

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12386 OF 2019

Shri Dutt India Private Limited and another .. Petitioner

Vs.

The Government of India & ors. .. Respondents

Ms.Sairuchita R.Choudhary, for Petitioner.

Mr.Sureshkumar, for Respondents No.1 to 3.

**CORAM : RANJIT MORE &
M. S. KARNIK, JJ.**

DATE : 03rd DECEMBER 2019.

P. C. :

. Heard learned Counsel for the respective parties.

2. The petitioner has filed this Petition for the following reliefs.

“A. The Hon’ble Court may kindly issue writ of mandamus and any other appropriate writ and/or direction and/or order and thereby direct the Respondent No.3 to remove the seal & release the said property of the Petitioner No.2 including the Godown No. 7 and all the contents therein immediately;

B. The Hon’ble Court may kindly issue writ of mandamus and any other appropriate writ and/or direction and/or order and thereby direct the Respondent No.3 to refrain from illegally obstructing the activities of the said factory without any justified cause and/or reason, in the future.”

3. Petitioner No.2 defaulted in repaying the loan availed from respondent No.4 – Bank. Respondent No.4 therefore filed Company Petition (IB) – 2956/ I&BP/MB of 2018 under section 7 of the I&B Code, 2016 before the National Company Law Tribunal (for short NCLT), Mumbai Bench. On 20/02/2019, NCLT admitted Petition and the Interim Resolution Professional within seven days from the date of order was made available. On 07/05/2019, Insolvency Resolution Process published invitation for expression of interest in Form – G and thereafter appointed respondent No.5 as a Resolution Professional.

4. In a proceeding before NCLT, petitioner No.1 purchased the factory of petitioner No.2. Under the said proceedings, Rs.67,61,06,870.10/- is to be deposited as per schedule.

5. In the present case, we are concerned with the provident fund dues. NCLT, having considered the respondent No.3's claim has disclosed in their E-mail dated 26/07/2019, copy of which is at page 35 to the Petition and concluded that the same are at Rs.4,40,77,899/- and petitioner No.1 was to pay this amount within a period of 3 months. In terms of this order, petitioner No.1 is obliged to deposit this amount on or before 10/02/2020.

6. The present Petition is filed firstly on the ground that petitioners are ready and willing to deposit the amount of provident fund dues as per directions by NCLT and secondly respondent No.3 before NCLT agreed to de-seal petitioner No.2's property under its email dated

26/07/2019 and despite officials of respondent No.5 visiting respondent's factory for de-sealing purpose, respondent No.3 did not co-operate.

7. Learned Counsel for the petitioners submitted that petitioner No.1 is ready and willing to deposit the amount of Rs.40,77,899/- within a period of one week from today and rest of the amount will be deposited on or before 10/07/2020. Statement is accepted.

8. Shri Sureshkumar learned Counsel for respondent No.3 submitted that petitioner No.2 owes provident fund dues to the tune of Rs. 23 crores approximately. He submits that respondent No.3 proposes to either file Review Petition before NCLT or challenge the order dated 11/11/2019 before the Appellate Tribunal. Respondent No.3 is at liberty to take appropriate action. As on today they have to comply with the order of NCLT. As far as provident fund dues are concerned and in as much as said order is passed by NCLT, dues are arrived at on the basis of respondent No.3's representation. In order to protect the interest of respondent No.3 in this regard, learned Counsel for the petitioner on behalf of petitioner No.1 states that for a period of 3 months from today , she will not transfer fixed assets which they have taken over under NCLT order dated 11/11/2019. Statement is accepted. Mr.Suresh Kumar also states that he would like to file affidavit in reply to the Petition. He seeks time. We grant the request. We defer the hearing of this Petition to 09/01/2020. Till then, by way of ad-interim relief, we pass following order.

ORDER

i) Respondent No.3 is directed to remove the seal by tomorrow

affixed on the property of the petitioner No.1 taken over by petitioner No.2 under NCLT order dated 11/11/2019.

ii) Petitioner No.1 shall deposit with respondent No.2 an amount of Rs.40,77,899/- within a week from today.

lii) Balance amount of Rs.4 Crores as per NCLT order dated 11/11/2019 shall be deposited by the petitioner with respondent No.3 on or before 10/02/2020.

9. It is made clear that the contention of the respondent No.3 that they are entitled to recover amount of Rs. 23 crores from petitioner No.2 is kept open and will be considered at the next date of hearing.

[M. S. KARNIK, J.]

[RANJIT MORE, J.]