

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 5450 of 2021

M/s Dadex Eternit Limited

Petitioner

through : Mr. Asim Iqbal, advocate

Respondents 1,2,4,5,6,8,9,10,11 & 13

Through : Mr. Ali Safdar Depar, AAG

Respondents 03 & 07

Through : Mr. Muhammad Nishat Warsi, DAG &
Mr. Qaim Ali Memon, advocate

Respondent 12

through : Mr. Ghulam Murtaza Saryo, advocate

Respondent SESSI

: Mr. Faisal, advocate holds brief for Mr. Jawad
A. Sarwana, advocate

Dates of hearing

: **12.01.2022**

ORDER

Through this petition, the petitioner- M/s Dadex Eternit Limited has prayed for the following relief(s):

- a) Providing protection to the petitioner against the ex-employees/ex-workers/rioters/hooligans who have blocked the entrance of the petitioner factory and not allowing the petitioner's employees/management to go inside the factory premises whom are also threatening the petitioner.
- b) Direct the official respondents to provide protection to the petitioner, its workers/employees/management and factory premises. Further to provide protection in removing the finished goods, raw material available at the factory premises and removing the installations, machineries, equipment, etc., from the factory premises.
- c) Direct the respondents No.10 and 11 to issue closure order/certificate in favour of the petitioner for the closure of the factory at Deh 22, Manghopir Road, Karachi.

At the very outset, Mr. Asim Iqbal, learned counsel for the petitioner company has submitted that the petitioner has approached the Sindh Labour Court as well as NIRC, however, such applications were turned down on the plea that they have no jurisdiction, compelling the petitioner company to

approach this Court. He pointed out that in principle the matter relates to the management of the petitioner company and its workers who are claiming their dues, however, they have cordoned off the premises of the petitioner company and are not allowed to enter into the factory and removed valuable chattels lying there, though the petitioner is ready to settle the dispute with all workers. Learned counsel referred to Section 15 of the Sindh Terms of Employment (Standing Orders) Act, 2015 and submitted that since the petitioner company is facing huge losses as well as heavy operational losses since past few years due to their rival company selling their cheaper imported goods; that the obsolete condition of the plant, low capacity of production, high maintenance, and operational charges have rendered the factory nonviable/noncompetitive as such the petitioner company decided in its board meeting held on 25.02.2021 to close down the CC sheet plant/PM-2 and finishing plant department be obsolete, besides that the petitioner company has retrenched around/less than 50% of its surplus employees/workers/staff keeping in view the principle of last in and first out. However, the petitioner company is ready and willing to settle the dispute with the remaining workforce under law. In this regard, both the parties have filed a joint statement dated 12.01.2022 with the following undertaking:

"It is respectfully submitted on behalf of the Petitioner, that this Hon'ble Court may be pleased to allow the Petitioner to remove the raw materials, moveable assets, as well as, the finished products lying at the factory located at Messrs. Dadex Eternit Limited, Deh 22, Mangopir, Karachi, in order to sell the same, and the proceeds thereof shall be utilized for paying the legitimate dues of the workers under/through Nazir of this Court, including without limitation, the banks/financial institutions, etc. as the factory is non-operational and has been closed for the last several years.

It is also submitted that the Petitioner will not remove the machinery affixed on the land, nor sell the land of the factory till the time, the matter is settled between the Petitioner and their workers, by this Hon'ble Court.

It is further submitted that the factory is not in a position to be operated and it shall remain closed/non-operational and nobody or person shall be employed in order to run/operate the same. If by any means, the operation needs to be restarted then, the Petitioner is bound to appoint the retrenched workers, in accordance with law.

In view of the afore-stated, it is most humbly prayed that the Police/Law Enforcement Agencies, impleaded herein as the Respondent Nos.3,4,5,6,7,8,9,10 be directed to provide adequate security for due compliance and enforcement of the orders passed by this Hon'ble Court under the supervision of Nazir of this Court for the, inter alia, removal of raw materials, movable assets, as well as, the finished products lying at the factory located at Messrs. Dadex Eternit Limited, Deh 22, Mangopir, Karachi."

At this stage, learned AAG has pointed out that the application of the petitioner company for permission to close down has been placed before the competent authority and the same shall be decided under law. Let them do so.

Since the application of the petitioner company in terms of Section 15(2) of the Sindh Terms of Employment (Standing Orders) Act, 2015, and other enabling laws, has not been decided by the competent authority, prima facie there does not impede allowing the petitioner company to remove its belongings from the concerned factory however subject to all just exceptions as provided under the law.

In view of the above facts and circumstances of the case, and by consent of the parties present in Court, we deem it appropriate to direct the Nazir of this Court to visit the site and prepare a necessary inventory of the articles lying therein and allow the petitioner company to remove raw materials, movable assets, as well as, the finished products, if any, lying at the factory located at Messrs. Dadex Eternit Limited, Deh 22, Mangopir, Karachi, strictly in terms of settlement arrived by and between the parties as discussed supra. However, the aforesaid arrangement is without prejudice to the rights of the factory workers, whose dues are yet to be cleared by the petitioner company as per the above undertaking.

In case of non-compliance with the terms of the settlement, this Court shall pass appropriate orders including contempt proceedings against the petitioner company so far as the settlement of the dues of the remaining workers of the company is concerned. The Nazir shall ensure adherence to terms of the statement, during the intervening period. He may also obtain necessary security from the law enforcement agencies to comply with the direction of this Court; and, submit his report to this Court accordingly, for appropriate orders, if the need be. The petitioner company shall deposit the Nazir's fee in the sum of Rs.100,000/- with the Nazir of this Court for carrying out the aforesaid assignment.

This petition stands disposed of in terms of the statement dated 12.01.2021. However, the respondents shall resurrect the above petition in case of violation of the terms of the above undertaking.

J U D G E

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Nadir*