

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.11.2014

+ **W.P.(C) 4785/2014 & CM No. 9531/2014**

INDIAN OVERSEAS BANK

..... Petitioner

versus

COMMISSIONER OF CUSTOMS (APPG.) & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Padma Priya.

For the Respondents : Mr Satish Kumar, Sr. Standing Counsel with
Ms Shruti Yadav.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner bank (hereafter 'IOB') has filed the present petition, *inter alia*, praying as under:-

- “(a) Issue a writ, direction or order in the nature of certiorari to quash the Communication/Notice dated 16.05.2014 issued by the Respondent no.1 herein, i.e., the Commissioner of Customs, Marmagoa to the petitioner herein as also the communications dated 22.04.2014 and 12.05.2014 issued by the Respondent no.1 to the Reserve Bank of India;
- (b) Restrain the Respondent no.1 from taking any adverse action against the petitioner in the nature of blacklisting or otherwise as stipulated in the impugned communications dated 22.04.2014 and 12.05.2014’;

- (c) Restrain the Respondent no.1 from disseminating any adverse information/comments about the Petitioner to any third party/Government departments etc. as mentioned in the said impugned communications dated 22.04.2014 and 12.05.2014.”

2. By a notice dated 16.05.2014, IOB was called upon to appear before the Deputy Commissioner of Customs (A) with all relevant documents and was further informed that in absence of its appearance an ex-parte decision would be taken for enforcement of the bank guarantees (hereafter ‘BGs’) furnished by IOB to the Customs Authorities (being LG No 408/IOB/LGI/57/2012 dated 03.04.2012 for ₹ 37,91,852 and LG No 408/IOB/LGI/54/2012 dated 31.03.2012 for ₹ 25,32,940/-).

3. IOB is further aggrieved by communication dated 12.05.2014, sent by the Customs Authorities to Reserve Bank of India, *inter alia*, seeking that proceedings be initiated against IOB for not fulfilling its obligations under the aforementioned BGs. In addition, IOB has also impugned a letter dated 22.04.2014 whereby the Deputy Commissioner Customs (A) had threatened IOB that if IOB failed to renew the BGs all authorities and departments would be informed of IOB’s failure to honour its commitments; in effect, IOB would be blacklisted.

4. According to IOB, the BGs in question had lapsed and no request for renewal of the BGs had been received from respondent No.2 (M/s Alpine Minmetals India Pvt. Ltd, hereafter ‘Alpine’), at whose instance the BGs had been issued. Therefore, there was no question of renewing the same and IOB could not be compelled to do so.

5. The controversy in the present case involves a question as to interpretation of the BGs issued by IOB in favour of the President of India to secure the Customs Authorities against any loss, damage caused or suffered on account of failure on the part of Alpine to comply with any terms and conditions as contained in the provisional assessment test bond.

6. The controversy involves interpretation of clause 5, 7 and 8 of the BGs. Before proceeding further, it would be relevant to refer to clauses 7, 8 and the relevant portion of clause 5 of the BG (LG No 408/IOB/LGI/54/2012), which are reproduced as under:-

“5.....This Guarantee will remain in force for SIX (6 months) months of its issue and we undertake to renew the Bank Guarantee at the request of the exporter till the matter for which the Guarantee is furnished is decided.

XXXXX

XXXXX

XXXXX

XXXXX

7. We hereby undertake to renew the Bank Guarantee from time to time till the matter is finally decided and also confirm that the guarantee will not be revoked by the guarantor without prior written consent of the government.

8. Notwithstanding anything contained herein:

a. Our liability under this guarantee shall not exceed Rs. 25,32,940/- (Rs. Twenty Five lakhs Thirty two thousand nine hundred forty only).

b. This Bank Guarantee shall be valid up to 30th September 2012.

c. We are liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only if you serve upon us a written claim or demand on or before 30th September, 2012.”

7. The language of the BG being LG 408/IOB/LGI/57/2012 is similar except that the amounts differ and the last date for receiving a claim under clause 8 (c) of the BG is 02.10.2012.

8. A plain reading of clause 7 of the BGs indicates that IOB had undertaken that BG would not be revoked without the consent of the Government and the same would be renewed from time to time till the matter is finally decided. However, it is trite law that a document has to be read as a whole. The Supreme Court in **P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi**: (2007) 10 SCC 231 held as under:

“13. A document, as is well known, must be read in its entirety. The intention of the parties, it is equally well settled, must be gathered from the document itself. All parts of the deed must be read in their entirety so as to ascertain the nature thereof. ”

9. Thus, it would be necessary to reconcile the language of clause 7 with the other terms of the BGs. The latter part of clause 5 of the BGs clearly indicate that the BGs would be in force only for a limited period of time and would be renewed at the request of the customer i.e. Alpine. If clause 7 of BGs is read harmoniously with clause 5, the inescapable conclusion is that while IOB is obliged to keep the BGs alive and not permit the same to be revoked by Alpine, the said obligation is limited only during the valid tenure of the BGs. The obligation of IOB to renew the BGs – as expressed in the opening words of clause 7 – is subject to compliance with clause 5, that is, subject to request of Alpine. Reading the BGs in any other manner would render the latter part of clause 5 as quoted above

otiose. The clause limiting the validity of BGs to six months would be of no effect.

10. In the present case, Alpine has not made any request for renewal of the BGs and the respondent authorities have also not ensured that Alpine take the necessary steps for IOB to renew the BGs and the BGs lapsed. It is difficult to accept that clause 7 of the BGs would enjoin IOB to renew the BGs without any request from IOB's customer at whose instance the BGs had been issued.

11. Notably, the opening words of clause 8 contain a *non obstante* clause which expressly indicates that IOB would be liable to pay the guaranteed amount only if a written claim was served on IOB before the last date of the validity of the BG.

12. The Supreme Court in the case of State of **Bihar v. Rajaya M.S.E.S.K.K. Mahasangh**: (2005) 9 SCC 129 explained the import of a *non obstante* clause in the context of statutory provisions in the following words:

“45. A *non obstante* clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the *non obstante* clause. It is equivalent to saying that in spite of the provisions of the Act mentioned in the *non obstante* clause, the provision following it will have its full operation or the provisions embraced in the *non obstante* clause will not be an impediment for the operation of the enactment or the provision in which the *non obstante* clause occurs.”

The above principles would be equally applicable for interpretation of deeds. Thus, on plain reading, clause 8 of the BG, would override other provisions of the BG by virtue of the express *non obstante* provision.

13. Indisputably, no claim had been received by IOB during the validity period of the BGs and thus IOB has no obligation to pay any amount to the Customs Authorities. In this view, the present petition is allowed and the communications dated 22.04.2012 and 12.05.2014 issued by respondent no.1 stand quashed. Further the notice dated 16.05.2014 issued by respondent no.1 is also set aside.

14. The application also stands disposed of.

VIBHU BAKHRU, J

NOVEMBER 10, 2014

MK/pkv

