IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CIVIL APPLICATION NO.14415 OF 2019
IN WP/4335/2019
WITH
CIVIL APPLICATION NO.14419 OF 2019
IN WP/4334/2019

THE COMMISSIONER MUNICIPAL CORPORATION OF AURANGABAD AND OTHERS
VERSUS
ATC TELECOM INFRASTRUCTURE PRIVATE LIMITED THROUGH AUTHORIZED SIGNATORY

...
Advocate for Applicants : Mr. Tope Sambhaji S.
AGP for Respondent/State : Mr. P.G. Borade
Advocate for Respondent : Mr. N.B. Khandare h/f. Mr. P. S. Chavan
...

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

DATE : 03/01/2020

PER COURT :

1. These are the applications filed by the applicants for withdrawal of the amount deposited by the non-applicant pursuant to the orders passed by this Court.

2. Mr. Khandare 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 applicants was of Rs.5,00,00,000/-. Now in the affidavit filed in the fresh writ petition of the present non-applicant, the applicants have filed affidavit claiming recovery of Rs.9,55,68,000/-. There is no consistency in the demand of the present applicants. 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.

3. 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 In case the original writ petitioner succeeds, the amount allowed to be withdrawn can be adjusted in the taxes or even the applicant can be directed to deposit the amount allowed to be withdrawn.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.

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

O R D E R

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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