IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.24206 of 2017
and W.M.P.Nos.25580 and 25581 of 2017, 29664 of 2017

The Manager,
Dharani Sugars & Chemicals Ltd.,
"PGP HOUSE",
57, Sterling Road,
Nungambakkam,
Chennai 600 034. .. Petitioner

Vs.

1.Government of India,
Ministry of Consumer Affairs, Food & Public
Distribution Department of Food & Public Distribution,
(SDF Accounts Section),
Krishi Bhavan,
New Delhi.

2.The General Manager,
IFCI Limited, IFCI Tower,
61, Nehru Place,
New Delhi.

3.The Indian Bank,
Madras George Town, Office,
155, Thambu Chetty Street,
Chennai 600 001. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified Mandamus to call for the records of the second respondent in pursuant to his impugned order communicated through the email dated 04.09.2017 and quash the same and consequently forbearing the second respondent from encashing the bank guarantee furnished by the petitioner till the petitioner request of restructuring and rescheduling of loan will consider by the first respondent.

For Petitioner	: Mr.AR.L.Sundaresan Senior Counsel for M/s.P.T.Ramadevi
For Respondents	: Mr.Venkatasamy Babu for R1 Standing Counsel Mr.P.Raghunathan for M/s.T.S.Gopalan & Co for R2 No Appearance for R3

ORDER

The petitioner is aggrieved against the proceedings of the second respondent dated 04.09.2017, calling upon the third respondent Bank to pay the outstanding SDF loan covered under bank guarantee. Consequently, the petitioner also seeks to forbear the second respondent from encashing the bank guarantee furnished by the petitioner till the request of the petitioner for restructure and reschedule of loan is considered by the first respondent.

2.When the matter was taken up for admission on 07.09.2017, this Court, while ordering notice to the respondents 2 and 3 and also recording the appearance of the learned counsel for the first respondent, granted interim stay by recording the statement made by the learned Senior Counsel appearing for the petitioner that pursuant to the impugned order dated 04.09.2017, the second respondent has not invoked the bank guarantee till that date.

3.After notice, the second and third respondents entered appearance. A counter affidavit is filed by the second respondent with an application to vacate the interim stay granted.

4.Heard Mr.ARL.Sundaresan, learned Senior Counsel appearing for the petitioner, Mr.Venkatasamy Babu, learned Standing counsel appearing for the first respondent and Mr.P.Raghunathan, learned counsel appearing for the second respondent. There is no representation for the third respondent.

5.It is seen that the petitioner had applied to the Central Government for financial assistance under a Scheme "Technology Upgradation and Capacity Optimization of its sugar undertaking". It is further seen that a sum of Rs.9,70,14,400/- was sanctioned to the petitioner by the first respondent through the second respondent, after obtaining an agreement entered between the parties on 12.10.2007. Under the said agreement, it was agreed between the parties that the borrower shall repay the loan with interest thereon in accordance with the provisions of the sanction letter. Clause (IX) of the said agreement specifically deals with the effect of two consecutive defaults in the repayment of loan or installment. The said clause reads as follows:

> "ix) In the case of two consecutive defaults in the repayment of loan or installment thereof, the Central Government shall realize or cause to realize the entire amount of loan along with interest and additional interest thereon from the security furnished by the Sugar Undertaking for the loan or from any claim of the sugar factory against the Central Government."

6.It is stated that the first and second installments have been paid and only the third installment, which has fallen due on 01.03.2016, amounting to Rs.1,94,02,880/- and the fourth installment, which has fallen due on 01.03.2017, amounting to Rs.1,94,02,880/- were not paid by the petitioner. Therefore, the second respondent issued a letter on 31.08.2017 to the third respondent Bank for invoking the Bank Guarantee based on the above referred clause contained in the agreement entered between the parties. Thereafter, by communication dated 04.09.2017, the second respondent called upon the third respondent to pay the outstanding SDF loan covered under the bank guarantee.

7.Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner submitted that the petitioner has, in fact, paid a sum of Rs.2,25,000/- commencing from 30.08.2016 to 01.09.2017 by way of making RTGS payment as follows:

Particulars	Principal due	Interest due	Total due
Total amount due	3,88,05,760	1,16,56,613	5,04,62,373
Less:- Further payments RTGS no & date			
IDIBR 52016083013193473 Dt 30/08/2016			1,00,00,000
IDIBR 5201610031339499 Dt 03/10/2016			25,00,000
IDIBR 52017020113852635 Dt 02/02/2017			25,00,000
IDIBR 52017031714085344 Dt 17/03/2017			25,00,000
IDIBR 5201703301416026 Dt 30/03/2017			25,00,000
IDIBR 52017090114900769 Dt 01/09/2017			25,00,000
Total payments			2,25,00,000

Therefore, he submitted that the second respondent is not justified in invoking the bank guarantee by relying on the above said clause (IX) in the agreement, as no two consecutive installments have fallen due, as claimed by the second respondent. Apart from saying so, the learned Senior Counsel further submitted that the petitioner is ready to pay the outstanding, if sufficient time is given for making such payment in installments.

