

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE FIRST DAY OF MAY
TWO THOUSAND AND TWENTY

: PRESENT:

THE HON'BLE SRI JUSTICE K.LAKSHMAN

IA No. 3 OF 2020

IN

WP NO: 6573 OF 2020

Between:

1. M/s. Pennar Industries Limited, rep. by its Chief Financial Officer, Mr. J. S. Krishna Prasad, 3rd Floor, West Wing, DHFLVC Silicon Towers, Kondapur, Hyderabad-500 084.
2. J. S. Krishna Prasad, S/o. J Purnaiah Sastry

...Petitioners

(Petitioners in WP 6573 OF 2020
on the file of High Court)

AND

1. The Reserve Bank of India, 6-1-56, Secretariat Road, Saifabad, Hyderabad - 500 004
2. Yes Bank, Corporate Head Quarters, Yes Bank Tower, IFC - 2, 15th Floor, Senapati Bapat Marg, Elphinstone (W), Mumbai 400 013.
Also at Yes Bank, Ground Floor, Mayank Towers, Sy No. 31 and 31/2, Raj Bhavan Road, Somajiguda, Hyderabad - 500 082.

...Respondents

(Respondents in-do-)

Counsel for the Petitioners:

SRI K SIDDHARTH RAO

Counsel for the Respondents:

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to direct the 2nd respondent not to debit the amounts due under Letter of Credit numbers 005LM02200370001, 005LM0220038005, 005LM02200420001, 594LM02192630005, 005LM02200490006, 594LM02193500001, 594LM02200480004, 005LM02200550005, 005LM02200590002, 005LM02193600001, 594LM02200350008 and 594LM02200280001 from the account of the 1st petitioner by granting a moratorium of 90 days and not taking any coercive action including charging any penal/ ancillary interest upon development of the above Letters of Credit, pending disposal of WP No. 6573 of 2020, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

"The Writ Petition is filed aggrieved by the action of respondent No.1 in not granting appropriate reliefs including moratorium of payment of due letters of credit to various business entities availing working capital facilities from banks and accord same benefits as provided to term loans in lieu of global pandemic lockdown caused by COVID-19.

Sri K.Siddharth Rao, learned counsel for the petitioners, would submit that petitioner No.1 is a financially viable establishment and has remained profitable for the last 10 years. They have been repaying the loans to its financial institutions including respondent No.2. Absolutely there are no dues/arrears of loans of whatsoever by the petitioners. The petitioners have availed letter of credits (LCs) as non-refund based working capital from respondent No.2 Bank. Respondent No.1 vide circular dated 27.03.2020, granted certain reliefs to the borrowers of term loans and working capital facilities. Respondent No.1 also issued another circular dated 17.04.2020 informing all the commercial banks and others that in terms of the circular dated 27.03.2020 (Regulatory Package),

the lending institutions were permitted to grant a moratorium of three months on payment of all term loan instalments falling due between March 1, 2020 and May 31, 2020 (moratorium period). As such, in line with the clarification provided by the Basel Committee on Banking Supervision, in respect of all accounts classified as standard as on February 29, 2020, even if overdue, the moratorium period, wherever granted, shall be excluded by the lending institutions from the number of days past-due for the purpose of asset classification under the IRAC norms. It is also stated in the said circular that in respect of working capital facilities sanctioned in the form of cash credit/overdraft (CC/OD), the Regulatory Package permitted the recovery of interest applied during the period from March 1, 2020 upto May 31, 2020 to be deferred (deferment period). Such deferment period, wherever granted in respect of all facilities classified as standard, including SMA, as on February 29, 2020, shall be excluded for the determination of out of order status.

Learned counsel for the petitioners would further contend that the World Health Organization has declared COVID-19 as Pandemic on 13.03.2020 and subsequently, lockdown was imposed from 25.03.2020 to 14.04.2020 and the same was extended till 03.05.2020 by the Union of India. The said lockdown has caused wide spread destruction of the business of the petitioners, more specifically, a complete halt in the supply and delivery chain. It is a force majeure.

Learned counsel for the petitioners would further submit that petitioner No.1 has availed various Letter of Credits from various bankers and pays all its vendors/contractors through Letter of Credits and there is no default. An amount of Rs.199.79 crores is the outstanding payable as per the said Letter of Credits from 01.03.2020 to 31.05.2020. Petitioner No.1 has requested its vendors and has postponed/extended the encashing of Letter of Credits to a tune of Rs.51.06 crores. The outstanding amounts of Rs.68.07 crores payable in the month of May, 2020 are being negotiated with vendors of petitioner No.1 for grant of extension of encashment.

Learned counsel for the petitioners would further submit that petitioner No.1 has availed Letter of Credits from respondent NO.2 bank vide sanction letter dated 21.01.2020 and is operating from its account with Somajiguda Branch of respondent No.2 bank. He would further submit that the respondents are not extending the benefits/reliefs to the petitioners pursuant to the above said circulars dated 27.03.2020 and 17.04.2020 issued by respondent No.1 as were granted in respect of working capitals and cash credit limits/overdrafts. The respondents are also not granting deferment of loans, penalties and on the other hand, they have been resorting to various coercive methods including imposition of ancillary interest on the ground of non-payment of dues/arrears.

