts were due and payable by the defendants till realization. The plaintiffs undertake to pay the court fees as may be directed by this Hon'ble Court.;

(b) Pass a decree of perpetual injunction thereby injuncting and restraining the defendants, their servants, agents, representatives etc. from dealing with, disposing of, alienating or in any other way encumbering the asset i.e. "MGM Grand asset area 3" which is more particularly define in ANNEXURE-A of the Agreement dt.26.02.2010 executed between defendant No.9, 2, asset on which the Project was to be built.

(c) Pass an order appointing an Expert Committee to look and consider the claims of plaintiffs and other investors and make appropriate suggestions thereof for disbursal of money and damages and compensation;

(d) Pass a decree of mandatory injunction thereby directing defendants jointly as well as severally to repay or restore the money or property with interest of plaintiffs which has been siphoned off, retained or in respect of which they have committed misfeasance or breach of trust as may be found on enquiry;

(e) Pass a decree of permanent injunction thereby restraining defendants and each one of them from dealing with, disposing of, alienating or in any other way encumbering the assets and properties of defendant No.1 to 3 and further attaching the said properties and assets as described in a statement annexed hereto and marked as Annexure P-2.

(f) Pass a decree of permanent injunction thereby restraining defendants and each one of them, from changing the position of share holdings, and status quo in respect of share holding as existing on date of defendant No.1 to 3.

(g) Pass a decree of permanent injunction thereby restraining defendants from operating all the bank accounts of defendant No.1 to 3 company and incurring any expenditure for defending this suit as well as other litigation/cases/FIRs pending against them out of the funds of the defendant No.1 to 3 company;

(h) Pass a decree of permanent injunction thereby restraining defendants, their servants, agents, representatives etc. from parting with or alienating or otherwise dealing with their personal assets and also the assets created by the use of funds of defendant No.1 to 3 by the firms, companies owned and/or controlled by defendants as may be found on enquiry;

(i) Pass a decree of permanent injunction thereby restraining defendants, their servants, agents, representatives etc. from doing any act of receiving or disbursing any money on behalf of defendant No.1 to 3 or otherwise to anyone;

(j) Pass a decree of permanent injunction thereby restraining Defendants, their servants, agents, representatives etc. from inviting public to invest in their project or advertising their project;

(k) Costs;

(l) Pass such other further orders as may be deemed fit and proper in the interest of justice."

4. An application under Order 38 Rule 2 and Rule 5 of the Code of Civil

Procedure was also filed, and the apparent reason is that having collected about ₹85 crores from the plaintiffs not a penny was spent on development of the land and construction of the building in which space had to be allocated to the plaintiffs by Blue Coast Infrastructure Development Pvt. Ltd. and Silver Resort Hotel India Pvt. Ltd. Said application was pending when another application under Section 151 of the Code of Civil Procedure was filed by the plaintiffs intimating the Court that to recover its dues, IFCI had sold a property of Blue Coast Hotel Ltd. at Goa and out of the sale consideration in sum of ₹515 crores payable by ITC Group of Companies, after adjusting its dues, ₹178.48 were lying in the coffers of IFCI. It was prayed that a sum of ₹85 crores be attached out of ₹178.48 lying in the coffers of IFCI. It is apparent that a garnishee order was prayed for.

5. Issuing notice in the application IFCI was directed not to disburse ₹85 crores.

6. This order dated July 31, 2005 has been challenged in the appeal.

7. In our opinion the impugned order is not a judgment as per the law declared by the Supreme Court in the decision reported as(1981) 4 SCC 8 *Shah Babulal Khimji Vs. Jayaben D.Kania & Anr.* for the reason a final adjudication in the application filed by the plaintiffs has yet to take place. The impugned order may cause some inconvenience to the appellant, but is not of a kind which would amount to an interim judgment. A pro-tem order has been passed pending completion of pleadings and a decision would enure which would last till the disposal of the suit; said decision would be an interlocutory judgment capable of being appealed against.

8. Contention of learned counsel for the appellant that there was just no material before the learned Single Judge to even pass the pro-tem order and

that the order in question adversely affected the interest of the appellant who was not even a party to the Assured Returned Agreement and the Space Agreement, was repelled by learned senior counsel for the respondents No. 1 to 81 by referring to various documents which showed that defendants No.1 to 3 were holding themselves out as group companies and were under the common management of the Suris. Therefrom, learned senior counsel for the respondents urged that keeping in view the fact that defendant No.1 and 2 had siphoned off the entire money paid by the plaintiffs evidenced by no development whatsoever commencing at Asset Area 3 and MGM Grand New Delhi not even surfacing above the womb of the earth, the pro-tem measure pending consideration whether a garnishee order should be issued was fully justified. Referring to the annual report of the appellant, learned counsel referred to the fact recorded therein that the appellant is the holding company of defendants No.1 and 2. Drawing attention to the list of Directors of defendant No.2 and 3, learned counsel successfully showed that the members of the Suri family were in control of defendant No.2 and 3. Learned counsel showed that on the letterheads defendants prominently display :

Blue Coast
Group of Hotels

9. Learned senior counsel referred to a common website of defendants No.1 to 3, as per which the hotel at Goa, MGM Grand, Sheraton at Chandigarh and Amritsar were shown to be the hotels of the same group. Learned senior counsel referred to the profile of the Blue Coast Group of Companies displayed as per which it was held out to the world that defendants No.1, 2 and 3 are the three faces of the same obelisk.

10. Learned senior counsel also referred to a writ petition filed by the Blue Coast Hotel Ltd. registered as No.916/2015, before the High Court of Bombay at Panji, challenging the auction conducted by IFCI in which the appellant itself pleaded that it had won a bid pursuant to which Delhi International Airport Ltd. had allotted Asset Area No.3 at DIAL hospitality district and that Blue Coast Hotel Ltd. had envisaged construction of a five star deluxe building under MGM Grand Category with serviced apartments and nine restaurants wherein, to bring home the point that the appellant was itself proclaiming to be a vital stake holder in the MGM Grand New Delhi Building which was proposed to be constructed and for the construction of which the plaintiffs had paid nearly ₹85 crores to defendants No.1 and 2.

11. Since we have held the appeal to be not maintainable we are not commenting on the inferences which can be drawn from the documents referred to by learned senior counsel for respondents No.1 to 81, save and except to say that they are sufficient to rebut the argument advanced by learned counsel for the appellant that there was no material whatsoever before the learned Single Judge to even pass a protective pro-tem order.

12. We dismiss the appeal as not maintainable.

13. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 05, 2016
skb/mamta