

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.744 OF 2018

ITC Ltd.

Rep.by its Aut.Sign.

Balavady Prasanna Harsha

... Petitioner.

Versus

The State of Goa and others

... Respondents

Mr. Ravi Kadam, Senior Advocate, Mr. S.S.Kantak, Senior Advocate with Ms. Tanmai Gadre, Mr. L.K. Bhushan, Ms. Swati Kamat, Mr.Anirudha Arun Kumar, Mr. Preetam Talaulikar and Ms.R.Falcao, Advocates for the Petitioner.

Mr. D.Lawande, Advocate General with Mr. Pravin Faldessai, Advocate Additional Government Advocate for Respondent-State.

WITH

WRIT PETITION NO.815/2018

Ebony Traders Pvt. Ltd.

... Petitioner.

Versus

The State of Goa and others

... Respondents

Mr. Vineet Naik, Senior Advocate with Mr. J.A.Lobo, Advocate for the Petitioner.

Mr. D.Lawande, Advocate General with Mr. P. Dangui, Additional Government Advocate for the State-Respondent no.1.

Mr. Janak Dwarkadas, Senior Advocate with Ms. Swati Kamat, Advocate for Respondent no.2.

WITH

WRIT PETITION NO.990/2018

Blue Coast Hotels Ltd.

... Petitioner.

Versus

The State of Goa and others

... Respondents

Mr. Iqbal Chagla, Senior Advocate with Mr. A.F.Diniz, Mr. Ryan Menezes, Mr.Kunal Vajavi, Ms. Kanika Kumar, Mr. Srijan Tiwari, Ms. Gina Almeida, Advocates for the Petitioner.

Mr. Ravi Kadam, Senior Advocate with Ms. Tanmai Gadre, Ms. Swati Kamat, Mr. Bhuvan, Advocates for Respondent no.10.

Mr. D.Lawande, Advocate General with Mr.Pravin Faldessai, Advocate Additional Government Advocate for Respondent-State.

WITH**WRIT PETITION NO.924/2018**

Blue Coast Hotels Ltd. & Another

... Petitioners

Versus

IFCI Limited & Another

... Respondents

Mr. Iqbal Chagla, Senior Advocate with Mr. A.F.Diniz, Mr. Ryan Menezes, Mr.Kunal Vajavi, Ms. Kanika Kumar, Mr. Srijan Tiwari, Ms. Gina Almeida, Advocates for the Petitioner.

Mr. Nitin Sardesai, Senior Advocate with Ms. Gautami Kamat, Mr.M.Pereira, Advocates for the Respondent no.1.

Dr. Abhishek Singhvi Senior Advocate with Mr. Janak Dwarkadas, Senior Advocate with Mr. Amit Bhandari with Mr. Bhuvan, Ms. Swati Kamat and Mr. Aniruddha Arun Kumar, Advocates for Respondent no.2.

**Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.**

Date : 8 October 2018.

P.C.:

Heard the learned counsel for the parties at length.

2. This group of matters pertain to the property known as “Park Hyatt Goa Resort and Spa” situated at 263C, Arossim, Cansaulim, Goa. The Supreme Court, by the judgment and order dated 19 March 2018, allowed the Special Leave Petition filed by ITC Limited and directed Blue Coast Hotels Limited to hand over the possession of the properties within a period of six months.

3. The Writ Petition No.744/2018 is filed by ITC Limited challenging the order passed by the Sub Registrar dated 14 June 2018 and for direction to register the Sale Certificate dated 25 February 2015 executed by IFCI in favour of ITC. The Writ Petition No.744/2018 is filed by one Ebony Traders Private Limited for a prayer that no action be taken on the application for registration of Sale Certificate in favour of ITC and to hold an inquiry in respect of loss to public exchequer.

4. Writ Petition nos.924/2018 and 990/2018 are filed by Blue Coast Hotels Ltd. ,primarily on the ground it has a right of redemption of the mortgage properties and for direction to IFCI Limited not to disburse the balance amount. A prayer is also sought not to transfer or endorse any licenses in favour of ITC.

