IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2017

PRONOUNCED ON :13.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.1421 of 2017 and
W.M.P.No.4510 of 2017

INMA International Limited,
Represented by its
Chief Executive Officer/
Authorised Signatory,
Mr.J.Thiruvarasan
292, Avvai Shanmugam Salai,
Gopalapuram,
Chennai - 86. ...Petitioner

.. Vs ..

1.The Secretary,
Department of Financial Services,
Ministry of Finance,
Government of India,
3rd Floor, Jeevan Deep Buildinig,
Sansad Marg, New Delhi - 110 011.

2.The Governor,
The Reserve Bank of India,
Mumbai.

3.The Director,
Central Bureau of Investigation,
Plot No.5 - B, 6th Floor,
CGO Complex, Lodhi Road,
Jawaharlal Nehru Stadium Marg,
New Delhi - 110 003.
4.Indian Overseas Bank,
Rep. By its Managing Director,
726, Anna Salai, Chennai - 600 002.

5.Credit Information Bureau (India) Limited,
In Association with
DUN & BRADSTREET AND TRANSUNION,
Registered & Corporate Office at
Hoechst House, 6th Floor,
193, Backbay Reclamation,
Nariman Point,
Mumbai - 400 021. .. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the third respondent to take on file the complaint of the petitioner herein and expeditiously investigate and proceed in accordance with law as to how a dubious fraudulent parallel account was created and whether huge bank money was swindled by the 4th respondent officials.

For Petitioner : Mr.M.Purushothaman

For RR1 and 2 : No Appearance

For R.3 : K.Srinivasan,
Special Public Prosecutor (CBI cases)

For R.4 : Mr.F.B.Benjamin George

For R.5 : Mr.S.Parthasarathy

- - - - -

ORDER

INMA International Limited, is the writ petitioner before this Court. According to the affidavit filed by the Chief Executive Officer of the petitioner company, it is a 25 year old reputed Turnkey Construction and Infrastructure Project Development Company and it has undertaken important projects in India and Abroad.

2.In the year 2000, the petitioner company has availed a credit facility with Indian Overseas Bank (hereinafter referred to as “the IOB”), Chennai, for executing its contract for the Chennai Metro Rail Limited (hereinafter referred to as “the CMRL”) Project. In the year 2012, the petitioner's cash credit limit with the IOB was Rs.13,00,00,000/- and Inland Letter of Credit was Rs.6,00,00,000/-, as against security of property worth Rs.30 crores.

3.The Russian company 'Mosmetro' which was carrying the CMRL project, abandoned the project and vanished without paying around Rs.20 crores to the petitioner company. In turn, the petitioner company was not able to repay its loan with the IOB. As on 05.01.2015, the liability of the petitioner company with the IOB was Rs.16,34,74,930.20/- with interest.

4.The IOB has classified its loan account as sub-standard with effect from 31.12.2014 and also issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"), calling upon the company to discharge the liability. In order to settle the outstanding, the petitioner has approached other banks/financial institutions for credit facility. Though, those institutions initially came forward to assist the petitioner company, later, denied the financial assistance for the reasons not known.

5.In November 2015, when the petitioner company approached a Bank for securing loan, it was informed that as per Credit Information Bureau (India) Limited (hereinafter referred to as "the CIBIL") report, the petitioner's company owe about Rs.32 crores to the IOB. Thus, the report of CIBIL has indicated that the writ petitioner company owe Rs.32 crores to the IOB and its asset being shown as non standard, the other financial institutions were reluctant to advance loan to the petitioner.

6.While the writ petitioner company actually owe only Rs.15,76,56,258/- to the IOB, the information furnished by CIBIL was misleading and detrimental to the writ petitioner company. Suspecting the officials of the IOB as the cause for wrong reporting, the writ petitioner company has brought to the notice of CIBIL about the wrong information. The matter was taken up by CIBIL with IOB and later, the error was rectified only on 31.12.2015.

7.The contention of the learned counsel for the writ petitioner is that one Mr.S.Umapathy, Chief Regional Manager of the fourth respondent Bank has given the wrong and disceptive information about the petitioner company, so as to prevent the petitioner company from availing loan from other financial institutions and thereby bringing the prime property of the writ petitioner worth more than Rs.30 crores under auction and knock away the property without providing any opportunity to repay the loan availing one time settlement scheme. Further, the writ petitioner is under the suspicion that the officials of IOB have created dubious account that of the petitioner account and swindled huge money.

8.With this information and apprehension, the writ petitioner had sent a complaint to the Governor, Reserve Bank of India on 26.12.2016 to probe into the matter. The present writ petition is filed seeking mandamus directing the CBI to take on file the complaint of the petitioner and investigate the alleged dubious fraudulent parallel account created by the IOB officials.

9.IOB is the fourth respondent and CIBIL is the fifth respondent in this writ petition. They have filed independent counter affidavits admitting that there was error in the report of CIBIL dated 21.11.2014. This error was due to conversion of 17 digit account number into 15 digit account number as per the guidelines of Reserve Bank of India issued on 05.12.2009.

10.The counter affidavits and the additional counter affidavits filed by the respondents indicate that the writ petitioner account with IOB commenced on 07.02.2013 and it had 17 digit account number viz., 0109 2013 032 970864. Later, as per the guidelines of the Reserve Bank of India, the account numbers were rationalized assigning 15 digit number indicating bank branch code in the first four digit and the type or nature of the account in the next two digits and the last 9 digits indicate the existing account number. In the report of the CIBIL dated 24.11.2015, the profile of INMA International Limited, the writ petitioner herein shows that two credit facilities one in respect of account No.010902000970864 (15 digit) Rs.15,76,56,258/- and another in respect of account No.01092013032970864 (17 digit), Rs.16,34,74,930/-. The total credit balance is Rs.32,11,31,188/-.

