

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.A.No.2878 of 2012
and
M.P. Nos.1/2012, 1/2013
and
C.M.P. No.20158/2017

A.Purushothaman ..Petitioner/Appellant
Vs.

Pondicherry Industrial Promotion
Development and Investment
Corporation Ltd.
60 Romain Rolland Street
Pondicherry 605 001 ..Respondent/Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 12.12.2012 made in W.P. No.6811 of
2012. Writ petition filed under Article 226 of the
constitution of India praying to issue writ of certiorarified
Mandamus as stated therein.

For Appellant : Mr.C.Selvaraju, Sr. Counsel
for Mr.S.P.Harikrishnan

For Respondent : T.P. Manoharan, Sr. Counsel
Pandian, Govt. Pleader (P)

JUDGMENT

(made by S.MANIKUMAR, J.)

Material record discloses that Hotel Happy Green Private
Ltd., Puducherry, has availed five loans, as hereunder:

	Date of sanction	Amount sanctioned in Lakhs	Condition
I Loan	30.01.2004	85	Loan amount has to be repaid with interest on quarterly basis in 24 quarterly installments up to 2013

	Date of sanction	Amount sanctioned in Lakhs	Condition
II Loan	13.02.2007	33	Loan amount has to be repaid with interest on quarterly basis in 28 quarterly installments up to 2015
III Loan	29.11.2007	46	Loan amount has to be repaid with interest on quarterly basis in 28 quarterly installments upto 2015
IV Loan	24.03.2010	36	Loan amount has to be repaid with interest on quarterly basis in 32 quarterly installments upto 2019
V Loan	30.06.2010	34	Loan amount has to be repaid with interest on quarterly basis in 24 quarterly installments upto 2017

2. Hotel Happy Green Private Ltd., Pondicherry, has contended that Industrial Promotion Development and Investment Corporation Limited, did not adhere to the schedule of payment.

3. Government of India did not release the subsidy amount in time. During December 2011 there was Thane storm and that hotel could not function properly. There was loss of Rs.33.00 Lakhs. Due to the above said reasons, interest could not be paid in time.

4. Pondicherry Industrial Promotion Development and Investment Corporation Limited, Puducherry, issued a notice dated 10.01.2012 directing the appellant to remit a sum of Rs.68,82,000/- towards interest. The last date for payment was 31.01.2012. Thereafter, Pondicherry Industrial Promotion Development and Investment Corporation Limited, Puducherry, issued a notice dated 23.02.2012 under Section 29 of the State Financial Corporation Act, 1951, to take possession of the hotel, without prejudice to their right to resort to any other mode of recovery.

5. Being aggrieved by the same, Hotel Happy Green Pvt. Ltd., filed W.P. No.6811/2012 for a writ of certiorarified mandamus, to quash the notice dated 23.02.2012, and consequently, prayed for a direction to Pondicherry Industrial Promotion Development and Investment Corporation Limited, to

consider the representation of the appellant dated 23.02.2012, for restructuring and repayment schedule, in respect of the loan availed by the appellant, in view of the force majeure, affecting the appellant's hotel, in the month of December 2011.

6. Pondicherry Industrial Promotion Development and Investment Corporation Limited, has filed a counter affidavit to the writ petition.

7. When the matter came up for hearing before the writ court, on 12.12.2012, Mr.K.M.Vijayan, learned Senior Counsel, who had appeared for the appellant submitted that the appellant would pay a sum of Rs.95,68,345/- representing interest as on 31.10.2012, within a stipulated period to be fixed by the writ court. Learned senior counsel for the writ petitioner also contended that there was destruction of property due to cyclone and the cost of construction of the project was also escalated during that period. Having regard to the above said submissions, writ court, vide order dated 12.12.2012 in W.P. No.6811/2012, at paragraph No.14, ordered, as hereunder:

"14. I am of the view that the argument of the learned senior counsel has much force, although the learned counsel for the respondent resisted the same. Therefore, taking into account of the entirety of the facts and circumstances of the case, it is but proper that the writ petition is disposed in the following terms:

i. The petitioner shall pay Rs.50 lakhs within a period of 21 days from today and the balance amount of Rs.45,68,345/- (9568345-5000000) shall be paid by the petitioner in three equal monthly installments thereafter.

ii. If the petitioner has paid the interest amount of Rs.95,68,345/- as stated above, the respondent is directed to reschedule the entire principal outstanding amount upto maximum of two years as per their letter dated 10.01.2012, within a period of four weeks on completion of the payment of installments as stated above.

iii. If the petitioner fails to comply with the condition, it is open for the respondent to proceed in accordance with law.

iv. The respondent is also directed to consider sympathetically the payment of penal interest of Rs.6,42,502/- and pass orders taking into account the pleas raised by the petitioner as to the Thane Cyclone and also escalation of the prices, besides the delay in getting the Food Licence and Bar Licence."

