



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 663/2020

Jyotsana Suri W/o Late Shri Lalit Suri, Aged About 67 Years,
Chairperson And Managing Director, M/s Bharat Hotel Ltd.,
Barakhamba Lane, New Delhi.

-----Petitioner

Versus

Union Of India, Through Central Bureau Of Investigation

-----Respondent



For Petitioner(s)

: Mr. Harish Salve, Senior Advocate
assisted by Mr. Harish Nadda
Mr. PP Choudhary, Senior Advocate
assisted by Mr. Umesh Kant Vyas

For Respondent(s)

: Mr. R.D. Rastogi, Senior Advocate
assisted by Mr. B.P. Bohra

All through Zitsi Meet App

JUSTICE DINESH MEHTA

Order

22/09/2020

1. Narrating the relevant facts, learned Senior counsel appearing for the petitioner, informs that petitioner is presently Managing Director of M/s Bharat Hotels Ltd., and is wife of late Shri Lalit Suri, who was Managing Director of said company at the relevant time (year 2001), when the company participated in the process of disinvestment of M/s Laxmi Vilas Hotel.

2. Mr. Salve, learned Senior counsel submits that by way of the impugned order dated 15.09.2020, learned Court below has not only refused to accept the final closure report filed by the CBI but has also issued arrest warrant to the petitioner and has gone ahead to attach the assets, land, building and hotel business of



said hotel (M/s The Lalit Laxmi Vilas Hotel, near Fateh Sagar Lake, Udaipur). He further informs that the Court below has appointed the District Collector, Udaipur as receiver of the property with a simultaneous direction to hand over the management and operations of the hotel to some Central Government controlled or run institution/ Corporation, engaged in hotel business.

3 Challenging the order impugned, various submissions were made. While maintaining that the Court below was not justified in rejecting the closure report filed by the CBI, a horde of submissions were made, out of which a few which relate to jurisdiction of the Court and deal with the very proprietary of the Court to pass the order are considered germane for the purpose of considering prayer of interim relief and are set out hereinfra :-

(i) The Court was not justified in rejecting the final closure report of the CBI :

4 Learned Senior counsel submits that the process of disinvestment was not a sale simplicitor; as a matter of fact, petitioner's Company M/s Bharat Hotels Ltd., took part in process of disinvestment of Laxmi Vilas Hotel, which was one of numerous Government owned companies decided to be handed over to private operators. He submits that process was transparent and open bids were invited while fixing the reserve price at Rs.6.12 crores. It is submitted that the petitioner was the sole bidder and had offered a bid of Rs.7.52 Crores (25% above the reserve price) and was declared successful.

5. It is also asserted that parameters and procedure set for this purpose had a four layered process, having checks at all level and the bid in question was finalized after the approval given by the Cabinet Committee under the aegis of the then Prime Minister.



6. It is also argued that questioning the transaction which dates back to year 2001, issue was brought to this Court on two occasions and on both the occasions, this Court rejected the allegation of like nature inter-alia observing that there was no material evincing any irregularity and illegality in the process.

7. Learned Senior counsel submits that notwithstanding the above, acting in furtherance of a complaint filed in the year 2008, CBI investigated into the matter and after thorough investigation came to a conclusion that no irregularity has been committed and filed its final closure report to this effect, yet the Court refused to accept the final report so filed by CBI.

8. According to Mr. Salve, there was no material with the Court below to come to a conclusion that the petitioner's Company has defrauded the Central Government by Rs.244.36 Crores.

(ii) Issuance of arrest warrant :

9. Without prejudice to above contention, learned Senior counsel submits that the Court below was not legally justified in issuing warrant of arrest to the petitioner. He argues that in light of the judgment of Hon'ble the Supreme Court in case of Inder Mohan Goswami & Ors. Vs. State of Uttaranchal & Ors. [(2007) 12 SCC p.1], a Court is firstly required to issue summons, then bailable warrant and in rarest of rare case, the Court can resort to issuing arrest warrant.

10. It is vehemently argued that no circumstances existed for which the Court was required to adopt extreme mode of securing presence of the petitioner – a law abiding senior citizen of repute, to whom not even an information much less notice of the rejection of CBI's closure report was ever given.



