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| MHRG170021522025  | COMMERCIAL SUIT NO.5/2025 Maharashtra State Road Development through Shrimant Vishnu Patole Vs. Expressway Truck Terminus Pvt Ltd through its Director Shri Vijay Ratanchand Javeri CNR NO. MHRG170021522025 |
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ORDER BELOW EXH. 29

1. The Plaintiff has filed the suit seeking a declaration that the termination of the Concession Agreement dated November 3, 2014, is valid and maintainable, and for the recovery of outstanding dues.
2. According to the plaintiff, the defendant is guilty of committing following series of fundamental breaches of the Concession/Lease Agreement dated November 3, 2014;
 - i) Failure of payment and delayed payment of the upfront and additional payment and the service tax applicable therein;

- ii) Failure of payment of yearly lease rent and the fees of the Independent Engineer;
 - iii) The Defendant had last furnished a Bank Guarantee of Rs.1,36,00,000/- towards Performance Security under Article 3. This Guarantee had lapsed on July 19, 2017 and had not been renewed by the Defendant;
 - iv) Failure to maintain separate books of accounts and submit audited statements;
 - v) Failure to keep up to date records of the collection of parking charges at the Truck Terminus, which has prevented this Applicant from verifying the real time data;
 - vi) Inadequacies in the facilities provided for the drivers and maintenance of the Truck Terminus component;
 - vii) The Show Cause Notice also enumerated various shortcomings in the facilities which were not at par with good industrial practices;
3. Accordingly, the plaintiff by issuing notice dated 26.03.2021 had called upon the defendant to show cause as to why the concession agreement ought not to be terminated. In the said notice the plaintiff had also claimed that the defendant was liable to pay an amount of Rs.8,39,42,172/- and accordingly, it was called upon to pay the outstanding amount. It has been further claimed

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that the notice was replied by the defendant which was signed by Mr. Vijay Wagh, thereby he has admitted the dues, but asked for reconciliation of the dues. Consequently, vide letter dated 19.05.2021, the plaintiff had revoked the concession agreement.

4. The plaintiff has further claimed that Smt. Pradnya Bagde, the director of the defendant had issued a letter dated 28.02.2023 to the plaintiff and requested to reconcile the account and settle the outstanding amount and prayed for revocation of the termination. Thus, the plaintiff has claimed that in view of the default on the part of the defendant to pay the outstanding amount, the defendant is liable to pay interest @ 15% p.a. and additional penal interest @ 3 % p.a. Therefore, the plaintiff has prayed to direct the defendant to deposit amount of Rs.16,77,21,602/- as described in Exh.NNN.
5. The defendant has contested the claim by challenging the legality of the termination letter and the demand made by the plaintiff, asserting that the suit is built on suppressed facts, fabricated documents, and "fictitious" financial calculations.

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6. According to the defendant the claim for Rs. 16,77,21,602/- is grossly inflated and lacks a contractual basis. According to it, while Article 2.3 of the Concession Agreement stipulates 15% p.a. interest on staggered installments and only 3% p.a. penal interest for actual delays, but the plaintiff has applied a flat 18% interest rate to the total balance. The defendant has further claimed that it has constructed a critical service road at a cost of Rs. 2.71 Crores (+18% GST) and that the plaintiff has explicitly approved this cost to be adjusted against the defendant's by issuing letter dated January 10, 2018.
7. It is further contention of the defendant that the detailed breakdown showing that the first installment was paid in advance on October 31, 2014, and subsequent delays were minimal, with all interest and penal interest duly calculated and accounted for.
8. It has been further pleaded by the defendant that the plaintiff is legally barred from claiming material defaults or project mismanagement because it has issued a Part Occupancy Certificate on February 27, 2018 and a Full Occupancy Certificate on February 27, 2019, which were

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issued *after* the alleged 2017 defaults, proving that the plaintiff was satisfied with the project's progress and the performance of the defendant at the relevant time.