8. Having agreed to pay a sum of Rs.95,68,345/- towards interest as on 31.10.2012, instant writ appeal No.2878 of 2012 has been filed challenging that rate of interest, as awry and legally not justifiable. Further contention has been made in this appeal that impugned notice dated 23.02.2012 for taking over the assets is illegal. Writ court had failed to consider that the hotel was seriously affected by Thane cyclone. Where there was security for more than 10.00 Crores and when loan payable was hardly 2.3 Crores, resort to take over possession, amounts to misuse of statutory powers.

9. Material record discloses that when the instant W.A. No.2878 of 2012, came up for hearing on 07.12.2012, in M.P. No.1 of 2012 in W.A. No.2878 of 2012, a Hon'ble Division Bench of this court granted interim stay on condition that the appellant pays a sum of Rs.20.00 Lakhs to Pondicherry Industrial Promotion Development and Investment Corporation Limited, Puducherry/respondent, by 28.12.2012, and another sum of Rs.30.00 Lakhs, within a period of one month, failing which the interim order shall stand automatically vacated.

10. Subsequently, Pondicherry Industrial Promotion Development and Investment Corporation Limited, Puducherry, has filed M.P. No.1 of 2013 for vacating the stay granted in M.P. No.1 of 2012. On 31.07.2013, an additional affidavit has been filed by the appellant stating that in compliance with the directions of the Hon'ble Division Bench in M.P. No.1 of 2012 dated 27.12.2012, a sum of Rs.20.00 Lakhs was remitted on 28.12.2012 and the remaining amount of Rs.30.00 Lakhs was remitted on 28.01.2013 respectively. At this juncture, it is to be noted that earlier a sum of Rs.95,68,345/- was agreed to be paid by the appellant before the writ court and accordingly, directions were issued.

11. On 31.07.2013, when the writ appeal came up for hearing, submission has been made by the respondent that as on 31.03.2013, the appellant was due and payable to the Corporation to the tune of Rs.1,85,78,701/-. Though on 31.07.2013, the appellant had submitted that he would deposit the remaining amount of Rs.45,68,345/-, within two months in favour of the respondent Corporation, a Hon'ble Division Bench, directed the appellant to pay a sum of Rs.50.00 Lakhs to the respondent Corporation within a period of two months from 31.07.2013, failing which the interim order granted on 27.12.2012 shall stand automatically vacated, without reference to the order of the Hon'ble Division Bench.

12. Subsequently, M.P. No.2 of 2013 has been filed for extension of time. Having regard to the submission of the learned senior counsel for the appellant that a purchaser had entered into an agreement of sale of the property belonging to the wife of the Managing Director of the Hotel Happy Green Private Ltd., Pondicherry and the production of demand drafts, a Hon'ble Division Bench of this court, at paragraph No.6 of

the order in M.P. No.2 of 2013 dated 03.10.2013, ordered as hereunder:

"6. This court, taking into consideration the rival submissions, is passing the following order:-

(a) The amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) paid by the petitioner, by way of three demand drafts, bearing Nos.151890, 151891 and 151907, dated 28.09.2013, for Rs.2,00,000/- (Rupees Two Lakhs only), Rs.10,00,000/- (Rupees Ten Lakhs only) and Rs.3,00,000/- (Rupees Three Lakhs only) respectively, is recorded.

(b) The petitioner shall pay a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the respondent within a period of one month from today and another sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) within a month thereafter, failing which, the interim order granted shall stand automatically vacated without further reference to this court."

13. On 14.11.2017, when the writ appeal came up for further hearing, we heard the learned counsel appearing for both the parties and recorded as hereunder:

On the basis of a letter dated 23.10.2017 of the General Manager (Admn.) of Pondicherry Industrial Promotion Development and Investment Corporation Limited, addressed to M/s.Happy Green Hotel (P) Ltd., Mr.TP.Manoharan, learned Senior counsel submitted that after giving concession to the tune of Rs.1,11,41,384/- appellant was given option to avail the One Time Settlement (OTS) scheme by settling the loan amount of Rs.86,49,596/- on or before 10.11.2017 being 25% of the outstanding balance and also to pay the remaining 75% of the balance amount of Rs.2,59,48,789/- on or before 31.03.2018 and appellant has failed to respond to the OTS scheme proposed by Pondicherry Industrial Promotion Development and Investment Corporation Limited.

2. Mr.S.P.Harikrishnan, learned counsel for the petitioner, submitted that no sooner the proposal dated 23.10.2017 was mooted out, appellant has sought for details of payment made, and there was no response. Notwithstanding the above, learned counsel for the appellant submitted that he will get appropriate instructions from M/s.Happy Green Hotel (P) Ltd., Puducherry, appellant herein on the OTS scheme, payment to be made as proposed and sought for time.

