

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.4408 of 2017

W.M.P.No.4615 of 2017

M/s.Diamond Engineering (Chennai) Pvt. Ltd.,
rep., by its Deputy Managing Director,
Mr.P.Danaraj

.. Petitioner

versus

1. The General Manager (MC I & MC II)
State Bank of India,
Mid Corporate Regional Office,
No.34, College Road, Nungambakkam,
Chennai 600 006.

2. The Deputy General Manager,
State Bank of India,
L & I Branch, Kilpauk,
171, Poonamallee Road,
Kilpauk, Chennai 600 010.

3. The Authorized Officer/Chief Manager,
State Bank of India,
Leather and International Branch,
MVJ Towers,
177/1, Poonamallee High Road,
Kilpauk, Chennai 600 010.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent bank to consider the petitioner's representation dated 08.02.2017 in accordance with the guidelines issued by the Reserve Bank of India.

For Petitioner : Mr.P.P.Shanmugha Sundaram,
Senior Counsel for
Mr.N.Elumalai

ORDER
(Order of the Court was made by S.MANIKUMAR, J.)

Writ petition is filed seeking for a Mandamus, directing the respondent bank to consider the petitioner's representation dated 08.02.2017, in accordance with the guidelines, issued by the Reserve Bank of India.

2. During 2004-05, the respondent bank sanctioned a credit limit of Rs.24.00 crores and the petitioner had availed Rs.25.36 crores from the respondent bank. Likewise, as mentioned in the statement for the period November 2004 to 31.01.2017, the sanction limit was enhanced upto Rs.197.40 crores and the petitioner availed the limit upto Rs.183.48 crores. The petitioner has paid Rs.127.97 crores towards interest and Rs.20.59 crores towards other charges and RS.10.10 crores towards Equated Monthly Instalments. While the petitioner-Company are negotiating with the respondent bank for second restructuring of the loan availed by them, the respondents-Bank has issued a notice, dated 21.12.2016, under Section 13(2) of the SARFAESI Act, directing the petitioner to pay a sum of Rs.227,88,30,223/-. In the said notice dated 21.12.2016, it is indicated by the respondents-bank that the property mortgaged with them would be auctioned for realizing the loan amount, if the above amount has not been paid. A detailed reply, dated 05.01.2017, was sent by the petitioner, for sanctioning of restructure proposal for the second time by providing sufficient time limit as per the rules and regulations of the Reserve Bank of India. On 18.01.2017, the respondents-bank has rejected the second restructuring proposal, requested by the petitioner. Thereafter, the petitioner has submitted a new proposal on 08.02.2017, under Section 13(8) of the SARFAESI Act, as follows:

(A) Repayment of principal and interest from October 2017 to March 2025:

As per the statement of, the individual outstanding figures of facility are given for the above limit as on 31.01.2017 adding of provision for interest upto March 2017. Apart from this, provision for interest under diminishing rate of return is given for the remaining period from April 2017 to March 2025.

We give below the abstract of the total liability including principal and interest and its repayment upto March 2025 for your immediate reference.

(i) Total liability upto 31.03.2017	Rs.206.58 crores
(ii) Add: Interest for the period April' 17 to March' 25	Rs.170.30 crores

TOTAL Liability	Rs.376.68 crores
(iii) Repayment from October '17 to Mar '2025	Rs.376.88 crores

Balance	Rs. NIL

The above repayment of principal along with interest is projected and based on estimated sales turnover to be achieved in eight 'years from 2017 to 2025. Please note that the repayment of principal and interest starts from October 2017 and it is mainly based on improvement in getting of additional local and export orders in huge value and improved cash flow of the company.

B. Sale of idle properties through banker's e-auction and also through our own efforts:

In addition to the above proposal for the repayment of principal and interest on WCTL, FITL & CC A/c. out of the sale realization from October 2017 to March 2015, we give below an alternate proposal for the settlement of liabilities by way of sale of the following properties through bankers e-auction and also through our own efforts.