11. Learned Senior counsel submits that the petitioner respects the law and would appear before the Court below on the date to be fixed by the Court and would ensure full cooperation in the proceedings, subject of course to her legal rights and contentions in the present case.

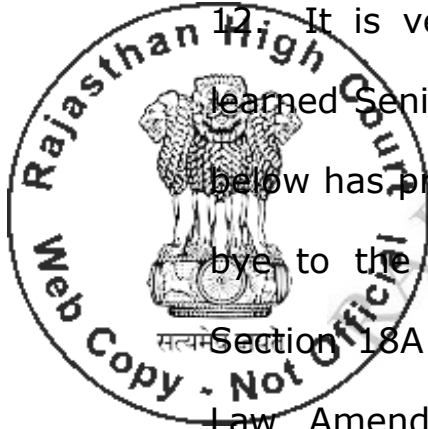
(iii) Attachment of the property is illegal :

12. It is vehemently argued by Mr. Salve and Mr. Choudhary, learned Senior counsel appearing for the petitioner that the Court below has proceeded not only in hot haste but has also given a go by to the statutory provisions and procedure provided under Section 18A of the Prevention of Corruption Act, 1988; Criminal Law Amendment Ordinance, 1944 and Prevention of Money Laundering Act, 2002.

13. Navigating the Court through relevant provisions of the Acts, it is argued that if the Court was of the view that the attachment was imperative, it could have at the maximum, provisionally attached the property before passing a final order of attachment.

14. Advancing his arguments further, he would contend that the order of attachment in question could have been passed only pursuant to a request (if any) made by the CBI; whereas no such request was ever made by the CBI. It is vehemently argued that even if it is assumed that the situation warranted attachment of the property, the same could not have been done sans affording an opportunity of hearing to the petitioner and her Company.

15. Mr. Choudhary, learned Senior counsel appearing for the petitioner produced for perusal of the Court copy of the letter dated 17.09.2020 written by the District Collector, Udaipur to the Special Judge, CBI, Jodhpur, who has expressed his inability to run





the hotel in question. Copy of the letter dated 17.09.2020 is taken on record.

16. With the submissions above referred, it is prayed that the effect and operation of the impugned order dated 15.09.2020 be stayed. It is alternatively prayed that appropriate order be passed to protect petitioner from being arrested pursuant to the impugned order dated 15.09.2020. A prayer to pass order of 'status-quo ante' is also made, lest a running hotel be not pushed to a situation of near closure.

17. Mr. P.D. Rastogi, learned Senior counsel appearing for the CBI while seeking time to file reply, opposes the petitioner's prayer of staying the effect and operation of the order impugned.

18. He zealously informs that pursuant to the order passed by the Court below, the District Collector, Udaipur – the appointed receiver has taken charge of the property at 12.35 p.m. on 16.09.2020 itself, and submits that staying the effect and operation of the order at this juncture, would amount to putting the clock back.

19. Heard.

20. Having heard learned counsel for the parties and upon perusal of the material available on record, this Court is of the prima facie opinion that learned Court below was not justified in issuing warrant of arrest to the petitioner.

21. This Court is constrained to observe that the Court below has not recorded any reason worth the name before resorting to the extreme mode of securing presence of an accused - issuing arrest warrant. The issuance of warrant of arrest becomes all the more serious, when the petitioner was not put to any notice of the pending proceedings.



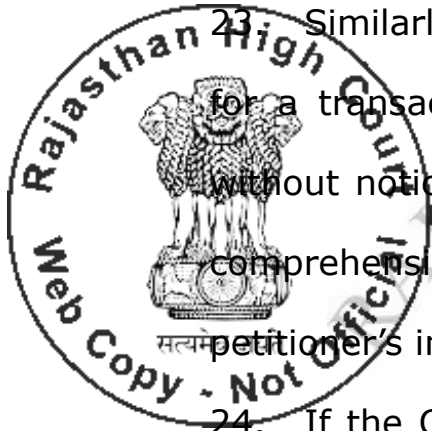
22. Further, while issuing arrest warrant, Court below has not recorded any finding as to why petitioner's custodial interrogation is required, particularly when all the relevant documents are on the record of the Court below and the transaction dates back to the year 2001, when she was not at the helm of affairs of the Company.

