IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.1322 OF 2020
IN
WRIT PETITION NO.5024 OF 2018

The Vaidyanath Urban Co-operative Bank Ltd.,
A Lead Bank, At Post Parli, Tq. Parli,
Dist. Beed, and for and on behalf of the
Consortium, through its Chief Executive Officer,
Sanjay Pandharinath Khandade,
Age : 51 years,
Occ. Service as Assistant General Manager,
Vaidyanath Urban Co-operative Bank Ltd.,
At Post Parli, Tq.Parli, Dist. Beed ..Applicant

Vs.

1. The Commissioner of Sugar,
Maharashtra State,
Commissionerate of Sugar,
Sakhar Sankul, Shivaji Nagar,
Pune

2. Sangli Urban Co-operative Bank Ltd.
Through its Chief Executive Officer,
At Post – Sangli, Khanbagh,
Tq. and Dist. Sangli

3. Shambhu Mahadeo Sugar and Allied
Industries Ltd., Hawargaon,
Tq. Kallam, Dist. Osmanabad
Through its Chairman and Managing
Director ..Respondents

Mr.R.N.Dhorde, Senior Advocate i/b. Mr.S.N.Suryawanshi, Advocate for applicant

Mr.R.R.Bangar, Advocate for Union of India

Mr.N.B.Khandare, Senior Advocate i/b. Mr.Manish P. Tripathi, Advocate for intervenors (depositors of credit society)

Mr.Madhav Rai, Advocate h/f. Mr.Suresh Kulkarni and Mr.R.S.Malani, Advocate for intervenor – Abhyudaya Co-op. Bank Ltd.

CORAM : R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.

DATE : JUNE 13, 2025

ORDER :-

This is an application with the following reliefs :-

> A) Allow the applicant bank to withdraw the remaining sale proceeds of the Sugar Factory to the tune of Rs.45,24,97,000/- (Forty Five Crores Twenty Four Lakhs Ninety Seven Thousand) deposited in this Hon'ble Court, and for that purpose issue necessary orders.
>
> OR IN THE ALTERNATIVE AND WITHOUT PREJUDICE TO THE ABOVE PRAYER :
>
> B) Hear and decide the group of the present Writ Petitions expeditiously at the admission stage and for that purpose pass appropriate orders.

2. The applicant is a banking company. It had lent financial assistance to respondent no.3 – Shambhu Mahadeo Sugar and Allied Industries Ltd. ("sugar factory", for short) for its establishment.

Since respondent no.3 – sugar factory defaulted on the loan, the applicant bank, being secured creditor, sold the properties of the sugar factory. Meanwhile, respondent no.2 – Sangli Urban Co-op. Bank Ltd. approached the Debts Recovery Tribunal (DRT) for recovery of its dues from respondent no.3 – sugar factory and for incidental reliefs. The applicant – bank, then, approached this Court by filing Writ Petition (5024/2018). This Court, therefore, directed the applicant – bank to deposit with this Court the sale-proceeds.

3. Mr.Dhorde, learned senior counsel for the applicant – bank, would submit that the Reserve Bank of India is after the applicant. It may pass any adverse order against the applicant – bank. He would further submit that the applicant – bank is ready to furnish bank guarantee and abide by any further orders that may be passed in relation to the amount in deposit. He, therefore, urged for allowing the application.

4. Mr.Khandare, learned senior counsel representing the intervenors, i.e. depositors of the credit society namely, Subhkalyan Multi-State Co-operative Credit Society Ltd., would submit that the depositors of the credit society are, in fact, victims. Their hard-earned money in deposits with the said co-operative credit society,

was lent to respondent no.3 – sugar factory. Pursuant to the First Information Report lodged, crimes for the offences under the the Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act) and I.P.C. have been registered. He relied on the Apex Court judgment in the case of **National Spot Exchange Limited Vs. Union of India and ors., Writ Petition (Civil) No.995 of 2019**, to submit that the provisions of the M.P.I.D. Act would prevail over the Insolvency and Bankruptcy Code, 2016 and even, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

5. Mr.Dhorde, learned senior counsel representing the applicant, submitted that the co-operative credit society will, first, have to establish connection between the amount in deposit and the amount lent by it to the sugar factory. According to him, the applicant bank had lent the money for establishing sugar factory itself, long before the FIR was registered for the offence under the provisions of MPID Act. According to learned senior counsel, the sale-proceeds are of sale of the sugar factory itself. The credit society might have lent money to the sugar factory long after the sugar factory was established, which could have been utilised for other purposes and as such, the sale-proceeds in deposit with this

court, has no connection with the amount lent by the co-operative credit society.

6. Except the applicant – bank, none of the respondents or the credit society has prayed for release of the amount in deposit, in their favour. Admittedly, the Abhudaya Co-operative Bank, which also had lent money to the sugar factory, initiated proceedings under IBC way back in 2019, being CP.No.3062/IBC/NCLT/MB/MAH/2018. It is informed that the National Company Law Tribunal (NCLT) has passed an order appointing Insolvency Resolution Professional (IRP). Our attention has been drawn to Section 14 of the I.B.C., whereunder, there is moratorium for prohibiting institution of suits or continuation of pending proceedings initiated for the recovery of the amount. For better appreciation, we reproduce Section 14 of I.B.C. below:-

> **14. Moratorium**.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—
>
> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;

(3) The provisions of sub-section (1) shall not apply to—

3(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

> (b) a surety in a contract of guarantee to a corporate debtor.
>
> (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:
>
> Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

7. Since the N.C.L.T. has appointed IRP and passed order dated 04.01.2019, declaring moratorium, we cannot pass any order as regards the amount in deposit with this Court. The application, therefore, stands rejected.

[NEERAJ P. DHOTE, J.] **[R.G. AVACHAT, J.]**

KBP