

PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1580 OF 2023

Apar Industries Ltd.

... Petitioner

Versus

Union of India

... Respondents

Mr. Mustafa Doctor with Mr. Nimay Dave, Mr. Spenta Havewala, Mr. Rahul Dwarkadas, Areez Gazdar, Nutash Kotwal, Shireen Mistri i/b. Veritas Legal, for the Petitioner.

Mr. Devang Vyas, ASG with Mrs. Savita Ganoo, Mr. D. P. Singh, Mr. Sheelong Shah, Ms. Vaibhavi Chaudhary, Mrs. Arusa Amin, for Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 31 JANUARY, 2024

P.C.

1. We have heard Mr. Doctor, learned Senior Advocate for the petitioner and Mr. Vyas, learned ASG for the respondent.
2. This petition under Article 226 of the Constitution is filed praying for the following reliefs:-

“a) that this Hon’ble Court will be pleased to issue a Writ of Certiorari or any other Writ in the nature of Certiorari or any other appropriate writ, direction or order calling for all the documents in relation to the Impugned Show cause Notice and Impugned Delisting Letter, and after going into the legality and propriety of the same, quash and set aside:

(i) The Impugned Show Cause Notice dated 28th February 2023 (*Exhibit “C” hereto*); and

(ii) The Impugned Delisting Letter dated 16th May 2023

(Exhibit “A” hereto).

- b) that this Hon’ble Court be pleased to issue a Writ of Mandamus or any other writ in the nature of mandamus or any other appropriate writ, direction or order restraining Respondent No.2 and their officers and agents from taking any steps in any manner in furtherance of the Impugned Show Cause Notice dated 28th February 2023 and Impugned Delisting Letter dated 16th May 2023;
- c) that without prejudice and in the alternatives to prayers (a) and (b) and in the event that the Respondent authorities take the view that the Impugned Delisting Letter prevents the Petitioner from completing the existing contracts, this Hon’ble Court be pleased to issue a writ of Certiorari or any other Writ in the nature of Certiorari or any other appropriate writ, direction or order staying the operation implementation and effect of the Impugned Delisting Letter dated 16th may 2023 and so far as it pertains to existing contracts;
- d) in the alternative, in the event this Hon’ble Court is not inclined to quash and set aside the Delisting Letter, this Hon’ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, direction or order restraining Respondent No.2 and 3, and their respective officers and agents, from taking any steps in furtherance of the Impugned Delisting Letter dated 16th May 2023, till the hearing and final disposal of any appeal filed before the Appellate Authority (*i.e.* GM/CORE) in a manner as contemplated in the Guidelines issued by Respondent No. 2;
- e) that pending the hearing and final disposal of the present petition this Hon’ble Court be pleased to stay the implementation, operation and effect of the Impugned Delisting Letter dated 16th May 2023;
- f) that without prejudice and in the alternative to prayer D above, pending the hearing and final disposal of the present petition, in the event the Respondent authorities take the view that the delisting prevents the Petitioner from completing the existing contracts, this Hon’ble Court be pleased to stay the operation, implementation and effect of the Impugned Delisting Letter dated 16 May 2023 in so far as it pertains to existing contracts;
- g) that without prejudice and in the alternative to prayer D above, pending the hearing and final disposal of the present petition, this Hon’ble Court be pleased to permit the Petitioner to participate in ongoing tenders issued by the Respondents and its affiliates in respect of which it has already submitted its bid;
- h) For ad-interim and interim reliefs in terms of prayer (a) to (g) above;
- i) for costs of this Petition;”

3. At the outset Mr. Vyas would submit that the entire cause of action on this petition has arisen in the State of Uttar Pradesh, hence it would be the Allahabad High Court before which the present petition ought to have been filed. Such contention as urged by Mr. Vyas, is disputed by Mr. Doctor. He would submit that this is a third petition which is filed before this Court on similar cause of action, and that the earlier petitions have been entertained and orders passed.

4. We however find from the earlier orders passed by this Court on the petitions filed by the petitioner that the issue of territorial jurisdiction was not addressed.

5. Be that as it may, we do not intend to delve on the objection of Mr. Vyas, considering as to what has transpired before us today. It is not in dispute that against the impugned order dated 16 May 2023 directing de-listing the petitioner has a remedy of an appeal to be filed before the Appellate Authority. On behalf of the petitioner, it is fairly stated that the petitioner is willing to take recourse to such remedy to assail the impugned order before the Appellate Authority.

6. In our opinion, such approach of the petitioner is quite fair. All the issues can be effectively adjudicated in the appeal as provided.

7. We find that this petition was filed on 26 May 2023. A co-ordinate Bench of this Court, on 9 June 2023 had passed an ad-interim order on the petition whereby protection was granted to the petitioner in terms of prayer

clauses (e), (f) and (g), and the same has continued to operate till date. As now the petitioner intends to take recourse to the remedy of an appeal, it is in the interest of justice that the ad-interim order dated 9 June 2023 be further extended for a reasonable period so as to enable the petitioner to file an appeal and to take out an interim application for stay of the impugned order in such proceedings.

8. Accordingly, we dispose of the petition by the following order:

ORDER

- i. The petitioner shall file an appeal before the Appellate Authority within a period of 10 days from today alongwith an application for stay.
- ii. The ad-interim protection as granted by this Court by the order dated 9 June 2023 shall continue to operate till the Appellate Authority passes appropriate orders on the Interim Application for stay to be filed by the petitioner.
- iii. All contentions of the parties on merits are expressly kept open.
- iv. It is further clarified that in the event an order adverse to the petitioner is passed on the stay application, it shall not be given effect to for a period of 10 days from the date of the said order so as to enable the petitioner to take recourse to such appropriate remedy as may be permissible in law.

9. Disposed of. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)