$~SB-1 & 2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 04.08.2022*

+ **LPA 221/2022 & CM Nos.14558/2022, 34491/2022 & 34492/2022**

INDIAN OVERSEAS BANK ..... Appellant

Through: Mr Sanjay Jain and Mr Neeraj Kumar Jain, Sr. Advs. with Mr Krishan Kumar, Mr Nitin Pal, Mr Kartik Sarsoonia and Mr Yuvraj Sharma, Advs.

versus

M/S AGSON GLOBAL PVT LTD & ANR. ..... Respondents

Through: Mr Parag P. Tripathi, Sr. Adv. with Mr Rishi Agrawala, Mr Karan Luthra, Mr Pranjit Bhattacharya and Mr Shrinivasan Ramaswamy, Advs. R-1 & 2.

Mr Ravi Prakash, CGSC with Mr Farman Ali, Mr Taha Yasin and Mr Kapil Dev Yadav, Advs. for -3/NCGTCL.

+ **LPA 222/2022**

INDIAN OVERSEAS BANK ..... Appellant

Through: Mr Sanjay Jain and Mr Neeraj Kumar Jain, Sr. Advs. with Mr Krishan Kumar, Mr Nitin Pal, Mr Kartik Sarsoonia and Mr Yuvraj Sharma, Advs.

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3/NCGTCL.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE JASMEET SINGH

RAJIV SHAKDHER, J.: (ORAL)

[Physical Hearing/Hybrid Hearing (as per request)]

1. The above-captioned appeals have been filed on behalf of the Indian Overseas Bank ('IOB'). LPA 222/2022 is directed against the order dated 22.02.2022 passed in W.P.(C) 3261/2022, while LPA 221/2022 is directed against the order dated 09.03.2022, passed in W.P.(C) No. 3919/2022.

1.1. We may note that both the above-mentioned orders have been passed by the Learned Single Judge.

2. It is required to be noticed that the Learned Single Judge, *via* order dated 22.02.2022, had, after hearing both sides, passed the following operative directions:

> *"10. For the aforesaid reasons, the impugned order is wholly unsustainable and is, accordingly, set aside. The matter is remanded back to the respondent with a direction to consider afresh, the petitioners' application, for grant of loan by taking into account the modifications introduced vide ECLGS 4.0 as noted hereinabove. An order be passed by the respondent within a period of 10 days from today."*

2.1. These directions are based on a rationale provided by the Learned Single Judge in paragraphs 8 and 9 of the very same order.

3. Pursuant to the order dated 22.02.2022, IOB considered the case of the respondents and passed an order dated 03.03.2022.

3.1. In sum, IOB rejected the request made by the respondents, for the grant of a loan, by taking into account modifications introduced by the

National Credit Guarantee Trustee Company ('NCGTD') *via* Emergency Credit Line Guarantee Scheme 4.0 ('ECLGS 4.0').

3.2. The reasoning provided by IOB in reaching this conclusion is contained in paragraphs 2, 3 and 5 of its order dated 03.03.2022. For the sake of convenience, the said paragraphs are extracted hereafter:

> "*2. Since under the ECLGS 100% guarantee would be provided by National Credit Guarantee Trustee Company ("NCGTC") to Member Lending Institutions and which will be extended in the form of Additional Working Capital Term Loan facility, IOB being Lead Bank and Canara Bank being member of the consortium, vide Letters Dated 28.02.2022 & 25.02.2022 respectively, sought clarification from NCGTC Limited that the -*
> *• "Cap of loan outstanding of Rs.500.00 Crores from all Lending Institutions had been removed only to the sectors covered under ECLGS 3.0 or all sectors covered under ECLGS 1.0, 2.0, 3.0 and 4.0.*
> *• Borrower account is NPA as on date with 5 Member Banks (starting from January 2022 onwards) out of 11 Banks. In such case whether fresh loan under ECLGS can be considered by other banks under consortium where the account is standard. However, the account was not reported under SMA 2 category as on 29.02.2020 & 31 .03.2021.*
> *• To confirm availability of guaranteecover in case ECLGS 2.0 (Extension) is being considered by the banks to the above mentioned customer."*
> *3. The NCGTC vide its E-Mail Dated 28.02.2022 clarified that as per FAQ No. 139, it is very clearly mentioned that-*
> *"The cap of total loan outstanding of Rs.500 crore from all lending institutions has been removed in respect of sectors falling under ECLGS 3.0. Accordingly, if you belong to any one of the sectors specified under ECLGS 3.0 and meet the other eligibility criteria of the scheme, you shall be eligible for assistance up to 40% of your outstanding as on February 29, 2020 or March 31, 2021, whichever is higher, subject to maximum of Rs.200 crore"*

