

ROBUST HOTELS PVT. LTD. & ORS.

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v.

EIH LIMITED & ORS.

(Civil Appeal Nos. 11886-11887 of 2016)

DECEMBER 07, 2016

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[PINAKI CHANDRA GHOSE AND ASHOK BHUSHAN, JJ.]

Interlocutory order – Breach of – Technical Services Agreement between EIH-respondent no. 1 and BHEL wherein EIH was to provide technical knowledge and skill required for operation of hotel constructed by BHEL – EIH paid BHEL, Rs. 15.21 Crores by way of financial accommodation – Termination of the said agreement, and BHEL to refund the said amount – BHEL took financial assistance from IFCI and TFCI – Issuance of advertisement by TFCI for sale of hotel project of BHEL – EIH informing TFCI about the agreements between EIH and BHEL that till the said amount was not refunded, EIH would have exclusive right over the hotel – Thereafter, suit by EIH against BHEL and others seeking declaration that Technical Services Agreement is valid, legal and subsisting as also sought permanent injunction restraining BHEL and others from selling – Meanwhile, grant of temporary injunction to EIH and OB hotels by the High Court – Two years later, on initiation of proceeding by IFCI under SARFAESI Act, RB Hotels purchased the hotel unit of BHEL – Thereafter, impleadment of RB hotel – Interim application by EIH, seeking restraining of RB from having construction of hotel unit or taking steps in derogation of rights of EIH under Technical Services Agreement – Single Judge dismissed the application, however, Division Bench issued certain directions – Thereafter, suit as also interim applications filed by EIH and OB Hotels praying for a declaration that Deed of Transfer entered into between the financial institutions and RB Hotels, and the certificate of sale of immovable property as illegal and, null and void; as also for perpetual injunction – Dismissal of interim application by the High Courts, however, suit by EIH and OB Hotels pending – On appeal, held: It is not open either a party to the lis or to any third party to determine at their own that an order passed by a Court is valid or void – Party to the lis or the third party who

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- A *considers an order passed by a court as voidable or non est, must approach the court of competent jurisdiction for setting aside the said order – Injunction ordained that while dealing with the hotel unit the rights of the applicant be disclosed – However, the financial institutions sold the hotel contrary to the order passed by the High Court without disclosing the rights of the applicant as provided by the Agreement – Financial institutions who had executed the deed of transfer in favour of R Hotels and were parties to suit, were bound by the said interim injunction which 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 – Object was that anyone purchasing the hotel unit should be aware of the liability and said liability should also be adverted and taken care of – There is no error in the directions issued by Division Bench of the High Court – Interim order passed by the High Court, directing for deposit of Rs. 15.12 Crores has done substantial justice between parties, which need no interference by this Court in exercise of its jurisdiction u/Art. 136 – Furthermore, the Hotel has already commenced its operation and contracts have been made with third parties for the operation of the hotel and bookings are also made – Taking into consideration the overall circumstances as also that the last suit by EIH and OB hotels, are yet to be adjudicated, orders passed by the Single Judge and Division Bench, refusing to grant interim injunction, cannot be faulted – Constitution of India – Art.136 – Code of Civil Procedure, 1908.*

Disposing of C.A. No. 11886-11887 and dismissing C.A. No. 11888-11889, the Court

- HELD: 1.1** One of the conditions of last agreement dated 4th February, 2002 was to make payment of an amount of Rs. 15.21 Crores by erstwhile owner before transferring the right in the hotel unit including right to run the hotel in favour of any entity. The Order passed by Division Bench dated 26th July, 2011 does complete justice between parties, and Division Bench has exercised its discretionary jurisdiction in granting the relief which need no interference by this Court in exercise of jurisdiction under Article 136 of the Constitution. [Paras 18, 19][447-G-H; 448-A-B]

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1.2 The essence of interim injunction issued by the Court was that Respondent Nos. 3 to 7 of that suit were restrained by an order of injunction from dealing with, disposing of, selling and/or encumbering in any manner howsoever the hotel unit of BHEL, in favour of any person without disclosing the rights of the applicants to operate and manage the hotel in terms of the Technical Services, Project Consultancy & Royalty Agreement dated 26th October, 1988 and the Agreements dated 12th January 2000, 10th June, 2000 and 4th February, 2002. Thus, the injunction ordained that while dealing with the hotel unit the rights of the applicant be disclosed. The subsequent facts, indicate that even after the said injunction the IFCI Ltd. and Tourism Finance Corporation of India Ltd. by deed of transfer dated 5th July, 2007 transferred the hotel unit to R Hotels without disclosing the rights of the applicant as provided by the Agreement mentioned therein. The Agreement dated 4th July, 2002 clearly provided that the BHEL was required to repay the amount of Rs. 15.21 Crores to the EIH by 31st December, 2002 whereafter, EIH had nothing to do with the operation of the hotel. [Paras 28, 29][450-C-F]

