

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 13365 OF 2024
IN
WRIT PETITION NO. 10077 OF 2023

Siporex India Pvt Ltd & Anr ...Applicants
In the matter between
Siporex India Pvt Ltd & Anr ...Petitioners
Versus
Pune Cantonment Board & Ors ...Respondents

WITH
INTERIM APPLICATION NO. 13361 OF 2024
IN
WRIT PETITION NO. 10145 OF 2023

B G Shirke Construction Technology Ptd Ltd ...Applicants
& Anr
In the matter between
B G Shirke Construction Technology Ptd Ltd ...Petitionerss
& Anr
Versus
Pune Cantonment Board & Ors ...Respondents

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Date: 2024.10.03
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Mr Navroz Seervai, Senior Advocate, i/b, Shailendra Kanetkar,
for Applicant in IA/13365/2024.

Mr Navroz Seervai, Senior Advocate, with, Prangana Barua,
Shivam Bhagwati & Swarupini Srinath, i/b, Crawford
Bayley & Co. for Applicant in IA/13361/2024.

Mr K J Presswalla, *with Tushad Kakalia, D J Kakalia & Sandeep Goyal, i/b Mulla & Mulla & Craigie Blunt & Caroe, for Respondent in both IAs.*

Mr Chandrakant N Chavan, *for Respondent No. 4-UOI, in both IAs*

CORAM **M. S. Sonak &
Kamal Khata, JJ.**
DATED: **1 October 2024**

PC:-

1. Heard learned Counsel for the parties.
2. Learned Counsel for the parties agree that the common order can dispose of both these Interim Applications.
3. Both these Interim Applications seek a modification of our order dated 6 September 2024 to the extent the said order records that the Petitioners/Applicants would deposit the disputed amounts with the Cantonment Board within four weeks, i.e., on or before 4 October 2024.
4. The statement regards such a deposit is contained in paragraph 14 of our common order dated 6 September 2024, which reads as follows:

“14. Learned counsel for the Petitioners state that the amounts in dispute will be deposited by them with the Board within four weeks from today, i.e., on or before 4 October 2024. They, however, submit that during the pendency of the Petitions, they have already deposited some amounts without prejudice with the Board. They submit that these amounts should be directed to be adjusted. Mr Presswalla quite fairly agrees that this could be done. Accordingly, the Petitioners

would be entitled to adjust the amounts already paid and deposit the balance amount within four weeks from today, i.e., on or before 4 October 2024.”

5. Mr Seervai, the learned Senior Advocate for the applicants, submits that the applicants have now acquired knowledge based upon some statements made by the Chief Executive Officer of the Pune Cantonment Board, indicating that the financial position of the Cantonment Board is quite precarious. In this regard, reliance is placed upon news items dated 14 February 2024 in the Daily Hindustan Times and 7 July 2022 of the Indian Express. Reliance is also placed upon certain information available in the public domain about the recruitment in kept on hold or maintenance of the garden being neglected due to funds crunch.

6. Mr Seervai submits that considering the above material, if the applicants are made to deposit any amounts with the Cantonment Board, it is unlikely that such amounts would be reimbursed or refunded to the applicants even if they succeed in the appeals before the Appellate Authority. Mr Seervai submitted that the interest of justice would be met if the applicants are permitted to offer a bank guarantee instead of depositing the amount or in the alternate, the applicants should be permitted to deposit this amount in the Court, and if the Cantonment Board wishes to withdraw such amount, the Cantonment Board could be put to terms regards such withdrawal. Finally, Mr Seervai submitted that even if the applicants are required to deposit the amount, the Cantonment Board should be directed to maintain a separate

account for such amount and such amount should not be spent by the Cantonment Board for any purposes until the disposal of the appeal.

7. Mr Presswalla opposes the grant of any reliefs in this Application. He submits that the applicants have already received enough indulgence, and the grant of any further indulgence would be contrary to the scheme of the Cantonments Act 2006.

8. We have considered Mr Seervai's submissions, but with due respect to him, we are unable to agree with any of them.

9. The requirement of deposit of the amounts with the Cantonment Board as a pre-condition for the final appeal hearing is a statutory requirement in Section 96(b) of the Cantonments Act 2006. This requirement cannot be sidestepped based on the submissions made. The right to appeal is a creation of the statute. In this case, the right is hedged with the requirement of a pre-deposit of the disputed amount. Based on any alleged financially precarious position of the Board, this statutory requirement cannot be waived.

10. If Mr Seervai's contention based mainly on some press reports is to be accepted, practically all those who dispute tax liability will insist on similarly deviating from the statutory scheme in Section 96 of the Cantonments Act 2006.

11. In any event, the amounts to be deposited in the present case are in the range of Rs. 8.8 Crores in the two matters. This is, after adjusting the amounts already paid/deposited by the

applicants. It is too much to suggest that the Cantonment Board, with several immovable properties and assets, will not be in a position to refund the amounts deposited by the applicants should the applicant's appeals ultimately succeed.

12. Typically, in matters of recovery of either statutory dues or taxes, this Court is quite circumspect while granting interim orders. In the case of **Assistant Collector of Central Excise vs Dunlop India Ltd & Ors**¹, the Hon'ble Supreme Court has held that collections of public revenue are seriously jeopardised, and the budgets of governments or local authorities are affirmatively prejudiced to the point of precariousness consequent upon interim orders by the Courts, which deprive the governments and local authorities of the much-needed finances. The principles and observations in this decision are reasons enough to reject these applications.

13. Mr Presswalla disputed Mr Seervai's contentions but submitted without prejudice that the Cantonment Board's financial position is affected precisely because of parties like the present applicants who go to any extent to evade tax payment.

14. Based on the apprehension that the Cantonment Board would not be in a position to refund the deposited amount should the applicants' appeals be ultimately allowed, no case is made out to bypass the statutory requirement in Section

¹ AIR 1985 SC 330

96(b) of the Cantonment Boards Act. This is assuming that at this stage, we can rely upon certain newspaper reports relied upon by the applicant

15. For the above reasons, we dismiss these applications without any order for costs.

16. At this stage, Mr Seervai, learned Senior Counsel for the applicants, seeks an extension to deposit the amounts with the Cantonment Board up to 14 October 2024. On instructions, he stated that the amounts would be deposited with the Cantonment Board on or before 14 October 2024 in both matters.

17. Accordingly, we extend the time for deposit in both these matters up to 14 October 2024. However, we clarify that in case of a breach or failure to deposit, the applicants would not have the benefit of the indulgence shown in our order dated 6 September 2024.

18. These applications are disposed of in the above terms. No costs.

(Kamal Khata, J)

(M. S. Sonak, J)