

ANUP KUMAR DARUKA v. HDFC Ltd , (2022-2)206 PLR 790

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice M.S. Ramachandra Rao, Mr Justice H.S. Madaan

ANUP KUMAR DARUKA – Petitioner,

versus

HDFC LIMITED and others – Respondents.

CWP-22047-2021

ECLGS – Emergency Credit Line Guarantee Scheme – Denial of benefit under – Disbursal of the amount under the scheme was withheld raising a plea that all outstandings had to be paid as a condition precedent for such disbursal – A reading of the Operational Guidelines nowhere indicates that all outstanding dues must be cleared before disbursal of the amount under the ECLGS – Scheme appears to be part of several measures introduced by the RBI to give relief to businesses which have been affected on account of Covid-19 Pandemic and since the Scheme envisages in clause 18 thereof liberal sanctioning subject to fulfillment of norms, benefits under the Scheme cannot be denied on the basis of grounds which are not covered under the Scheme – Scheme appears to be thus intended only for borrowers having outstanding dues and not for borrowers without dues – If the entire outstanding loans are required to be cleared before disbursal then such a business enterprise would not require the emergency credit line guarantee at all – Directed to pay the amount – Action of the HDFC in denying benefit under the ECLGS to the petitioner is declared as arbitrary, illegal and violative of Art.14 and Art. 19 (1)(g) of the Constitution of India – HDFC is directed to release amount sanctioned under the ECLGS issued by National Credit Guarantee Trustee Company Limited and in terms of notifications/circulars dated 23.05.2020, 01.04.2021, 16.04.2021, 31.05.2021, 04.10.2021 and 20.10.2021 – RBI to take note of the conduct of HDFC Limited and take appropriate action against it for denial of the benefit of the ECLGS arbitrarily – Costs imposed – Constitution of India, Art.14 and Art. 19 (1)(g) – Banking. [Para 29-34, 36, 37, 38]

Er.Sandeep Suri, for the petitioners. Mr.Shekhar Verma, for the respondents.

M.S. Ramachandra Rao, J. – (Reserved on: 27.04.2022 Date of Decision:07.05.2022) –

The Background facts

1. Petitioner was doing business in the name of M/s GRH Enterprises and had availed

certain loan facilities from respondent No.1-Bank in 2015 and 2018 but, on account of the Covid-19 Pandemic and the consequent lockdown commencing in March 2020, petitioner applied to respondent No.1 for restructuring of loan facilities and vide emails dt. 21.09.2020 and 29.09.2020 (P3), the petitioner was supplied with the proper format for making such application, by respondent No.1.

The ECLGS

2. Subsequently, a scheme called “Emergency Credit Line Guarantee Scheme” [for short ‘ECLGS’] was floated by National Credit Guarantee Trustee Company Ltd (respondent No.2) (a Govt. Company working under the Department of Financial Services, Ministry of Finance, Govt. of India) on 23.4.2020.

3. This scheme Annexure P-16 provided 100% guarantee coverage for additional working capital term loans in the case of Banks and Financial Institutions and additional term loans (in case of NBFCs) upto 20% of their entire outstanding credit upto Rs. 25 crore i.e. as on 29.02.2020, subject to the account being less than or equal to 60 days past due as on that date.

4. Clause 7 of the Scheme dealt with eligible borrows. It stated that all business enterprises/MSME borrower accounts with combined outstanding loans upto Rs. 25 Crore as on 29.2.2020, and annual turnover of upto Rs. 100 Crore for FY 2019-2020 were eligible for the Scheme.

5. All borrowers which have not been classified as SMA 2 or NPA by any of the Member Lending Institutions (MLIs) as on 29.2.2020 were declared to be eligible for the Scheme.

6. Clause 8 dealt with the Loan amount eligible under the Guarantee coverage. It stated that the MLIs were expected to check with the credit bureau the overall standing of the borrower to assess the overall additional loan amount eligible for sanction under it.

7. Clause 10 of the Scheme dealt with the nature of account and Tenor of credit under the Scheme. It stated that moratorium of one year was provided on the principal amount to borrowers for the GECL funding during which interest shall be payable and the principal was to be repaid in 36 installments after the moratorium period was over.

8. As per Clause 13, the respondent No.2 was to provide 100% Guarantee coverage on the outstanding amount for the credit facility provided under the Scheme as on the date of the NPA.

