

(2022) 02 DEL CK 0165

In the Delhi High Court

Case No : Civil Writ Petition No. 3261 Of 2022, Civil Miscellaneous Application
No. 9475 Of 2022

Agson Global Pvt. Ltd. & Anr.

APPELLANT

Vs

Indian Overseas Bank

RESPONDENT

Date of Decision : 22-02-2022

Acts Referred:

Citation : (2022) 02 DEL CK 0165

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Mukul Rohatgi, Rishi Agrawala, Sameer Rohatgi, Karan Luthra,
Pranjit Bhattacharya, Krishan Kumar, Atul Sheopuri, Nitin Pal

Judgement

Rekha Palli, J

CM APPL.9476-77/2022

1. Exemptions allowed, subject to all just exceptions.
2. The applications are disposed of.

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3. The petitioners have approached this Court assailing the communication dated 14.02.2022 issued by the respondent rejecting the petitioners' request for emergency loan of Rs.150 crore under the Emergency Credit Line Guarantee Scheme (hereinafter, ECLGS), introduced by the Government of India.

4. Learned senior counsel for the petitioners submits that the impugned decision of the respondent is based on an erroneous premise that under the ECLGS, applicable as on date, there is still a condition that the total fund based outstanding of the entire business of the company should not exceed Rs.500 crore. However, the respondent has failed to consider the modifications introduced vide ECLGS 4.0 on 31.05.2021 (annexed as Annexure P-12A to the

writ petition), which clearly states that the loan outstanding limit of Rs.500 crore was being removed. In fact, a specific advice was given by the Government of India to all the financial institutions to make use of these modifications to the scheme. He, therefore contends that the impugned order, which does not consider the effect of these modifications, is liable to be set aside.

5. Issue notice. Learned counsel for the respondent accepts notice and supports the impugned order by urging that the same has been passed on the basis of the guidelines issued by the National Credit Guarantee Trustee Company (NCGTC), Government of India. He is, however, not in a position to dispute that the impugned order has been passed on the basis of the conditions in ECLGS 2.0 and without any reference to the modifications introduced vide ECLGS 4.0 on 31.05.2021.

6. In the light of the aforesaid stand taken by the parties, it is evident that the issue raised in the present petition hinges only on the interpretation of the modifications introduced on 31.05.2021, which is already on record. The writ petition is, therefore, with the consent of the parties taken up for disposal.

7. In the light of the rival submission of the parties, it would be apposite to refer the impugned communication dated 14.02.2022 as well as the modifications introduced by ECLGS 4.0 as recorded in the communication dated 31.05.2021.

Impugned Communication dated 14.02.2022

"Dear Sir/Madam,

We refer to the captioned subject and would like to inform you that our Top management has advised that as per 'Guaranteed Emergency Credit Line (GECL) - Modification in Scheme and enclosed annexures (1) Operational Guidelines of ECLGS issued by NCGTC (2) FAQs issued by NCGTC latest updates as on 01.10.2021.

Quote: "As an extension to above, even if borrowers have fund based outstanding in the select 27 sectors within Rs. 500.00 crore but their total fund based outstanding exceeds Rs. 500.00 Crores, they shall be ineligible for assistance under ECLGS 2.0/2.0 (Extension).

Unquote:

From the extant circulars / guidelines and FAQ it is clear that if a borrower is having diversified activities and fund based outstanding in one or more of the 27 identified sector is within Rs. 500.00 crores and total fund based outstanding for all business exceeds Rs. 500.00 crores, they shall be ineligible for assistance under ECLGS 2.0/2.0 (Extension).

Therefore, it is not a valid point to take up with Ministry of Finance / RBI for the clarifications.

We also advise you to regularise the account immediately."

Communication dated 31.05.2021 from NCGTC

NCGTC

Ref No. 0388/NCGTC/ECLGS May 31, 2021

The Chairman & Managing Directors, Chief Executive Officers of all Scheduled Commercial Banks, Financial Institutions and Non-Banking Finance Companies.

Madam/Dear Sir,

Emergency Credit Line Guarantee Scheme [ECLGS] – Modifications

Please refer to NCGTC's letter No. 0173/NCGTC/ECLGS dated April 16, 2021 advising modifications in the scheme of CLGS.

We advise that the scope of ECLGS has further been expanded by introduction of ECLGS 4.0 which provides for 100 per cent collateral free guarantee to Member Lending Institutions in respect of loans upto Rs.2 crore extended to eligible hospitals/nursing homes/clinics/medical colleges/units engaged in manufacturing of liquid oxygen, oxygen cylinders etc. for setting up of on-site oxygen producing plants.

Further, all loans under ECLGS and eligible for coverage under RBI resolution framework of May 5, 2021 have been allowed to be considered for grant of extension in repayment period and for additional assistance upto 10% of their outstanding as on February 29, 2020., subject to terms and conditions as specified under ECLGS and RBI guidelines.

Moreover, the scope of ECLGS 3. 0 has been expanded by inclusion of civil aviation sector within it and removal of the loan outstanding limit of Rs.500 crore. (emphasis supplied)

The loans under ECLGS i.e., ECLGS 1.0, ECLGS 2.0, ECLGS 3.0 & ECLGS 4.0 can be sanctioned upto 30.09.2021 and disbursed upto 31.12.2021, subject to terms and conditions as specified in the Operational Guidelines and FAQs.

The updated detailed Operating Guidelines and updated FAQs have been uploaded on our website. We advise you to make maximum use of the modifications introduced in the scheme.

With kind regards,

sd/-

Chief Executive Officer"

8. A perusal of the aforesaid guidelines clearly shows that not only was the scope of ECLGS 3.0 expanded by including an additional sector i.e., civil aviation, within the ambit of the scheme but the limit of the outstanding loan of Rs.500 crores was also specifically removed by the said communication. The ECLGS scheme was introduced by the Government of India to help various sectors that suffered

immensely due to the devastating effect of the Covid-19 pandemic and therefore, the beneficial provisions thereof have to be given their full effect.

9. Once, the limit of Rs. 500 crores had been specifically removed by the Government of India on 31.05.2021 vide ECLGS 4.0, this aspect was necessarily required to be considered by the respondent while dealing with the petitioners' application. It is an undisputed position that while passing the impugned order, the respondent has considered the petitioners' case only on the basis of parameters laid down in ECLGS 2.0 without taking into account the modifications introduced by the ECLGS 4.0.

10. For the aforesaid reasons, the impugned order is wholly unsustainable and is, accordingly, set aside. The matter is remanded back to the respondent with a direction to consider afresh, the petitioners' application, for grant of loan by taking into account the modifications introduced vide ECLGS 4.0 as noted hereinabove. An order be passed by the respondent within a period of 10 days from today.

11. Needless to state, in case the petitioners are still aggrieved, it will be open for the petitioners to seek legal recourse as permissible in law.