

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION (L) NO. 31382 OF 2019
IN
ARBITRATION APPEAL NO. 20 OF 2019
WITH
CIVIL APPLICATION NO. 24 OF 2019

Hindustan Antibiotics Ltd	...Petitioner
<i>Versus</i>	
DSM Sinochem Pharmaceuticals India & Ors	...Respondents

**Mr D Rey Choudhuri, Senior Advocate, with DG Dhannure, for
the Petitioner.**

**Mr S Puri, Senior Advocate, with Mr Dinesh Pednekar, Mr
Chanakya Keswani and Mr Avinash Tripathi, i/b Economic
Laws Practice, for the Respondent.**

CORAM: G.S. PATEL, J.
DATED: 3rd March 2020

PC:-

1. There is no merit in the Contempt Petition.

2. The contempt alleged is that the Respondents were late in filing or furnishing the bank guarantee required by GS Kulkarni J's order of 31st July 2019.

3. I noted the relevant dates in my order of 24th February 2020 when I permitted that bank guarantee to be withdrawn since the Contempt Petitioners had already initiated execution proceedings in the Civil Court in Haryana. GS Kulkarni J himself had expressly directed that the Contempt Petitioners could not do both simultaneously i.e. prosecute execution proceedings and insist upon a bank guarantee.

4. The submission that the bank guarantee was not in favour of the Contempt Petitioners is incorrectly placed. When a Court asks for a bank guarantee, it is always in favour of the registrar of that Court so that it is the Court which will invoke that bank guarantee when necessary.

5. The fact that the bank guarantee may have been a counter-guarantee or a back-to-back guarantee is immaterial. It was for the Respondent to arrange its affairs and provide a guarantee. Besides, the Respondents had filed a draft guarantee and then filed the final guarantee in terms of that draft.

6. The submission that with the withdrawal of the bank guarantee has been put out of reach of the Contempt Petitioners is also not a persuasive submission. The bank guarantee was never an asset of the Respondents. In any case, GS Kulkarni J's order clearly posited an either/or situation and did not permit the Contempt Petitioners the advantage of both a bank guarantee and execution proceedings.

7. The mere delay in providing bank guarantee cannot possibly constitute contempt especially when the Respondents took the trouble to apply to Court for an extension of time. This was granted. In any case, once the bank guarantee was filed, and not rejected departmentally or otherwise, any preceding delay must be deemed to have been waived and condoned especially now that there is an order permitting the Respondents to withdraw the guarantee.

8. In this view of the matter, I do not believe there is any substance in the Contempt Petition. It is dismissed.

9. This order is entirely without prejudice to all rival contentions in any pending execution proceedings in the Court in Haryana or any Section 34 proceedings pending in District Court in Pune. The District Court is requested to expedite the final disposal of the Section 34 Petition.

(G. S. PATEL, J)