

Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

COMMERCIAL SUIT NO.LD-VC-7 OF 2020
ALONG WITH
INTERIM APPLICATION NO. LD-VC-7 (IA) OF 2020

Ideal Toll & Infrastructure Pvt. Ltd.,
Mumbai and Anr. Plaintiffs-Applicants
V/s.
ICICI Home Finance Co. Ltd.,
Mumbai & Anr. Defendants

Mr. Vikram Nankani, Senior Counsel, with Mr. Sumeet Nankani, Mr. Ameet Naik and Ms. Madhu Gadodia, i/by Naik & Naik Co., for the Plaintiff-Applicant.

Mr. Ranjit Shetty, with Mr. Rahul Dev and Ms. Avina Karnad, i/by Argus Partners, for the Defendants.

Ms. Aditi Joshi, with Mr. Aniruddh Gambhir and Ms. Preeti Mishra - Representatives of the Defendants.

CORAM : A.K. MENON, J.

DATE : 7TH APRIL 2020.

[THROUGH VIDEO CONFERENCE]

P.C. :

1. This hearing is convened on the video conferencing facility provided by the registry in view of restrictions placed on personal hearings in a court room and in view of the social distancing requirements resulting from the COVID-19 pandemic. The matter has been listed today at the request of the plaintiffs' Advocate and considering the urgency mentioned.

2. Mr. Nankani, learned senior counsel for the plaintiffs-applicants, on instructions, undertakes to ensure that the suit will be properly lodged

immediately upon the lock-down is lifted and registry functioning and comply with all office objections within a period of four weeks from such lodgment. The Advocates for the defendants and their representatives named in the appearances have participated in this hearing by video conference.

3. This suit has been filed by the plaintiffs against the defendants for a declaration that invocation of the pledge in favour of defendant no.1 in respect of pledged shares of one MEP Infrastructure Developers Limited, as detailed in Exhibit-B to the plaint is invalid; for a permanent injunction restraining the defendants from giving effect to certain e-mails including that of 31st March 2020 and thereby nullifying the sale of pledged shares, for re-crediting the pledged shares to the plaintiffs' demat account; for a temporary injunction restraining the defendants from alienating, selling or transferring the pledged shares and also to withdraw orders for sale of the pledged shares pursuant to the loan sanction letter dated 14th January 2019, annexed at Exhibit-A to the plaint.

4. Defendant no.1 has sanctioned a line of credit by way of term loan for a sum of Rs.5 crores for a period of 12 months with an option to renew the same on terms and conditions set out in the Sanction Order. Plaintiff no.1 has pledged 14 lakhs shares of MEP Infrastructure Development Limited ('suit shares'). The suit shares effectively constitute the security for the suit term loan. Defendant no.2 is a depository participant, with whom the suit shares are lying. Defendant no.1 claims that the plaintiffs herein and the plaintiff in companion Commercial suit no.LD-VC-8 of 2020 were liable to pay a sum of approximately Rs.4.72 crores to the defendant no.1 as of 20th January 2020 and being in default of the said amount, the defendant no.1 notified the plaintiffs that they would be invoking the security and liquidating the suit shares. Repeated e-mails have been sent by defendant no.1 to the plaintiffs to this effect and in the process, sale of shares commenced. It is not in dispute that a

total of 1,52,413 shares were sold in two tranches particularly on 4th March 2020 and on 31st March 2020.

5. According to the plaintiffs and as canvassed by Mr.Nankani, the defendant no.1 has ignored the fact that BSE Sensex had fallen by 9878.71 points from 1st March 2020 and as a result, the price of the suit shares had also dropped. At all material times, he submitted that the shares were valued @ between Rs.40/- to Rs.37.50 per share and on 2nd March 2020, the shares were trading @ Rs.35/- per share, but on 1st April 2020, the shares value had crashed to Rs.11.55 per share. The sharp decline was caused by the effect of the lock-down announced throughout the country, as a result of which road traffic came to a standstill and the only source of income of the plaintiffs-company and MEPDIL also was badly affected.