9. So far as the letter issued by Mr. Wagh is concerned, the defendant has pleaded that the letter was fabricated and unauthorized and prepared by misusing letterheads of the company, to facilitate an illegal takeover of the project. According to the defendant, the company never passed a board resolution authorizing him to admit such liabilities or to have correspondence with the plaintiff, in that capacity and that said fact was formally informed to the plaintiff that the letter was not signed by him and that Mr. Wagh had no authority to represent the company.
10. The defendant has claimed that the act of revocation of the fuel station No Objection Certificate on April 29, 2021 is illegal and non-sequitur to the Show Cause Notice. It is further claimed that Article 9.10 and Schedule A of the Concession Agreement granted it a vested right to sublease facilities without the strict necessity of additional No Objection Certificate and that the plaintiff had clear knowledge of the dealership structure with Mr. Vinay Bele

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as early as February 14, 2017, yet it continued to issue clarifications and support for the fuel station for four years before revoking the No Objection Certificate.

11. On the point of lapse of the Bank Guarantee, the defendant claims that the plaintiff had misplaced the original guarantee in its custody, making it impossible for the Defendant to surrender it to the bank for renewal. It has been further claimed that the plaintiff had issued the Termination Notice without judicially adjudicating the defendant's detailed reply to the Show Cause Notice dated April 9, 2021. Thus, it is prayed for rejection of the application.
12. I have heard the submissions advanced by learned advocate Mr. Indrajeet Bhosale for the plaintiff and Advocate Mr. Kishor Vig for the defendant.
13. During the course of arguments, learned advocate for the defendant Mr. Vig has initially made an attempt to challenge the legality of the claim made by the plaintiff. He has invited my attention to the chart showing that some of the installments were paid by the defendant well in advance. Upon perusal of the chart placed on record, it

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is found that it suggests that the amount of first installment which was due on 15.11.2014, was paid on 31.10.2014 and the third installment which was due on 05.11.2015 was paid on 02.07.2015. The chart showing the delay in payment suggests that there was delay of 47, 109, 146 and 226 days delay in making the payment of Second and Third installments.

14. According to Mr. Vig, the learned advocate for the defendant, the plaintiff has wrongly calculated the amount of interest at the rate of 18% p.a. According to him, the amount of installment payable was Rs.6,45,33,594/- out of which the defendant had paid an amount of Rs.6,26,72,022/- and thus only an amount of Rs.18,61,572/- was due and payable by the defendant. However, according to him, the plaintiff has made a excessive claim.
15. Upon perusal of the terms and conditions of Concession Agreement it is revealed that on the point of default, the defendant had agreed to pay interest at the rate of 15% p.a. on staggered installments and additional penal interest at the rate of 3% per annum on delayed

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payments. Therefore, prima facie it can be said that the plaintiff has applied a flat 18% interest rate to the total balance, which is against the terms of the agreement.

16. Lastly, learned advocate for the defendant Mr. Vig, would make a fair statement that if the defendant is directed to deposit 50% of the alleged outstanding amount, in that case the defendant is ready to deposit it under protest, on undertaking by the plaintiff that in due course if it is found that the plaintiff was not entitled to receive the above amount, in that case, it shall refund it, with interest.
17. It is to be noted that considering the fact that the project in question is for a public purpose, the continued failure to satisfy the financial obligations of the Concession Agreement results in significant loss to the state exchequer. In this view of the matter and considering the claim of the plaintiff, in my view if the defendant is directed to pay an amount of Rs.8,40,00,000/-, which would be more than 50% of the claim of the plaintiff, that would meet the ends of justice.
18. The learned advocate for the plaintiff Mr. Bhosale has submitted that in view of the order passed by the learned

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NCLT, Mumbai, the defendant cannot operate the account and as such even if the direction is given to the defendant to pay the amount, it cannot give effect to the order and as such according to Mr. Bhosale, if the Managers of the Banks with whom the defendant has maintained the account, are directed to deposit the amount in the bank account of the plaintiff, that would meet the ends of justice.

19. In this regard, learned advocate for the defendant Mr. Vig has submitted that the defendant has challenged the order before the Hon'ble NCLAT, New Delhi and that in the said Company Appeal, the Hon'ble NCLAT has permitted to Smt. Pradnya Bagde to pay statutory dues as well as salaries, if any. He would further submit that the learned NCLT is not the authority to decide as to who is the director of the company. Therefore, he would submit that the order would not affect the powers of Mr. Jhaveri, the director of the defendant and as such he has prayed to pass appropriate order.