23. Similarly attaching the property of a running hotel business for a transaction which took place way back in 2001, that too, without notice to the petitioner or her hotel, is beyond anybody's comprehension; particularly when a final decision about petitioner's involvement/guilt is yet to be taken by the Court.

24. If the Court ultimately comes to a decision otherwise, then, the situation would be irreversible.

25. That apart, in prima facie opinion of this Court, the attachment is contrary to the provisions contained in Section 3 and 4 of the Criminal Law Amendment Ordinance, 1944 (which requires an application by the Central, State Government) and Section 5 of the Prevention of Money Laundering Act, 2002 and Section 18A of the PC Act, which mandate an audience to the petitioner and her company.

26. True it is, that in normal circumstances, this Court would not pass an order of status-quo ante. But then, having regard to the facts noticed above and considering the submissions made by Mr. Choudhary, based on the letter dated 17.09.2020, written by the District Collector, this Court is of the considered opinion that if the order of appointment of receiver is not stayed, the hotel in question would suffer irreparable loss. Not only the guests who have got bookings and the business of the hotel would suffer but also the employees of the hotel would lose their livelihood,





particularly because the District Collector – receiver is not in a position to operate the hotel.

27. It will not be out of context to paste a scanned copy of the letter dated 17.09.2020 (written by the Collector) hereunder :-

राजस्थान सरकार

कार्यालय जिला कलक्टर, उदयपुर

क्रमांक / विधि / 2020 /

दिनांक: 17-09-2020



माननीय न्यायालय, विषिष्ठ न्यायाधीष,

सी.बी.आई.

जोधपुर

विषय:-

फौजदारी प्रकरण सं.9/2020 (आर.सी. जेडीएच 2014 ए 2008) में जारी आदेश क्रमांक 138 दिनांक 15.09.2020 की पालना बाबत।

उपर्युक्त विषयान्तर्गत माननीय अदालत द्वारा जारी संदर्भित आदेश द्वारा अधोहस्ताक्षरकर्ता को रिसीवर नियुक्त किया जाकर निम्नानुसार कार्यवाही हेतु आदेशित किया गया। माननीय न्यायालय के उक्त आदेश के क्रम में निम्नानुसार अनुपालना रिपोर्ट प्रस्तुत है:-

- 1- मैसर्स लक्ष्मी विलास पैलेस होटल वर्तमान नाम दी ललित लक्ष्मी विलास पैलेस, उदयपुर, फतहसागर झील के सामने, उदयपुर का रिसीवर के रूप में कब्जा दिनांक 16.09.2020 को प्राप्त किया गया। (परिषिष्ट-1)
2. चल-अचल सम्पत्ति का विवरण तैयार किये जाने एवं अन्य सम्बन्धित कार्यों हेतु राजस्थान प्रशासनिक सेवा के वरिष्ठ अधिकारी श्री शैलेश सुराणा, अति. मुख्य कार्यकारी अधिकारी, जिला परिषद, उदयपुर को रिसीवर के प्रतिनिधि के रूप में अधिकृत कर दिया गया है एवं रिसीवर द्वारा कब्जे में ली गयी चल व अचल सम्पत्ति की सूची तैयार करने हेतु आदेश दिनांक 16.09.2020 द्वारा दलों का गठन किया गया है। (परिषिष्ट-2)
3. उक्त गठित दलों द्वारा होटल प्रतिनिधियों की उपस्थिति में दिनांक 17.09.2020 तक तैयार की गयी चल व अचल सम्पत्ति की सूची संलग्न कर प्रस्तुत की जा रही है। (परिषिष्ट-3) परिसर वृहत्त होने से तथा सम्पत्तियों की संख्या अधिक होने से सम्पूर्ण सूची तैयार करने में न्यूनतम सात दिवस का समय लगना संभावित है। आदेश दिनांक 16.09.2020 को प्राप्त होने एवं दिनांक 18.09.2020 को पालना रिपोर्ट प्रस्तुत की जाने के कारण माननीय अदालत द्वारा प्रदान किये



गये समय में उक्त कार्य पूरा होना भी संभव नहीं होने से समयावधि बढ़ाने हेतु निवेदन है। सत्यापन कार्य एवं सूची पूर्ण होने पर न्यायालय में चल अचल सम्पत्तियों की सम्पूर्ण सूची प्रस्तुत कर दी जायेगी।