9. Clause 18 stated that lending institutions are expected to be liberal in sanctioning loans.

10. Operational guidelines were modified and the scheme was extended till 31.3.2021 on 26.11.2020, and later till 30.6.2021 on 16.4.2021, till 30.9.2021 with disbursements upto 31.12.2021 on 31.5.2021.

The events after the introduction of the ECLGS

11. Petitioner believed that he is entitled to apply under the said scheme and get an additional term loan of 20% of the entire outstanding credit.

12. On 23.3.2021, the petitioner applied for the said benefit on 23.03.2021.

13. Petitioner was informed through an SMS dt.30.03.2021 (P5) that his loan sanctioned by the respondent No.1 Bank has been approved for guarantee cover under the ECLGS and subsequently an email dt.31.03.2021 (P6) was also sent to him by one Ishan Bassi, an officer of respondent No.1, informing the petitioner that his application for ECLGS had been approved in principle for Rs. 7 lakh and that a letter of offer containing the terms and conditions would be sent to the petitioner.

14. Another email was also sent to the petitioner on 01.04.2021 informing the petitioner about approval of the said additional loan facility but, the letter containing the terms and conditions of the said facility was not sent to the petitioner and he alleges that inspite of his several visits to the office of respondent No.1, the amount was not released.

15. Vested with the said attitude, petitioner got issued a legal notice dt.20.6.2021 (P7) to respondent No.1 to release the said amount of Rs. 7 lakh to him within 7 days. This was followed up by the petitioner vide an email dt.03.07.2021 (P8).

16. Ultimately, petitioner was asked on 30.08.2021 through an email to visit the office of respondent No.1 to discuss the matter with the officers of respondent No.1.

17. Petitioner went to the office of respondent No.1 on 31.08.2021 and he alleges that he was informed that they would revert back to him soon.

18. Petitioner subsequently received letter dt.13.9.2021 (P11) from respondent No.1, addressed to his counsel, stating as under:

“At the outset, HDFC denies all averments made in your above referred notice, save and except such averments which have been expressly admitted in the paragraphs below. No averment made in your notice may be deemed to be admitted for mere non-traverse.

We would like to state that we have never denied disbursement under the ECLG scheme but the disbursement is subject to clearing of all the outstanding dues as on the date of disbursement. Your client was called upon to visit our office on dt. 31.08.2021 and pursuant to your client’s visit the matter was discussed in detail. Eventually your client was asked to clear the outstanding amount by 10th September 2021 so as to enable us to disburse the loan asked for. An E-mail to that effect has also been marked to your client on dated 06.09.2021.” (emphasis supplied)

The instant Writ Petition

19. Challenging the said proceeding P11 dt.13.9.2021, this Writ Petition is filed for a direction to respondent No.1 to release the amount of Rs. 7 lakh under the ECLGS scheme and the circulars issued thereunder from time to time by respondent No.2 and to restrain

respondent No.1 from taking any coercive steps against the petitioner in the meantime.

20. Counsel for the petitioner contended that petitioner is entitled to apply under the ECLGS and was entitled to additional term loan of 20% of the entire outstanding credit; that having given in principle sanction to it, the respondent No.1 is stopped from denying it under the impugned proceedings Annexure P-11 dt.13.9.2021 by giving reasons contrary to the terms of the Scheme. He contended that the respondent No.1 being a scheduled bank is bound by the circulars/ guidelines issued by the respondents No.2&3, and since sanction under the ECLGS itself is intended to be liberal, respondent No.1 cannot refuse to release the said benefit on the grounds which are not mentioned in the said policy of respondent No.2, notified on 23.05.2020 vide Annexure P-16 and modified from time to time vide Annexures P17 to P21.

21. It is contended that loan was to be disbursed on 01.04.2021, that the petitioner was in dire need of money to run his business as the same was required for the working capital, and on account of the non release of the said loan amounts, the business of the petitioner suffered immensely and was unable to fulfill his loan obligations/EMIS. It is contended that the default occurred on account of conduct of respondent No.1. It is also reiterated that no such additional conditions of clearance of loan EMIs could be raised as the same was neither part of the scheme nor part of the approval.

Events after filing of the Writ Petition

22. After issuance of notice of motion on 18.11.2021, reply is filed by respondent No.1.

23. The respondent No.1 contended that it was always ready to disburse the loan approved in principle under the ECLGS but, *petitioner had to clear the outstanding dues* and because the loan account of the petitioner was in default at the time of applying for the ECLGS loan, he is not entitled to any relief.