1.3 A perusal of Section 34 indicates that there is express bar of jurisdiction of the Civil Court to the stated effect. Thus the bar of jurisdiction of Civil Court has to correlate to the stated conditions. For purposes of the instant case, this Court need not express any opinion as to whether suits filed by EIH were barred by Section 34 or not, since the issue are yet to be decided on merits and the appeal by RH Hotels have been filed only against an interim order. [Para 32][452-A, C-D]

1.4 At the time, when injunction order was issued by Single Judge, R Hotels was not in picture, however, subsequently, it was also impleaded in the suit and the challenge to the impleadment of R Hotels failed up to this Court. There can be no doubt that IFCI and Tourist Finance Corporation who had executed the deed of transfer in favour of R Hotels 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

- A 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. [Para 33][452-E-G]

- B 1.5 It has been held in *Anita International Versus Tungabadra Sugar Works Mazdoor Sangh and Others* that it is not open either a party to the lis or to any third party to determine at their own that an order passed by a Court is valid or void. A party to the lis or the third party who considers an order passed by a court as voidable or non est, must approach the court of competent jurisdiction to have the said order set- aside on such grounds, as may be available in law. [Para 41][456-F]

- C 1.6 The Division Bench of the High Court rightly took not of the entitlement of EIH to receive Rs. 15.21 Crores, which was the condition of the agreement was to be reflected in any future transaction by virtue of the injunction order dated 18th March, 2005 dealing with the property. There is no error in the directions issued by Division Bench of the High Court, directing 1st and 2nd Respondent, i.e., erstwhile owner and 8th Respondent to deposit the sum of Rs. 15.12 Crores. However, it was not necessary for the High Court to presume that the conditions of deposit, as ordered by the court would not be complied with. The orders of the court are issued to be complied with and a court does not lack power to ensure the compliance by appropriate proceedings. Thus, further directions of the High Court that 'if the condition of deposit as ordered by this court has not complied with by either of the parties....', interim injunction, restraining the 8th Respondent' was uncalled for. The interim order passed by the High Court, directing for deposit of Rs. 15.12 Crores has done substantial justice between parties. However, the directions issued by the Division Bench need to be affirmed. The time is extended for deposit of the amount till 31st January, 2017. [Para 42, 43 and 44][456-G-H; 457-A, B-F]

- G 1.7 The Division Bench as well as Single Judge has already noted that hotel has already commenced its operation and contracts have been made with third parties for the operation of the hotel and bookings are also being taken from the customers. This Court has noticed the directions issued by Division Bench, directing the defendant Nos. 1, 2 and 8 to the suit C.S. No. 257 of
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2005 to deposit an amount of Rs. 15.21 Crores which order had done substantial justice between parties. Taking into consideration the overall circumstances, specially when issues raised in C.S. No. 164 of 2011 are yet to be adjudicated, the orders passed by both Single Judge and Division Bench, refusing to grant interim injunction in view of the facts, cannot be faulted. [Para 47][458-E-F]

Nahar Industrial Enterprises Limited v. Hong Kong & Shanghai Banking Corporation (2009) 8 SCC 646 : 2009 (12) SCR 54; *Century Flour Mills Ltd. v. S. Suppiah and Others* AIR 1975 Madras 270; *Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and Another* (1996) 4 SCC 622 : 2009 (12) SCR 54; *Anita International v. Tungabadra Sugar Works Mazdoor Sangh and Others* (2016) 9 SCC 44 – referred to.

Clarke and Others v. Chadburn and Others 1985 of All ER 211 - referred to.

Case Law Reference

2009 (12) SCR 54	referred to	Para 30	
AIR 1975 Madras 270	referred to	Para 34	E
2009 (12) SCR 54	referred to	Para 36	
(2016) 9 SCC 44	referred to	Para 37	

CIVILAPPELLATE JURISDICTION: Civil Appeal Nos. 11886-11887 of 2016.

From the Judgment and Order dated 26.07.2011 of the High Court of Judicature at Madras in C. M. A. No. 798 of 2011 and M. P. No. 1 of 2011.

WITH

C. A. Nos. 11888-11889 of 2016.

K. K. Venugopal, K. V. Vishwanathan, Sr. Advs, Manu Nair, Ishan Gaur, S. S. Shroff, Advs. for the Appellants.

Jaideep Gupta, Siddhartha Mitra, Sr. Advs, Ms. Roopaseth Mitra,

- A S. Patra (For M/s. Khaitan & Co.), Rakesh K. Sharma, A. G. Garg, Rakesh Garg, M. N. Singh, Ms. Shweta Garg, Advs. for the Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Leave granted.

- B 2. These appeals along with connected appeals although emanates from two different suits filed by the same plaintiff, but the parties being common and sequence of facts being inter-related, we have heard the appeals together and they are being decided by this common judgment.

Civil Appeal Nos.11886-11887 Of 2016

- C **(Arising Out of SLP(C)Nos. 23410-11 of 2011)**

3. These appeals have been filed against the judgment and order dated 26th July, 2011 passed by High Court of Madras in C.M.A. No. 798 of 2011 and MP No. 1 of 2011 arising out of C.S. No. 257 of 2005 renumbered as OS No. 12159 of 2010. Brief facts of the case, necessary to be noted for deciding the appeal are:

The EIH Ltd., Respondent No. 1 (hereinafter referred to, as EIH) to the appeal is a company which operates a chain of luxury hotels. The Oberoi Hotels Private Ltd., Respondent No. 2 owns a brand name 'Oberoi'.

