

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WP-LD-VC NO. 88 OF 2020**

Zee Learn Ltd. ...Petitioner

Versus

UTI Asset Management Co. Ltd. & Ors. ...Respondents

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Mr.Aspi Chinoy, Senior Counsel a/w. Mr. Janak Dwarkadas, Senior Counsel, Mr.Rohan Dakshini, Ms.Namrata Shah, Mr. S.Laskari, Ms. Ashna Contractor and Mr.Bhavin Shah i/b. Rashmikant and Partners for the Petitioner.

Mr.Darius Khambata, Senior Counsel a/w. Mr.Pheroze Mehta, Mr.Vividh Tandon, Mr.Shanksen Gupta, Ms.Manini Bharati, Ms.Chhavi Jain and Ms. Uttara Srinivasan i/b. M/s. Tri Legal for the Respondents.

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**CORAM : R. D.DHANUKA &  
V.G.BISHT, JJ.**

**DATE : 13 TH JULY, 2020  
(THROUGH VIDEO CONFERENCING)**

**P.C.:**

1. Heard learned Senior Counsel for the parties at length.
2. By this Petition filed under Article 226 of the Constitution of India, the petitioner seeks to impugn the letter dated 4<sup>th</sup> June, 2020 addressed by respondent No.1 to the petitioner and also seeks

extension of redemption date which is 8<sup>th</sup> July, 2020 to a date three months after the Government allows schools to reopen, subject to the balance/ outstanding debenture amount continuing to bear/ accrue interest at 10.40 % per annum till such extended date.

3. The petitioner had made a private placement of 650 unlisted redeemable non-convertible debentures of Rs. 10,00,000/- each for cash at par aggregating to Rs. 65,00,000/- in the month of March, 2015 with 10.40% XIRR payable at the time of maturity and having redemption date of 8<sup>th</sup> July, 2020.

4. The respondent No.1 A is a sole trustee and was a party to the said agreement.

5. It is the case of the petitioner that under the said agreement, the petitioner made various payments to respondent No.1A. It is the case of the petitioner that, however, since March 2020 in view of the situation arising out of COVID-19 pandemic, the petitioner committed default in making payment of certain installments to respondent No.1A. According to the petitioner, the petitioner has to make payment of Rs. 44 Crores to respondent No.1A under the said agreement.

6. The respondent No.1A raised demand for making payment of the amount under the agreement. The petitioner, however, could not make any payment. The petitioner accordingly filed this Petition on various grounds impugning the said notice of demand dated 4<sup>th</sup> June, 2020 and for seeking extension of redemption date which is admittedly fall due on 8<sup>th</sup> July, 2020.

7. This Petition is vehemently opposed by raising various issues.

8. Mr.Chinoy, learned Senior Counsel for the petitioner, invited our attention to the various exhibits, which are part of the record. It is submitted by learned Senior Counsel that respondent No.1 is a public undertaking though 100% shares in respondent No.1A are not held by Government. Above 70% shares in respondent No. 1A are held by other public authorities. The respondent No.1A is a public financial institution withing the meaning of Section 2 (72) of the Companies Act and is amenable to the writ jurisdiction under Article 226 of the Constitution of India and would fall under Article 12 of the Constitution of India.

9. The learned Senior Counsel invited our attention to the moratorium issued by Reserve Bank of India and would submit that though the said moratorium does not refer to the mutual funds or debentures, principles behind the said circular issued by Reserve Bank of India should be extended to the petitioner also. He submits that the petitioner was regularly paying installments to respondent No.1A however committed default in view of the situation arising out of COVID-19 pandemic and thus, the petitioner only seeks extension of time to make the balance payment with interest as agreed under the Debenture Deed agreed upon by the parties. He also invited our attention to the separate circular issued by Reserve Bank of India granting similar moratorium related to the mutual fund companies.

10. Insofar as respondent No.1 is concerned, it is submitted by learned Senior Counsel that respondent No. 1 is an agent of respondent No.1A. He submits that respondent No.1A is a sole trustee under the said Debenture Deed entered into between the parties. The auditor of respondent No.1A is to be appointed by the Auditor Comptroller of India. The respondent No.1A is also a public body and thus amenable to the writ jurisdiction. It is submitted by

learned Senior Counsel that even in case of the contract entered into between the private party and a public undertaking, in case of contractual matters, the principles of Article 14 of Constitution of India can be pressed into service in case of action of such public undertaking being arbitrary. He submits that it is not the case of respondent No.1A that the petitioner has not made payment under the said Debenture Deed to the respondents in past. The respondent No.1A thus cannot declare the petitioner as a defaulter in the prevailing circumstances faced by the large number of people as well as companies including the petitioner.

11. It is submitted by learned Senior Counsel that licensees of the petitioner are not in a position to recover the school fees from the students since March 2020 and therefore they are unable to make such payment to the petitioner to enable the petitioner to discharge its obligation under the said Debenture Deed to respondent No.1A. He submits that though moratorium refers to terms loans and mutual funds, he submits that the principles behind the issuance of such circular and the guidelines issued by the Reserve Bank of India should be extended to the facts of this case also.

12. Mr.Khambata, learned Senior Counsel for the respondents, on the other hand, strongly raised an issue of maintainability on the ground that respondent No.1 is a private entity whereas respondent No. 1A does not fall under Article 12 of the Constitution of India and thus would not be amenable to the writ jurisdiction of this Court. He relied upon several judgments for consideration of this Court in support of his submission. We need not refer to those judgments in this order in view of there being no dispute about the principles laid down therein.