3. Post on 20.11.2017.

4. In the meanwhile, Pondicherry Industrial Promotion Development and Investment Corporation Limited, is directed to file affidavit supporting the oral submissions and letter dated 23.10.2017, considered by this Court."

14. On this day, an affidavit dated 21.11.2017 of the Managing Director of Hotel Happy Green Private Limited is filed along with a One Time Settlement dated 23.10.2017.

15. Mr.C.Selvaraju, learned senior counsel appearing for the appellant reiterated that a sum of Rs.95,68,345/- demanded towards interest has been paid and that there is bona fide on the part of the appellant. As regards Possession Notice dated 23.02.2012 issued under Section 29 of the State Financial Corporation Act, 1951, grounds of challenge have been summarised, supra. Along with the supporting affidavit dated 21.11.2017, appellant has filed C.M.P. No.20518/2017 praying for six months time to make the initial payment of 25% of the amount for availing one time settlement offered in letter dated 23.10.2017. Besides citing the reason of Thane storm etc, appellant has also contended that as per the directions of the Hon'ble Supreme Court, bar in the hotel was closed. Thus, in flow of guests and more particularly, foreigners, has reduced. For mobilising funds, appellant is taking efforts.

16. Per contra, inviting the attention of this court to Section 29(1) of the State Financial Corporation Act, 1951 and placing reliance on Karnataka State Industrial Investment & Development Corpn. Ltd. vs. Cavalet India Ltd. and others reported in (2005) 4 SCC 456, Mr.T.P.Manoharan, learned senior counsel for the respondent submitted that except in two exceptional situations, namely, violation and statutory provisions by the Corporation or where the Corporation had acted unfairly or unreasonably, writ court, should not interfere in the matter between the Corporation and the debtor, namely, the appellant. He further submitted that as per the decision of the Hon'ble Supreme Court cited supra, fairness required of the Financial Corporations cannot be carried to the extent of enabling them from recovering what is due to them.

17. Placing reliance on the decision of the Hon'ble Supreme Court in Punjab Financial Corporation vs. Surya Auto Industries reported in (2010) 1 SCC 297, learned senior counsel submitted that a Corporation is not supposed to give loans and refrain from taking action for recovery thereof. Being an instrumentality of the State, the Corporation is expected to act fairly and reasonably qua its borrowers/debtors, but it is not expected to flounder public money for promoting private interests. He further submitted that decision in Karnataka State Industrial Investment & Development Corpn. Ltd.'s has been reiterated in Punjab Financial Corporation's case also. He further added that in Punjab Financial Corporation case, the Hon'ble Supreme Court has further held that while exercising jurisdiction under Article 227, the High Court does not sit as an appellate authority over the act and debts of the Corporation.

18. Mr.T.P.Manoharan, learned Senior Counsel further submitted that though loan was availed in the year 2007, so far no amount has been paid towards discharge of principal amount. Except payment of interest of Rs.95,68,345/- as on 31.10.2012, nothing has been paid since July 2013 onwards, either principal or the accrued interest thereon. He also submitted that though Pondicherry Industrial Promotion Development and Investment Corporation Limited, has come forward to restructure the loan amount by granting waiver of Rs.1,11,41,384/-, the appellant has not come forward to accept the same and that the appellant has not come forward to make 25% of the outstanding amount in time and now citing the very same reasons, sought for extension of time to make the initial deposit of 25% of the amount offered under One Time Settlement. Learned Senior Counsel further submitted that the affidavit dated 21.11.2017 filed in support of C.M.P. No.20518 of 2017, does not contain any averments regarding payment of balance 75% towards discharging the loan. For the above said reasons, he submitted that there is no bona fide on the part of the appellant and equity need not be extended. He prayed for dismissal of the appeal.

19. Heard the learned senior counsel appearing for both the parties.

20. Notice impugned in W.P. No.6811/2012 dated 23.02.2012 is reproduced hereunder:

"No.PIPDIC/FP/SSI/12/2010-2011/T-1/1333 Date : 23
FEB 2012

NOTICE

Sub: Default in payment of the dues - Action to
takeover the

assets of the hotel under Sec. 29 of the
SFC's Act - Reg.

Ref: 1.Our Notice No.PIPDIC/FP/SSI/12/2010-2011/T-1/
2946 dt.29.06.11

2.Our Notice No.PIPDIC/FP/SSI/12/2010-2011/T-1/
4426 dt.12.09.11

3.Our Take-over Notice No.PIPDIC/FP/SSI/12/2010-
2011/
T-1/6522 dt.17.11.11

4.Your letter dated 18.11.2011

5.Our letter No.PIPDIC/FP/SSI/12/2010-2011/T-
1/6652

dt.28.11.2011

6.Our letter No.PIPDIC/FP/SSI/12/2010-2011/T-
1/073

dt.10.01.2012

Please refer to our notices first and second
cited under reference, wherein it was brought to
your notice about the heavy over-dues payable to
this Corporation and called upon you to clear the

overdues to avoid recovery action under Sec.29 of SFC's Act, 1951. As you did not respond properly and also not cleared the overdues to the corporation, it was decided to takeover the assets of the hotel and accordingly the takeover notice to take possession of the assets of the hotel on 06.12.2011 was issued vide notice cited under reference 3.