He would further submit that in the similar circumstances, vide order dated 27.04.2020 in W.P.(C) 2997/2020 & CM APPL.10397/2020, the High Court of Delhi passed order restraining the respondents/financial institutions therein from taking any coercive action against the petitioner therein including declassification of the petitioner therein, for the default committed by the petitioner in the Reverse Factoring Facility availed by it from the respondents therein, subject to the condition that the petitioner shall abide by all such conditions as may be stipulated by Court by its further orders.

Learned counsel for the petitioner has also relied upon the order dated 06.04.2020 of the High Court of Delhi in W.P.(C) Urgent 5/2020 and order dated 11.04.2020 in W.P.No.LD-VC No.28/2020 of the Bombay High Court which are on the very same issue.

Learned counsel for the petitioners would further rely upon another order of the High Court of Delhi dated 20.04.2020 in O.M.P. (I) (COMM) & I.A. 3697/2020, wherein the High Court of Delhi, while considering the application under Section 9 of the Arbitration and Conciliation Act, 1996, restraining the respondents therein from invocation or encashment of the bank guarantees.

He would further submit that he has served notice along with copies of affidavit in the Writ Petition and material papers on the both the respondents in compliance of the order dated 22.04.2020 and filed proof of service. Despite service of notice, there is no representation on behalf of the respondents.

Perused the entire material papers including circulars dated 27.03.2020 and 17.04.2020 and orders passed by the High Court of Delhi and the High Court of Bombay. It is the specific contention of the petitioners that it has been repaying loans to its bankers and financial institutions and there are no dues/arrears. Petitioner No.1 is a financially viable company and remained profitable for the last 10 years. Due to the present situation, more particularly imposition of lockdown due to COVID-19, respondent No.1 has extended certain benefits including 90 days moratorium and permitted all the commercial banks and non-banking financial companies to allow the said moratorium for 3 months on payment of instalments in respect of all term loans outstanding as on 01.03.2020. Clause II.6 relates to working capital facilities, but address only facilities sanctioned in the form of cash credit/overdraft. The same is silent on the Letter of Credit and sanction amount. Clause XI.7 specifies rescheduling of payments will not qualify as a default for the purpose of supervisory reporting and reporting to credit information companies which shall ensure that credit history of the borrowers shall not be affected.

Learned counsel for the petitioners would submit that respondent No.1 does not mention or specify any other types of working capital facility like the Letter of Credits and grants no protection of moratorium.

It is not in dispute about declaration of COVID-19 as pandemic by WHO and imposition of lockdown from 25.03.2020 to 03.05.2020 and it is a force majeure. The parties under contract are obviously frustrated in performing their obligations under the contract. The matter requires examination. Admittedly, the RBI gave liberty to the banks and financial institutions to allow moratoriums in respect of loans outstanding as on 01.03.2020 vide the above said circulars.

As discussed supra, the similar issue came for consideration before the High Court of Delhi and High Court of Bombay in the judgments referred supra. In the said orders, the High Court of Delhi and High Court of Bombay granted interim orders in favour of the petitioners therein considering the difficulties of the petitioners therein in the present situation of lockdown due to COVID-19 and also considering the benefits granted by respondent No.1 vide circulars dated 27.03.2020 and 17.04.2020. Despite service of notice, there is no representation on behalf of respondent Nos.1 and 2. In view of the above, *prima facie*, I am of the opinion that the petitioner is entitled for the interim relief.

Therefore, respondent No.2 is directed not to debit the amounts due under Letter of Credit Nos.005LM02200370001, 005LM0220038005, 005LM0220042001, 594LM02192630005, 005LM02200490006, 594LM02193500001, 594LM02200480004, 005LM02200550005, 005LM02200590002, 005LM02193600001, 594LM02200350008 and 594LM02200280001 from the account of petitioner No.1 for a period of 90 days and further directed not to take any coercive steps against petitioner No.1 including imposition of ancillary interest upon development of the above Letters of Credit.

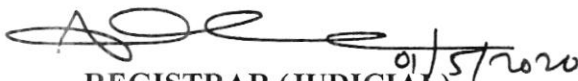
List on 11.06.2020 in motion list.

In the meanwhile, issue fresh notice to the respondents.

Learned counsel for the petitioners is permitted to take out personal notice to the respondents through RPAD and file proof of service."

SD/-SRI JUSTICE K. LAKSHMAN

//TRUE COPY//


REGISTRAR (JUDICIAL) 01/5/2020


SECTION OFFICER

To,

1. The Reserve Bank of India, 6-1-56, Secretariat Road, Saifabad, Hyderabad - 500 004
2. Yes Bank, Corporate Head Quarters, Yes Bank Tower, IFC - 2, 15th Floor, Senapati Bapat Marg, Elphinstone (W), Mumbai 400 013
3. Yes Bank, Ground Floor, Mayarik Towers, Sy No. 31 and 31/2, Raj Bhavan Road, Somajiguda, Hyderabad - 500 082
(Addressees 1 to 3 by RPAD)
4. One CC to Sri K. Siddharth Rao Advocate [OPUC]
5. One spare copy

Csk

HIGH COURT

KLJ

DATED:01/05/2020

NOTE: POST ON 11.06.2020 IN M.L

ORDER

IA. NO. 3 OF 2020
IN
WP.No.6573 of 2020

DIRECTION

