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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 2997/2020 & CM APPL. 10397/2020, CM APPL. 10398/2020, CM APPL. 10399/2020**

EASTMAN AUTO & POWER LIMITED ..... Petitioner

Through: Ms.Manmeet Arora (Email: manmeet.p.arora@gmail.com 9811333871)
Mr.Keshav Sehgal & Mr.Gaurav H. Sethi, Advs.(9999989899, 9891010420 keshavsehgal.10@gmail.com)

versus

RESERVE BANK OF INDIA & ORS. ..... Respondents

Through: 1.Mr.Ramesh Babu MR, Adv for resp. no.1
Lex Orbis rbabumr@gmail.com
+91 9873922734, R-1 (RBI).
2.Ms.Suruchi Suri, Adv. for R-2 (Bank of Baroda), 9810255518
suruchi.suri@surico.in
3.Mr. Vipin Rai, Adv. for respondent no. 3
4.Ms. Arti Singh, Adv. for R-4 (PNB), 9899838859,
asalawyers@gmail.com
5.Mr. Ashish, AR for Punjab and Sind Bank (respondent no.6)
ho.imd@psb.co.in
+91-9015 285 882
6. Mr. OP GAGGAR, Adv. for Union Bank/R-5 9810185751, opgaggar@gmail.com

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% 27.04.2020

This hearing has been held by video conferencing.

CM Nos.10398-99/2020 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 2997/2020 & CM APPL. 10397/2020

1. Issue notice. Notice is accepted by the learned counsels mentioned hereinabove for the respective parties. They pray for and are granted a week's time to seek instructions/file reply, if any.

2. None appears for the respondent no.7 inspite of notice of today's hearing. Let fresh notice be issued to the respondent no.7 to be served by the petitioner through electronic mode, returnable on 15th May, 2020.

3. As far as the respondent no. 6 is concerned, the learned counsel for the petitioner submits that after the filing of the present petition, the respondent no. 6 has accepted the representation of the petitioner and granted an extension of the financial facility availed of by the petitioner.

4. Mr. Ashish, who appears for the respondent no. 6 affirms the above statement.

5. In view thereof, the learned counsel for the petitioner prays for leave to delete the respondent no. 6 from the array of parties. Respondent no. 6 is deleted from the array of parties. The petitioner shall file an amended memo of parties within one week from today.

6. It is the case of the petitioner that the petitioner had availed electronic bill discounting facility known as Reverse Factoring Facility through the Trade Receivable Discounting Systems(TReDS) from the respondent nos. 2 to 7. For the facility so availed, the petitioner has made full payment till 31.03.2020. However, due to the restrictions declared because of the COVID-19 pandemic, the petitioner has not been able to make payment for servicing of such facility for the period beyond

31.03.2020. The petitioner has represented to the respondent nos. 2 to 7 seeking extension of such facility on conditions as may be stipulated by the said respondents. In fact, the respondent no. 6 has, by a letter dated 24.04.2020, agreed to extend the facility by a period of 90 days subject to the conditions mentioned in the letter. The petitioner is agreeable to the conditions so stipulated by the respondent no. 6. As noted hereinabove, Mr. Ashish, who appears for the respondent no. 6 affirms the above.

7. The learned counsel for the petitioner submits that other banks/financial institutions namely the ICICI Bank, Canbank Factors Limited, State Bank of India (orally) and IndusInd Bank have also agreed to the extension of the similar facility availed by the petitioner from such banks/financial institutions.

8. The learned counsel for the petitioner further submits that the petitioner is ready and willing to abide by such reasonable conditions as may be stipulated by the respondents for grant of extension of the facility, specifically keeping in view the notifications/circulars dated 27.03.2020 and 17.04.2020 issued by the respondent no. 1.

9. She places reliance on the interim order dated 06.04.2020 passed by this Court in WP(C) Urgent 5/2020, titled as ***Anant Raj Limited v. Yes Bank Limited*** as also the order dated 13.04.2020 of this Court in WP (C) 2959/2020, titled as ***Shakuntla Educational& Welfare Society v. Punjab& Sind Bank*** to submit that the petitioners therein have been granted protection by this court keeping in view the mandate of the notifications dated 27.03.2020 and 17.04.2020 issued by the respondent no. 1.

10. The learned counsel for the respondent no. 1 prays for time to seek instructions on whether the facility availed by the petitioner would be

covered by the notifications/office orders dated 27.03.2020 and 17.04.2020.

11. The learned counsel for the respondent no. 4 (Punjab National Bank) submits that the bank has agreed to the representation of the petitioner and is in the process of issuing a letter sanctioning the extension of the facility to the petitioner for a period of 60 days subject to the conditions stipulated therein. The period of 60 days has been agreed as a matter of policy for such facility being extended to the customers of the respondent no. 4.

12. The learned counsel for the petitioner, on the other hand, submits that while other reasonable conditions as may be stipulated by the respondent no. 4 would be acceptable to the petitioner, the petitioner would be praying for an extension of the facility by a period of 90 days as has been agreed by the other banks/financial institutions.

13. The petitioner would be at liberty to make such representation to the respondent no. 4 and the respondent no. 4 shall consider such representation, if made, remaining uninfluenced by the pendency of the present petition as also by the order passed today.

14. As far as the respondent no. 2 (Bank of Baroda) and respondent No.5(Union Bank of India) are concerned, the petition is opposed on the ground that the facility availed by the petitioner would not be covered by the notifications/office orders dated 27.03.2020 and 17.04.2020 issued by the respondent no.1. The learned counsels appearing for respondent no. 2 and 5 submit that such facility is intended to provide working capital to the MSME(s) who have made supplies to the petitioner and raised invoices on the petitioner. Such facility is not intended for the benefit of the petitioner. They further submit that any default in the timely payment

by the petitioner would in fact make the petitioner liable for the penal consequences as provided in the Payment and Settlement Systems Act, 2007.

15. I have considered the submissions made by the learned counsels for the petitioner and the respondent nos. 2 and 5. *Prima facie*, I am unable to agree with the submissions made by the respondent nos. 2 and 5. Admittedly, the responsibility of making the payment, including the interest component for such facility, is on the petitioner. The object of issuing notifications/circulars dated 27.03.2020 and 17.04.2020 was to provide financial relief to the parties who have availed the term loans and working capital facilities. This Court in its order dated 06.04.2020 passed in WP (C) Urgent 5/2020 (Supra), had considered the abovementioned notifications/ circulars of the respondent no. 1 and observed that prima facie, the intention of the respondent no. 1 appears to be to maintain *status quo* as on 01.03.2020 with regard to the financial facilities that have been granted to various parties and have fallen due. The learned counsel for the petitioner has also drawn my attention to Clause 5 and 8 of the Annexure to the Circular dated 30.07.2015 issued by the respondent no. 1, which *prima facie* shows that such Factoring facility was to be considered at par with loans and advances extended by the banks.

16. In view of the above and till the next date of hearing, the respondent nos. 2 to 5 and 7 (respondent no. 6 has been deleted today) are restrained from taking any coercive action against the petitioner, including declassification of the petitioner, for the default committed by the petitioner in the Reverse Factoring Facility availed by the petitioner from such respondents, subject to the condition that the petitioner shall

abide by all such conditions as may be stipulated by this Court by its further orders. The said respondents shall, however, be free to consider the representation of the petitioner for further extension of the facility, remaining uninfluenced by any observation of this Court in the present order.

17. A copy of this order shall be uploaded on the website of the High Court and shall also be provided to the learned counsels on the e-mail address provided.

NAVIN CHAWLA, J

APRIL 27, 2020/*Arya*