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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

R-18

+ **W.P.(C) No. 7949 of 2009**

AIRPORT AUTHORITY OF INDIA & ORS Petitioners
Through: Mr. V.P. Choudhary, Senior Advocate
with Mr. Digvijay Rai, Advocate

versus

STATE OF UTTAR PRADESH & ANR Respondents
Through: Mr. Anurag Kishore, Advocate for R-1.
Mr. Sandeep Agarwal with Mr. K.A. Singh,
Advocate for R-2.

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of local paper may be allowed to see the judgment? No
2. To be referred to the report or not? No
3. Whether the judgment should be referred in the digest? No

ORDER
23.11.2010

1. The prayer in this writ petition is for a direction to Respondent No. 1 State of Uttar Pradesh to honour its guarantee in respect of 13% (taxable) secured redeemable bonds issued by Pradeshia Industrial and Investment Corporation of UP Limited ('PICUP'), Respondent No. 2 and to make payments as per the Schedule at Annexure P-24 of the petition. The Petitioners also seek quashing of the letter dated 13th January 2009 written by the PICUP to the Petitioner No. 2 communicating the settlement of Bond investment at less than the principal amount invested and in the absence of an offer for negotiated settlement before 31st March 2007, at 75% of the principal amount.

2. The facts are that PICUP on 21st November 2001 circulated its information memorandum to the Petitioner No. 1 Airports Authority of India ('AAI') to attract investment through its lead arrangers M/s. R.R. Financial Consultants Limited, New Delhi. In the Information Memorandum, it was highlighted that the Respondent No. 1 had given an unconditional and irrevocable guarantee for the payment of interest and the repayment of the principal. It is stated that in view of the representations made by Respondent No. 1, the International Airport Authority of India Employees Contributory Provident Fund Trust ('IAAIECPFT'), Petitioner No. 2 purchased the bonds issued by the PICUP in the sum of Rs. 2 crores and bond certificates were issued by PICUP to the Petitioners. In between February 2002 to August 2003, PICUP made payment of interest on the application money at the rate of 13% by a demand draft dated 4th February 2002. Further amounts were received by cheques dated 17th April 2002, on 3rd May 2002 and 16th October 2002. PICUP defaulted in making the payment of interest on the next due date i.e. 15th April 2003.

3. On 17th October 2003, the IAAIECPFT received a communication from PICUP for accepting a reduction of interest to 10% per annum. By a further letter dated 31st October 2003, PICUP informed the IAAIECPFT that since there was no communication of acceptance to the offer of reduction in interest, no payment would be released. By letter dated 15th December 2003, the IAAIECPFT informed PICUP that it was not in a position to accept the reduction in the interest rate. The Petitioner made demand for payment of principal sum together with the interest @ 13% up to the date of payment. Thereafter, on 29th January 2004 PICUP issued a letter stating that the

IAAIECPFT should review its earlier decision and accept the payment of interest @ 10% per annum.

4. On 5th August 2008, the Petitioner informed PICUP that the total outstanding interest on the bonds had accumulated to Rs. 1.43 crores from 15th October 2002 to 15th April 2008. In response to the legal notice dated 15th October 2008, PICUP wrote a letter dated 22nd October 2008 stating that its accumulated loss had reached a staggering Rs. 407.83 crores and its net worth was negative at Rs. 272.26 crores as on 31st March 2007. Thereafter on 13th January 2009, a communication was received from PICUP wherein it is stated that it would consider offering the entire principal amount invested to remaining bond investors in the event their offer for a negotiated settlement was received up to 31st March 2009. Beyond that date, PICUP would consider offering only 75% of the principal amount invested. In the above circumstances, the present petition was filed.

5. Mr. V.P. Choudhary, learned Senior counsel appearing for the Petitioners placed reliance upon the order passed by the Supreme Court on 15th October 2008 in Civil Appeal No. 6126 of 2008 (*State of Uttar Pradesh v. Hindustan Unilever Limited*) where in similar circumstances, the Supreme Court upheld the order of this Court and directed that the State of Uttar Pradesh would be liable to guarantee payment to the investors in the U.P. Cooperative Spinning Mills Federation Ltd., another undertaking of the State of UP.

