

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WP.No.4396 of 2017
and WMP.No.4584 of 2017

S.Maresh

..Petitioner

VS

1. The Tamilnadu Industrial Investment Corporation Ltd.,
Head Office No.692, Anna Salai,
Nandanam, Chennai - 600 035.
2. The Tamilnadu Industrial Investment Corporation Ltd.,
4/22, Shri Lakshmi Complex,
Omalur Road, Swarnapuri,
Salem - 636 004.
3. The Tamilnadu Industrial Investment Corporation Ltd.,
D.No.20/127-5B, First Floor,
80 Feet Road, Salem Road,
Namakkal - 637 001.

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India petitioner prayed that this Court to issue a writ of Certiorari Mandamus to call for the records relating to auction notice dated 24.01.2017 passed by the 3rd respondent under which the auction is scheduled to be held on 27.02.2017 and quash the same and direct the respondents to consider the petitioner's representation dated 03.12.2015 for One Time Settlement in the manner known to law within a reasonable time.

For Petitioner : Mr. T.L.Thirumalaisamy

For Respondents : Mr.K.Magesh for R1 to R3

ORDER

The Auction Notice issued by the 3rd respondent in proceedings dated 24.01.2017, in respect of the Auction scheduled to be held on 27.02.2017, is under challenge in this writ petition.

2. The writ petitioner along with 4 other persons entered into a partnership deed on 02.02.2011 and started a business of manufacturing "Fly Ash Bricks" in the name and style of M/s.

PonSurya Fly Ash Bricks and the place of business is at 4/32, North Sellappampalayam, Irukkur Post, Kabilarmalai, Namakkal. The writ petitioner is the Managing Director of the Partnership Firm and authorized by the Partners to operate the Bank Account and to execute and sign documents, Government Tenders and look after the administration.

3. The petitioner approached the 3rd respondent for availing term loan and have produced all necessary documents. The 3rd respondent approved the term loan as per the terms and conditions. The writ petitioner had mortgaged the properties and machineries installed in their factory in order to avail the term loan on 19.11.2013. The 3rd respondent sanctioned the term loan of a sum of Rs.19,00,000/- and Subsidy Bridge Land (SBL) of a sum of Rs.4,90,000/- totally amounting to Rs.23,90,000/- to the writ petitioner. However, the writ petitioner / Partnership Firm faced some business crises and was unable to repay the loan amount in time. The petitioner Firm have committed default in repayment of loan and the respondents commenced their actions as per the terms and conditions.

4. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner made all sincere attempts to repay the entire loan amount and on account of sudden fall in the business, they are unable to honor the commitments and therefore, there is no willful default on the part of the writ petitioner. Even at the time of filing of the present writ petition, the writ petitioner had paid the amount of Rs.7,50,000/- as per the conditions imposed by this Court, while granting the interim orders. Thus, the writ petitioner has no intention to commit any such default and therefore, some leniency has to be shown to the writ petitioner, in respect of the repayment of the entire loan amount.

5. The learned counsel appearing for the respondents opposed the contention by stating that the writ petitioner is the chronic defaulter and not paid the loan dues in time. In view of the fact that there is a huge amount of arrears of loan amount, the respondents have taken action in respect of the property mortgaged as security in view of the loan amount. In view of the fact that the writ petitioner is the chronic defaulter and not paid the loan amount, the respondents are bound to initiate action as per the terms and conditions of the Loan Agreement and there is no irregularity or infirmity in respect of the actions taken by the respondents and therefore the writ petition is liable to be rejected.

6. This Court is of an opinion that undoubtedly the writ petitioner is the defaulter and not paid the loan dues in time. However, the learned counsel appearing for the petitioner now come out with a proposal by stating that the writ petitioner would pay a further amount of Rs.8,00,000/- in eight weeks from

the date of receipt of the copy of this order and the balance amount will be cleared in six equal installments.

7. The learned counsel appearing for the petitioner urged this Court by stating that suitable directions may be issued to the respondents to waive the penal interest, since, the petitioner has all along taken steps to repay the entire loan amount and there is no willful default and the default had occurred on account of sudden fall in the business.

8. In view of the bonafide contention raised on behalf of the writ petitioner, this Court is inclined to consider the same and pass the following orders:

(i) The impugned auction notice issued by the 3rd respondent in proceedings dated 24.01.2017, is quashed.

(ii) The writ petitioner is directed to pay a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) to the respondents within a period of eight weeks from the date of receipt of the copy of this order.

(iii) The respondents, thereafter, is directed to calculate the balance amount and inform the same to the writ petitioner within a period of two weeks from the date of payment of a sum of Rs.8,00,000/- by considering the case of the writ petitioner for waiver of penal interest as the petitioner has shown his bonafide.

(iv) On receipt of such information from the respondents, the writ petitioner shall repay the entire balance loan amount in six equal instalments from the date of receipt of the orders from the respondents.

(v) If the petitioner fails to comply with any of the directions in this order, then the respondents are at liberty to proceed against the writ petitioner in accordance with law.

9. The writ petition stands allowed with the above directions. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr. T.L.Thirumalaisamy, Advocate sr.no.56680

+1cc to Mr.K.Magesh, Advocate sr.no.56665

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ssi(co)
nr 17/09/2018



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