

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 11276 OF 2017 IN
WRIT PETITION NO. 7478 OF 2017**

**JAPFA COMFEED INDIA PVT LTD THROUGH ITS
AUTHORIZED OFFICER V S KAPGHATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Applicant : Shri V. P. Latange
AGP for Respondent- State : Shri S. R. Yadav - Lonikar
Advocate for Respondent No.3 : Shri S. S. Dande

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**CORAM : RAVINDRA V. GHUGE AND
S. M. GAVHANE, JJ.**

DATED : 12th JULY, 2019.

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PER COURT :

1. On 15/04/2019, we had passed the following order :-

"1. The applicant / petitioner prays that the order of this Court, dated 7.8.2017, be slightly modified, so as to permit the petitioner to tender a Bank guarantee of the HDFC Bank.

2. The learned Advocate appearing on behalf of the MIDC, though opposed the said request, submits that the petitioner has consumed time from September 2017 till April 2019, keeping in view that the amount was to be deposited within four weeks from 7.8.2017. He, therefore, submits that the amount may have gathered

interest of about Rs. Fifteen lakhs, inasmuch as, the pattern / principle on the basis of which the calculations are to be made, in view of the differential premium due to change in the shareholding pattern of the company, would lead to an increase in the said amount.

3. *We, therefore, put to the learned counsel for the petitioner / applicant, as to whether he would tender a Bank Guarantee for an amount of Rs. 1.50 Crores of a Bank, which has a good reputation in the market. The learned counsel submits, on instructions from the officer representing the applicant Company, present in the Court, that the Bank Guarantee of the HDFC Bank, would be tendered for an amount of Rs. 1.50 Crores.*

4. *In view of this statement, we called upon Shri Dande, learned Advocate to take instructions from his client, MIDC, as to whether such a Bank Guarantee would last till the Writ Petition is decided. We also grant liberty to the applicant to deposit the amount of Rs. 1.50 Crores as the MIDC would accept the change in the shareholding pattern of the company after tendering the Bank guarantee and on the basis of which, according to the learned Advocate for the applicant, they will be able to garner liquid cash by mortgaging their assets.*

5. *By the consent of the parties, S.O. to 29.4.2019 at 4.30 p.m."*

2. The learned Advocate appearing on behalf of respondent Nos. 2 and 3 MIDC authorities submits that the main petition is pending adjudication before the Regular Bench. The petitioner is seeking modification of an order dated 07/08/2017 passed by this Court, vide which, the petitioner was directed to deposit the amount in this Court as demanded by the MIDC, without prejudice to its rights and contentions. Now that the petitioner is agreeable to deposit a bank guarantee of Rs. 1.5 Crores issued by the HDFC Bank with the assurance that the bank guarantee would be live and would last till the petition is decided, the MIDC is willing to accept the bank guarantee, subject to the petition being heard on its merits by the Regular Bench. This Civil Application, therefore, can be disposed off.

3. The learned Advocate for the petitioner is agreeable.

4. In view of the above, the order dated 07/08/2017, directing the petitioner to deposit Rs. 1.5 Crores in this Court, would be replaced by the direction to deposit a bank guarantee for Rs. 1.5 Crores issued by the HDFC Bank and with the rider

that the said bank guarantee would be live and would last till the Writ Petition is disposed off.

5. In view of the above, this Civil Application is disposed off.

(S. M. GAVHANE, J.)

(RAVINDRA V. GHUGE, J.)

shp/-