- E 4. On 26.10.1988 EIH entered into 'Technical Services Agreement' (for short TSA) with one Balaji Construction (P.) Ltd. Predecessors-in-interest of the 3rd Respondent Balaji Hotels & Enterprises Ltd. (for short, BHEL). The agreement provided that EIH would provide its technical knowledge and skill required for operation of hotel, which was being constructed by BHEL. Another agreement on January 12, 2000 was entered between BHEL and EIH, where it was recorded that on the request of BHEL, EIH paid Rs. 9 Crores to the BHEL by way of financial accommodation which was used for construction of hotel. By supplemental agreement dated June 10, 2000, it was recorded that in total Rs. 15 Crores 12 Lacs have been received by BHEL, repayment of which is to be made within 24 months from the date of the principal agreement dated 12th June, 2000. It appears that amount could not be repaid hence another agreement was entered between EIH and BHEL on 4th February, 2002. The agreement recorded that, it has now been mutually agreed by the BHEL and EIH that EIH will no longer participate in the hotel operations hence the Technical Service Agreement will be terminated.
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EIH, further stipulated that No-Objection to BHEL shall be given for A
selling, leasing or otherwise transferring the hotel unit to any other
company whether subsidiary or not, or to any other company or entity
either directly or indirectly or otherwise. It was further agreed that BHEL
shall refund the amount of Rs. 15.12 Crores alongwith interest.

5. Relevant Clauses F and G of the Agreement, are as follows: B

F. It is also agreed by and between the parties that BHEL shall
refund the said amount of Rs. 15.12 Crores as mentioned in clause D
above along with interest as applicable on the above amounts on the
terms and conditions hereinafter contained.

G. It is also agreed by and between the parties that BICL will C
execute an irrevocable guarantee in favour of EIH guaranteeing the
payment of the said sum of Rs/ 15.12 Crores along with interest as
applicable and in consideration of such guarantee, EIH has agreed to
give BHEL time up to 31st December, 2002 to repay the said sum of Rs.
15.12 Corers with interest as applicable. D

6. On the same day, a Letter of Guarantee was issued by Balaji
Industrial Corporation Ltd. the 4th Respondent in this appeal,
unconditionally, absolutely and irrevocably guaranteeing the payment of
Rs. 15.12 Crores, in the event, BHEL did not paid the subject amount of
Rs. 15.12 Crores within 31st December 2002. E

7. The BHEL had obtained financial assistance from IFCl, the
7th Respondent and and Tourism Finance Corporation of India Ltd., the
8th Respondent. EIH came to know that Tourism Finance Corporation
India Ltd. (for short TFCI) had issued advertisement inviting offer for
take over (joint venture) sale of hotel project of BHEL. The EIH wrote F
to TFCI on 8th September, 2002 informing about the agreements entered
between EIH and BHEL and further stating that till sum of Rs. 15.12
Crores along with interest is not refunded EIH would have the exclusive
right to operate the hotel. BHEL on 8th June, 2004 acknowledged and
confirmed the principal sum of Rs. 15.12 Crores being outstanding as
per books of accounts of March 31st, 2004 with interest. A suit in the G
High Court of Madras being C.S. No. 257 of 2005 was filed by EIH
against BHEL and others praying for following reliefs:

"The plaintiff prays for a Judgment and Decree for:

(a) Declaration that the Technical Services Agreement

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A *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 June, 2000 and 4th February 2002 are valid, legal and subsisting and are binding and enforceable on the Defendant No. 3 to 7 and /or its assigns.*

B *(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 June, 2000 and 4th February 2002.*

(c) *Costs*

(d) *Such further and other reliefs."*

E 8. An application was also filed by the EIH and Oberoi Hotels (P) Ltd. who were Plaintiff Nos. 1 and 2, for grant of temporary injunction. The learned Single Judge had issued temporary injunction on 18.03.2005.

F 9. After the grant of temporary injunction, it appears that in the year 2007 proceedings were initiated by IFCI by issuing notice under Section 13 sub Section (2), Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 demanding amount due from BHEL.

G 10. Proceeding under Sarfaesi Act, 2002 proceeded and the hotel asset of BHEL was transferred in favour of one Robust Hotels (P.) Ltd.(the appellant in C.A.Nos.....of 2016 (arising out of SLP © No. 23410-11 of 2011). A transfer deed dated 5th July, 2007 was issued by IFCI and TFCI in favour of Robust Hotels (P) Ltd. (hereinafter referred to as Robust Hotels). All the land, together with erections, plant and machinery were transferred to Robust Hotels. EIH filed an application

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in November, 2009 for impleadment of Robust Hotels in C.S. No. 257 of 2005 although the impleadment was opposed but was allowed by learned Single Judge *vide* judgment dated 23rd March, 2010. The Appellant Nos.1 to 4 in SLP (C) No. 23410-11 of 2011 were impleaded as Defendant Nos. 8 – 11 in C.S. No. 251 of 2005. Letters Patent Appeal against the said judgment was also dismissed by Division Bench on 22nd October, 2010. The Robust Hotels unsuccessfully challenged the order of the Division Bench before this Court by filing an S.L.P., which was also dismissed on 7th January, 2011.