13. It is submitted by learned Senior Counsel that the petitioner is in default of making payments under the said Debenture Deed not only during the period of COVID-19 pandemic but has been a defaulter since 4<sup>th</sup> July, 2019. The last default was committed by the petitioner on 31<sup>st</sup> March, 2020. It is submitted that there are above 21,000 small investors who are required to be paid by respondent No.1A for the debentures held by them. If any relief as sought by the petitioner is granted, it would affect those 21,000 small investors. The respondent No.1A in that event would commit default in making repayment to those 21,000 small investors.

14. It is submitted by the learned Senior Counsel that the transaction between the two parties herein is purely contractual and no case for interference of whatsoever nature is made out by the petitioner in this Writ Petition. The learned Senior Counsel invited our attention to two moratoriums issued by Reserve Bank of India on 27<sup>th</sup> March, 2020 and 23<sup>rd</sup> May, 2020 and would submit that none of those moratoriums/ circulars would apply to the respondent No.1A. He submits that those circulars would apply only to the parties to whom those circulars are addressed and in case of term loans. He submits that none of the terms and conditions of those circulars would apply to the respondent No.1A. The petitioner can not avail of any benefit under the said circulars which are not applicable to the respondent No.1A at all in any manner whatsoever.

15. In his alternate submission, it is submitted that in any event under those two circulars issued by Reserve Bank of India, the parties to whom the said circulars are applicable are permitted to give moratorium. There is no direction issued by Reserve Bank of India to grant any moratorium to any of the defaulters. He submits that even otherwise, the said circulars on merits would not apply to the respondent No.1A. It is submitted by learned Senior Counsel that it is an admitted position that 100% shares of respondent No.1A

are not held by Central Government and thus though respondent No.1A is a public financial institution within the meaning of Section 2 (72) of the Companies Act, it would not be amenable to the writ jurisdiction under the Article 226 of the Constitution of India.

16. The learned Senior Counsel invited our attention to the Deed of Guarantee executed by the guarantor on behalf of the petitioner and would submit that the guarantee given by Zee Entertainment Enterprises Limited on behalf of the petitioner is a profit making company and to protect the guarantor, the petitioner has filed this Petition which shall not be entertained by this Court.

17. In rejoinder, Mr. Chinoy, learned Senior Counsel for the petitioner would submit that even if the circulars issued by Reserve Bank of India would not apply directly to the respondent No.1A, the principles behind issuance of such circular must be kept in mind by this Court. The respondent No.1A cannot take undue advantage of the situation arising out of COVID- 19 pandemic.

18. Insofar as the issue of maintainability of this Petition is concerned, it is not in dispute that the Government does not have 100% shareholding of respondent No.1A. Insofar as respondent

No.1 is concerned, it is a limited company and is an agent of respondent No.1A. It is not even the case of the petitioner that respondent No.1A is also amenable to the writ jurisdiction under Article 226 of the Constitution of India.

19. In our view even if respondent No.1A falls within the definition prescribed under Section 2 (72) of the Companies Act, merely on that ground the respondent No.1A cannot be subjected to the writ jurisdiction of this Court under Article 226 of the Constitution of India. In our view, Writ Petition itself is not maintainable on that ground.

20. Be that as it may, since learned Senior Counsel appearing for the parties addressed this Court also on merits of the matter, we deal with the submissions.

21. The entire Petition is based on the reliance placed on the moratoriums dated 27<sup>th</sup> March, 2020 and 23<sup>rd</sup> May, 2020 issued by Reserve Bank of India. A perusal of the said circular clearly indicates that it applies to all Commercial Banks, all Primary (Urban) Co-operative Banks, States Co-operative Banks, District Central Co-operative Banks, All India Financial Institutions, All Non-Banking

Financial Companies and also deals with terms loans and working capital facilities provided by those entities. It is clearly beyond reasonable doubt that those two circulars would not apply in case of mutual funds and debentures.

22. Mr. Chinoy, learned Senior Counsel could not demonstrate as to how the respondent No.1A would fall under any of those categories specifically prescribed under those circulars dated 27<sup>th</sup> March, 2020 and 23<sup>rd</sup> May, 2020.

23. In our view the reliance placed by the petitioner on those two circulars for the purpose of availing benefits under those two circulars is misplaced. None of these circulars would apply to the facts of this case. The concession provided under those two circulars cannot be availed by the petitioner.

24. Be that as it may, a perusal of the circulars clearly indicate that those circulars only permits those entities to provide moratorium of three months and does not record any directives to grant such moratorium.

25. In our view, Mr. Khambata, learned Senior Counsel is right in his submission that neither of those two circulars are applicable nor the petitioner has made out any case to avail of the benefits under any of these circulars. A perusal of the record further indicates that the petitioner has committed default in making payment to respondent No.1A under the Debenture Deed not only during the lock down period since March, 2020 till date but has already been defaulted since 4<sup>th</sup> July, 2019. In my view the petitioner cannot be allowed to raise the plea that the petitioner has committed default because of lock down situation since March, 2020.

26. The respondent No.1A is a sole trustee and has to make payment to 21000 small investors out of the funds which they would receive on redemption of the debentures from the petitioner. If this Court interfere with the two notice of demand and grant extension to the petitioner, the respondent No.1A would commit default to those 21000 small investors. We are not inclined to interfere in this Petition on that ground also.

27. In our view, Mr. Khambata, learned Senior Counsel for the respondents, is right in his submission that the guarantor Zee

Entertainment Enterprises Limited is a profit making company and is liable to face the consequence of default committed by the petitioner. It is for the petitioner to make an arrangement for the balance amount on the due date which the petitioner has failed.

28. In our view, no case is made out by the petitioner for inference in this Petition. This Petition is devoid of merits and accordingly disposed of. No order as to costs.

29. This order will be digitally signed by the Personal Assistant of this Court. Associate of this Court is permitted to forward the parties copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

**(V.G.BISHT, J.)**

**(R.D.DHANUKA, J.)**