

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO. 857 of 2016**

- 1] M/s Abhishek Engineers
a sole Proprietorship of
Shri Uday Kamlakant Naik,
having its office at Karma
Empress No.5 to 13, 1st Floor,
Near KTC Bus Stand, Mundvel,
Vasco da Gama, Goa 403 802.
- 2] Shri Uday Kamlakant Naik,
major in age, Indian National,
Sole Proprietor of the Petition no.01,
having his office at Karma Express No.
5 to 13, 1st Floor,
Near KTC Bus Stand, Mundvel,
Vasco da Gama, Goa 403 802.

Petitioners**Versus**

Corporation Bank,
Through its Assistant General Manager,
having its Branch Office at
Raghunath Apartment,
F.L.Gomes Road, PB No.86,
Vasco da Gama, Goa

.. Respondents.

Shri Zeller D'Souza, Advocate for the petitioners.

Ms. Priyanka Kamat, Advocate for the respondent.

CORAM : F.M.REIS & NUTAN D. SARDESSAI, JJ
DATED : 26/10/2016.

Oral Judgment (Per F.M. Reis, J):

1. Heard Shri Z.D'Souza, learned counsel appearing for the petitioners and Ms. P. Kamat, learned counsel appearing for the respondents.
2. Rule. Heard forthwith with the consent of the learned counsel appearing for the respective parties.
3. Ms. Kamat, learned counsel waives notice on behalf of the respondent.
4. The grievance of the petitioners is that a request by the petitioner for renewal of a bank guarantee filed on 11th August, 2016 has not yet been issued by the respondent.
5. On the earlier dates of hearing, the learned counsel appearing for the respondent has pointed out that such request cannot be examined as Proprietor of the petitioners who has substantial interest in sister concern had not liquidated the liabilities of the respondent-bank. As far as such entities are

concerned, it is not disputed that in the meanwhile on account of the OTS scheme floated by the respondent, the liabilities of such concerns have been duly liquidated. Two companies have been cleared though with regard to one company the OTS is still pending for consideration.

6. The learned counsel appearing for the respondent further points out that the proposal submitted by the petitioners for renewal of the bank guarantee is pending for approval before the higher authorities and that the decision for renewal of bank guarantee has not been considered, as the petitioners are called upon to pay a sum of Rs.1,22,18,000/- to clear the subsisting loan availed by the petitioners from the respondent bank. The other ground on which the renewal has not been examined is because the petitioners have not produced any records to substantiate their contention that the subject agreement with the Maharashtra Maritime Board is still subsisting and in force. Shri D'Souza, learned counsel appearing for the petitioners submits, upon instructions, that the petitioners are not in a financial position to deposit a sum of Rs.1,22,18,000,00/- immediately, but however undertake to pay such amount of Rs.1,22,18,000/- immediately after the bank guarantee is renewed. It is further pointed out that to secure the said amounts, besides other securities which have already been issued in favour of the

respondent-bank, the petitioners shall furnish an additional security of two barges "Abhishek" and "Abhishree" which belong to the petitioner no.2, to the respondent-bank. The learned counsel further points out, upon instructions, that the subject agreement with the Maharashtra Maritime Board is still in force and subsists and, in fact, the petitioners are proceeding to work in terms of such agreement.

7. The learned counsel appearing for the respondent-bank, upon instructions, of the concerned Officer states that the respondent-bank should be secured that the petitioners would liquidate the amount due on the loan obtained by the petitioners and the fact that the said subject agreement is still subsisting. In the peculiar facts and circumstances of the case as in the meanwhile apparently the other objections raised by the respondent-bank have been substantially complied with, we find it appropriate and in the interest of justice to dispose of the above petition on the following terms:-

(i) The petitioner no.2 shall furnish an undertaking to the satisfaction of the Additional Registrar (Judicial) of this Court that he will pay a sum of Rs.1,22,18,000/- and any other amount payable to the respondent-bank in connection with the loan account within one month from the date the subject bank guarantee stands renewed. As to the additional security towards

repayment of said amount, the petitioner no.2 shall execute the requisite documents in favour of the respondent-bank of the said two barges as security for payment of said amount. The petitioners shall furnish an undertaking to the Additional Registrar (Judicial) of this Court that the subject agreement with Maharashtra Maritime Board dated 26th December, 2014 is still subsisting and in force and stands renewed.

8. After the petitioners have complied with the above directions, the respondent-bank shall proceed to decide the application filed by the petitioners for renewal of bank guarantee as expeditiously as possible and in any event within two weeks from today.

9. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F.M. REIS, J

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