11. C.S. No. 257 of 2005 was renumbered as O.S.No. 12159 of 2010. An IA was filed by EIH being IA No. 22846 of 2010. By the aforesaid IA No. 22846 of 2010 the plaintiff prayed for an order, restraining Robust Hotels from having the construction of the hotel unit or from doing, acting or taking steps contrary to or in derogation of the rights of the plaintiff under the Technical Services Agreement and other agreements. The application was rejected by learned Single Judge *vide* judgment and order dated 9th March, 2011, challenging the aforesaid order 9th March, 2011, an appeal being C.M.A. No. 798 of 2011 was preferred. The Division Bench of this Court decided the appeal being C.M.A. NO. 798 of 2011 and M.P. No. 1 of 2011 and issued certain directions *vide* its judgment and order dated 26th July, 2011. C.A.Nos.....of 2016 (arising out of SLP(C) No.23410-11 of 2011) have been filed against aforesaid Division Bench judgment and order dated 26th July, 2011 by the Robust Hotels and other three defendants.

C.A.Nos.11888-11889 of 2016

(arising out of SLP (C) No. 17742-43 of 2012)

12. These appeals have been filed by EIH Ltd. and Oberoi Hotels against judgment and final order dated 13th March, 2012 passed by the High Court of Madras in O.S.A. No. 419 of 2011 and M.P. No. 1 of 2011. While noticing the facts in the appeals filed by Robust Hotels, we in the proceedings paragraphs have noted the facts which are also relevant for understanding the issues raised in present appeals. The appellants EIH and Oberoi Hotels filed a suit, being C.S. No. 164 of 2011 before the High Court of Madras praying for a declaration that Deed of Transfer dated 5th July, 2007 entered into between IFCI Ltd. and TFCI on one part and the Robust Hotels (P.) Ltd. on another part, and the certificate of sale of immovable property dated 6th July, 2007 are illegal and null &

- A void and of no effect and not binding. A perpetual injunction was also prayed for, restraining the defendants whether by themselves, their servants, agents or otherwise howsoever from purporting to act, to give effect to. or taking any steps in furtherance of the purported deed of transfer dated July 5, 2007 and the certificate of sale of movable and immovable property also dated July 5, 2007 or from enforcing the same in any manner whatsoever.

13. It was pleaded that the cause of action for instituting the suit was the sale of hotel unit at Mount Road, Chennai by the financial institutions contrary to the order passed by this High Court dated 18th March, 2005. The counter affidavit was also filed in O.A. No. 233 of 2011 in C.S. No. 164 of 2011 by Robust Hotels. A Contempt Petition was also filed for violation of Order dated 18th March, 2005, passed in O.A. No. 300 of 2005 in C.S. No. 257 of 2005.

14. O.A. No. 233 of 2011 in C.S. No. 164 of 2011 filed by EIH and Oberoi Hotels praying for injunction was dismissed by learned Single Judge *vide* Order dated 8th August 2011. By the same order, learned Single Judge also dismissed the Contempt Petition (C) No. 647 of 2011 filed by EIH and Oberoi Hotels. Challenging the order passed by the learned Single Judge dated 8th August, 2011 Letters Patent Appeal was filed by EIH and Oberoi Hotels being O.S.A. No. 419 of 2011. The Division Bench by the Order dated 13th March, 2011 dismissed the appeal, challenging which order the C.A. Nos.....of 2016 (arising out of Special Leave Petition (C) Nos. 17742-43 of 2012) has been filed by EIH and Oberoi Hotels.

15. We have heard Shri K. K. Venugopal learned senior counsel and K. V. Vishawanathan learned senior counsel for Robust Hotels, Shri Jaideep Gupta learned senior counsel and Shri Siddharth Mitra learned senior counsel have appeared on behalf of the EIH and Oberoi Hotels.

16. Shri K. K. Venugopal, in support of his appeal, contends that the Division Bench of Madras High Court erred in passing an interim order on 26th July, 2011 whereas there was no case made out by the EIH and Another for grant of any interim order. The Robust Hotels has purchased the hotel unit under Sarfaesi Act, 2002 and the property has been conveyed to the Robust Hotels free from any encumbrance. The proceedings under Sarfaesi Act, 2002 cannot be made subject matter of challenge before a Civil Court. Section 34 of Sarfaesi Act, 2002 completely oust the jurisdiction of Civil Court. He contends that

entitlement to recover the amount of Rs. 15.21 Crores by EIH if at all
was against the Balaji Hotels & Enterprises Ltd. and Balaji Industrial
Corporation Ltd., for which it was open for EIH to take appropriate
proceedings. The Robust Hotels having acquired the assets under
Sarfaesi proceeding has no liability to make any payment to EIH and the
order passed by the Division Bench issuing such direction is unsustainable.
It is submitted that Robust Hotels cannot be held liable for any breach of
Order dated 18.03.2005 and in view of the subject matter, order dated
18.03.2005 was also hit by Section 34 of Sarfaesi Act, 2002. Shri
Venugopal further submitted that C.A.Nos....of 2016 (arising out of
Special Leave Petition (C) Nos. 17742-43 of 2012) filed by EIH deserved
to be dismissed since both learned Single Judge and Division Bench
have rightly held that the transfer on 5th July 2007 made in favour of
Robust Hotels could not have been challenged in C.S. No. 164 of 2011
in view of Section 34 of Sarfaesi Act, 2002.

