

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10836 of 2018

and WMP Nos.12779 & 12780 of 2018

Automotive Coaches and Components Limited,

Represented by its Managing Director,

Sri Jai Krishna Sudharsan,

Gummidipoondi - 601 201.

... Petitioner

vs.

1. The Branch Incharge,
Bank of Maharashtra,
Deccan Gymkhana Branch,
JM Road, Deccan Gymkhana,
Pune - 411 004.

2. The District Collector,
Tiruvallur District.

3. The Tahsildar,
Gummidipoondi.

4. The Director,
Enforcement Directorate,
Mumbai.

.... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for records in connection with the order of the 2nd respondent in Rc.No.4505/2018/M2 dated 06.04.2018 issued against the company namely ACCL and quash the same and direct the 1st to 3rd respondents to act upon the OTS proposal dated 07.04.2017 submitted by the petitioner and settle the issue and release the company from the SARFAESI proceedings thereupon in the interest of justice.

For Petitioner

: Mr.R.Singaravelan, Senior Counsel
for Dr.T.M.Kannan

ORDER

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

Being aggrieved by the notice of an intimation letter of the District Collector, Thiruvallur District, addressed to Thasildar dated 06.04.2018, calling for a report and contending interalia that OTS proposed on 07.04.2017 has not been honoured, instant writ petition has been filed for a writ of certiorarified

mandamus to quash the abovesaid letter dated 06.04.2008 and consequently, the petitioner has sought for a direction against respondents 1 to 3 to act upon OTS proposal dated 07.04.2017 submitted by the petitioner and settle the issue and release the company from SARFAESI Proceedings.

2. Brief facts leading to the writ petition are as follows:

(a) Petitioner Company viz., M/s. Automotive Coaches and Components Limited [ACCL], is a company incorporated under the Companies Act, 1956, having its registered office, at the lease hold land Plot No.C1 & D6, SIPCOT Industrial Complex, Gummidipoondi 601 201. The company also owns property at Puducherry located at 17-19 Industrial Area, Sedarapet, Puducherry 605 111 and also leasehold land at Oragadam located at B4 in the SIPCOT Industrial Park at Oragadam, Tamil Nadu bearing Survey Nos.7 Pt, 9 Pt, 10 Pt, 11 Pt, and 82 Pt of Village Vaippur. The management of the company has been taken over from the erstwhile Directors who had otherwise contemplated to close the company, without being able to continue its operations.

(b) ACCL is one of the leading manufacturers of Tippers, Trailers, Fifth Wheel Couplers and Truck Cabins / Front End Structures in India. Since its founding in 1981, as part of Ashok Leyland Group and its subsequent ownership changes, the company has been a very trusted high volume supplier to Ashok Leyland, Indian Air Force, Indian Space Research Organisation, Central Reserve Police Force, Jammu & Kashmir Police and other clients of national importance. The company directly employs hundreds of people and indirectly impacts the economic well being of thousands of people in the greater Chennai Metropolitan Area and beyond.

(c) Because of the closure of the company the value of the shares of the company has become negative and therefore, upon deliberating with the erstwhile shareholders who were ready to part with the shares a notional value of 0.10 paise per share was arrived at and the Majority Shareholding viz., 59.63% of ACCL has changed w.e.f. 1 November 2017 and the new owners have filed the necessary papers before the Registrar of Companies for change of the Share Holder's name therein and further inducted a new Managing Director and two others as Directors of the Company to handle the day to day affairs. In addition, duly laid down procedures have been followed to inform other relevant authorities viz. The Inspector of Factories, PF, ESI and GST.

(d) M/s.ACCL has credit facilities with Bank of Maharashtra, Deccan Gymkhana Pune Branch which is now shown as NPA. Further the Company has also incurred losses because of which it has almost closed down its activities in all the units stated supra,

as the erstwhile management could not operate the company, due to financial crunch and other problems, which could not be overcome by them. The bank has initiated Debt Recovery Proceedings (DRT) under the SARFAESI Act, 2002, against the company which is pending before the concerned authorities.

(e) All efforts are being taken by the present management to take over the credit facilities availed by M/s.ACCL from the said Bank of Maharashtra, Deccan Gymkhana Branch, within a period of 90 to 180 days from the date of the Order of this Hon'ble Court, by settling its outstanding as per the OTS letter dated 07.04.2017 issued by Mr.N.S.Deshpande, Zonal Manager, Bank of Maharashtra, Pune City Zone.

