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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 7189 OF 2024
IN
WRIT PETITION NO. 3124 OF 2024

Navi Mumbai Municipal Corporation .. Applicant

Versus

Pfizer Limited .. Respondent

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- Mr. A.A. Garge, Advocate for Applicant – Corporation.
- Mr. Girish Godbole, Senior Advocate a/w. Mr. Abhay Jadeja and Ms. Snigdha Mankar, i./by Jadeja & Satiya Advocates for Respondent – Company.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2024.

P.C.:

1. This Interim Application is filed by the Applicant - Navi Mumbai Municipal Corporation seeking a direction to withdraw the amount of Rs.24.33 Crores deposited by the Respondent – Company with the Registry of this Court by Demand Draft dated 19.01.2024 pursuant to the order dated 17.01.2024 passed by this Court at the interim stage while hearing Writ Petition No.3124 of 2024.

2. By a further order dated 04.03.2024, the aforesaid Writ petition was disposed after giving certain directions.

3. Present Interim Application is filed by the Applicant - Corporation on the ground that it a public Authority and the amount deposited by Respondent - Company is due to the Applicant – Corporation in the form of tax, which is a major revenue and source of income of the Applicant – Corporation. It is stated in the Application that the Corporation has correctly assessed the amount of tax due and payable towards property tax by the Respondent - Company and the deposited amount therefore belongs to the Applicant - Corporation.

4. Mr. Garge, learned Advocate appearing on behalf of the Corporation would draw my attention to the provisions of Section 406 of the Maharashtra Municipal Corporation Act, 1949 (for short "**the said Act**") and more specifically clause (e) of sub-section 2 thereof to contend that in the case of any Appeal against a tax, the same can be entertained only on deposit of the entire tax amount to be deposited with the Commissioner of the Corporation. Such an order and consequential coercive action itself led to the filing of the Writ Petition by the Respondent – Company.

4.1. Next, he would submit that though the deposit is required to be made with the Commissioner, under Section 406(2)(b) of the said Act, the Commissioner is the statutory / appellate Authority. Incidentally, he has argued that in the first place, the Writ Petition filed by the Company was itself not maintainable since there was non-compliance of the provisions of Section 406(2)(e) of the said Act. In that view of the matter, he would submit that the statutory Appeal and the Municipal Civil Appeal filed by the Respondent – Company ought to have been dismissed on the statutory and mandatory deposit having not been made. He would further submit that because the statutory deposit was not made, the Corporation issued statutory notices under Rules 44 and 45 of Chapter VIII of the said Act against the Company, resultantly leading to filing of the Writ Petition.

4.2. He would submit that if the present Interim Application is not allowed, it would amount to an incorrect precedent being set by this Court and all tax payers would come rushing to this Court to overreach the statutory provisions of Section 406(2)(e) of the said Act. He would submit that the Applicant – Corporation should be allowed to withdraw the deposited amount as it is ready and willing to give an undertaking to this Court and would undertake to ensure that the said amount is invested separately as per the directions of this Court. He would submit that no prejudice whatsoever would be caused to the Company since it is not the case of the Company that no tax is payable at all by the Company to the Corporation. He would submit that collection of tax amount is the sole revenue of the Corporation which is essentially required for its functioning and operations and therefore the prayer made in the Interim Application should be allowed.

5. The Application is resisted by the Respondent – Company. Mr. Godbole, learned Senior Advocate appearing for the Respondent -

Company would draw my attention to the twin orders passed by this Court dated 17.01.2024 and 04.03.2024 while disposing of the Writ Petition. He would submit that pursuant to the 1st order dated 17.01.2024, the Respondent – Company immediately deposited the amount of Rs.24.33 Crores with this Court on 19.01.2024, in order to secure the alleged claim of the Corporation subject to decision in the pending statutory Appeal. He would submit that though Corporation has pleaded that the deposit of the amount in this Court should be construed in the nature of allowing the Corporation to withdraw the said amount is incorrect and a wrong appreciation of the order dated 17.01.2024.