6. In the counter affidavits filed by the Respondents, there is no denial of the

liability of Respondent No. 1 to make payment. However in the affidavits of both Respondents 1 and 2, a preliminary objection has been raised to the maintainability of the writ petition.

7. It is urged by Mr. Sandeep Aggarwal, learned counsel for Respondent No. 2 that in the terms and conditions governing the issuance of the bonds in question in the instant case, there was a clause whereby all disputes between the parties would be subject to the jurisdiction of the courts at Lucknow only. Relying on the judgments in *A.B.C. Laminart Pvt. Limited v. A.P. Agencies, Salem* (1989) 2 SCC 163, *New Moga Transport Co. through its Proprietor Krishan Lal Jhanwar v. United India Insurance Co. Limited* (2004) 4 SCC 677, *A.K. Surekha v. The Pradeshiya Investment Corporation of U.P.* 105 (2003) DLT 440 (DB) and *Mahesh Chand Gupta v. Assistant Collector, Sadar Bazar, New Delhi* 2003 (71) DRJ 409 it is submitted that this Court has no territorial jurisdiction to entertain the present writ petition.

8. This Court finds no merit in the preliminary objection raised by the Respondents as to the territorial jurisdiction of this Court. In *A.K. Surekha v. The Pradeshiya Investment Corporation of U.P.*, the facts were that a recovery certificate was issued in Uttar Pradesh by PICUP and it was for the recovery of the amount covered of the said recovery certificate that the proceedings were initiated in Delhi. In those circumstances, it was held that this Court has no territorial jurisdiction to entertain the writ petition challenging the recovery proceedings. This judgment was followed by the learned Single Judge of this Court in *Mahesh Chand Gupta v. Assistant*

Collector, Sadar Bazar, New Delhi where it was held that the recovery certificate issued by Collector, Lucknow was the substantial cause of action arising in Uttar Pradesh and, therefore, this Court has no jurisdiction to entertain the petition.

9. The above two decisions are, in the considered view of this Court, distinguishable on facts. In the present case, no recovery certificate has been issued by PICUP, much less in U.P. On the other hand, this Court finds that a substantial part of the cause of action has in fact arisen within the territorial jurisdiction of this Court. The Information Memorandum was circulated through the lead arrangers M/s. R.R. Financial Consultants Limited in Delhi. The cheque for the investment was issued in Delhi. Since a substantial part of the cause of action has arisen in Delhi, this Court has jurisdiction to entertain the writ petition. This is consistent with the law as explained by the Supreme Court in a series of judgments including *Oil & National Gas Commission v. Utpal Kumar Basu (1994) 4 SCC 711*, *Navinchandra N. Majithia v. State of Maharashtra (2000) 7 SCC 640* and *Union of India v. Adani Exports Limited (2002) 1 SCC 567*. The clause in the terms and conditions stating that the disputes would be subject to the jurisdiction of the courts at Lucknow only cannot whittle down the powers of a High Court under Article 226 of the Constitution. In particular, Article 226(2) of the Constitution embodies the concept of substantial part of the cause of action. This Court has therefore the jurisdiction to entertain the present writ petition. The preliminary objection raised by the Respondents is accordingly negated.

10. On merits, this petition is fully covered by the judgment of the Supreme Court in *State of U.P. v. Hindustan Unilever Limited*. Following the said decision, this Court has already allowed Writ Petition (Civil) No. 9150 of 2009 (*Tirath Ram Shah Charitable Trust v. State of Uttar Pradesh*). Barring the difference in the state owned corporation, the facts are more or less identical.

11. Accordingly, following the judgment of the Supreme Court in *State of U.P. v. Hindustan Unilever Limited* it is directed that Respondent No. 1 will pay to the Petitioners the principal amount together with interest amounts till date as per the Schedule which is annexed at P-24 of the paper book within a period of twelve weeks from today failing which the Respondent No. 1 will pay penal simple interest at 15% per annum for the period of delay.

12. With the above directions, the writ petition is disposed of, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J

NOVEMBER 23, 2010

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