(f) In the meantime, a petition has been filed by the Authorised Officer of the 1st respondent bank, dated 01.03.2018 with the District Collector, Tiruvallur District, 2nd respondent herein, who in turn vide his Rc.No.4505/2018/M2 dated 06.04.2018 issued a letter to the Thasildar, Gummidipoondi, the 3rd Respondent herein, calling for a report. A copy of the letter was personally handed over to the petitioner company on 21.04.2018 by a person from the Office of the District Collector, Tiruvallur District, the 2nd respondent's office and acknowledgment taken. In order to settle the 1st respondent-Bank of Maharashtra, of its dues from the company, the present management is taking all efforts. Challenging the letter of the District Collector, Tiruvallur District, 2nd respondent herein, addressed to the Tahsildar, Gummidipoondi, 3rd respondent herein, instant writ petition has been filed for the relief stated supra.

3. Grounds on which, prayer sought for, are as follows:

(i) The shares of the company belonging to the Erstwhile promoters have been purchased and the names of the shareholder have been duly updated in the Company records from 13.11.2017. As on date, the incoming shareholders are the principal share holders of the Company with 59.63% of shares in their name. The balance shares of approx.40% at present are in attachment with the Director, Enforcement Directorate, Mumbai, 4th respondent herein, and if the same is ordered to be released on payment (as per the present market value) it would fully release both the "Investigated Entities" and the "Erstwhile Promoters" from their obligations to Bank of Maharashtra that were assumed on behalf of M/s.Automotive Coaches and Components Limited, as the present management would be 100% owners of the company and would be able to get loan from private financier, who is insisting on the present management to own 100% shares as per the commitment letter placed in the typed set of papers.

(ii) The principal share holders have inducted the petitioner herein as the Managing Director and two others to act

as the Directors of the Company to handle the day to day affairs of the Company.

(iii) The "Erstwhile Promoters" being fellow promoters (along with the "Investigated Entities") of M/s. Transport Solutions India Private Limited, Pune, Maharashtra, have been summoned frequently, for enquiry by the respondents. However now that the "Erstwhile Promoters" have relinquished their shareholding and management positions in M/s.ACCL, the present shareholders and management should not be called in for enquiry by the 4th respondent herein, as the same would affect the future of the Company, as the goodwill of the present management with Ashok Leyland and ultimately Ministry of Defence from whom orders have been received for supply of tipper body would be at stake.

(iv) With the present management trying to arrange for private finance to run the day to day affairs of the company so that the dead line of effecting supplies to Ashok Leyland can be met, the financier is insisting that 100% shares of the company should be in the name of the present management and therefore, unless the shares in attachment with the 4th respondent is released, the present management cannot acquire the same and cannot arrange for the required finance to settle the 1st respondent namely Bank of Maharashtra, Deccan Gymkhana Pune Branch with whom the availed credit facility is shown as NPA, so that the present management can totally be free from the erstwhile management and start working without any hassle.

(v) On the above pleadings, it is prayed this Court taking a lenient view in the matter and also the survival of more than 500 worker's family in the company who would be permanently employed, order for release of the approx. 40% shares which are held by the 4th respondent, as attachment from the erstwhile promoters of the Company namely ACCL in the names of Mr.Roop Chand Baid, Mr.Kamal Kumar Baid, Ms.Manju Dev Baid and Mr.Deepak Baid, upon deposit of the value of the shares ie., Rs.4,30,348/- value taken as per the share transfer form for the majority of the shares purchased and transferred in the name of the present share holders from the other directors.

(vi) The present management is ready and willing to deposit the amount of Rs.4,30,438/- being value of the shares as per the Certificate issued by the Chartered Accountant / Company Secretary with this Hon'ble Court or as directed in this regard.

(vii) The petition filed by the Bank of Maharastra, Deccan Gymkhana Branch, Pune, 1st respondent, with the District Collector, Tiruvallur District, 2nd respondent and he in turn issuing a letter to the Tahsildar, Gummidipoondi, 3rd respondent, which has been impugned herein has to be kept in abeyance / quashed with a good intention, since th survival of

more than 500 families employed with the company would again be put to test. The present management is ready and willing to settle the amount due and payable to the 1st respondent at the earliest, and not later than 180 days as stated supra and for which reason the petitioner is seeking a suitable direction to the Director, Enforcement Directorate, Mumbai, 4th respondent to release the shares of the company held by them in attachment.

