

Surya Kiran Investments And Capital ... vs Yes Bank Limited & Ors on 24 July, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

\$~6

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 4522/2020, CM APPL. 16317/2020 (stay), CM APPL. 16318/2020 (exemption), CM APPL. 16319/2020 (permission to file lengthy synopsis) & CM APPL. 16320/2020 (exemption)

SURYA KIRAN INVESTMENTS AND CAPITAL SERVICES
PVT. LTD. & ORS.

..... Petitioners

Through: Mr. Anivesh Bhardwaj, Advocate.

versus

YES BANK LIMITED & ORS.

..... Respondents

Through: Mr. Rajiv Nayar, Senior Advocate
with Mr. Anuj Berry, Ms. Smarika Singh, Mr. Kartik Nayar, Mr. Shiv Johar and Mr. Vinayak Chawla, Advocates for R-1.
Mr. Dayan Krishnan, Senior Advocate with Mr. V.P. Singh, Ms. Anindita Roy Chaudhary, Ms. Vatsala Rai, Mr. Paresh Lal, Ms. Vanya Chhabra and Ms. Aakash Lodha, Advocates for R-2.
Mr. Chetan Sharma, ASG with Mr. Jasmeet Singh CGSC and Mr. Srivats Kaushal, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 24.07.2020

1. The hearing was conducted through video conferencing.
2. The learned counsel for the petitioners seeks the following reliefs:

"

A. Issue an appropriate writ, order or direction declaring the write-down of Additional Tier 1 Bonds by Yes Bank Limited as ultra vires the "Yes Bank Ltd. Reconstruction scheme" issued by Union of

India on 13.03.2020;

B. Issue an appropriate writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction quashing the write-down of AT1 bonds as being in violation of the terms of the Offer Document/Information Memorandum and the Master Circular on Basel III Norms issues by RBI;

C. Issue an appropriate writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction quashing „Writ-down Disclosure dated 14.03.2020 issued by Yes Bank Ltd. by way of which Yes bank declared that the AT1 Bonds worth INR 8,415 crore were written-down with incorrect application of law; D. Issue an appropriate writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to reconstitute the AT1 Bond holders and follow the "Order of write-down"

as provided under the Offer Document/Information Memorandum of the AT1 Bonds by reversing the effect of any accounting entries, notings, write-off/write-down, cancellations or any such steps that have been taken pursuant to the decision of writing off/writing-down AT1 Bonds;

E. Issue an appropriate writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction directing Yes Bank Ltd. to write-down Common Equity Capital before writing down AT1 Bonds in accordance with the provisions of the Offer Document/ Information Memorandum, Reconstruction Scheme issued by UOI, and the Basel III Master Circular issued by RBI; F. Issue an appropriate writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction directing Yes Bank Ltd. to write down the existing Common Equity Capital as per the RBI Basel III Master Circular before issuing/allotting additional equity shares; AND G. Pass such further and other orders as the court may deem fit in the circumstances of the present case may require."

3. At the outset, the learned Senior Advocates for respondent no. 1 and respondent no. 2, state that the writ petition is not maintainable for, inter alia, the following reasons:

i) Under the Bond scheme, the jurisdiction apropos any dispute specifically vests with courts in Mumbai, Maharashtra.

ii) A petition is pending before the Bombay High Court seeking the similar reliefs. Interests of Bond-holders are being watched over by and they are duly represented by the Trustee. The petitioner could well join the efforts in the said proceedings.

iii) Apropos comity of court proceedings, it would be prudent, if the matter is heard by one court.

4. Reference is made to Morgan Stanley Mutual Fund vs. Kartick Das, (1994) 4 SCC 225, in which the Supreme Court, inter alia, held as under:

"

39. In this case, the public advertisement was given as seen above, on 13-12-1993; the petition was filed on 4-1- 1994 and the impugned order of Consumer Forum came to be passed on the following day. As to why the respondent chose to come at the eleventh hour and where was the need to pass an urgent order of injunction, are matters which are not discernible. Besides tested in the light of the case law set out above, the impugned order which is bereft of reason and laconic cannot stand a moment s scrutiny.

42. As far as India is concerned, the residence of the company is where the registered office is located. Normally, cases should be filed only where the registered office of the company is situate. Courts outside the place where the registered office is located, if approached, must have regard to the following. Invariably, suits are filed seeking to injunct either the allotment of shares or the meetings of the Board of Directors or again the meeting of general body. The Court is approached at the last minute. Could injunction be granted even without notice to the respondent which will cause immense hardship and administrative inconvenience. It may be sometimes difficult even to undo the damage by such an interim order. Therefore, the court must ensure that the plaintiff comes to court well in time so that notice may be served on the defendant and he may have his say before any interim order is passed. The reasons set out in the preceding paragraphs of our judgment in relation to the fact which should weigh with the court in the grant of ex parte injunction and the rulings of this Court must be borne in mind.

....."

5. The same principle was reiterated in Bloom Deckor Limited vs. Subhash Himatlal Desai and Others, (1994) 6 SCC 322.

6. The registered office of respondent no. 1 is in Mumbai, Maharashtra and the headquarters of Reserve Bank of India is also situated in Mumbai. Therefore, according to the learned counsels for the respondents, lis if any, ought to pursued before the courts in Mumbai, where the issue is already being examined. Furthermore, it is argued that the petitioners knew fully well that the proceedings were initiated way back in March 2020 and they should have approached the court promptly, not now after a lapse of four months.

7. The learned counsel for the petitioners contends that the aforesaid judgements examined jurisdiction apropos suits and not to writ proceedings. Invoking the writ jurisdiction for protection of fundamental rights or against patently arbitrary action of State cannot be relegated to a distant court, much to the inconvenience and unwarranted expense of the petitioners. He relies upon the dicta of the Supreme Court in Maharashtra Chess Association v. Union of India, 2019 SCC OnLine SC 932, which reads, inter alia, as under:

"....

29. In the present case, the Bombay High Court has relied solely on Clause 21 of the Constitution and Bye Laws to hold that its own writ jurisdiction is ousted. The Bombay High Court has failed to examine the case holistically and make a considered determination as to whether or not it should, in its discretion, exercise its powers under Article 226. The scrutiny to be applied to every writ petition under Article 226 by the High Court is a crucial safeguard of the rule of law under the Constitution in the relevant territorial jurisdiction. It is not open to a High Court to abdicate this responsibility merely due to the existence of a privately negotiated document ousting its jurisdiction.

30. It is certainly open to the High Court to take into consideration the fact that the Appellant and the second Respondent consented to resolve all their legal disputes before the courts at Chennai. However, this can be a factor within the broader factual matrix of the case. The High Court may decline to exercise jurisdiction under Article 226 invoking the principle of forum non conveniens in an appropriate case. The High Court must look at the case of the Appellant holistically and make a determination as to whether it would be proper to exercise its writ jurisdiction. We do not express an opinion as to what factors should be considered by the High Court in the present case, nor the corresponding gravity that should be accorded to such factors. Such principles are well known to the High Court and it is not for this Court to interfere in the discretion of the High Court in determining when to engage its writ jurisdiction unless exercised arbitrarily or erroneously. The sole and absolute reliance by the Bombay High Court on Clause 21 of the Constitution and Bye Laws to determine that its jurisdiction under Article 226 is ousted is however one such instance.

...."

8. List on 26.08.2020, for arguments on maintainability of the writ petition.

9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J JULY 24, 2020/AB