1. Sale of vacant land 1.76 acres in OMR. Sholinganallur, Chennai-119

The minimum market value is around RS.52.8 crores for the sale of old Diamond at Sholinganallur, Chennai 119. The banker may initiate action immediately for the sale of this vacant prime land in the city limit.

2. Sale of land in Emerald 4.68 acres in Pudupakkam village (off the OMR)

After two years from the sale of 1.76 acres vacant prime land in Sholinganallur, the bank may initiate action for the sale of land in Emerald 4.68 acres in Pudupakkam village, Off the OMR. The time limit of two years is required for dismantling the existing factory sheds and removal of entire plant and machineries from Emerald to our Ruby unit at Kayar village where the dismantled factory sheds will be reassembled and removal of machineries will be re-erected for the continuous use for the production process.

The minimum market value is around Rs.70.20 crores for the sale of vacant land in Emerald at

Pudupakkam village.

3. Sale of land in Diamond-Mambakkam village 8 acres (Ratta) + 6 acres (enjoyment) in Kelambakkam-Vandalur Main Road:

After 3 years from the sale of above 4.68 acres land in Pudupakkam village, the bank may initiate action for the sale of land at Diamond, Mambakkam village in Kelambakkam-Vandalur Main Road. The time limit of 3 year is required for dismantling the existing factory sheds and removal of entire plant & machineries from Diamond, Mambakkam village into our Ruby unit at Kayar village where such dismantled factory shed and machineries will be reassembled and re-erected for the continuous use for the production process.

The minimum market value is around Rs.150 crores for the sale of vacant land 8 Acres patta in Diamond, Mambakkam village in Kelambakkam-Vandalur Main Road.

By the sale of the above 3 prime properties in different intervals, the company may collect sale realization of around Rs.273 crores. The sale value of the land will be deposited directly by the proposed buyer into our account and the liability of the company will be adjusted progressively in the overall period."

3. The petitioner has contended that if any proceedings are initiated under Section 13(4) of the SARFAESI Act, the Company would suffer credibility in the market and it would affect its survival in the industry. The company is facing severe financial crisis for the past five years, which has resulted in delayed contribution to Employees Provident Fund and Employees State Insurance Corporation, consequent to which, action was initiated by the respective organizations. The petitioner is a bona fide borrower of the loans, with a genuine intention to repay the same and therefore, if any action is taken for possession, then it would not only cause serious financial loss to the company, but also affecting the workers engaged in the Company, both directly and indirectly. Hence, they prayed for a Mandamus, as stated supra.

Heard the learned counsel appearing for the parties and perused the materials available on record.

4. Though the petitioner has sought for a direction to the respondents, to restructure the loan account, by considering their representation, dated 08.02.2017, this Court has no right under Article 226 of the Constitution to direct re-scheduling of the loan or to fix instalments. Useful reference can be made to a decision of a Division Bench of this Court in M/s.Digivision Electronics Ltd., Registered Office at No.A5 & 6, Industrial

Estate, Guindy, Chennai - 32 v. Indian Bank, rep. by its Deputy General Manager, Head Office, 31, Rajaji Salai, Chennai-1 and another, reported in 2005 (3) LW 269, wherein, at paragraph No.42, it has held as follows:

"42. Some of the learned counsel submitted that the Court should direct one time settlement or fixing of installment or rescheduling the loan. In Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, 2004 (5) CTC 689, it has been held that this Court cannot pass any such order in writ jurisdiction, since directing one time settlement or granting installments is really re-scheduling the loan, which can only be done by the bank or financial institution which granted the loan. This Court under Article 226 of the Constitution cannot reschedule a loan. A writ is issued when there is violation of law or error of law apparent on the face of the record, and not for rescheduling loans. The Court must exercise restraint in such matters, and not depart from well settled legal principles".