> *"Further, it may be noted that as per updated guidelines of the scheme issued vide letter dated May 31, 2021 and also in subsequent updated guidelines it is very clearly indicated that ECLGS 4.0 is available in respect of loans up to Rs. 2 crores extended to eligible hospitals/nursing homes/clinics/medical colleges/units engaged in manufacturing of liquid oxygen cylinders etc. for setting up of on-site oxygen producing plants."*
>
> *xxx xxx xxx*
>
> *5. Keeping in view the interpretation given by NCGTC vide E-Mail Dt.28.02.2022 and as the total exposure of the Company is more than Rs.500 Crores across all members in consortium, the Company is not eligible to be considered for grant of financial assistance under GECL facility. The cap of total loan outstanding of Rs. 500.00 crores from all lending banks and financial institutions had been removed in respect of sectors falling under ECLGS 3.0 only. The Company does not belong to any of the sectors specified under ECLGS 3.0, as such even on fresh consideration of the application of the Company, we advise that the Company is ineligible under any of the Schemes of GECL i.e. ECLGS 1.0, ECLGS 2.0, ECLGS 3.0 and ECLGS 4.0.*"

4. Respondents, being aggrieved, approached the Learned Single Judge by way of a petition under Article 226 of the Constitution of India. This writ petition is numbered as W.P.(C) No. 3919/2022.

4.1. In the said writ petition, as indicated above, challenge has been laid by the respondents to the communication/order dated 03.03.2022 passed by IOB, rejecting their request for the grant of loan, by taking into account the modifications introduced *vide* ECLGS 4.0.

4.2. *Via* order dated 09.03.2022, the Learned Single Judge, while issuing notice has directed that till the next date of hearing, IOB shall stand restrained from taking any 'coercive' steps against respondent no.1/M/s Agson Global Pvt Ltd ('AGPL') and respondent no.2 i.e., Mr Apresh Garg, who, we are told, is the other writ petitioner in W.P.(C) No. 3919/2022.

4.3. We are also informed that Mr Garg is both a Director as well as a shareholder in AGPL.

5. We have heard learned counsel for the parties at some length. It is agreed by the counsel for the parties that the appeals can be disposed of, based on the following directions:

(i) Insofar as the order dated 22.02.2022 passed in W.P.(C)No. 3261/2022 is concerned, it has worked itself out, inasmuch as IOB, pursuant to the said order, proceeded to consider the case of AGPL with regard to its request for grant of the emergency loan under ECLGS 4.0. Therefore, the said order of the Learned Single Judge i.e., order dated 22.02.2022, would not come in the way of IOB, in defending its case *vis-à-vis* the second writ action i.e., W.P.(C) No. 3919/2022.

(ii) AGPL and its co-petitioner would be entitled to profess before the Learned Single Judge in the pending writ petition i.e., W.P.(C) No. 3919/2022 that the financial limit prescribed in ECLGS 4.0 could operate sector-wise and not necessarily *vis-à-vis* all business ventures which are under the sway of AGPL. In other words, the prescribed maximum limit of Rs. 500 crores would apply to various sectors, in which AGPL operates. The record shows that AGPL is operating in three sectors i.e., Logistics, Chemicals and Wholesale Trading.

(iii) The interim order dated 09.03.2022 passed in the pending writ petition i.e., W.P.(C) No. 3919/2022 shall stand modified, inasmuch as the injunction issued against IOB that coercive steps will not be taken, shall stand confined to IOB not triggering an action under the Insolvency and Bankruptcy Code, 2016 for the next four (4) months and/or not declaring

AGPL's accounts as Non-Performing Assets ('NPA') for the very same timeframe i.e., four (4) months.

(iv) Parties will be free to project their respective stands in the pending writ petition i.e., W.P.(C) No. 3919/2022.

5.1. It is ordered accordingly.

6. Besides this, Mr Parag P. Tripathi, learned senior counsel, fairly states that in any event, for the next four (4) months, AGPL will pay Rs. 3 crores per month, towards the outstanding debt. This payment will be accepted by IOB, without prejudice to its rights and contentions.

6.1. AGPL will remain bound by its stand taken before this Court.

7. Mr Tripathi also states that AGPL will move an application before the Learned Single Judge for arraying NCGTD as a party to the writ petition.

7.1. Furthermore, Mr Tripathi says that AGPL would also like to move an application, for amending the aforementioned writ petition.

7.2. If such applications are moved, the Learned Single Judge will consider the same, as per law.

8. Needless to add, parties will render all assistance to the Learned Single Judge in the disposal of the pending writ petition as expeditiously as possible.

9. Consequently, pending applications shall also stand closed.

RAJIV SHAKDHER, J

JASMEET SINGH, J

AUGUST 04, 2022 /tr

Click here to check corrigendum, if any