6. Mr. Nankani's submitted that the Reserve Bank of India had issued a Press Release dated 27th March 2020, annexed at Exhibit-CC to the plaint declaring the RBI's 'Statement on Developmental and Regulatory Policies' as a result of the financial condition caused by Covid-19. It inter alia contemplates a moratorium on term loans. Mr.Nankani has relied upon paragraph 5 of the said policy statement, which provides that all commercial banks and lending institutions, including the defendant no.1, were permitted to allow a moratorium of three months on payment of installments in respect of all term loans outstanding as on 1st March 2020 and the repayment schedule of subsequent due dates was permitted to be shifted by three months. He submitted that despite this moratorium being announced, defendant no.1 has proceeded to sell the shares and had not extended time for payment.

7. Vide a further circular addressed to all relevant financial institutions, the RBI had announced a "Covid-19-Regulatory Package" Mr.Nankani relied upon the provisions of paragraph 2 thereof to state that the term loan granted by

defendant no.1 must be subjected to a three month moratorium and in that view of the matter, sale of shares could not be permitted. Mr. Nankani submitted that the total value of the shares pledged forming part of this and its companion suit at its lowest value as on date is over Rs.6 crores and therefore the defendant no.1 is substantially protected. He submitted that the benefit of the moratorium must be extended to the plaintiffs especially in view of the RBI guidelines and RBI instructions, as also the fact that other courts have considered these aspects. He referred to the decision of the Delhi High Court in the case of *Anant Raj Ltd. Vs. YES Bank Ltd. in Writ Petition (C) Urgent No.5/2020*, in which case the Court by an order dated 6th March 2020 granted time to make payments having formed a prima facie view that the account of the petitioner therein could not have been classified in NPA; directing status-quo ante and restoring the account classification as is stood on 1st March 2020. He therefore submitted that the effect of the RBI circular is also to prevent affected borrowers from being declared NPA. At this stage, he submitted that he is entitled to relief in terms of prayer clauses (c) and (d) of the suit.

8. The application is opposed on behalf of the 1st defendant-bank by Mr.Shetty who submits that as between the plaintiffs in this suit, filed by the Ideal Toll & Infrastructure Pvt. Ltd and one of its Directors, as on date a total 28,97,587 shares have been pledged to the 1st defendant. In the companion suit filed by a different individual and Director, 29,94,357 shares have been pledged. Mr.Shetty submits that the outstanding amount due from the plaintiffs in this suit as on 12th January 2020 was a sum of Rs.1.71 crores. He further submits that in the second suit filed an individual Director, the amount outstanding was Rs.3.01 crores and therefore a total sum of Rs.4.72 crores is due from the plaintiffs in both the suits. He was instructed to state that if this amount was overdue as of 12th January 2020 and was unaffected by the moratorium, which in any event would apply to loan repayments due after 1st March 2020. Due dates of installments payable from and after 1st March 2020

would therefore be required to be postponed; whereas, the amounts payable by the plaintiffs were overdue as of January, 2020 itself. It is, therefore, submitted that the moratorium does not apply. He further submitted that if by 13th April 2020, the account is not regularized by payment of Rs.1.71 crores the plaintiffs' account would have to be declared as a NPA. He therefore opposed grant of relief.