17. Shri Jaideep Gupta and Siddharth Mitra learned senior counsel,
appearing for EIH have vehemently opposed the submissions raised by
Shri K. K. Venugopal. It is contended by learned senior counsel appearing
for EIH and Another that the order passed by the Division Bench on
26th July, 2011 is perfectly in accordance with law, which need no
interference by this Court in exercise of jurisdiction under Article 136 of
the Constitution. It is submitted that interim order has been issued by
Division Bench of Madras High Court being fully satisfied on *prima*
facie case of the EIH Ltd., the balance of convenience and irreparable
loss being in favour of the plaintiffs. It is contended that injunction order
dated 18th March, 2005 issued in C.S. No. 257 of 2005, has been
violated by the financial institutions. Any action taken, in breach of
interim injunction order, is to be set aside and no party can be allowed to
take benefit of its wrong committed in breach of an order of the Court.
It is contended that financial institutions and erstwhile owners of the
hotel unit were made aware of the interim injunction order dated 18th
March, 2005 and despite the said injunction order, they transferred the
unit without taking into consideration the right of the EIH flowing from
the contracts entered between EIH and erstwhile owner as noted above.

18. One of the conditions of last agreement dated 4th February,
2002 was to make payment of an amount of Rs. 15.21 Crores by erstwhile
owner before transferring the right in the hotel unit including right to run
the hotel in favour of any entity.

A 19. The Order passed by Division Bench dated 26th July, 2011 does complete justice between parties, and Division Bench has exercised its discretionary jurisdiction in granting the relief which need no interference by this Court in exercise of jurisdiction under Article 136 of the Constitution.

B 20. Coming to appeal, filed by EIH against the Order dated 13th March, 2012, it is contended that all actions in breach of an interim injunction have to be set aside and the Court is fully competent to restore status quo ante. It is contended that in event where an action is taken in disregard of any interim injunction passed by a court, the question of
C *prima facie* case, balances of convenience and irreparable loss have not to be looked into and the Court has to undo the wrong done in breach of court's order.

D 21. It is submitted that Section 34 of the Sarfaesi Act, 2002 does not protect the Robust Hotels in facts of the present case. It is submitted that the appeal filed by the EIH, deserved to be allowed setting aside all actions taken in breach of the injunction order 18th March, 2005.

E 22. Learned senior counsel for both the parties have also relied on various judgments of this Court in support of their respective submissions, which shall be referred to while considering their submissions in detail.

E 23. First, we take up the appeal of Robust Hotels, the appeal has been filed against an interim order passed by the High Court, disposing of the CMA No. 798 of 2011.

F 24. The interim directions issued by Division Bench are in following three parts:

G “(i). This Court without prejudice, directs the 1st and 2nd respondents / erstwhile owners / BH and EL and another or the 8th respondent / the present owner / Robust Hotels Private Limited to deposit a sum of Rs. 15.12 Crores into the credit of O.S. No. 12159 of 2010 on or before 31st August 2011.

(ii). After such deposit has been made the learned trial judge shall dispose the case within a period of three months on merits, without being influenced by this Court's findings.

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(iii) If the Condition of deposit as ordered by this Court, is not complied with by either of the parties, the interim injunction, restraining the 8th respondent/Robust Hotels Private Limited, from acting or taking any steps contrary to and/or in derogation of the rights of the petitioners under the technical service agreement, the projects consultancy agreement and the Royalty agreement all dated October 26, 1988, entered into between the petitioners /EIH and another and the respondents 1 and 2/B.H. and EL and BICL will come into effect from 01.09.2011.”

25. As noted above the agreement dated 4th February, 2002 Annexure P. 4 between Balaji Hotels Enterprises Ltd. and its successor Balaji Industrial Corporation Ltd. with EIH contemplated that EIH will no longer participate in the hotel unit and Technical Service Agreement will be terminated and BHEL shall refund the amount of Rs. 15.12 Crores for which time was extended by EIH to BHEL by 31st December 2002. When the EIH came to know that Tourism Finance Corporation India Ltd. has issued an advertisement for inviting offers for take over / joint venture, sale of hotel brought at Mount Road, Chennai it immediately wrote to Tourism Finance Corporation India Ltd. informing about its agreement with BHEL. The EIH has also informed in writing *vide* letter dated 15th July, 2004 Annexure P. 8 to the Asset Reconstruction Company (India) Ltd. about their advance of Rs. 15.12 Crores which it had made to BHEL.