5.1. He would next submit that the order dated 04.03.2024 while disposing of the Writ Petition has clearly directed that the pending Civil Appeal with respect to rateable value of the Company's premises before the learned District Judge be expedited and heard within a time-bound programme preferably on or before 31.01.2025 and until the disposal of the said Appeal and for a period of 60 days thereafter the hearing of the Municipal Appeals shall remain stayed. He would submit that this Court in paragraph No.9 of the order has clearly stated that depending on the outcome of the said Civil Appeal, parties are at liberty to apply to this Court for appropriate directions. Hence, he would submit that the present Application made by the Corporation is premature since the said Civil Appeal is still undecided. He would also draw the Court's attention to the contents of paragraph No.8 of the order dated 04.03.2024 and would submit that the deposited amount has been directed to be deposited in fixed deposits to earn the highest rate of interest and therefore there is no prejudice caused whatsoever to the Applicant - Corporation.

6. I have heard the learned Advocates and considered the rival submissions.

7. Mr. Garge has in support of his submissions referred to and relied upon an reported decision in the case of ***Walchandnagar Industries Limited Vs. Municipal Corporation of the City of Pune and Ors.*** passed by the Division Bench of this Court on 16.01.2014 in Writ Petition No.9588 of 2013 to contend that the *vires* of the provisions of Section 406 of the said Act have been upheld by this Court in the said decision and would therefore contend that the said provisions are absolutely mandatory for the purpose of compliance. I have considered the said decision also. It has no Application to the present facts and circumstances.

8. Submissions made by the learned Advocates have received due consideration of the Court.

9. At the outset, one of the question raised by the Court and which desired an adequate answer is the fact whether, if the

Respondent – Company succeeds in the statutory Appeals, will the Applicant - Corporation refund the amount, if it is allowed to withdraw the same. After much deliberation on this issue with the learned Advocates, it is seen that there is no provision whatsoever in the said Act for refund of the amount to the assessee from whom the amount is collected, if it is found that the levy of tax was incorrect and improper. It is further seen that in paragraph No.5 of the Application, the Applicant - Corporation has contended that it is ready to give an undertaking to refund the balance amount, in the event if the Company succeeds in the statutory Appeals, but only after deducting the legitimate eligible tax amount as per the provisions of law. Such a stand by the Corporation is arbitrary and high-handed, especially in view of the fact that the Corporation has now raised an additional demand of Rs.57.19 Crores against the Company towards its tax liability.

10. It is thus seen that while disposing of the Writ Petition, this Court ensured that the amount is deposited in this Court and is also invested until the disposal of the statutory Civil Appeal. All contentions of the parties were expressly kept open in view of the pending decision in the Appeal. Both the twin orders dated 17.01.2024 and 04.03.2024, do not give any leave or liberty to the Corporation for seeking withdrawal of the amount deposited in the Court and more specifically in view of the pending Civil Appeal. In fact in paragraph No.8, it is categorically directed by the Court that parties are at liberty to apply to this Court depending on the outcome of the Civil Appeal and if such Application is filed, it shall be considered on its own merits. Hence, to construe that liberty was given by this Court in the aforementioned twin orders to the Corporation to withdraw the amounts is incorrect. The intention of the Corporation is not clear when it states in the Application that it may be put to terms and also be allowed to withdraw the deposited amount but in the event of the Company succeeding in the Municipal Appeals and the Civil Appeal, the Corporation shall refund the balance amount, after deducting the eligible tax amount. Such a stand taken by the Corporation cannot be countenanced by the Court. In fact no prejudice whatsoever is caused to the Corporation if the deposited amount stays in this Court since the alleged claim of the Corporation is secured fully. Pursuant to the passing of the order dated 04.03.2024, there is no change in circumstances enabling the Corporation to seek withdrawal of the deposited amount.

11. In view of the above reasons, the Applicant - Corporation has not made out any case for seeking withdrawal of the deposited amount and hence I am inclined to reject the Interim Application due to the aforementioned reasons and accept the submissions made by the Respondent – Company herein.

12. In view of the above observations, Interim Application No.7189 of 2024 is dismissed.

13. It is clarified that the present order shall not operate as precedent and is only applicable / restricted to the facts and circumstances involved in the present matter.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK UGALMUGALE Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2024.05.07 19:49:33 +0530