

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

**902.2 CIVIL APPLICATION NO.14417 OF 2019
IN WP/2560/2019**

**THE COMMISSIONER MUNICIPAL CORPORATION OF AURANGABAD AND
OTHERS
VERSUS
INDUS TOWERS LIMITED**

...
Advocate for Applicants : Mr. Tope Sambhaji S.
Advocate for Petitioner in WP : Mr. S.S. Deshmukh
...

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 03/01/2020

PER COURT :

1. Mr. Deshmukh the learned counsel for the respondent submits that the respondent has already deposited Rs.1,30,00,000/- with the Corporation and pursuant to the orders of this Court had deposited Rs.50,00,000/- in this Court.

2. This is an application filed by the applicant for withdrawal of the amount deposited by the non-applicant pursuant to the orders passed by this Court.

3. Mr. Deshmukh the learned advocate for the non-applicant/original writ petitioner strenuously contends that this Court after considering the matter and the prima facie case granted stay subject to condition of deposit. The original writ petitioner has got strong case on

merits. The respondent could not have imposed penalty. The taxes have been paid regularly by the petitioner till the current year. There are no dues so far as taxes are concerned. The claim of the applicant was of Rs.1,54,00,000/-. There is no consistency in the demand of the present applicant. The original petitioners have never disputed their liability to pay the tax and the same has been paid in toto. According to the learned counsel, the towers of the original petitioners are not unauthorized as such the applicants cannot impose any penalty, even the procedure is not followed for imposing penalty. All these aspects are required to be considered.

4. The applicant is a corporation. The present non-applicant is running its business and admittedly is liable to pay the taxes every year. In case the original writ petitioner succeeds, the amount allowed to be withdrawn can be adjusted in the taxes or even the applicant can be directed to deposit the amount allowed to be withdrawn. The submissions made by the learned advocate for the original writ petitioner will have to be considered at the time of deciding the writ petition.

5. In light of that we pass the following order:

ORDER

- i. The applicant is allowed to withdraw the amount deposited by the non-applicant in this Court on a condition that the applicant no.1 shall file an undertaking that in case this Court directs applicants to deposit the amount they shall

deposit it with interest as may be directed by this Court.

- ii. Civil applications accordingly disposed of.

(MANGESH S. PATIL, J.)

(S. V. GANGAPURWALA, J.)

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