26. Subsequently, suit, namely, C.S. No. 257 of 2005 was filed by the EIH Ltd. and Oberoi Hotels, plaint of which suit has been brought on record by annexure P. 14.

27. Interim injunction was issued by the learned Single Judge of the High Court in the aforesaid suit to the following effect:

“That 1. Assets Reconstruction Company (India) Limited, 2. ICICI Bank Limited 3. IFCI Limited 4. Tourism Finance Corporation of India Limited, and 5. Anand Rathi Securities Private Limited, the respondents 3 to 7 herein, whether by itself, its servants, agents and/or assigns or otherwise howsoever be and are hereby restrained by an order of interim injunction until further orders of this court from dealing with, disposing of, selling and/

A *or encumbering in any manner howsoever the hotel unit*
 of the Respondent No. 1 situated at Mount Road,
 Chennai in favour of any person without disclosing the
 rights of the Applicants to operate and manage the hotel
 in terms of the Technical Services, Project Consultancy
B *& Royalty Agreement dated 26th October 1988 and the*
 Agreements dated 12th January 2000, 10th June, 2000
 and 4th February 2002.”

 28. The essence of interim injunction issued by the Court was
that Respondent Nos. 3 to 7 of that suit were restrained by an order of
injunction from dealing with, disposing of, selling and/or encumbering in
C any manner howsoever the hotel unit of Balaji Hotels & Enterprises
 Ltd.(BHEL), in favour of any person without disclosing the rights of the
 applicants to operate and manage the hotel in terms of the Technical
 Services, Project Consultancy & Royalty Agreement dated 26th October,
 1988 and the Agreements dated 12th January 2000, 10th June, 2000 and
D 4th February, 2002.

 29. Thus, the injunction ordained that while dealing with the hotel
unit the rights of the applicant be disclosed. The subsequent facts, as
noted above indicate that even after the aforesaid injunction the IFCI
Ltd. and Tourism Finance Corporation of India Ltd. by deed of transfer
E dated 5th July, 2007 transferred the hotel unit to Robust Hotels without
 disclosing the rights of the applicant as provided by the Agreement
 mentioned therein. The Agreement dated 4th July, 2002 clearly provided
 that the BHEL was required to repay the amount of Rs. 15.21 Crores to
 the EIH by 31st December, 2002 whereafter, EIH had nothing to do with
 the operation of the hotel.

F 19. Learned senior counsel for the appellants have placed much reliance
 on the **Section 34 of the Sarfaesi Act, 2002**. Section 34 of the Sarfaesi
 Act, 2002 provided as follows:

G *“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

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in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)." A

30. The scope and ambit of Section 34 of Sarfaesi Act, 2002 have been considered by this Court in several cases. It is sufficient to refer the judgment of this Court in *Nahar Industrial Enterprises Limited Versus Hong Kong & Shanghai Banking Corporation (2009) 8 SCC 646*. This Court held that the jurisdiction of the Civil Court is plenary in nature, unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits. B

31. Following was laid down in para 110-111:- C

"110. It must be remembered that the jurisdiction of a civil court is plenary in nature. Unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits.

111. In Dhulabhai v. State of M.P., this Court opined: (AIR pp. 89-90, para 32) D

"32. ... The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. E

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not." F
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- A 32. A perusal of Section 34 indicates that there is express bar of jurisdiction of the Civil Court to the following effect:

“(i) Any suit or proceeding in respect of any matter in which Debt Recovery Tribunal or Appellate Tribunal is empowered by or under this Act to determine.

- B (ii) Further, 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 Financial Institutions Act, 1993.”

- C Thus the bar of jurisdiction of Civil Court has to correlate to the above mentioned conditions. For purposes of this case, we are of the view that this Court need not express any opinion as to whether suits filed by EIH were barred by Section 34 or not, since the issue are yet to be decided on merits and the appeal by Robust Hotels have been filed only against an interim order.

- D 33. The submissions, which have been much pressed by learned senior counsel for EIH is on the effect and consequence of acting in breach of injunction order dated 18th March, 2005. At the time, when injunction order was issued by learned Single Judge, Robust Hotels was not in picture, however, subsequently, it has also been impleaded in the suit and the challenge to the impleadment of Robust Hotels has failed up to this Court. There can be no doubt that IFCI and Tourist Finance Corporation who had executed the deed of transfer in favour of Robust Hotels 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.

- F 34. Learned senior counsel for the EIH has referred to and relied on the judgment of the Full Bench of Madras High Court in *Century Flour Mills Ltd. Versus S. Suppiah and Others AIR 1975 Madras 270* and another judgment reported in *1985 of All England Report 211 Clarke and Others Versus Chadburn and Others*, for the proposition that any action taken in disobedience or disregard in injunction
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order, becomes void & illegal.

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35. Madras High Court in *Century Flour Mills Ltd.* stated following in para 9:

"In our opinion, the inherent powers of this court under Section 151 C.P.C. are wide and are not subject to any limitation. Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders. But in this case it is not necessary to go to that extent as we hold that the power is available under Section 151, C.P.C."