4. उक्त सम्पत्ति को रिसीवर के कब्जे में लेने के समय होटल के 9 कमरों में अतिथि रुके हुए हैं जो पूर्व बुकिंग अनुसार दिनांक 19.09.2020 तक चले जावेंगे। (परिशिष्ट-4)

5- उक्त सम्पत्ति को रिसीवर के कब्जे में लेते वक्त मैसर्स लक्ष्मी विलास पैलेस होटल वर्तमान नाम दी ललित लक्ष्मी विलास पैलेस, उदयपुर, फतहसागर झील के समने, उदयपुर के अधिकृत प्रतिनिधि से जानकारी प्राप्त करने पर उनके द्वारा अवगत कराया कि इनकी बैंक खाते पंजाब नेशनल बैंक, शाखा टाउन हॉल, उदयपुर एवं यस बैंक, शाखा पंचवटी, उदयपुर में हैं। दोनों बैंक प्रबंधकों को माननीय न्यायालय के आदेश के बिना या रिसीवर/उनके अधिकृत प्रतिनिधि की बिना अनुमति से इन बैंक खातों से किसी प्रकार का संव्यवहार नहीं किया जाने हेतु सूचित किया जा चुका है। जारी पत्र एवं बैंक खातों का विवरण संलग्न परिशिष्ट-5 पर है।

6. माननीय अदालत के आदेश की अनुपालना में होटल के संचालन हेतु अध्यक्ष और प्रबन्ध निदेशक भारतीय पर्यटन विकास निगम, दिल्ली को दिनांक 16.09.2020 को लिखा गया था। भारतीय पर्यटन विकास निगम द्वारा अपने पत्र क्रमांक टीडीसी/2020 दिनांक 16.09.2020 द्वारा इस कार्य के संबंध में निर्णय लेने में असमर्थता जाहिर की गयी है। (परिशिष्ट-6)

7. सचिव, पर्यटन मंत्रालय, भारत सरकार को भी होटल संचालन की व्यवस्था करने हेतु लिखित निवेदन किया गया है। (परिशिष्ट-7) जवाब प्रतीक्षित है।

माननीय न्यायालय द्वारा जारी आदेशों के क्रियान्वयन/अनुपालना के क्रम में निम्न बिन्दुओं पर मार्गदर्शन हेतु निवेदन है –

1- माननीय न्यायालय द्वारा आदेशित किया गया है कि "उक्त होटल का संचालन इस प्रकरण के निर्णय तक भारत सरकार के किसी होटल व्यवसाय संचालित करने वाली संस्था द्वारा अपने निर्देशन में करावें तथा उसके हिसाब-किताब प्रत्येक त्रैमासिक इस न्यायालय में पेश करें"

माननीय न्यायालय के उक्त निर्देश के क्रम में दिनांक 16.09.2020 को भारतीय पर्यटन विकास निगम को निवेदन किया गया परन्तु उनके द्वारा



असमर्थता व्यक्त की गयी है। पर्यटन मंत्रालय, भारत सरकार को भी निवेदन किया गया परन्तु उनकी ओर से भी इस बाबत अभी तक जवाब अपेक्षित है।

माननीय न्यायालय के उक्त निर्देश की अनुपालना किए जाने के संदर्भ में निवेदन है कि अधोहस्ताक्षरकर्ता (रिसीवर) के पास होटल संचालन हेतु संसाधन एवं विशेषज्ञता नहीं है। अतः रिसीवर द्वारा होटल संचालन अथवा रिसीवर के निर्देशन में होटल संचालन व्यवहारिक एवं संभव नहीं है। अतः निवेदन है कि माननीय न्यायालय इस बाबत उचित संस्था का विनिश्चयन कर उन्हें संचालन बाबत निर्देशित करें ताकि होटल संचालित किये जाने हेतु योग्य व सक्षम संस्था द्वारा उसका संचालन किया जा सके एवं इस सम्पत्ति का उचित रख रखाव एवं संधारण किया जाना संभव हो सके।

