IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 629 OF 2017

Housing and Urban Development
Corporation (HUDCO) ....Petitioner
V/s.
The Municipal Commissioner,
Jalgaon Municipal Corporation
and Ors. ....Respondents

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Mr. Venkatesh Dhond, Senior Counsel a/w. Mr. Bhavik Manek, Mr. V.N. Ajikumar i/by. V.N. Ajikumar, Advocate for the petitioner.

Mr. Nitin Thakkar, Senior Advocate with Mr. Rohit Gupta and Mr. Vinod Kothari i/by. M/s. APEX Law Partner, Advocate for respondent no.1.

Ms. Jyoti Chavan, AGP for respondent no.2, State.

ALONGWITH
O.S. WRIT PETITION NO. 779 OF 2017

The Jalgaon Municipal Corporation ...Petitioner
v/s.
The Housing and Urban Development

Corporation and Ors. ...Respondents

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Mr. N.G. Thakkar, Senior Counsel a/w. Mr. Rohit Gupta, Mr. Vinod Kothari i/by. M/s. Apex Law Partners, Advocate for the petitioner.

Mr. V.R. Dhond, Senior Counsel a/w. Mr. Bhavik Manek, Mr. V.N. Ajikumar, Advocate for respondent no.1.

Ms. Jyoti Chavan, Assistant Government Pleader, for the State a/w. Ms. Deepali Patankar, Honarary Assistant to Government Pleader for the State, respondents no.2 to 5.

CORAM :- B.R.GAVAI &

SANDEEP K. SHINDE, JJ.

DATE :- 7TH NOVEMBER, 2017.

P.C. :-

1. These two petitions, one filed by the Jalgaon Municipal Corporation (hereinafter referred to as 'the Borrower) and another by the Housing and Development Corporation ("HUDCO" for short) (hereinafter referred to as 'the Lender').

2. The petition filed by the HUDCO challenges the order dated 4th April, 2016 passed by the Debt Recovery Appellate Tribunal (DRAT), Mumbai thereby granting complete waiver to the Borrower under the provisions of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the DRT Act"), whereas, the petition filed by the Jalgaon Municipal Corporation challenges the order dated 16th February, 2017 passed by the DRAT at Mumbai thereby rejecting the application filed by the Borrower for relieving it from its Undertaking to pay an amount of Rs.3 crores per month.

3. There is a chequered history to the litigation between the parties. However, in view of the orders that we propose to pass, it will not be necessary for us to go into the entire legal history of litigation between the parties.

4. Suffice it to state that, in the year 1989-90 the borrower had taken a loan from the lender for sixteen housing schemes and six urban infrastructure schemes. Out of the said twenty-two schemes, the loans for eleven schemes were repaid. However, insofar as, other eleven schemes were concerned, the loan was not repaid. On account of non-payment of the amount, there has been litigation between the parties. It further appears that, the State Government who was a guarantor had also attempted to settle the matter between the parties and a tripartitite agreement by way of Default Resolution Package between the Borrower, Lender and the State. Admittedly, even the terms and conditions as laid down in the said tri-partitite agreement were not fully complied with by the Borrower and there were defaults to the terms and conditions.

5. It appears that, after considerable delay, the Borrower filed an O.A. before the DRAT, Mumbai against

the Lender, as well as, the State. It further appears that, in the said O.A. an interim Recovery Certificate for an amount of Rs.129.76 crores was issued. It further appears that, since the payment was not made in accordance with the said interim Recovery Certificate, all the Bank Accounts of the Borrower came to be attached. As a result of which, Borrower, Corporation was required to file Writ Petition (Lodg) No. 24891 of 2014. It was sought to be urged before this Court, that if the order of attachment was not stayed, the life of all citizens in the Jalgaon Municipal Corporation area would come to a standstill, inasmuch as, even the basic facilities like water supply, sewerage etc. could not be provided by the Corporation. Taking into consideration, the interest of the citizens at large, the Division Bench of this Court vide order dated 23rd September, 2014 in the said petition, stayed the order of attachment, however, subject to the condition that the Borrower pays an amount of Rs.3 crores to the Lender. It further appears that, the petition had come up for hearing before the Division Bench of this Court from time to time. It further appears that, in the meantime, the original application which was filed by the Lender was allowed on 13th March, 2015 whereby Tribunal directed the Borrower to pay an amount of Rs. 3,407,498,627.29 (Rupees Three Forty Crores Seventy Four Lakhs Ninety Eight Thousand Six Hundred and Twenty Seven and paise Twenty Nine only) alongwith interest at the rate of 12% p.a. As such, the Division Bench of this Court vide order dated 12th January, 2016 reserving the right of the Lender to challenge the final order, the DRAT disposed off the petition. The ad-interim relief granted in the petition was directed to continue to operate for a period of one month from the said date.