4. Mr.R.Singaravelan, learned senior counsel made submissions on the above.

5. Heard Mr.R.Singaravelan, learned senior counsel appearing for the petitioner and perused the materials available on record.

6. Letter of the District Collector, Tiruvallur District, Tiruvallur, addressed to the Tahsildar, Gummidipoondi dated 06.04.2018, calling for a report, is extracted hereunder.

Rc.No.4505/2018/M2 Dated 06.04.2018

Sir,

Sub:- SARFAESI Act, 2002 - Securitization of Reconstruction of Financial Asset and Enforcement of Security Interest Act 2002 - Report called for - Regarding.

Ref:- Petition filed by the Authorised Officer, M/s.Bank of Maharashtra, Asset Recovery Branch, Agarkar High School Building, II Floor, Somwar Peth, Pune - 411 011 dated 01.03.2018.

The Authorised Officer has filed a petition to the District Magistrate and Collector, Tiruvallur praying for the order to take possession of the scheduled mentioned property under SARFAESI Act, 2002 as detailed below in the reference cited:-

ame of the Owner of the property	Name of the Taluk, Village	Survey No.(s)	Extent	Details of property with 4 side boundaries
M/s.Automotive Coaches & Components Ltd.	Gummidipoondi Taluk Pethikuppam Village	300 Part, 330 Part, 307 Part, 308 Part, 309 Part, 310 Part.	79 cents 4 Acre 42 cents	Plot No.C1 and D6 Item I and II Boundaries North-S.No.330/1 and others South- Plot No.D7 East-S.No.302 and others West-18 M wide road & NH Bypass Road (see Annex)

Hence you are requested to check thoroughly the

facts submitted by the petitioner bank and physically verify all the original records by summoning the petitioner bank to produce the relevant records, and submit a detailed report, after inspection of the site, along with the Proforma enclosed.

The original application received from the petitioner bank is also enclosed and the same should be returned without fail. This exercise should be completed within a week time from the date of receipt of this letter."

7. First of all, writ challenging internal correspondence between officials is not maintainable, unless and until it fructifies into an order affecting the rights of a person. Reference can be made to a few decisions.

(a) In *Bachhittar Singh Vs. State of Punjab*, reported in AIR 1963 SC 395, a Constitution Bench of the Supreme Court has considered as to whether a note file which did not fructify into an order and communicated to the petitioner therein, can give rise to a cause of action and at paragraph Nos.9 and 10, held as follows:

9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file.

10. Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.

(b) The views expressed in *Bachhittar Singh's* case, have been followed in *Laxminarayan R. Bhattad Vs. State of Maharashtra*, reported in 2003(5) SCC 413, wherein, the Supreme Court held, a right created under an order of a statutory authority must be communicated to the person concerned, so as to confer an enforceable right. The said proposition of law has once again reaffirmed in *Sethi Auto Service Station Vs. Delhi Development Authority*, reported in 2009 (1) SCC 180, wherein,

the Apex Court held that internal notings and departmental communications between Government Agencies do not have the sanction of law to be an effective order, unless it culminates into an executable order, by communication to the person concerned, affecting his right or conferring any legal right. Reliance can also be made to the decision of the Supreme Court in Union of India and others Vs. Vartak Labour Union (2), reported in (2011) 4 SCC 200.

8. Secondly, writ against the bank is not maintainable and reference can be made the decision of the Hon'ble Supreme Court in Federal Bank Limited Vs. Sagar Thomas and others, reported in AIR 2003 SC 4325, wherein, after considering several decisions, at Paragraph Nos. 18 and 33, held as follows:

"18.the position that emerges is that a writ petition under article 226 of the Constitution of India, may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

33.a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank."

9. Thirdly, mandamus against bank to enter into One Time Settlement as proposed by the writ petitioner vide letter dated 07.04.2017, is also not maintainable. Repeatedly, this Court has held that in contractual matters, Court has no power to issue directions to the bank as to how the mode of repayment should be scheduled. We deem it fit to consider the following decisions.

(a) 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."

(b) In M/s.Digivision Electronics Ltd., Registered 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, a Hon'ble Division Bench of this Court, 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".