8.Per contra, learned counsel appearing for the second respondent submitted that when there is a clear and categorical agreement between the parties for invocation of the bank guarantee, in the event of two consecutive installments have fallen due, the petitioner is not entitled to approach this court and file the present writ petition, as he is bound to honour the agreement, being a party to the same. He further submitted that the very interim order granted by this court was based on a submission made before this court as if the bank guarantee was not invoked as on 07.09.2017, when in fact, the second respondent has already issued a letter on 31.08.2017 itself and invoked the bank guarantee well before the stay granted by this court on 07.09.2017. Thus, he submitted that the third respondent Bank has to formerly pay the amount to the respondents 1 and 2 in pursuant to the invocation of such bank guarantee taken place already. In sofar as the contention of the learned Senior counsel appearing for the petitioner with regard to his interpretation of clause (IX) of the agreement is concerned, the learned counsel for the second respondent submitted that two consecutive installments due as referred to in the said clause must be construed to mean that there must be payment of entire amount of such two consecutive installments to escape from the clutches of such clause and therefore any part payment of those two installments cannot be construed as payment of two consecutive installments. Therefore, he submitted that the petitioner has committed default in making the two consecutive installments and thus, they are not entitled to any relief from this court.

9.Learned counsel appearing for the first respondent supported the claim of the second respondent and submitted that the petitioner is not entitled to the relief.

10.There is no dispute of the fact that the petitioner has availed loan from the first respondent, Government of India to the tune of Rs.9,70,14,400/- by entering into an agreement dated 12.10.2007 with the second respondent, being the nodal agency of the first respondent. I have already narrated the relevant clause in the agreement, which deals with realisation of the entire amount of loan along with interest and additional interest in case of two consecutive defaults in the repayment of loan or installment thereon which had fallen due already. Execution of such agreement is not in dispute. It is also not in dispute that the petitioner did not pay the third installment on or before 01.03.2016 and the fourth installment on or before 01.03.2017, each amounting to Rs.1,94,02,880/-.

11.What is sought to be contended before this court is that the petitioner has made certain payments commencing from 30.08.2016 to 01.09.2017, totaling to Rs.2,25,00,000/- and therefore, the invocation of the bank guarantee is not justifiable. I do not think that the learned Senior Counsel for the petitioner is justified in making such contention especially, when the payment of the third and fourth installments were not made on or before the last date for such payments and on the other hand, the petitioner has started to make the partial payments only from 30.08.2016 i.e., nearly after six months from 01.03.2016. Therefore, it is evident that even before 01.03.2016, the petitioner has not paid the entire third installment of Rs.1,94,02,880/- and on the other hand, even according to the petitioner, they paid only Rs.1,50,00,000/- as on 02.02.2017. Thus, it is evident that the third installment was not paid in full not only before the cut off date and also even thereafter. Likewise, the fourth installment was also not paid, as admittedly the petitioner has paid only Rs.75,00,000/- as on 01.09.2017, when the amount due to be paid in the fourth installment is Rs.1,94,02,880/- as on 01.03.2017. When such being the factual position, I do not think that the interpretation sought to be made by the learned Senior Counsel for the petitioner in respect of clause (IX) of the said agreement to the effect that if some amount is paid towards an installment, it has to be treated as though he has complied with the payment of such installment to escape from the clutches of the clause (IX) of the agreement, can be appreciated. Moreover, in this case, as could be seen from the communication issued by the respondents 2 and 3 dated 31.08.2017, the second respondent has already invoked the bank guarantee much earlier to the grant of the interim order by this court on 07.09.2017. Therefore, I find that the petitioner has no merits in this case. Consequently, the writ petition fails and the same is dismissed. No costs. The connected miscellaneous petitions are closed.

31.10.2017

Speaking/Non Speaking

Index : Yes/No

Note:Issue order copy on 06.11.2017.

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To

1.Government of India,
Ministry of Consumer Affairs, Food & Public
Distribution Department of Food & Public Distribution,
(SDF Accounts Section),
Krishi Bhavan,
New Delhi.

2.The General Manager,
IFCI Limited, IFCI Tower,
61, Nehru Place,
New Delhi.

3.The Indian Bank,
Madras George Town, Office,
155, Thambu Chetty Street,
Chennai 600 001.

K.RAVICHANDRABAABU,J.

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W.P.No.24026 of 2017

31.10.2017