IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2015

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6941 of 2014
and M.P.No.1 of 2014

M/s.KOP Enterprises,
rep.by its Partner - S.M.Sukumar
S/o.Muruganandam,
No.18, Vanapadi Road,
Ranipet - 632 402,
Vellore District. .... Petitioner

Vs.

1. The Chairman & Managing Director,
State Industries Promotion
Corporation of Tamil Nadu (SIPCOT),
No.19-A, Rukmani Lakshmipathy Road,
Post Box No.7223,
Egmore,
Chennai - 600 008.

2. The Official Liquidator,
attached to the High Court of Delhi,
High Court of Delhi,
New Delhi. .... Respondents

The 2nd respondent is impleaded as per order dated 12.2.2015 made in M.P. No.2 of 2014 in W.P.No.6941 of 2014.

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus directing the respondent to comply with the direction in the letter dated 02.01.2012 issued by the Office of the Recovery Officer, Debt Recovery Tribunal - I, New Delhi in Recovery Case No.15 of 2006 (O.A.No.674 of 1996) and thereby effecting the necessary transfer of property in the name of M/s. KOP Enterprises.

For Petitioner : Mr.M.K.Kabir,Sr.Counsel
for Mr.V.S.Senthil Kumar

For Respondents : Mr.Sudarshamasundar for R.1
Mr.K.V.Babu for R.2

ORDER

With the consent of the learned counsel appearing on either side, the writ petition is taken up for disposal.

2. Heard Mr.M.K.Kabir, learned Senior Counsel assisted by Mr.V.S.Senthil Kumar, learned counsel appearing for the petitioner, Mr.Sundarshamasundar, learned counsel appearing for the 1st respondent and Mr.K.V.Babu, learned counsel appearing for the 2nd respondent - official liquidator.

3. The petitioner has filed this writ petition seeking for issuance of writ of mandamus to direct the 1st respondent to comply with the request made by the Recovery Officer, Debt Recovery Tribunal-I, New Delhi in Recovery Case No.15 of 2016 (O.A.No.674 of 1996) and effect the necessary transfer of property in the name of M/s.KOP Enterprises, the petitioner.

4. The undisputed facts are that the property in question was allotted to M/s.Apollo Tubes Limited on 26.11.1973. Subsequently, the name of the Company was changed to M/s.Apollo Tube & Steel Industries Limited, (in short, ''ATSIL''). Pursuant to the order of allotment, a lease cum sale agreement was executed between the allottee viz., ATSIL and the 1st respondent in 1974. It is stated by the 1st respondent that ATSIL started commercial production in the year 1975. In the counter affidavit filed by the 1st respondent, it is admitted that the sale deed was registered on 19.11.1986 as document No.3711 of 1986. Further, it is admitted that the term loan sanctioned to ATSIL to the tune of Rs.71.50 lakhs was fully repaid by the Company during 1986. Thus, what ever amount payable by ATSIL to the 1st respondent in respect of the land in question had been fully settled and that is precisely the reason why the deed of absolute sale was executed in favour of ATSIL. The 1st respondent claims to have sanctioned IFST loan to a tune of Rs.60.86 lakhs and agreements have been executed by ATSIL along with personal guarantee. According to the 1st respondent, since the Company has been wound up, this amount is recoverable. In the mean time, the property in question was brought for auction at the instance of M/s.Kotak Mahindra Bank and the petitioner herein has been declared as successful bidder in the auction after he having paid the highest bid amount.

5. Now, the only dispute arisen in this case is, as to whether the property should be transferred in favour of the petitioner in the records of the 1st respondent. In this regard, the petitioner approached the Recovery Officer, Debt Recovery Tribunal-I, New Delhi and the Recovery Officer addressed the 1st respondent by communication dated 2.1.2012. Along with the said communication, a certified true copy of the order dated 21.12.2011 passed by the Recovery Officer, Debt Recovery Tribunal -I, Delhi along with a supplementary deed dated 11.12.2007 was enclosed. The 1st respondent

was informed by the Recovery Officer that the petitioner is the auction purchaser of the property belonging to ATSIL situated in the SIPCOT Industrial Complex, Ranipet and the 1st respondent was directed to transfer the property in favour of the petitioner/auction purchaser by making necessary entries in the records. After the communication was sent by the Recovery Officer, the petitioner has submitted representation on 22.9.2013 for transferring the property in the name of the petitioner in the records maintained by the 1st respondent. No reply was given by the 1st respondent to the representation given by the petitioner. Therefore, the petitioner sought for information under the Right to Information Act and by reply dated 24.10.2013, the Information Officer of the 1st respondent informed the petitioner that an amount of Rs.2.26 Crores is recoverable from the ATSIL and therefore they did not comply with the request made by the petitioner. In the background of these facts, the petitioner is before this Court by way of writ petition.