Subsequently, based upon the assurance given by Thiru.A.Purushothaman, Managing Director, on behalf of the hotel vide letter cited under reference 4, that the interest overdues will be cleared fully positively before the end of December 2011, the corporation has deferred the takeover proceedings temporarily and intimated vide letter cited under reference 5, that in the event of failure on your part to clear the interest overdues fully before the stipulated period, the corporation will proceed with the takeover of assets of the hotel immediately. Further the Corporation, vide letter cited under reference 6 requested you to opt for the scheme of extension of repayment period by remitting the entire interest overdues on or before 31.01.2012. But you have failed to honour your own commitment and also not opted the scheme even after extending sufficient time and plenty of opportunities given to regularise the loan account.

Whereas, it has been now decided to takeover possession of assets of M/s.Happy Green Hotel (P) Ltd., represented by its Managing Director Thiru A.Purushothaman and having its hotel premises at R.S. No.46/1, Mullodai, Pondy-Cuddalore Road, (ECR), Bahour Commune, Puducherry under Sec. 29 of the SFC's Act, 1951 on 21.03.2012, if it happens to be a holiday, on the subsequent working day, by reasons of the default committed by the said company in paying the sum of Rs.1,41,44,033/- as on 31.12.2011 with subsequent interest thereon and for not complying the assurance given in the letter cited under reference 4, inspite of service upon the company of the notice calling upon the company to satisfy its dues in entirety to PIPDIC and also its failure to show bonafide cause as to why action should not be taken against it under Sec.29 of the SFC's Act, 1951.

You are hereby informed that all assets of the hotel will be taken possession by PIPDIC on 21.03.2012, if it happens to be a holiday, on the subsequent working day, so as to offer them to sale in AS IS WHERE IS condition to intending purchaser at an advertised sale at net sale proceeds to be adjusted toward the dues by the hotel to PIPDIC

without prejudice to the right to resort to any other mode of recovery for the balance, if any.

Please find enclosed the copy of the proposed advertisement calling for offers for sale of the assets of the hotel and Notice for public to be published in News Paper for taking possession of the assets of the hotel.

For and on behalf of
Pondicherry Industrial Promotion
Dev. & Investment Corpn. Limited
(E.Vedagiri)
Chief General Manager

21. On 10.01.2012, Pondicherry Industrial Promotion Dev. & Investment Corpn. Limited, has issued a notice to M/s.Happy Green Hotel (P) Ltd, Puducherry, to regularise and reschedule the loan amount. Vide said notice dated 10.01.2012, Pondicherry Industrial Promotion Dev. & Investment Corpn. Limited, has stated that, as on 31.01.2012, a sum of Rs.68,82,000/- was due towards interest. Corporation has requested the hotel to pay the said sum for suitable action. For brevity, letter dated 10.01.2012 addressed to Happy Green Hotel (P) Ltd., Puducherry is reproduced hereunder:

No.PIPDIC/FP/SSI/12/T-1/073 Date : 10 JAN 2012

To

M/s.Happy Green Hotels (P) Ltd.,
R.S. No.46/1, Mullodai,
Pondy-Cuddalore Road, (ECR),
Puducherry 607 402

Sirs,

Sub:Reschedule of loan outstanding - compliance of
terms & conditions of the scheme - requested -
Reg.

Ref:Our letter of even number dated 25.11.2011.

Kindly recall the discussion you had with the undersigned on 05.12.2011 on the subject mentioned above. In this regard, we regret to inform that till date you have not remitted the interest/principal dues to avail the benefit under the Scheme of Extension of Repayment period. As explained earlier, this scheme will be in operation only upto 31st January, 2012 and before the expiry date you have to remit the interest dues amounting to Rs.68,82,000/- positively to avail the benefit. On compliance of the above, the entire principal outstanding amount will be rescheduled upto a

maximum of 2 years over and above the original repayment period.

Please note that failure to opt for the scheme and regularise the loan account before 31st January, 2012, appropriate action will be initiated for recovery of entire dues, as per rules.

Yours faithfully
(A.RAMALINGAM)
General Manager (Admn)

22. In response to the same, hotel has sent a reply dated 30.01.2012 stating that due to Thane storm, there was economic loss. Appellant has requested for extension of time. However, on 23.02.2012, Pondicherry Industrial Promotion Dev. & Investment Corp'n. Limited, Puducherry, has issued proceedings under Section 29 of the State Financial Corporation Act, 1951, to takeover the assets of the hotel, extracted supra.