24. It is contended that the concept of prudent lending would not permit respondent No.1 to provide any additional loan unless the existing default is cleared. It is contended that the approval of loan is an in house process and certain formalities were required before a formal sanction letter in the nature of offer letter would be issued.

25. It is alleged that there was default by the petitioners as on 31.3.2021, which was cleared only in April 2021, and the petitioner can only be extended the benefit under the ECLGS after clearance of the existing loans.

26. It is alleged that the objective of the ECLGS is that the loan under the said Scheme would be disbursed to meet the operational liabilities and restart the business but, the petitioner is asking respondent No.1 to adjust the outstanding dues from the ECLGS and disburse the balance to him which is contrary to the spirit of the Scheme i.e. ECLGS.

The consideration by the Court

27. From the facts narrated above, it is clear that in principle sanction was given to the

petitioner by the respondent No.1 for grant of benefit under the ECLGS scheme, but the disbursal of the amount under the scheme was withheld raising a plea that all outstandings had to be paid by petitioner as a condition precedent for such disbursal.

28. When asked to point out which clause in the Scheme empowers respondent No.1 to impose such a condition for disbursal of amount under the Scheme, counsel drew attention of this Court to a term in Annexure P21 i.e. 'Operational Guidelines' updated on 20.10.2021 with regard to ECLGS, which stated that "MLIs are expected to check with credit bureau the overall outstanding of the borrower to assess the overall additional loan amount eligible for sanction under the Scheme."

29. A reading of the above provision nowhere indicates that all outstanding dues must be cleared before disbursal of the amount under the ECLGS.

30. The above Scheme appears to be part of several measures introduced by respondent No.3 to give relief to businesses which have been affected on account of Covid-19 Pandemic and since the Scheme envisages in clause 18 thereof liberal sanctioning subject to fulfillment of norms, benefits under the Scheme cannot be denied on the basis of grounds which are not covered under the Scheme.

31. Admittedly, the Scheme itself says in Clause 7 that Business Enterprises accounts which have outstanding loans upto Rs. 25 crore as on 29.02.2020 and annual turnover of upto Rs. 100 crore for Financial Year 2019-2020 are eligible under the Scheme.

32. The Scheme appears to be thus intended only for borrowers having outstanding dues and not for borrowers without dues.

33. If the entire outstanding loans are required to be cleared before disbursal then such a business enterprise would not require the emergency credit line guarantee at all.

34. It is unfortunate that respondent No.1 having given in principle approval to the petitioner to avail the facility under the ECLGS for Rs. 7 lakh on 31.03.2021 has not bothered to release the same by giving fanciful and arbitrary reasons. It is in fact estopped from blowing hot and cold in the matter. It cannot take the plea that it is a 'business decision' and avoid review of its actions.

35. The plea of the respondent No.1 that the petitioner wanted the benefit not for meeting the operational liabilities and for restart the business but to adjust the outstanding dues from the ECLGS and disburse the balance to him, and that this is contrary to the spirit of the Scheme i.e. ECLGS, cannot be countenanced. In the legal notice Annexure P-7, the petitioner categorically asserted that he was in dire need of funds for purpose of continuing his business and that it is required for meeting emergent business needs. So it is clear that the respondent No.1 is attempting to mislead this Court by taking a false plea.

Conclusion

36. For the aforesaid reasons, this Writ Petition is allowed; the action of the respondent

No.1 in denying benefit under the ECLGS to the petitioner is declared as arbitrary, illegal and violative of Art.14 and Art. 19 (1)(g) of the Constitution of India; and respondent No.1 is directed to release amount sanctioned to the petitioner as per emails dt.31.03.2021 and 01.04.2021 (P6) under the ECLGS dt.23.05.2020 issued by respondent No.2 and in terms of notifications/circulars (P16 to P21), within three weeks from the date of receipt of a copy of this order.

37. The respondent No.3 shall take note of the conduct of the respondent No.1 and take appropriate action against it for denial of the benefit of the ECLGS arbitrarily to the petitioner.

38. The respondent No.1 shall pay costs of Rs.10,000/- to the petitioner within 3 weeks from today.

Sd/- H.S. Madaan, J.

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