9. Having heard learned counsel for the parties and having considered their respective submissions, I am of the view that the protection sought to be availed of by the plaintiffs by virtue of the RBI circulars would clearly apply to all amounts due after 1st March 2020. In the instant case, the plaintiffs were liable to pay Rs.1.71 crores as of 12th January 2020. There is no doubt that defendant no.1 has a vested right to sell the pledged shares. The sale of shares at this moment would appear to be prompted by anxiety to recover the amount of Rs.1.71 crores that is overdue from the plaintiffs. In view of the willingness of the plaintiffs to regularize the account and considering the fact that the RBI has clearly opined that the moratorium can be granted for three months on payment of all installments, it would appear that it is only the installments falling due between 1st March 2020 and 31st May 2020 that are contemplated under the Covid-19 Regulatory Package, as seen from paragraph 2 of RBI Circular dated 27th March 2020, annexed at Exhibit-DD to the plaint. The Press Release dated 27th March 2020 on 'Statement of Developmental and Regulatory Policies' seems to suggest that moratorium would apply in respect of payment of installments of terms loans outstanding "as of 1st March 2020". That would seem to include even the amounts due to the 1st defendant from the plaintiffs in this suit but the Statement of Developmental and Regulatory Policies is only a Press Release setting out the policies to address stress in financial conditions caused by Covid-19. They do not constitute the directions to the banks.

10. In my view the directions to the banks and financial institutions is to be found in the RBI Circular No.RBI/2019-20/186 (DOR No.BP.BC.47/21.04.048/2019-20) dated 27th March 2020. This is the effective circular directing the banks to grant benefit of Covid-19 Regulatory Package. This circular issued directions in detail for rescheduling of term loan payments and working capital facilities, easing of working capital financing, classification as Special Mention Accounts and Non-Performing Assets. It is this and certain other conditions that came into effect as on 27th March 2020. The instructions in paragraph 2 reads as follows :-

“2. *In respect of all terms loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions and NBFCs (including housing finance companies) (“lending institutions”) are permitted to grant a moratorium of three months on payment of all **installments, falling due between March 1, 2020 and May 31, 2020.** The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.”*

(Emphasis supplied)

11. The footnote to clause 2 reads as follows ‘*Instalments will include the following payments falling due from March1, 2020 to May 31, 2020:(i)principal and/or interest components; (ii) bullet repayments; (iii) Equated Monthly instalments; (iv) credit card dues.*’ It is therefore clear that the grant of moratorium of three months would apply to the payment of all installments falling due between 1st March 2020 and not those installments which were due prior thereto. I am therefore unable to agree with the submissions of Mr. Nankani that the amount admittedly due as of January 2020

would be covered by the moratorium. This moratorium would however cover the amounts claimed by defendant no.1 in the companion suit filed by the individual Director viz. Commercial Suit No.LD-VC-8 of 2020. In the present suit, therefore, I am of the view that both the parties' rights are entitled to be protected and with that intention, I am of the view that the order that I propose to pass will meet the ends of justice.

12. Considering the fact that the plaintiffs' income stream now stands seriously depleted, the fact that the defendants cannot dispute, I pass the following order :-

- (i) Plaintiffs shall pay to the defendant no.1 a sum of Rs.30 lakhs on or before 18th April 2020.
- (ii) Plaintiffs shall pay a further sum of Rs.70 lakhs to defendant no.1 on or before 30th April 2020.
- (iii) The balance amount of Rs.71 lakhs, along with accrued interest on overdue amount as of 12th January 2020 till date of payment shall be paid over to defendant no.1 on or before 15th May 2020.
- (iv) In the meanwhile none of the pledged shares, excluding those that have already been sold at the close of trading today, shall be sold by the defendants.
- (v) Till a default is committed, the plaintiffs suit loan account shall not be declared a Non-Performing Asset. In the event of any default in payment of any of these amounts, the defendant no.1 shall be at liberty to sell shares pledged by the plaintiffs in Commercial Suit No.LD-VC-8 of 2020 to the extent required to recover the balance due as on the

date of default in Loan Account No.120000002080 pursuant to sanction letter dated 14th January 2019, annexed at Exhibit-A to the plaint without further reference to court.

- (vi) Since certified or authenticated copies may not be available for some time, all concerned shall act on a copy of this order digitally signed by the Personal Secretary of the Court and transmitted by email to the Advocates concerned.

(A.K. MENON, J.)