23. Said notice dated 23.02.2012 was challenged in W.P. No.6811/2012. When the matter came up for hearing on 12.12.2012, learned senior counsel for the appellant had submitted that payment of Rs.95,68,345/- representing interest as on 31.10.2012 would be paid. He has also sought a prayer to reschedule the entire outstanding amount for a maximum period of two years, in terms of the letter of the Pondicherry Industrial Promotion Dev. & Investment Corp'n. Limited, dated 10.01.2012. After hearing the learned counsel appearing for both parties, on 12.12.2012 in W.P. No.6811/2012, directions have been issued, as extracted supra.

24. When the appellant before the writ court had offered to pay Rs.95,68,345/- interest as on 31.10.2012, there is no offer to pay the outstanding principal amount which remained due. Appellant had never questioned the outstanding amount, but only prayed for the indulgence of this court, due to the alleged economic loss during Thane storm. As stated supra, though the appellant had obtained an order of interim stay in M.P. No.1 of 2012 in W.A. No.2878 of 2012 dated 07.12.2012, on condition to pay Rs.20,00,000/- to the respondent on 28.12.2012 and another sum of Rs.30,00,000/- to the respondent Corporation within a period of one month, appellant had not paid the remaining amount of Rs.45,68,345/- towards the balance interest, as agreed before the writ court in W.P. No.6811/2012.

25. For the failure to comply with the directions of the writ court, respondent Corporation has filed M.P. No.2 of 2013 for vacating the interim order granted on 07.12.2012. When the matter came up for hearing, submission has been made that as on 31.03.2013, appellant was due and payable a sum of Rs.1,84,78,701/- and in spite of indulgence, appellant had not come out with any proposal for settlement of the loan amount.

26. Having regard to the fact that a sum of Rs.45,68,345/- was due, a Hon'ble Division Bench of this court in M.P. No.1/2012 (stay petition) and M.P. No.1/2013 (vacate stay petition) dated in W.A. No.2878/2012, vide order dated 31.07.2013, directed payment of Rs.50,00,000/- to the respondent Corporation, within a period of two months from 31.07.2013 failing which, interim order granted on 27.10.2012 would stand automatically vacated.

27. Subsequently, in M.P. No.2 of 2013, time has been extended, details of which have been, extracted supra.

28. Taking note of the concession announced by the Hon'ble Chief Minister in the budget, and in the interest of hotel industries to those who come forward to settle the loan amount based on One Time Settlement scheme, Pondicherry Industrial Promotion Dev. & Investment Corp'n. Limited, on 23.10.2017, has offered One Time Settlement for offering concession, in the interest portion of Rs.1,11,41,384/-. Appellant has not come forward with any concrete proposal except to seek for six months time even to make the initial deposit of 25%.

29. As rightly contended by Mr.T.P.Manoharan, learned senior counsel appearing for Pondicherry Industrial Promotion Dev. & Investment Corp'n. Limited, though the loan was availed in the year 2007, so far payment has not been made towards the principal amount. Interest of Rs.95,68,345/- as on 31.10.2012 alone has been paid. Thereafter, the appellant has not paid any amount towards either the principal amount or the accrued interest from 31.07.2013. Settlement offered by the Pondicherry Industrial Promotion Development & Investment Corporation Limited, is extracted hereunder:

PROCEEDINGS:

No.PIPDIC/FP/SSI/R.R.Cell/T-III/4443 Date:23.10.2012

To

M/s. Happy Green Hotel (P) Ltd.,
East Coast Road,
R.S.No.46/1, Mullodai,
Bahour Commune,
Puducherry - 607 402.

Sir,

Sub: Settlement of loan account under the
One Time Settlement Scheme for Hotel Industries by
availing concession in interest - Intimation -
issued - Reg.

I am to refer to the subject mentioned above and state that, as per our records, the total outstanding loan amount payable by your Company to this Corporation as on 31.08.2017, is as detailed below:-

Principal : Rs.2,34,57,000.00

Interest : Rs.2,22,82,769.00

Total : Rs.4,57,39,769.00

(Rupees Four Crores, fifty seven lakhs, thirty nine thousand, seven hundred and sixty nine only).

2. PIPDIC has extended concession as announced by the Hon'ble Chief Minister in his budget speech, in the interest of Hotel Industries, to those who come forward to settle their loan account based on the One Time Settlement Scheme, which is as follows:-

'The Hotel industries shall pay the entire principal outstanding plus 50% of the interest outstanding as on 31.08.2017 within 6 months from the date of communication of the scheme. On payment of the amount as per the above norms, the account will be treated as settled by waiving off the balance interest outstanding'.