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 v. The District Collector, Coimbatore, 2005 WLR 47, Chandra Singh v. State of Rajasthan, JT 2003 (6) SC 20. The Managing Director, Tamil Nadu State Transport Corporation (Madurai Division-IV) Ltd., Dindigul v. P.Ellappan, 2005 (1) MLJ 639, Ramniklal N.Bhutta and Another v. State of Maharashtra, 1997 (1) SCC 134, etc."

10. 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., Registered 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, Court cannot compel the bank for any rephacement or One Time Settlement.

11. Though, Mr.Singaravelan, learned senior counsel for the petitioner submitted that the internal correspondence would give rise to a cause for filing writ petition and that, having regard to the plight of 500 workman, working in the petitioner's company and work orders to the tune of Rs.300 Crores obtained from Ashok Leyland Company, direction may be issued to the bank to accept OTS, this Court is not inclined to accept the same in the light of the decisions stated supra, which has the binding effect, on a co-ordinate bench.

12. Order passed under Section 14 of the SARFAESI Act, 2002, can be challenged, under Section 17 of the Act. Therefore, if any order is passed under Section 14 of the SARFAESI Act, 2002, it is always open to the petitioner to challenge the same before the tribunal under Section 17(1) of the SARFAESI Act, 2002.

13. With the above directions, the writ petition is dismissed. No costs. Consequently the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ars/skm

To

1. The Branch Incharge,
Bank of Maharashtra,
Deccan Gymkhana Branch,
JM Road, Deccan Gymkhana,
Pune - 411 004.

2. The District Collector,
Tiruvallur District.

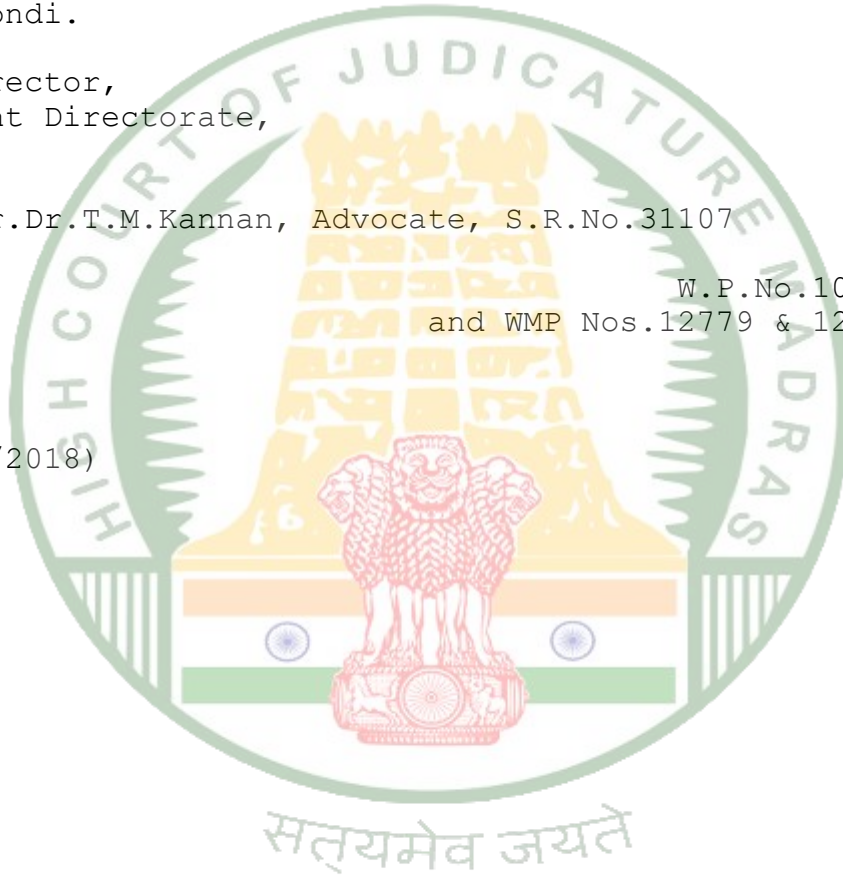
3. The Tahsildar,
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4. The Director,
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+lcc to Mr.Dr.T.M.Kannan, Advocate, S.R.No.31107

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SR(CO)
GSP(11/06/2018)



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