

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-OCW-65-2020**

M/s Pernod Ricard India Pvt. Ltd. ... Applicant  
Versus  
State of Goa & Ors. ... Respondents

Mr. Nakul Dewan, Senior Advocate with Mr. K. Noorani, Advocate for the Applicant.

Ms. S.Mordekar, Additional Government Advocate for the Respondents.

**Coram:- M. S. SONAK &  
SMT. M. S. JAWALKAR, JJ.**

**Date:- 17<sup>th</sup> July, 2020**

**P.C.**

This Misc. Application is posted for hearing on 21<sup>st</sup> July, 2020 since, the reply to this application was served upon the Applicant only late yesterday night.

2. Mr. Dewan, on the basis of the instructions from the Applicant/Petitioner makes a statement that the Applicant/Petitioner do not wish to challenge the order dated 12<sup>th</sup> June, 2020 by which the interim relief was declined to the Applicant/Petitioner. He states that according to his instructions, the bank guarantee furnished by the Applicant/Petitioner has already been encashed by the Government.

3. Ms. Mordekar, learned Additional Government Advocate however disputes this position. She points out that the Applicant/Petitioner, without any notice to the Respondents secured return of the original bank guarantee from the Administrative Tribunal, perhaps by suppressing the fact that the interim relief had already been declined by this Court. She states that this position is borne out from the email addressed by the Applicant/Petitioner itself to the Respondents.

4. Ms. Mordekar points out that the Respondents had written to the bank on 7<sup>th</sup> July, 2020 seeking payments in terms of the bank guarantee. She however submits that the bank is insisting upon the production of original bank guarantee. She states that the original bank guarantee, is in fact with the Applicant/Petitioner, who secured its return from the Administrative Tribunal, possibly by suppressing the order made by this Court on 12<sup>th</sup> June, 2020. Mr. Dewan, learned Senior Advocate for the Applicant/Petitioner, on instructions states that the Applicant/Petitioner undertakes to ensure that the amount of Rs.6,56,26,912/- will be paid to the Respondents latest by 20<sup>th</sup> July, 2020, if in the meanwhile, the bank guarantee is not actually encashed by the Respondents. Going by the statement made by Ms. Mordekar, it does not appear that the Respondents are in a position to encash the bank guarantee by 20<sup>th</sup> July, 2020. Therefore, consistent with the Applicant's/Petitioner's own undertaking, which we have now accepted as an undertaking to this Court, the Applicant/Petitioner to ensure that

the amount of Rs.6,56,26,912/- is paid to the Respondents latest by 20<sup>th</sup> July, 2020 without any further delay or default.

5. We make it clear that it is obviously not our intention that the Respondents recover the amount of Rs.6,56,26,912/- twice over. Therefore, once this amount is paid by the Applicant/Petitioner, no doubt, subject to final outcome in the writ petition, there will be no question of the Respondents encashing the bank guarantee even if the same is ultimately traced with them.

6. At one stage, we were inclined to require the Managing Director of the Applicant/Petitioner to remain present in this Court in person, because at least *prima facie*, we were unable to appreciate the Applicant's/ Petitioner's action of seeking return of the original bank guarantee from the Administrative Tribunal even after we had declined the interim relief vide our order dated 12<sup>th</sup> June, 2020 and the Applicants/Petitioners had themselves taken a decision not to challenge this order any further. However, now that an undertaking is given on behalf of the Applicant/Petitioner that this amount will be positively paid on or before 20<sup>th</sup> July, 2020, we refrain from requiring the personal presence of the Managing Director to explain the circumstances in which the application for release of bank guarantee was made before the Tribunal.

7. Mr. Dewan seeks leave to file affidavit in rejoinder. He says that in this rejoinder, the Applicant/Petitioner will explain the circumstances in which such application was made before the Tribunal. Leave as prayed for is granted. Such rejoinder, to be filed by 21<sup>st</sup> July, 2020. Rejoinder to state clearly whether this Court's order dated 12<sup>th</sup> June, 2020 was brought to the notice of the Tribunal.

8. We also call for the records and proceedings from the Administrative Tribunal in connection with the order for return of bank guarantee on the application made by the Applicant/Petitioner herein. Neither of the counsel were in a position to furnish us a copy of this order or details of the application made by the Applicant/Petitioner. Ms. Mordekar points out that such order was made without any notice to the Respondents. Registry to ensure that such records and proceedings are available to this Court on 21<sup>st</sup> July, 2020 when this matter is taken up.

9. The reason for calling of such records and proceedings in exercise of our jurisdiction under Article 227 of the Constitution of India is to basically apprise ourselves of the circumstances in which the application for return of the original bank guarantee was made and order passed thereon, despite our order dated 12<sup>th</sup> June, 2020 declining the interim relief in the main matter. As noted earlier, it is the Applicant's/Petitioner's own case that a decision had already been taken

not to appeal against the order dated 12<sup>th</sup> June, 2020, though initially, the stay was applied on this order no sooner the same was pronounced and such stay had in fact been granted by this Court for a period of two weeks as requested.

10. We again make it clear that the personal presence of the Managing Director is dispensed with only in view of the undertaking now given to this Court that the amount will indeed be paid to the Respondents by 20<sup>th</sup> July, 2020. This undertaking is accepted as an undertaking to this Court and the Applicants/Petitioners are directed to act accordingly.

11. Stand over to 21<sup>st</sup> July, 2020.

**SMT. M. S. JAWALKAR, J.**

**M. S. SONAK, J.**

**at\***