3. In case your Company is desirous of availing the above benefit, you shall pay 25% of the following amount to the Corporation on or before 10.11.2017 as a token of acceptance to opt for availing the concession benefits under the OTS Scheme, and the balance amount is to be paid within a period of 6 months:-

Code No.	Name of the Unit	Principal outstanding as on 31.08.2017 (Rs.)	Interest outstanding as on 31.08.2017 (Rs.)	Concession amount as per scheme 50% of the interest as on 31.08.2017 (Rs.)
03C01	Happy Green Hotel (P) Ltd.	85,57,000.00	62,18,370.00	31,09,185.00
03D80	Happy Green Hotel (P) Ltd.	34,00,000.00	44,78,783.00	22,39,391.00
03C93	Happy Green Hotel (P) Ltd.	33,00,000.00	35,89,472.00	17,94,736.00
03D21	Happy Green Hotel (P) Ltd.	46,00,000.00	53,43,250.00	26,71,625.00
03D63	Happy Green Hotel (P) Ltd.	36,00,000.00	26,52,894.00	13,26,447.00

Code No.	Name of the Unit	Principal outstanding as on 31.08.2017 (Rs.)	Interest outstanding as on 31.08.2017 (Rs.)	Concession amount as per scheme 50% of the interest as on 31.08.2017 (Rs.)
	Total	2,34,57,000.00	2,22,82,769.00	1,11,41,384.00

Principal outstanding as on 31.08.2017 =Rs.2,34,57,000/-
50% of the interest outstanding as on 31.08.2017 =Rs.1,11,41,384/-

Total (ONE Time Settlement amount) Rs.3,45,98,384/-

[25% of the total OTS amount to be paid on or before 10.11.2017 as up-front amount is Rs.86,49,596/- (Rupees Eighty Six lakhs, forty nine thousand, five hundred and ninety six only)].

4. Therefore, you are hereby advised to avail the opportunity of concession in interest of Rs.1,11,41,384/- by opting for the OTS Scheme by setting the loan account by paying only Rs.86,49,596/- on or before 10.11.2017 being 25% of the outstanding balance, and also to pay the remaining 75% of the balance amount of Rs.2,59,48,789/- on or before 31.03.2018, failing which, PIPDIC would be forced to construe that you do not intend to avail the concessional benefits in interest by opting for the OTS Scheme, and would be constrained to recover the entire outstanding loan amount (principal + interest) payable under Section 29 of the State Financial Corporations Act, 1951, without applying any OTS Scheme benefits.

5. You may please note that this letter is issued without prejudice to the proceeds in respect of W.A.No.2878/2012 in W.P.No.6811/2012 pending before the Hon'ble High Court of Madras.

30. Appellant has sought for restructuring and Corporation has come forward, giving concession of Rs.1,11,41,384/- towards waiver of interest.

31. Section 29 of the State Financial Corporation Act, 1951 reads thus:

29. Rights of Financial Corporation in case of default

(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of loan or advance or any instalment thereof

[or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the [right to take over the management or possession or both of the industrial concerns], as well as the [right to transfer by way of lease or sale] and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred [as if the transfer] had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) [Where any action has been taken against an industrial concern] under the provisions of sub-section (1), all costs, [charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it [as incidental thereto] shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.]

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of [the concern].

32. As regards the scope of the State Financial Corporation Act, 1951, and exercise of powers, let us consider few decisions:

i) In U.P. Financial Corporation vs Gem Cap (India) Pvt. Ltd. reported in (1993) 2 SCC 299, at paragraph Nos.10 and 11, held thus:

10. It is true that the appellant Corporation is an instrumentality of the State created under the State Finance Corporation Act, 1951. The said Act was made by the Parliament with a view to promote industrialisation of the States by encouraging small and medium industries by giving

financial assistance in the shape of loans and advances, repayable within a period not exceeding 20 years from the date of loan. We agree that the Corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, mote particularly it? matters like the present one. The above narration of facts shows that the respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the Corporation at bay. Approaching the Courts through successive writ petitions is but a part of this game. Another circumstance. These Corporation are not sitting on King Solomon's mines. They too borrow monies from Government or other financial corporation. They too have to pay interest thereon. The fairness required of it must be tempered nay, determined, in the light of all these circumstances. Indeed, in a matter between the Corporation and its debtor, a writ court has no say except in two situation : (1) there is a statutory violation on the part of the Corporation or (2) Where the Corporation acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction under [Article 226](#) of the Constitution can sit as an Appellate Authority over the acts and deeds of the

corporation and seek to correct them ? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints self-imposed undoubtedly of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

11. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the Rule of Law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the Quasi-Judicial Authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak & Ors. v. Union of India & Ors., AIR 1970 S.C. 150. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred" (Lord Diplock in Secretary of State for Education v. Tameside Metropolitan Borough Council, 1977 AC 1014 at 1064). The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene MR in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, (1948) 1 KB at 229.