6. It could further be seen that subsequent to the disposal of the petition, an Appeal came to be filed before the Learned DRAT by the Borrower, Corporation beyond the period of limitation. As such, liberty was sought to file

an application for condonation of delay which was granted. An application for waiver of pre-deposit as required under Section 21 of the said Act was also filed. The said application was allowed vide order dated 4th April, 2016 vide which the Learned DRAT granted waiver, however, subject to the condition that, as undertaken, the Borrower shall deposit an amount of Rs.3 crores per month. Being aggrieved thereby, the HUDCO has filed Writ Petition No. 629 of 2017.

7. Subsequently, the Borrower filed an application for relieving it from an Undertaking of depositing Rs.3 crores per month before the Learned DRAT. Vide order dated 16th February, 2017, the said application is rejected. Hence, the Borrower has filed Writ Petition No. 779 of 2017.

8. Mr. Thakkar, the Learned Senior Counsel appearing on behalf of the Borrower submits that the

petitioner Borrower being Municipal Corporation is under obligation to pay various statutory dues. He submits that, on account of onerous condition of depositing an amount of Rs.3 crores per month, the entire functioning of the Jalgaon Municipal Corporation would affect adversely. He states that, the Corporation is even finding it difficult to pay the salaries. He further submits that, an substantial amount has been paid by the Corporation and as such it was in the interest of justice that the Corporation ought to have been relieved by the Undertaking given by it.

9. As against this, Mr. Dhond the learned Senior Counsel appearing on behalf of HUDCO, submits that the discretion of grant of waiver which has been exercised by the Learned Tribunal has been exercised in an most arbitrary and perverse manner. He submits that the Corporation is habitual defaulter. It is submitted that, it does not abide by even the terms and conditions of the

Default Resolution Package which was arrived at the intervention of the State Government. He submits that, the Learned Tribunal ought not to have granted a complete waiver to such a default borrower. The Learned Counsel, therefore submits that, it is in the interest of justice that the order be set aside and the borrower be directed to deposit certain amount as pre-condition for hearing the Appeal.

10. Insofar as the petition of the Borrower is concerned, we find that the Borrower has challenged the order dated 16th February, 2017 passed by the Debt Recovery Appellate Tribunal in Misc. Application No. 269 of 2016 and Misc. Application No. 270 of 2016. Misc. Application No. 269 of 2016 was for condonation of delay. The delay was condoned by the Appellate Tribunal; whereas, Misc. Application No. 270 of 2016 was an application seeking waiver of requirement of pre-deposit. Both the Misc. Applications were decided by composite

order dated 4th April, 2016. The Appellate Tribunal while dealing with the contention of waiver of condition of pre-deposit imposed the condition to deposit Rs.3 crores per month in terms of the Undertaking by the appellant. That as such, the direction to deposit Rs.3 crores per month came to be passed on the basis of the appellant's Undertaking. Be that as it may, the petitioner herein vide another Misc. Application No. 100 of 2017 requested the Tribunal to relieve the appellant from the Undertaking to deposit the amount of Rs.3 crores per month and modify the order dated 4th April, 2016 to that extent. The said Misc. Application No. 100 of 2017 was found to be misconceived and was dismissed by the Debt Recovery Appellate Tribunal vide order dated 16th February, 2017. The Tribunal, therefore refused to relieve the applicant from the said Undertaking. It could further be seen that, at the relevant time, the requirement under the Statute was of depositing 75% of the amount due. No doubt, that the provision also enabled the Appellate Tribunal to waive the said deposit or reduce the said deposit amount. It could thus be seen that, in normal circumstances, as a pre-condition to entertain an Appeal, the Borrower would have been required to deposit an amount of more than Rs.250 crores. No doubt that there is a provision to waive the said condition, however, the discretion to waive has to be exercised in an equitable and just manner. Prima-facie, we are in agreement with Mr. Dhond that the Learned Tribunal has not given any cogent and solid reasons as to why the absolute waiver was warranted for in the facts and circumstances of the case. We find that the Learned Tribunal granted waiver in view of the Undertaking and as such had not imposed the condition to deposit 75% of the amount due. In that view of the matter, we do not find any merit in the petition filed on behalf of the Borrower Corporation.

11. Insofar as, the petition filed by the Lender, HUDCO is concerned, no doubt we find that in the facts

and circumstances of the case, a complete waiver ought not to have been granted. However, we may refer to the observations made by the Division Bench of this Court in its order dated 23rd September, 2014. We find that, if at this stage, we impose some stringent conditions on the Corporation and direct it to deposit an amount which, in view of the amended provisions of the statute, would not be less than Rs.85 crores, then the Corporation will find great difficulty in providing the basic facilities to its citizens. We are in agreement with the observations of the Division Bench of this Court made in the order dated 23rd September, 2014. We therefore find that, it will be in the interest of justice that instead of upsetting the situation which has been prevailing for more than one and half year, it will be more appropriate in the interest of justice, that the Learned DRAT is directed to decide the Appeal on its merits. In the result, we are not inclined to entertain either of the petitions. Both the petitions are dismissed with no order as to costs. However, in the facts and circumstances of the case, the Learned DRAT is directed to decide the Appeal within a period of three months from today.

(SANDEEP K. SHINDE, J) **(B.R. GAVAI, J)**