11.The respondents 4 & 5 contend that due to omission of merging of old account with new account, the error has crept in and immediately after the error brought to the notice of CIBIL by the writ petitioner, the same was conveyed to the credit institutions namely IOB and they have rectified the error by 30th December and the same has been intimated to the writ petitioner and again reiterated through email dated 09.03.2016 and 30.03.2016.

12.The learned counsel for the writ petitioner vehemently contended that non merger of old account into new account is only an excuse for the mischief committed by the IOB officials. The intention of the officials of the IOB is to show the writ petitioner company in bad light and as defaulter of huge sum so that, the writ petitioner company cannot avail any loan from other financial institution.

13.The above mischief and malicious design was not known to the writ petitioner, for a long time, which has made the writ petitioner to hunt for prospective financier for nearly one year. This has facilitated the officials of IOB to easily bring the property of the petitioner worth more than Rs.30 crores for public auction. Even after pointing out the error, the officials of IOB have not acted bona fidely and had furnished wrong number to CIBIL causing delay in merging the account and intimating the true balance of the petitioner. To emphasis this point, the learned counsel for the petitioner pointed out the contradictions in the affidavit filed by both IOB and fifth respondent blaming each other for the erroneous report.

14.A perusal of the affidavits and the letter communication between the fourth respondent and the fifth respondent, without any doubt indicates lapse on the part of IOB in furnishing the correct account number and correct credit balance detail of the petitioner. However, after the matter being taken up for dispute settlement by the CIBIL, the issue has been sorted out by 31.12.2015. The duplicate entries crept in the record of CIBIL has been rectified and the same has also been intimated to the petitioner by email. In the mean while, this matter has also been brought to the notice of CBI, the third respondent herein and this Court sought a report from the third respondent, CBI as to what action has been taken on the complaint given by the writ petitioner.

15.The Special Public Prosecutor (CBI cases) representing CBI has informed this Court that the complaint of the writ petitioner was received by them and they have directed the Chief Vigilance Officer, IOB Vigilance Department, Chennai for necessary verification and to ascertain the existence of prima facie allegations and if any prima facie allegation is in existence, the Bank may prefer complaint either with local police or with CBI, as deem fit as per the existing guidelines.

16.The affidavit filed by the Assistant General Manager, IOB, dated 21.08.2017, indicates that on receipt of the letter from CBI, the Chief Vigilance Officer of the fourth respondent bank had verified the complaint and found no prima facie allegation existing.

17.In the said backdrop, the grievance which could be agitated in this matter is whether the wrong information furnished by CIBIL pursuant to the data given by IOB cause for tortuous liability. At this juncture, it is necessary to place on record, why the financial data of a customer is given by a credit institution to CIBIL and what is the responsibility of the credit institution if the data furnished is erroneous.

18.In order to introduce financial reform and growing incident of non performing assets crippling the fund flow of the financial institutions, the legislators have enacted a law to facilitate efficient distribution of credit by providing credit information on borrowers. Accordingly, as a first step, towards credit risk management, the fifth respondent company namely, the CIBIL has been formed and registered under the Companies Act, 1956.

19.As per the direction of RBI, CIBIL collates information on trade credit and financial standing of the borrowers of the credit institution which is a member of the credit information company. In this case, the fourth respondent IOB, is one of the member of the fifth respondent company. It has furnished the data of its borrower namely the writ petitioner herein. The 4th respondent pleads there was confusion in conversion of account numbers, from 17 digit to 15 digit, the duplication in the account data has crept in the writ petitioner statement of account inadvertently.

20.To ensure the accuracy and security of credit information, the Credit Information Company Regulation Act, 2005 has laid down certain procedures. It is also now made imperative for any person who applies for grant or sanction of credit facilities from any credit institution, to furnish copy of the credit information. Hence, anticipating in the said process there may be a dispute among the Credit Information Company, credit institutions, borrowers and clients on matters regarding the business of credit information, settlement through Arbitration Act is provided under Section 18 of the said Act.

21.Apparently, in this case, a dispute has arose and the communication between the parties since 21.11.2015 till 30.03.2016 centres around the dispute and the settlement of the said dispute. Despite rectification of the duplicate entries, if the writ petitioner is under the impression that the duplication is not an innocuous error crept inadvertently but, with intention to cause wrongful loss to the company, it is always open to the writ petitioner to seek damages under the common law remedy.

22.From the records, it appears that neither the RBI nor the IOB nor CBI could find any prima facie material in the complaint given by the writ petitioner to infer any willful omission or false statement knowingly furnished by IOB officials. In such circumstances, this Court is not inclined to entertain this writ petition seeking mandamus.

23.In the result, the writ petition fails and accordingly, the same is dismissed. However, it is open to the writ petitioner, if so advised, to resort relief under common law procedure. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-CCC)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Director,
Central Bureau of Investigation,
Plot No.5 - B, 6th Floor,
CGO Complex, Lodhi Road,
Jawaharlal Nehru Stadium Marg,
New Delhi - 110 003.

+1cc to Mr.F.B.Benjamin George Advocate, S.R.No. 80371

+1cc to Mr.S.Parthasarathy Advocate, S.R.No.80606

+1cc to Mr.M.Purushothaman Advocate, S.R.No. 80568

W.P.No.1421 of 2017

AD (CO)
TR(27/11/2017)