At paragraph No.46 of M/s.Digivision Electronics' case (cited supra), a Hon'ble Division Bench further held as follows:

"46. Writ is a discretionary remedy, and hence this Court under Article 226 is not bound to interfere even if there is a technical violation of law, vide R.Nanjappan Vs. The District Collector, Coimbatore, 2005 WLR 47, Chandra Singh Vs. State of Rajasthan, JT 2003 (6) SC 20. The Managing Director, Tamil Nadu State Transport Corporation (Madurai Division-IV) Ltd., Dindigul Vs. P.Ellappan, 2005 (1) MLJ 639, Ramniklal N.Bhutta and Another Vs. State of Maharashtra, 1997 (1) SCC 134, etc."

5. Earlier, after considering a catena of decisions on the legal right of a person to seek for a writ of mandamus, a Hon'ble Division Bench of this Court in Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited reported in 2004 (5) CTC 689, at Paragraph Nos.7,8,16 and 18, held as follows:

"7. In our considered opinion it is not proper for the Court to interfere in such matters relating to recovery of loans. Such matters are contractual in nature and writ jurisdiction is not the proper remedy for this. A writ lies when there is an error of law apparent on the face of the record, or there is violation of law. No writ lies merely for directing one time settlement or for directing re-scheduling of the loan or for fixing instalments in connection with the loan. It is only the bank or the financial institution which granted the loan which can re-schedule it or fix one time settlement

or grant instalments. The Court has no right under Article 226 of the Constitution to direct grant of one time settlement or for re-scheduling of the loan, or to fix instalments.

8. No doubt Article 226 on its plain language states that a writ can be used by the High Court for enforcing a fundamental right or for 'any other purpose'. However, by judicial interpretation the words 'any other purpose' have been interpreted to mean the enforcement of any legal right or performance of any legal duty, vide *Calcutta Gas Co. v. State of West Bengal*, AIR 1963 SC 1044. In the present case, the writ petitioner has really prayed for a Mandamus to the Corporation to grant it a one time settlement, but no violation of any law has been pointed out. In our opinion, no such mandamus can be issued in this case, and hence the writ petition should not have been entertained. A mandamus is issued only when the petitioner can show that he has a legal right to the performance of a public duty by the party against whom the mandamus is sought.

16. A loan is granted in terms of the contract, and grant of one time settlement or re-scheduling of the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties, vide Section 62 of the Contract Act, 1872. The Court cannot alter the terms of the contract.

18. Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held up by Court orders under Article 226 proceedings which were really unwarranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not a mere sympathy or compassion. No doubt, there be hardship to a party, but unless violation of law is shown the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons. The Courts must keep these considerations in mind."

6. Therefore, as per the decisions of this Court in *Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited*, reported in 2004 (5) CTC 689 and *M/s.Digivision Electronics Ltd., Retistered Office at No.A5 & 6, Industrial Estate, Guindy, Chennai - 32 Vs. Indian Bank, rep. by its Deputy General Manager, Head Office, 31, Rajaji Salai,*

Chennai-1 and another, reported in 2005 (3) LW 269, this Court cannot compel the bank for any rephasement or One Time Settlement. Decisions cited by us, decide the principles of law to be followed, in the matter of rephasement and settlement of dues.

7. In the light of the above decisions, the writ petition is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

skm

To

1. The General Manager (MC I & MC II)
State Bank of India,
Mid Corporate Regional Office,
No.34, College Road, Nungambakkam,
Chennai 600 006.
2. The Deputy General Manager,
State Bank of India,
L & I Branch, Kilpauk,
171, Poonamallee Road,
Kilpauk, Chennai 600 010.
3. The Authorized Officer/Chief Manager,
State Bank of India,
Leather and International Branch,
MVJ Towers,
177/1, Poonamallee High Road,
Kilpauk, Chennai 600 010.

+1 cc to Mr.N.Elumalai Advocate sr 11752

W.P.No.4408 of 2017

mg(co)
aa07/03/2017