"It is true the discretion must be exercised reasonably. Now what does that mean ? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather

comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

ii) In U.P. Financial Corporation and Others vs. Naini Oxygen & Acetylene Gas Ltd. and Another reported in (1995) 2 SCC 754, at paragraph No.21, the Hon'ble Supreme Court held thus:

13. However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the reformation in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or business like it may be, for the decision of the Corporation. Hence, whatever the wisdom [or the lack of it] of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

iii) In Karnataka State Financial Corporation v. Micro Cast Rubber & Allied Products (P) Ltd. and others reported in (1996) 5 SCC 65, the Hon'ble Supreme Court, while considering sale of property, by the Corporation, held thus:

"The directions contained in paragraph 22 of the judgment in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors, (supra) are in the nature of guidelines for the exercise of the power under Section 29 of the Act. The action of the State Financial Corporation is not liable to be interfered with if it has acted broadly in consonance with these guidelines.

In the matter of a sale by the State Financial Corporation in exercise of the power

conferred on it under Section 29 of the Act the scope of judicial review is confined to two situations, namely, (1) there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation acts unfairly, i.e., unreasonably. While exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation. [See : U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. and Others, 1993 (2) SCC 299 at p. 306]. "

iv) In S.J.S.Business Enterprises (P) Ltd., v. State of Bihar reported in 2004 (7) SCC 166, at Paragraph 17, the Hon'ble Supreme Court, held as follows:

"17. We are of the view that the sale effected in favour of respondent No. 6 cannot be sustained. It is axiomatic that the statutory powers vested in the State Financial Corporation under the State Financial Corporations Act, must be exercised bonafide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probabalize the abuse of that power. In such event it is for the concerned officer to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the Court can assume that the impugned action was improper [See M/s.Pannalal Binjraj & Ors., v. Union of India, AIR 1957 SC 397, 409]. Doubtless some of the restrictions placed on State Financial Corporations exercising their powers under Section 29 of the State Financial Corporation Act, as prescribed in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation, 1993 (2) SCC 279, are no longer in place in view of the subsequent decision in Haryana Financial State Corporation v. Jagdamba Oil Mills. [(2002) 3 SCC 496]. However, in over-ruling the decision in Mahesh Chandra, this Court has affirmed the view taken in Chairman and Managing Director, SIPCOT, Madras V. Contromix Pvt. Ltd. 1995 (4) SCC 595 and said that in the matter of sale under Section 29, the State Financial Corporation must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold.

"This can only be achieved when there is a maximum participation in the process of sale and

everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interesting in purchasing the property and generally secures the best price".

v) In Karnataka State Industrial Investment and Development Corporation Ltd., v. Cavalet India Ltd., reported in 2005 (4) SCC 456, after considering several judgments, the Hon'ble Supreme Court, at Paragraphs 19 and 20, summarised legal principles and held, as follows:

"19. From the aforesaid, the legal principles that emerge are :

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the corporation and its debtor, a writ court has no say except in two situations;

(a) there is a statutory violation on the part of the corporation or

(b) where the corporation acts unfairly i.e., unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the financial corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adapted.

(vii) The financial corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity,

wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

20. True, the exercise of the right by a financial corporation under Section 29 of the Act should be fair and reasonable. Ultimately, whether the action of the financial corporation is bona fide or not would depend on the facts and circumstances of each case."

vi) In Punjab Financial Corporation vs. Surya Auto Industries reported in (2010) 1 SCC 297, the Hon'ble Supreme Court at paragraph Nos.21 and 22, held as under:

"21. The proposition of law which can be culled out from the decisions noted above is that even though the primary function of a corporation established under Section 3 of the Act is to promote small and medium industries in the State, but it is not obliged to revive and resurrect every sick industrial unit de hors the financial implications of such exercise. The Corporation is not supposed to give loans and refrain from taking action for recovery thereof. Being an instrumentality of the State, the Corporation is expected to act fairly and reasonably qua its borrowers/debtors, but it is not expected to flounder public money for promoting private interests.

22. The relationship between the Corporation and borrower is that of creditor and debtor. The Corporation is expected to recover the loans already given so that it can give fresh loans/financial assistance to others. The proceedings initiated by the Corporation and action taken for recovery of the outstanding dues cannot be nullified by the courts except when such action is found to be in violation of any statutory provision resulting in prejudice to the borrower or where such proceeding/action is shown to be wholly arbitrary, unreasonable and unfair.

The court cannot sit as an appellate authority over the action of the Corporation and substitute its decision for the one taken by the Corporation.

