

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.31359 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s.Indev Logistics Pvt. Ltd.
Swamy Complex
No.81, Thambu Chetty Street
Chennai - 600 001,
Rep by its Chief Financial Officer
Mr.Viswanathan Gandla ... Petitioner

...Vs...

1.State Industries Promotion Corporation
of Tamil Nadu Ltd., (SIPCOT)
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai - 600 008,
Rep by its General Manager.

2.Axis Bank Ltd.,
Corporate Banking Branch
Rep by its Authorised Signatory
Ground Floor, 192, Karumuthu Nilayam
Anna Salai, Chennai - 600 002. .. Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent culminating in its impugned communication bearing Ref.No.D-II/IRU/Indev Logistics/26/2015 dated 27.07.2015, quash the same and direct the 1st respondent not to deny any facility to the petitioner on the ground of pendency of W.P.No.18399 of 2014 wherein the 1st respondent's demand of Rs.4,68,25,220/- and its actions are under challenge.

For Petitioner : Mr.I.Subramanian, Senior Counsel
for Mr.P.Muralidharan

For Respondents: Mrs.Sudharshana Sundar, for R1

R2 - No Appearance

ORDER

Heard Mr.I.Subramanian, learned Senior Counsel assisted by Mr.P.Muralidharan, learned counsel appearing for the petitioner and Mrs.Sudharshana Sundar, learned standing counsel appearing for the first respondent/SIPCOT. Though notice has been served on the second respondent/AXIS Bank and their name is printed in the cause list, none appears for the second respondent. With the consent of the learned counsel for the petitioner and the first respondent, the writ petition itself is taken up for disposal.

2.The facts which are necessary for the disposal of the writ petition are as here under:

The petitioner was granted a long term lease of 99 years in respect of a property in a Industrial park developed by SIPCOT in Irungattukottai bearing Plot Nos.A-11, A-12, B-7 and B-8 measuring an extent of 19.53 acres. The fact that a lease deed was executed in favour of the petitioner and other related matters are not in dispute. The petitioner has put up a ICD facility in the said property and for business purposes they proposed to approach the second respondent for grant of loan. However, in terms of conditions of lease, the petitioner is required to secure a No Objection Certificate from SIPCOT and without their prior approval, the petitioner would not be in a position to approach the bankers for financial assistance.

3.Roughly about the same time, the first respondent came to know that the petitioner has unauthorizedly sub-leased the built up area of 1,81,072 sq.ft., to M/s.Uniworld logistics Pvt. Ltd., It is submitted by the learned counsel appearing for the first respondent that though sub-leasing is permissible, it cannot be done without prior written permission of SIPCOT and that the petitioner having not obtained such permission, the SIPCOT has issued a demand for Rs.4,68,25,220/- being the sub-leasing charges for the period from 01.04.2010 to 31.03.2014 and this was directed to be paid by the petitioner within a period of thirty days from the date of receipt of the said demand.

4.The petitioner had filed W.P.No.18399/2014 challenging the said demand, in which an order of interim stay was granted on 14.07.2014 in M.P.No.1/2014, subject to the condition that the petitioner deposits 10% of the amount as demanded in the impugned letter and this to be deposited without prejudice to the petitioner's rights and contentions. Subsequently, the petitioner filed an application for modification of interim order by filing M.P.No.2/2014 and after hearing the parties, the Court by an order dated 25.07.2014 modified the earlier order by permitting the petitioner to furnish Bank Guarantee towards 20% of the amount demanded by the respondent in the impugned letter

therein. The said order has been complied with and the petitioner has furnished the Bank Guarantee to SIPCOT.

***5."The learned Standing Counsel for the first respondent/SIPCOT submitted that the M/s.Uniworld logistics Pvt. Ltd., has filed a Civil suit before the Original Side of this Court, being C.S.No.914 of 2015, seeking for declaratory relief with regard to a Leave and Licence agreement, and for declaration that the Warehouse Agreement, dt.1.12.2010, entered into between the plaintiff and the first defendant (writ petitioner) as sham document, and the SIPCOT is contesting the same."** Thus, it is seen that the first respondent has demanded the sub-leasing charges on the alleged ground that the petitioner has unauthorizedly sub-let the building. Thus, in all probabilities, if the demand is satisfied, then the charge of unauthorized sub-leasing would go off. In any event, the validity of the said demand is now been tested before this Court in the other writ petition and therefore, no further observations are required in that regard.

6. So far as the present case is concerned, the order impugned is the letter dated 27.07.2015, wherein the first respondent has rejected the request made by the second respondent on behalf of the petitioner for grant of No Objection Certificate for sanction of the loan, citing the demand of Rs.4,68,25,220/-, which is subject matter of challenge in the other writ petition.

7. The learned Senior Counsel appearing for the petitioner referred to the decision of the Hon'ble Division Bench of this Court in the case of Tamil Nadu Electricity Board v. Best Cotton Mills reported in 2014 AIR CC 1506 and submitted that when the earlier demand has been stayed, then the first respondent cannot rely upon the same to reject their request for grant of NOC to avail the loan.