उक्त बिन्दु की निरन्तरता में निवेदन है कि होटल संचालन हेतु उपयुक्त संस्थान का विनिश्चय नहीं किये जाने तक उक्त होटल का संचालन बंद ही रहेगा एवं इस दौरान होटल की चल एवं अचल संपत्ति की सुरक्षा/संरक्षा के अत्यन्त महत्वपूर्ण कार्य पर व्यय हेतु बजट की आवश्यकता रहेगी। इस हेतु निवेदन है कि सम्पत्ति की सुरक्षा/ संरक्षा हेतु सुरक्षा एजेन्सी को न्यायालय स्तर चिन्हित कर निर्देशित किए जाने हेतु निवेदन है एवं आवर्ती व्ययों की पूर्ति किए जाने हेतु भी आवश्यक निर्देश जारी करने हेतु निवेदन है।

3. रिसीवर द्वारा कब्जा लेते वक्त उक्त सम्पत्ति में रुके हुए अतिथियों से जाते समय जो नकद भुगतान प्राप्त किया जा रहा है उसे राजकोष के पृथक मद में जमा कराया जाएगा ।
4. होटल संचालन हेतु किसी चिन्हित/चयनित संस्था को सुपुर्द किये जाने तक भी परिसर संधारण यथा सफाई, गार्डनिंग, जल व्यवस्था, विद्युत आदि मदों पर होने वाले व्यय हेतु बजट एवं वित्तीय प्रबन्धन/प्रक्रिया के संबंध में भी माननीय अदालत से निवेदन है।
5. उक्त सम्पत्ति के परिसर में स्थित आवासीय इकाइयों में होटल प्रबन्धन के कार्मिक निवासरत है जिनमें 6 कार्मिक परिवार सहित एवं 8 कार्मिक अकेले निवासरत है। उनसे आवास खाली कराने की अवधि के संबंध में माननीय न्यायालय के निर्देश हेतु अनुरोध है।



- 6- होटल के किचन व स्टोर में उपलब्ध खाद्य सामग्री, किराणा, मक्खन, पनीर आदि Consumables के निस्तारण के संबंध में भी माननीय न्यायालय के निर्देश हेतु अनुरोध है।

भवदीय

संलग्न : उपरोक्तानुसार।

(चेतन देवड़ा)

जिला कलक्टर
उदयपुर

रिसीवर प्र.सं. 9/2020

माननीय न्यायालय विशिष्ट
न्यायाधीश, सी. बी. आई., जोधपुर



28. The case at hands involves intricate question of law as well as of jurisdiction.

29. Hence, issue notice. Issue notice of stay application. Mr. R.D. Rastogi, learned Senior counsel assisted by Mr. B.P. Bohra, accepts the same and prays for three weeks' time to file reply.

30. In the facts and circumstances, obtaining in the present case, following ad-interim order is passed and directions issued :

(i) The petitioner shall not be arrested in pursuance of the arrest warrant issued in relation to the impugned order dated 15.09.2020 passed by Special Judge, CBI Cases, Jodhpur ;

(ii) The petitioner shall appear before the Court below on 08.10.2020 and furnish a personal bond of Rs.5 lacs and two sureties of Rs.2.5 lacs each. The petitioner shall be permitted to appear before the Court below along with her counsel ;

(iii) Petitioner shall also furnish an undertaking to the effect that till the disposal of the present case, she or her company will not sell, alienate or otherwise transfer the land, building or fixed assets of the hotel in question. The undertaking aforesaid shall



also contain a stipulation that the company would not create any further security interest or liability qua the assets of the Company nor shall it enhance its credit limit, without the leave of the Court.

(iv) The petitioner shall not leave India without prior permission of the Court.

(v) The effect and operation of the impugned order dated 15.09.2020 to the extent of appointing the District Collector, Udaipur as a receiver is hereby stayed till the next date (15.10.2020).

(vi) The receiver shall hand over the possession of the hotel, its assets and record forthwith to the authorised representative of the Company.

(vii) The receiver shall nevertheless prepare the list of the assets etc. and place the same before the trial Court.

31. The matter shall be taken up for consideration of remaining prayer(s) and/or the stay application on 15.10.2020.

32. Reply be filed by the next date, while giving a copy in advance to counsel for the petitioner.

सत्यमेव जयते (DINESH MEHTA),J

62-ArunV/-