5. As regards Writ Petition No.815/2018, filed by a Shareholders of Blue Coast Hotels Limited, a preliminary objection is taken on behalf of ITC that this Petition is abuse of process of law and this Petitioner put up by Blue Coast Limited, has merely 1.9% shareholding. Apart from these preliminary objection, we find this Writ Petition filed on 7 August 2018 makes no reference to the order passed by the Sub Registrar refusing to accept the Sale Certificate for registration. The Sub Registrar has stated that the question of stamp duty will be decided by a Committee. This order is under challenge in Writ Petition No.744/2018. In view of the Order refusing acceptance of the Sale Certificate for registration, the prayer does not survive. A stand is taken by the State that inquiry needs to be carried out. Therefore, this petition which seek enquiry does not survive and is disposed of.

6. As regards Writ Petition No.924 of 2018 and 990 of 2018, primarily it is the contention of the Blue Coast Hotels Limited that it has a statutory right of redemption, which is not lost and there is no registration of Sale Certificate and, therefore, it is entitled to pursue its rights and no transfer of licences should take place. The Petitions are vehemently opposed by the learned counsel appearing for ITC taking preliminary objections. These are, that the

Petitions are abuse of process of law and are calling upon this Court to issue directions contrary to the judgment of the Apex Court dated 19 March 2018. It is also contended that there is gross suppression of facts as on the date when the petition was moved in this court, the Petitioner has moved an interim application in the Apex Court, which is not disclosed in this Petition. It is contended that on the very grounds raised in this Petition regarding redemption, a review is filed in the Apex Court, which is pending. The learned counsel for the ITC further contend that the direction of the Apex Court to hand over possession of the mortgaged property to the ITC within a period of six months, is clear and takes within his ambit the question of redemption or mortgage, which is evident from the review application itself. The learned Senior Advocate for the Blue Coast Hotels Limited submitted that a review is on different grounds, and controverted the preliminary objections.

7. Though the copy of the review is not placed before us, a copy of the application is filed by Blue Coast Hotels in the Supreme court is before us. The Blue Coast Hotels itself has summarized the grounds of Review filed by it. These grounds are :

“The Review Petitions raise the following amongst other grounds:

- (a) *Violation of the principles of natural justice;*
- (b) *Mandatoriness of the provisions of the SARFAESI Act and the Rules;*
- (c) *The requirement of taking physical possession of the secured assets before sale;*
- (d) *Mandatory application of mind by the District Magistrate under Section 14 of the SARFAESI Act;*
- (e) *Waiver by a borrower of his rights under the SARFAESI Act;*
- (f) *Requirement of the secured creditors to assess whether the whole or part of the asset needs to be sold for recovery of dues;*
- (g) *Sale of the movables in violation of Rules 4 to 7 of the Rules.*
- (h) *Gross undervaluation of the properties and fixation of the low Reserve Price as compared to the fair market value of the secured asset;*
- (i) *Actions of the secured creditors interfering with the rights of the borrower under Article 300A of the Constitution of India;*
- (j) *Mortgagor's right to redeem the property and upon the failure to have it sold strictly in accordance with law;*
- (k) *Conduct of IFCI and ITC in conduct of the sale;*
- (l) *Unstamped and unregistered sale certificate which issues have not even been considered in the Judgment and Order of this Hon'ble Court though raised specifically in the Written Submissions as more particularly pointed out in the said Review Petitions".* (emphasis supplied)

A bare perusal of these grounds show that the same issues, such as, the redemption or mortgage, are agitated by Blue Coast Hotels in the Review. There is specific direction by the Apex Court to Blue Coast Hotels to hand over possession within a period of six months. It is in context of this mandate, that the implications on the grounds urged before us and in the review, will have to be considered.

8. In view of this position, the review on the specific grounds, in the facts and circumstances of the case, we do not think that we should entertain these two Writ Petitions filed before us. The learned Senior Advocate for Blue Coast Hotels seeks time to take instructions. At his request, stand over to 30 October 2018.

9. The learned Senior Advocate for ITC Limited submits that, though no interim relief is granted in Writ Petition No.990 of 2018, the State Authorities are construing the pendency of this Petition as a stay in respect of grant of licences. We make it clear that we have not granted any interim relief in this petition nor have we issued any directions to the State Authorities to construe the pendency of these Writ Petitions as a mandate on them not to do a particular act, except for an liberty in Writ Petition No.924/2018.

10. As regards the Petition No.744/20118 filed by ITC Limited, at the request the learned Advocate General, stand over to

30 October 2018.

11. As stated above Writ Petition No.815 of 2018 is disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.