



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2020

CORAM

THE HONOURABLE **MR. JUSTICE G.R. SWAMINATHAN**

W.P. (MD) No. 10177 of 2020
and W.M.P. (MD) No. 9054 of 2020

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M/s.Suresh Mass Marketing Pvt.Ltd.,
Represented by its Managing Director,
9/164-G, Indira Nagar Colony,
Sholavandhan Main Road,
Keelaurappanur Post, Thirumangalam Taluk,
Madurai District.

... Petitioner

Vs.

- 1.The Ministry of Finance,
Represented by its Secretary to Government,
Department of Financial Service,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi.
- 2.The National Credit Guarantee Trustee Company Limited,
Represented by its Company Secretary,
Swavalamban Bhavan, C-11, G Block,
Bandra Kurl Complex, Bandra(East), Mumbai.
- 3.The Chief Executive Officer,
The National Credit Guarantee Trustee Company Limited,
Swavalamban Bhavan, C-11, G Block,
Bandra Kurl Complex, Bandra(East), Mumbai.
- 4.State Bank of India,
Represented by its Bank Manager,
SME Branch, Kamaraja Salai,
Sandapettai, Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, to call for the records pursuant to the impugned communication of the fourth respondent dated 15.07.2020 and quash the same and consequently direct the respondents 2 and 3 to provide guarantee coverage for the Guaranteed Emergency Credit Line Loan (GECL) under the Emergency Credit Line Guarantee Scheme (ECLGS) to the petitioner company considering the existing fund based credit limit of the petitioner company and issue further direction to the fourth respondent to sanction the same to the petitioner company.



For Petitioner : Mr.Lakshmi Gopinathan,
for M/s.Polax Legal Solutions.

For R1 : Mr.B.Rajesh Saravanan

For R2 & R3 : Mr.C.Alaguramjothi

For R4 : Mr.M.Ponniah

ORDER

Heard the learned counsel appearing on either side.

2.The writ petitioner is M/s.Suresh Mass Marketing Pvt.Ltd. The petitioner had three sister concerns namely M/s.Suresh Timbers, M/s.SS Trading Company, M/s.Immayilum Nanmai Tharuvar Timbers. All the four entities were having their accounts with the fourth respondent. The fourth respondent had extended cash credit and other kinds of finance facilities for these four entities. For operational reasons, the four entities decided to merge themselves. In other words, the other three entities merged with the petitioner company. Necessary formalities were completed and a request was also given to the fourth respondent Bank to merge all the accounts. It is seen that this request was made as early as on 15.10.2019. The fourth respondent took time to process the said application and necessary formalities were concluded only on 18.03.2020. Thereafter, the cash credit and other limits of the petitioner Company were appropriately enhanced.

3.The issue on hand relates to the extent to which the petitioner can derive benefit under the Emergency Credit Line Guarantee Scheme introduced by the Union Finance Ministry. Cut off date set out in the scheme is 29.02.2020. The purpose of the scheme is as follows:

"To provide 100% guarantee coverage for the GECL, which shall be a pre-approved sanction limit of up to 20% of loan outstanding as on 29th February, 2020 to eligible borrowers, in the form of additional working capital term loan facility (in case of banks and Financial Institutions), and additional term of loan facility (in case of NBFCs) from all Member lending Institutions (MLIs) to eligible Business Enterprises / Micro, Small and Medium Enterprise (MSME) borrowers, including interested PMMY borrowers, in view of COVID-19 crisis, as a special scheme."

4.Clause 8 of the scheme sets out the loan amount eligible under the scheme and clause 8(A) reads as follows:-

"The amount of GECL funding to eligible Business Enterprises / MSME borrowers either in the form of



additional working capital term loan facility (in case of banks and Financial Institutions), and additional term of loan facility (in case of NBFCs) would be up to 20% of their total outstanding loans up to Rs.25 Crore as on 29th February, 2020, subject to the borrower meeting all the eligibility criteria."