24. In our view, the appellant Corporation had acted in a most reasonable and fair manner and the High Court was not justified in nullifying the second notice issued under Section 29 of the Act by assuming that the appellant Corporation had not taken effective steps for realisation of its dues in furtherance of first notice. Unfortunately, the High Court ignored that the respondent had not only adopted a recalcitrant attitude in the matter of payment of the outstanding dues, but also failed to avail the concessions offered by the appellant Corporation by reducing the rate of interest and rescheduling the payment of outstanding dues and did not take benefit of the schemes notified by the appellant Corporation for restoration of the unit on payment of the principal amount with a 10% outstanding interest."

33. On the aspect of rescheduling, a Hon'ble Division Bench of this Court in 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, at paragraph No.42, 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".

34. At paragraph No.46, in 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, the 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."

35. 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."

36. There is absolutely no bona fides on the part of the appellant in seeking for six months time. Action of the Pondicherry Industrial Promotion Development and Investment Corporation Ltd., does not come under any of the exceptions set out in the decision of the Hon'ble Supreme Court in Punjab Financial Corporation vs. Surya Auto Industries reported in (2010) 1 SCC 297. There is fairness in the action of the Pondicherry Industrial Promotion Development and Investment Corporation Ltd., Puducherry, in granting waiver of Rs.1,11,41,384/- towards interest. On the contra, there is no fairness or bona fides, in discharge of the amount due and payable to the Corporation, but there is an attempt to procrastinate payment. Though Thane Storm is stated to be a reason for the alleged economic loss, since 2011, no payment has been made towards the principal.

37. In the light of the above discussion and decisions, this court, is of the view that there are no merits in the writ appeal, warranting interference with the possession notice issued under Section 29(1) of the State Financial Corporation Act, 1951.

38. Notice dated 23.02.2012 is sustained. Interim order is vacated. Writ Appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

TO

Pondicherry Industrial Promotion
Development and Investment
Corporation Ltd.
60 Romain Rolland Street
Pondicherry 605 001.

+ 1 cc to Mr.S.P. Harikrishnan, Advocate Sr.85999
+ 1 cc to MR. T.M. Naveen, Advocate SR.85727

W.A.No.2878 of 2012

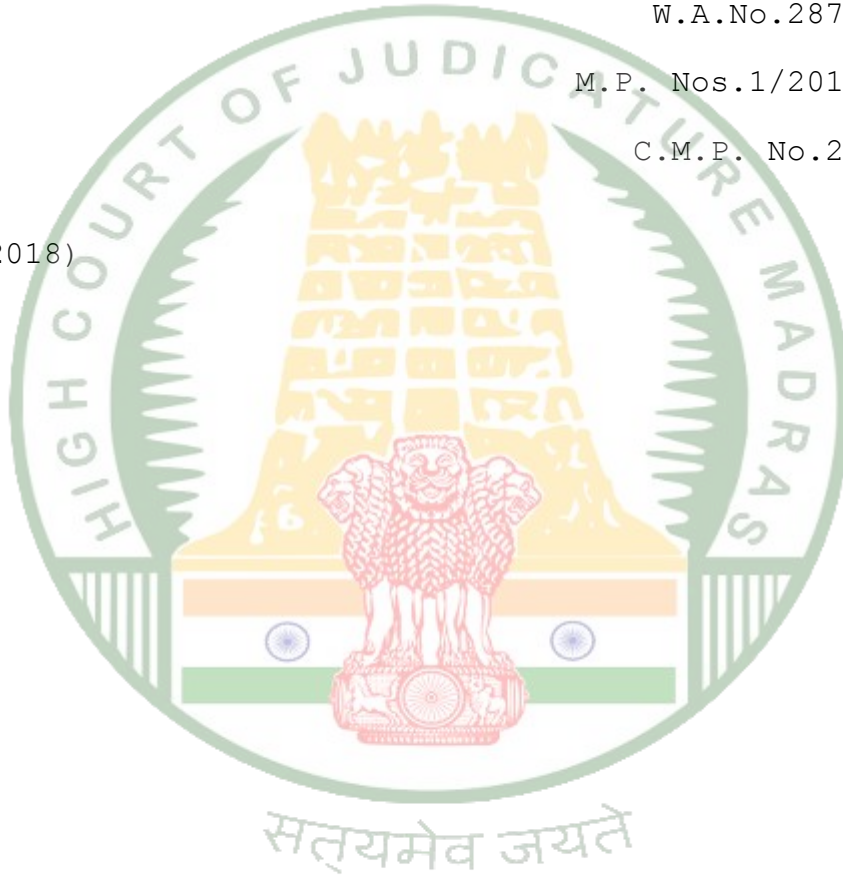
and

M.P. Nos.1/2012, 1/2013

and

C.M.P. No.20158/2017

AD(CO)
EU(11/01/2018)



WEB COPY