6. As noticed from the counter affidavit filed by the 1st respondent, the entire term loan payable by ATSIL to the 1st respondent has been fully paid and the property has been fully sold by deed of absolute sale dated 19.11.1986 and it is duly registered. The claim made by the 1st respondent against ATSIL is in respect of IFST loan. This, according to the 1st respondent, is to the tune of Rs.2.26 Crores. It has to be noted that ATSIL has already been wound up and the Official Liquidator attached to the High Court of Delhi was appointed as liquidator for ATSIL with direction to take charge of all assets and records of the Company and the Official Liquidator of Delhi High Court invited claims from secured creditors/unsecured creditors/workmen through publication of notice in the newspaper viz., ''The Hindu'' and in response thereto, claims have been received and the High Court of Delhi vide order dated 25.11.2010 appointed a Committee consisting of Advocate and Chartered Accountant to scrutinise the claims of the workers and secured/unsecured creditors. Further, the report submitted by the Official Liquidator confirms about the sale in favour of the petitioner in respect of the property in question for a sum of Rs.3.77 crores. From the report, it is further seen that SIPCOT also filed a claim before the Official Liquidator and the Committee, which was appointed by the Delhi High Court for scrutiny of the claims observed that the Committee does not have any records of the Company in liquidation to verify the claim, the principal amount claimed by the claimant/SIPCOT is Rs.57,07,900/-, the interest amount is Rs.1,44,61,272/- and SIPCOT has submitted a ledger sheet indicating the principal outstanding of Rs.57,07,900/- and in such circumstances the Committee estimated the claim of SIPCOT to the extent of principal amount of Rs.57,07,900/-. The relevant portion of the report submitted by the Court appointed Claims Committee before the Delhi High Court in C.P.No.103 of 1997 with reference to the claim of the 1st respondent reads as follows:

> ''6. SIPCOT
>
> 6.1. The OL's representative was directed to issue notice to this claimant of the meetings of this

Committee. SIPCOT has not attended any meeting.

6.2. The Committee does not have any records of the Company in liquidation to verify the claims. The principal amount claimed by the claimant is Rs.57,07,900. The interest amount is Rs.1,44,61,272. In support the claimant has furnished two deeds of hypothecation dated 6.05.1983 for Rs.13,00,000 and dated 20.11.1986 for Rs.71,50,000. This would total up to Rs.84,50,00 and yet the principal claimed is Rs.57,07,900.

6.3. The Claimant has submitted a ledger sheet indicating the principal outstanding of Rs.57,07,900.

6.4. The Committee is in no position to ascertain and verify the computation of interest. For that matter, even for the principal amount, the Committee has no independent means of verification. No supporting document has been produced indicating the computation of interest.

6.5. In the circumstances of the case, the Committee therefore admits the claim of this claimant to the extent of the principal amount that is Rs.57,07,900.''

From the above report, it is seen that SIPCOT has not attended any of the meetings and from the available records, the Committee has admitted the claim amount of Rs.57,07,900/-.

7. Learned Standing Counsel appearing for the 1st respondent takes strong exception to the observations of the Claims Committee in its report and submits that the SIPCOT had engaged lawyer and they appeared before the Committee and there are sufficient records to show that the findings rendered by the Committee are factually incorrect. However, this dispute cannot be gone into or adjudicated in this writ petition and it is open to the 1st respondent to agitate their claims before Company Court in this regard, if so advised.

8. The further submission of learned counsel for the 1st respondent is that the Claims Committee having admitted the claim of principal amount of Rs.57,07,900/-, this Court should direct the Official Liquidator/Claims Committee to pay the 1st respondent the said amount. From the report of the Official Liquidator, it is seen that from the documents produced by the SIPCOT, as on date, they have been treated as unsecured creditors and the matter is seized off by the Company Court of the High Court of New Delhi and if the 1st respondent seeks payment out of the amount, it has to necessarily move the Company Court of Delhi High Court for appropriate orders in this regard.

9. Thus, the contentions raised by the 1st respondent to refuse to accept to the request made by the petitioner for transfer of property in their name in the records of SIPCOT is wholly not justified. As already pointed out, the property has been sold in favour of ATSIL vide registered sale deed dated 19.11.1986 and it is admitted by SIPCOT that entire term loan borrowed was cleared by ATSIL. In respect of the claim made by SIPCOT in respect of IFST loan, SIPCOT is already before Company Court and has filed claim statement before the Official Liquidator and the Claims Committee, which supervised the claim, has admitted the claim sofar as principal amount of Rs.57,07,900/- is concerned. Therefore, if the 1st respondent has any further grievance, they have to move the Company Court of Delhi High Court for appropriate relief. For all the above reasons, the 1st respondent is bound to effect transfer of property in the name of petitioner.

10. In the result, the writ petition stands allowed and there will be a direction to the 1st respondent to transfer the property viz., the property of ATSIL in SIPCOT Industrial Complex, Ranipet, North Arcot District (Tamil Nadu) in favour of the petitioner as directed in the letter dated 2.1.2012 issued by the office of the Recovery Officer, Debt Recovery Tribunal-I, New Delhi in Recovery Case No.15 of 2006 (O.A.No.674 of 1996) within a period of eight weeks from the date of receipt of copy of this order. It is made clear that merely on account of effecting transfer of the property in the name of the petitioner, it will not in any manner affect the claim of 1st respondent to recover the IFST loan payable to them from the Company, which has been ordered to be liquidated by the Company Court of the High Court of New Delhi. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Chairman & Managing Director,
State Industries Promotion
Corporation of Tamil Nadu (SIPCOT),
No.19-A, Rukmani Lakshmipathy Road,
Post Box No.7223,
Egmore, Chennai - 600 008.

2. The Official Liquidator,
attached to the High Court of Delhi,
High Court of Delhi,
New Delhi.

3. The Recovery Officer
Debt Recovery Tribunal-I
New Delhi.

+1cc to Mr.V.S.SenthilKumar, Advocate sr.no.36923

rv[co]
srg 31.07.2015