5.Clause 12 and 13 state that no guarantee fee will be charged from the lending institutions and that the trustee company shall provide 100% guarantee coverage on the outstanding amount for the credit facility provided under the scheme as on the date of MNPA.

6.In view of the sanction letter dated 18.03.2020, the petitioner is entitled to have credit facility upto Rs.11 Crores and 50 Lakhs. The loan outstanding comes to Rs.12 Crores and 68 Lakhs. The petitioner seeks 20% of the total outstanding loan. The fourth respondent was not sure as regards the applicability of the scheme and sought clarification from the second respondent. The second respondent vide communication dated 10.07.2020 clarified as follows:

"Dear Sir,

It is observed that the 3 firms / companies are merged with the parent company as on March 26, 2020 and does not exists as on date. SBI has also extended loans under ECLGS to parent company based on the outstanding of the company as on February 29, 2020. Therefore, the other 3 firms / company will not be eligible for loans under ECLGS.

Regards,
DGM-NCGTC"

7.In view of the clarification provided by the second respondent, the fourth respondent Bank issued the impugned communication dated 15.07.2020. This is under challenge in this writ petition.

8.The fourth respondent had filed detailed counter affidavit seeking to sustain the stand set out in the impugned communication. The learned Standing Counsel for the second respondent also reiterated the stand set out in their earlier communication.

9.The learned counsel for the fourth respondent Bank took me through the averments set out in the counter affidavit and also the materials enclosed in the typed-set of papers and prayed for dismissal of this writ petition.

10.I carefully considered the rival contentions and went through the materials on record.



11.It is not in dispute that there were four entities namely, M/s.Suresh Mass Marketing Pvt.Ltd., M/s.Suresh Timbers, M/s.SS Trading Company, M/s.Immayilum Nanmai Tharuvar Timbers. The request for recognizing the merger and revision of the cash credit facility of the writ petitioner was made in October 2019 itself. However, due to administrative reason, the fourth respondent Bank could act on the said representation and give their financial approval only in March 2020. The question is whether the petitioner should be prejudiced on account of this administrative delay on the part of the fourth respondent Bank. Cut off date is 29.02.2020. The answer has to be in the negative and in favour of the petitioner. If the merger had been approved earlier, the issue would not have cropped up at all. Therefore, the fortuitous circumstance of delay in granting approval to the merger ought not to make any difference. The only question that should be posed is what was the position on the cut-off date. It is seen that as on 29.02.2020 the cash credit facility enjoyed by the petitioner and its sister concerns was Rs.12 Crores and 68 Lakhs.

12.The respondents have proceeded on the premise that the other three entities have ceased to exist. Ofcourse, in a technical sense they no longer exist. But the fact is that they have merged with petitioner company. Therefore, the position that obtained in respect of all the four entities put together as on 29.02.2020 should be the governing criteria.

13.I cannot lose sight of the fact that the scheme in question has been introduced by the Central Government with noble objective to provide easy credit to the existing account-holders. That cannot be defeated by a technical construction of the relevant provisions of the scheme. In this view of the matter the communication impugned in this writ petition is quashed and the fourth respondent is directed to sanction additional 20% of the outstanding limit as on 29.02.2020 as enjoyed by the petitioner company and its three sister concerns. Ofcourse, the amount already sanctioned will be taken into account. The second respondent is directed to provide guarantee coverage for the additionally sanctioned amount.

14.The writ petition stands allowed, on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.The Secretary to Government,
Ministry of Finance,
Department of Financial Service,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi.

2.The Bank Manager,
State Bank of India,
SME Branch, Kamaraja Salai,
Sandapettai, Madurai.

3.The Company Secretary,
National Credit Guarantee Trustee Company Limited,
Swavalamban Bhavan, C-11, G Block,
Bandra Kurl Complex, Bandra(East), Mumbai.

+1 CC to M/s.POLAX LEGAL SOLUTION, Advocate (SR-18851[F] dated 01/10/2020)

+1 CC to M/s.J. ALAGURAM JOTHI, Advocate (SR-18902[F] dated 05/10/2020)

W.P. (MD)No.10177 of 2020
30.09.2020

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