8. As pointed out earlier, it can be presumed that if the sub-lease charges are paid by the petitioner, the allegation of unauthorized sub-letting will not be put against the petitioner. However, the case of the petitioner is that there is no such sub-leasing. This will be considered in the other writ petition which is pending. However, if the first respondent is compelled to give a No Objection Certificate and the second respondent Bank advance money to the petitioner, then a collateral has to be created on the lease hold property. This would mean that in the event of default, the second respondent Bank would become a secured creditor and will have precedence over the first respondent.

9. Thus, considering the over all circumstances of the case, this Court is of the view that if the interest of the first respondent is safe guarded furthermore, then there can be no difficulty in granting No Objection Certificate. The first respondent should bear in mind that if the petitioner is unable to arrange for financial assistance, it would virtually cripple their entire venture. Therefore, the first respondent being a Government of Tamil Nadu enterprise specialized in developing industrial parks and established for promotion of industries should think on those lines and should not thwart any proposal for industrialization.

10. Therefore, this Court is of the view that if the interest of the first respondent is protected over and above the protection already given in the earlier writ petition, then there can be no objection for the first respondent to grant No Objection Certificate.

11. Accordingly, the writ petition is allowed and the impugned order is set aside, subject to the condition that the petitioner furnishes a Bank Guarantee for 20% of the amount demanded, after giving credit to the 20% Bank Guarantee already furnished in the previous writ petition and in addition to that, 10% of the amount shall be deposited before the first respondent. As and when the Bank Guarantee is furnished and the deposit is made, the first respondent is directed to complete the other formalities and issue No Objection Certificate to the second respondent to enable them to extend financial assistance. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst. Registrar
Dt. 19.8.16

***Corrected as per order dt. 2.9.16**

made in WP.No.31359/15

sd/-

Assistant Registrar

Dt. 9.9.16

/true copy/

Sub Asst. Registrar

To

The General Manager
State Industries Promotion Corporation
of Tamil Nadu Ltd., (SIPCOT)
19-A, Rukmani Lakshmipathy Road
Egmore,
Chennai - 600 008.

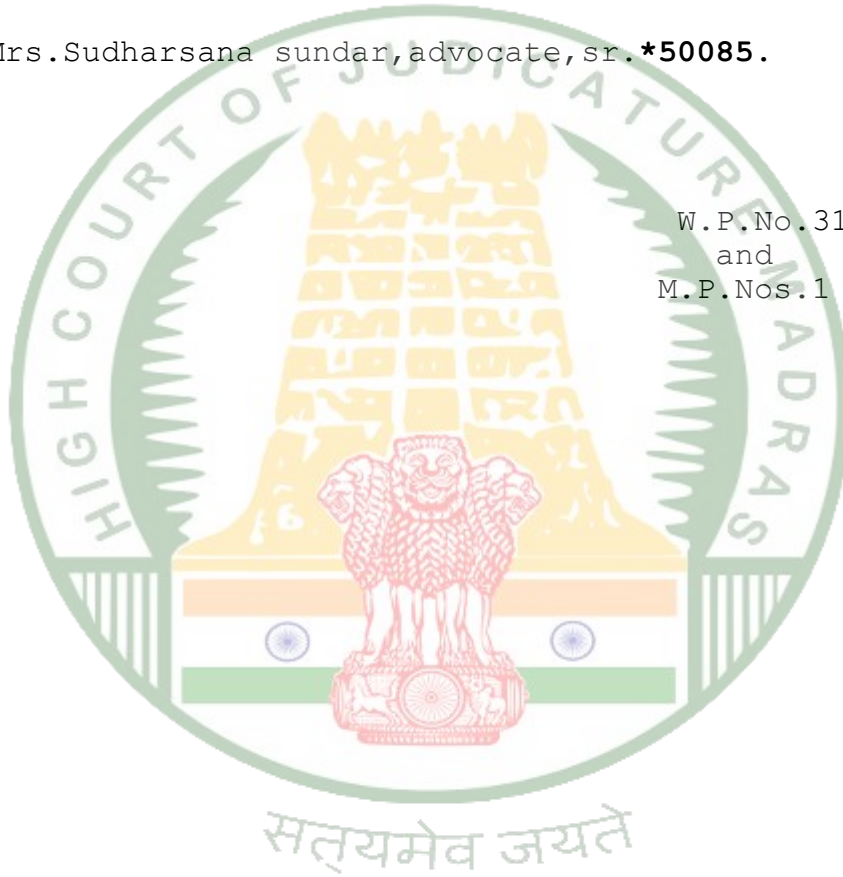
***To be substituted for
the order already
despatched on 1.9.16**

+2 cc to Mr.P.Muralidharan, advocate, sr.*49963

+1 cc to Mrs.Sudharsana sundar, advocate, sr.*50085.

scd(co)
krd 19/8
krd 12/9

W.P.No.31359 of 2015
and
M.P.Nos.1 & 2 of 2015



WEB COPY