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36. Judgment of Madras High Court in *Century Flour Mills Ltd. Versus S. Suppiah and Others and Clarke and Others Versus Chadburn and Others (Supra)* had been relied and approved by this Court in *Delhi Development Authority Versus Skipper Construction Co. (P) Ltd. and Another (1996) 4 SCC 622*.

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37. Another judgment relied upon is *Anita International Versus Tungabadra Sugar Works Mazdoor Sangh and Others (2016) 9 SCC 44*. In the aforesaid case, in a Company Petition, filed in the Madras High Court for winding up of Deve Sugars Ltd., an order of winding up was passed. An Official Liquidator was directed to take possession of the property of the company. State Bank of Mysore had extended some loan to the Deve Sugar Ltd. and on default having been committed, an O.A. was filed before the Debt Recovery Tribunal by the Bank for the recovery of the amount. The Recovery Certificate was issued for a sum of Rs. 8.40 Crores. State Bank of Mysore filed a Company Application in the pending Company Petition before the High Court of Madras, seeking leave to proceed before Debt Recovery Tribunal (DRT), Bangalore.

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A 38. The High Court, while granting the leave to the State Bank of Mysore passed an order that no coercive steps are to be taken against the assets of the company during or after concluding all the proceeding before the tribunal. The order passed by Madras High Court has been extracted in para 3 of the judgment which is to the following effect:

B *"(3) The Company Court in the High Court of Madras, while granting leave to State Bank of Mysore, passed the following order on 10..2000 (while disposing of Company Applications Nos. 1251-53 of 1999):*

C *This company application, praying to this Court to grant leave to the applicant Bank to proceed and prosecute further OA No. 1300 of 1997 filed by them against the respondent Company in the Debts Recovery Tribunal at Bangalore.*

D *Company applications coming on this day before this Court for hearing in the presence of Mr. R. Varichandran, Advocate for the applicant, herein and the Official Liquidator, High Court, Madras, the respondent, appearing in person, and upon reading the Judge's summons and affidavit and report of the Official Liquidator filed herein, the court made the following orders:*

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Leave is granted subject to the condition that the Official Liquidator is impleaded and no coercive steps are taken against the assets of the Company during or after the conclusion of the proceedings before the Tribunal."

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G 39. A perusal of the above order reveals that leave was granted subject to the condition that the Official Liquidator was impleaded before DRT, Bangalore, and further that no coercive steps would be taken against the assets of the Company Deve Sugars Ltd., during or after the conclusion of proceedings before DRT, Bangalore.

H 40. It appears that in the recovery proceedings, the assets were auctioned and Anita Internationals were the auction purchaser. The issue was raised before the High Court that in view of the order of Madras High Court dated 10.03.2000, proceedings for recovery as well as

confirmation of the auction were invalid. It was also contended before the High Court that the Company Court had no jurisdiction, the arguments raised before the Court that Company Court has no jurisdiction and it was a Debt Recovery Tribunal which has exclusive jurisdiction, was rejected by this Court. It is useful to refer para 49 and 51 of the judgment which is to the following effect:

“(49.) In order to support their claim, it was submitted on behalf of the appellants that jurisdiction in matters of recovery agitated by banks and financial institutions under the RDB Act has been repeatedly expounded by this Court. The Debts Recovery Tribunals concerned, before whom recovery proceedings are initiated, have exclusive jurisdiction in the matter. It was also pointed out that this Court has clearly declared that even the jurisdiction of Recovery Officers in matters of execution of recovery certificates was likewise exclusive. It was the pointed contention of the learned counsel for the appellants that in matter wherein banks and financial institutions approach a Debts Recovery Tribunal, which on due consideration issues a recovery certificate, the same can be executed only through a Recovery Officer. It was submitted that a Company Court has no jurisdiction in the matter. The learned counsel for the appellants substantiated the above assertion on the basis of the decisions rendered by this Court in Allahabad Bank, M.V. Janardhan Reddy, Andhra Bank, Rajasthan State Financial Corpn. and Official Liquidator cases.

(51.) It is not possible for us to accept the contentions advanced on behalf of the appellants. In this behalf it would be relevant to mention that in M.V. Janardhan Reddy case the Company Court by an order dated 13.8.1999 required that its permission should be obtained before the Recovery Officer finalised the sale. Thereafter, the Company Court by an order dated 25.03.2005 directed that sale by the Recovery Officer was subject to confirmation by the Company Court. In the above sequence of facts, this Court clearly held that

