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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.09.2016

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD)No.10563 of 2013

M/S CST HOTEL PRIVATE LTD.
REP. BY ITS EXECUTIVE DIRECTOR M.ARULNAYAGAM
NO.27 , GANGAI STREET, KALAKSHETRA COLONY,
BESANT ROAD, CHENNAI 90. : Petitioner

-Vs-

1 THE TAMIL NADU INDUSTRIAL INVESTMENT CORPORATION (TIIC)
REPD. BY ITS CHAIRMAN AND MANAGING DIRECTOR
692 ANNA SALAI,
NANDANAM, CHENNAI 35.

2 THE BRANCH MANAGER,
THE TAMIL NADU INDUSTRIAL INVESTMENT
CORPORATION (TIIC)
DINDIGUL BRANCH,
9, SPENCER COMPOUND,
THIRUVALLUVAR SALAI,
DINDIGUL. : Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records comprised in tender cum public auction notice dated 29.05.2013 issued by the 2nd respondent and quash the same as being premature , illegal, arbitrary, unjust and contrary to law and consequently direct the respondents to consider and dispose the petitioner's representation dated 26.02.2013 strictly in accordance with law and on merits in accordance with the policies applicable to OTS adopted by the respondent.

For petitioner : Mr.Sathish Parasaran
For Respondents : Mr.S.Suresh for
M/s.Aiyar & Dolia

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ORDER

Challenging the tender-cum-auction notice issued by the second respondent, with consequential direction to consider the petitioner's representation dated 26.02.2013, based on the policies applicable to One Time Settlement of the loan amount, the present writ petition has been filed.

2. According to the petitioner, the original promoters of the petitioner hotel borrowed a loan from the Respondent Corporation for setting up of a two star hotel to the tune of Rs.77.40 lakhs in the year 1998 and the petitioner, subsequently, also applied for additional loan for construction of additional floors etc., and the second loan was sanctioned in the year 2011. In view of the default committed by the petitioner, the respondent Corporation foreclosed the loan in the year 2003. On the request of the petitioner's hotel, the issue was kept in abeyance in order to facilitate payments by the petitioner. In fact, the auction sale of the properties mortgaged with TIIC deferred in order to consider the proposal for restructuring the loan made by the hotel. Since the negotiation relating to payment had failed, the TIIC had decided to bring the properties to auction in 2006. Thereafter, the petitioner paid Rs.5 lakhs in July 2006 and another Rs.5 lakhs in August and September 2006. On 15.07.2006, the current management entered into a memorandum of understanding with the original promoters and the management was taken over by the present group and it was duly informed to the respondent Corporation. After taking up the management, the petitioner requested the second respondent for One Time Settlement Scheme (OTS) and in order to show his bonafide, he deposited a sum of Rs.50 lakhs. Thereafter, the petitioner also paid another sum of Rs.30 lakhs in the months of February and March, 2008. Despite the same, OTS scheme was not sanctioned by the second respondent. Then, the respondent issued a notice to the petitioner to pay a sum of Rs.1,47,26,825/- along with applicable simple interest from 23.01.2009. Pursuant to the same, the petitioner made payments upto Rs.1 crore and also approached the respondent for making the full and final payment and simultaneously to receive the title deeds from the respondent. But, the respondent informed him that they are not in a position to hand over the title deeds. Subsequently, on 25.06.2012, the respondent, issued a notice for taking constructive possession of the hotel for default in payments. Then, after mutual discussion, the notice was withdrawn. Again, another notice was issued for taking constructive possession on 23.08.2012, in challenging the above notice, the petitioner filed a writ petition before this Court in W.P.(MD).NO.13181 of 2012, and this Court, by an order dated 27.02.2013, directed the respondent to consider the petitioner's proposal dated 26.02.2013, for settlement of dues and disposed of the said writ petition. Thereafter, the respondent issued a

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notice on 18.03.2013 informing the petitioner that the delay in making payments under the OTS Scheme could be condoned, if the petitioner can make the payment of Rs.1,31,69,564/- within a period of 30 days from the date of receipt of the notice. In the mean time, the Executive Officer was seriously ill and admitted in the hospital. Hence, the petitioner requested the respondent to give further time for payment. Without considering the same, the present auction notice has been issued. Challenging the above notice, the present writ petition has been filed.

3.The respondent filed a counter affidavit stating that earlier, a sum of Rs.77.40 lakhs has been sanctioned to the original promoter. Subsequently, another sum of Rs.30 lakhs was sanctioned to the petitioner in the year 2001. Apart from that, the petitioner also availed term loan and overdraft facilities from the City Union Bank, Periyakulam for purchasing of hotel equipments, without the knowledge of the respondents. Due to heavy overdue and default, the loan was foreclosed on 08.12.2003. In view of the mounting of overdues, the constructive possession of the hotel was also taken over on 31.12.2004, and brought it for public auction. Earlier, the Company has given a One Time Settlement proposal, during October 2004 for Rs.1 crore 20 lakhs, which was not accepted by the Corporation. Sofar, the averment the petitioner that he has deposited Rs.50 lakhs is also not correct and no amount has been deposited with the respondent. Thereafter while taking possession of the hotel, the petitioner filed a writ petition before this Court in W.P.(MD).No.4547 of 2004, and this Court granted an order of stay of taking possession on condition that the petitioner to pay Rs.20 lakhs within a period of 10 days from the date of receipt of copy of the order of the Court. Even thereafter, the petitioner has failed to remit any amount. Hence, the property was brought for auction sale on 30.09.2005. As there was no offer, the respondent Corporation decided to take over physical possession of the hotel and possession was taken on 17.02.2006. Thereafter, the petitioner paid Rs.5 lakhs during August and September 2006 and agreed to pay another Rs.5 lakhs in October 2006 and another Rs.3 lakhs in January 2007. Based on the undertaking given by the petitioner, the respondent redelivered the possession. But, the petitioner failed to keep up his promise. However, the OTS proposal was placed before the Regional Settlement Committee and offer was rejected. Thereafter, once again in January 2008, another proposal was given and the petitioner was directed to pay a sum of Rs.30 lakhs to show his bonafide. But even then, the petitioner did not pay any amount. Therefore, a notice was issued on 11.06.2008, under Section 29 of SFCS Act, 1951, thereafter another notice was issued to the petitioner to pay Rs.1 crore 47 lakhs on 02.03.2009 by giving one month time to settle the loan amount and the same was also not paid within the stipulated time. After that, the petitioner filed another writ petition in W.P.(MD). No.13181 of 2012 and this Court passed an order directing the

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respondent to consider the petitioner's representation toward OTS. Once again, another proposal was given to the petitioner to pay a sum of Rs.1,31,69,564/- within a period of 30 days and that amount also was not paid. Even though several opportunities were given to the petitioner, he has not paid the amount. Hence, the respondent decided to bring the property for auction.

4.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent Corporation.

6.Perusal of the averments made in the counter affidavit, it is seen that even though sufficient opportunities were given by the respondent Corporation to the petitioner, the petitioner did not avail the same, but, he is dragging on the matter from the year 2006 onwards. In the above circumstances, after giving sufficient opportunities to the petitioner, the respondent finally brought the property for auction.

7.In view of the above facts and circumstances of the case, this Court finds no illegality or irregularity in bringing the property for auction. Hence, the writ petitioner is not entitled for any relief. In the result, the writ petition fails, accordingly, the same is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(RTI)

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Sub Assistant Registrar

VS
TE/GSV-PM : 02/01/2017 : 4P/1C

W.P.(MD).No.10563 of 2013
28.09.2016

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