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20. During arguments, learned advocate Mr. Vig has shared details of the bank accounts maintained by the defendant. They are as under;
1. Janata Sahakari Bank, Nashik Branch (A/c No.2301/42).
 2. Indian Bank, MIDC Nashik Branch (A/c No.6268359744) and
 3. South Indian Bank, Viman Nagar, Pune Branch (A/c No. 0829073000000115)
21. Upon perusal of the order passed by the learned NCLT, Mumbai it is revealed that it had directed Mrs. Pradnya Bagde to operate the business and management of the defendant company and that she shall be continued as the director of the defendant and that all the bank accounts are to be defreezed and be operated by Mrs. Pradnya Bagde for all the statutory payments and day to day expenses for the smooth functioning of the defendant Company.
22. Upon perusal of the order passed by the Hon'ble NCLAT, New Delhi it is found that Mrs. Pradnya Bagde has been restrained from taking serious or final decision in the

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matter and that she was permitted to pay statutory dues as well as salaries, if any.

23. In fact, the issue as to whether the learned NCLT is having power to decide the directorship of the company or not, cannot be decided by this court. Therefore, this court is required to respect the findings recorded by the NCLT, till the date the same is either set aside, varied or modified by the higher forum.
24. In fact, if the court gives direction to the defendant, in that case as submitted by the learned advocate for the plaintiff, under the garb of the dispute which is pending before the Hon'ble NCLAT, the defendant or it's directors may not give effect to the execution of the order and in that case the order passed by this court would be just a paper order.
25. I need not emphasize upon the fact that the court is supposed to pass an executable order. In view of this, I am of the view that even if the banks are not parties to the suit, considering the facts and circumstances of the case and to balance of the interests of both parties while securing the claimed amount, if the banks are directed to

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transfer the amount to the bank account of the plaintiff, that would meet the ends of justice.

26. At the same time, this court is required to protect interest of the defendant by directing the plaintiff to an undertaking that if at the conclusion of trial, it is revealed that the plaintiff was not entitled to receive the amount, it shall refund the amount to the defendant within 7 days from the date of decision of the suit, along with interest at the rate of 6% p.a.
27. Similarly, it is necessary to direct the defendant to state as to how much amount is lying in the aforesaid banks, by placing on record the statements of all the bank accounts showing the amount which is lying in the accounts, mentioned above and if it is found that as on today the amount is short to cover the amount of Rs.8,40,00,000/-, in that case it is necessary to give directions to the banks to pay the balance amount to the plaintiff out of 50% of further collection of monthly rentals, deposited in the aforesaid bank accounts.

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28. The upshot of above discussion is that the application deserves to be partly allowed. Resultantly, I proceed to pass following order;

:: ORDER ::

- i. The Interim Application of the Plaintiff is partly allowed.
- ii. The Managers, Janata Sahakari Bank, Nashik Branch (A/c No. 2301/42) Indian Bank, MIDC Nashik Branch (A/c No. 6268359744), South Indian Bank, Viman Nagar, Pune Branch (A/c No. 0829073000000115) are hereby directed to transfer the amount of Rs.8,40,00,000/- (being the amount claimed due in the Show Cause Notice and Termination Notice) into the account of the plaintiff, within 07 days from this date.
- iii. The defendant shall submit the details about the amount which is lying in the aforesaid banks, by placing on record the statements of all the bank accounts, mentioned above.
- iv. If it is found that as on today the amount is short to cover the amount of Rs.8,40,00,000/-, in that case the balance amount shall be paid to the plaintiff out of 50% of further collection of monthly rentals, deposited in the aforesaid bank accounts, from time to time, in future.
- v. The plaintiff, shall submit within three days from this date, an undertaking that if at the conclusion of trial, it is revealed that the plaintiff was not entitled to receive the amount, it shall refund the amount to the defendant

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within 7 days from the date of decision of the suit, along with interest at the rate of 6% p.a.

- vi. The managers of the aforementioned banks are directed to submit the compliance report and if the banks fail to comply with the aforesaid order, in that case the defendant shall take appropriate steps for execution of the order, in accordance with the Banking Rules and Regulations, besides the provisions incorporated in the Code of Civil Procedure.

Panvel,

(Dinesh E. Kothalikar)

Dated :- 21/04/2026

District Judge-2, Panvel-Raigad.

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