- A *the condition imposed by the Company Court could not be violated by the Recovery Officer. It was concluded that the sale made by the Recovery Officer in violation of the orders passed by the Company Court was without the authority of law, the same was accordingly set aside.*
- B *The explanation tendered by the learned Senior Counsel representing the appellants was that even in the above judgment, this Court had not disturbed the exclusive jurisdiction of a Recovery Officer in executing the recovery certificate. In our considered view, the above contention is immaterial to the issue under consideration. The issue under consideration is whether or not an order passed by the Company Court (in the present case the order dated 10.3.2000) was binding on the Recovery Officer? And, whether the proceedings conducted by the Recovery Officer in violation of the above order were sustainable in law? We have no hesitation in concluding that in M.V. Janardhan Reddy case, an order passed by the Company Court was held to be binding on the Recovery Officer. Based on exactly the same consideration, we are of the view that the acceptance of the bid of Anita International by the Recovery officer on 11.8.2005 and the confirmation of the sale in its favour on 12.9.2005 were clearly impermissible and therefore, deserve to be set aside."*
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41. This Court further held that it is not open either a party to the *lis* or to any third party to determine at their own that an order passed by a Court is valid or void. A party to the *lis* or the third party who considers an order passed by a court as voidable or *non est*, must approach the court of competent jurisdiction to have the said order set-aside on such grounds, as may be available in law. This Court held that the order of the Company Court of Madras High Court was to be complied with and sale held in violation of the said order was to be set aside.

42. The entitlement of EIH to receive Rs. 15.21 Crores, which was the condition of the agreement dated 4th February, 2002 was to be reflected in any future transaction by virtue of the injunction order dated 18th March, 2005 dealing with the property, has rightly been taken note by the Division Bench of the High Court and we do not find any error in

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the directions issued by Division Bench of the High Court, directing 1st A
and 2nd Respondent, i.e., erstwhile owner and 8th Respondent Robust
Hotels to deposit the sum of Rs. 15.12 Crores.

43. We, however, are of the view that it was not necessary for
the High Court to presume that the conditions of deposit, as ordered by
the court shall not be complied with. Orders of the court are issued to be B
complied with and a court does not lack power to ensure the compliance
by appropriate proceedings. Thus, further directions of the High Court
that 'if the condition of deposit as ordered by this court has not complied
with by either of the parties....', interim injunction, restraining the 8th
Respondent' was uncalled for. The interim order passed by the High C
Court, directing for deposit of Rs. 15.12 Crores has done substantial
justice between parties, which need no interference by this Court in
exercise of its jurisdiction under Article 136. We, however, are of the
view that the directions issued by the Division Bench in para 38 need to
be affirmed only to the following extent:

*"(a) (i). This Court without prejudice, directs the 1st and D
2nd respondents / erstwhile owners / BH and EL and
another or the 8th respondent / the present owner /
Robust Hotels Private Limited to deposit a sum of Rs.
15.12 Crores into the credit of O.S. No. 12159 of 2010
on or before 31st August 2011."* E

44. It goes without saying that the trial judge has to expeditiously
proceed to decide the suit. The deposit was to be made under the order
of the High Court till 31st August, 2011. This Court passed an interim
order on 29th August, 2011 due to which no deposit was made, we thus
extend the time for deposit of the amount till 31st January, 2017. The F
appeals filed by Robust are disposed of as above.

45. Now, we come to appeals filed by EIH. EIH filed an appeal
against the order of the Division Bench dated 13th March, 2012 by which
order, the Division Bench has dismissed the appeal against the order
dated 8th August, 2011, passed by the learned Single Judge. Order dated G
8th August, 2011 was passed in O.A. No. 233 of 2011 by which application,
the plaintiff has prayed for interim injunction, restraining the defendants
from purporting to act or to give effect to or taking any step in furtherance
of the purported deed of transfer dated 5th July, 2007 and the certificate
of sale of movable and immovable property dated 5th July, 2007 or from H

A enforcing the same in any manner whatsoever pending the suit.

46. The learned Single Judge passed an order, refusing the interim order as prayed for in O.A. No. 233 of 2011. The Division Bench, while dismissing the appeal made following observations in Para 62 at page 50:

B *"62. The maintainability of suits, which are pending on*
C *the file of the City Civil Court as well as on the file of*
D *this Court in C.S. No. 164 of 2011, can be adjudicated*
E *in the course of trial and this Court finds some force in*
F *the submission made by the learned senior counsel*
G *appearing for the appellants that the said findings may*
 definitely prejudice their case. Hence, this Court
 expunge the observations made by the learned Judge
 with regard to the maintainability of the suit in O. S.
 No. 12159 of 2010, pending on the file the III Addl.
 Judge, City Civil Court, Chennai and C.S. No. 164 of
 2011 pending on the file of this Court."

47. The Division Bench as well as learned Single Judge has already noted that hotel has already commenced its operation and contracts have been made with third parties for the operation of the hotel and bookings are also being taken from the customers. We have already noticed the directions issued by Division Bench, directing the defendant Nos. 1, 2 and 8 to the suit C.S. No. 257 of 2005 to deposit an amount of Rs. 15.21 Crores which order had done substantial justice between parties. Taking into consideration the overall circumstances, specially when issues raised in C.S. No. 164 of 2011 are yet to be adjudicated, the orders passed by both learned Single Judge and Division Bench, refusing to grant interim injunction in view of the facts as noted above cannot be faulted.

48. In result, the appeals of Robust Hotels & ors. are disposed of by modifying the order of the Division Bench as above. The appeals of ElH Ltd. and ors. are dismissed.

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Nidhi Jain

Appeals disposed of.