

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4126 of 2013 and
M.P.Nos.1 & 2 of 2013 and
M.P.Nos.1 & 2 of 2015

M/s.Renaissance RTW Asia (P) Ltd.,
(Formerly known as 'Renaissance
Creation (P) Ltd.),
Rep. by its Manager-Operations,
Shri S.Manivannan,
277-B, Kupbandampalayam,
Veerapandi (PO),
Tirpur-641 605.Petitioner

Vs.

M/s.New Tirupur Area Development
Corporation Ltd.,
37, Rassi Towers, Ground Floor,
JG Nagar, Kumaranandapuram,
60 feet Road,
Tirupur-641 602. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in communication dated 28.12.2012, on the file of the Respondent and quash the same and further direct the Respondent to restore the water supply service to the petitioner.

For Petitioner : Mr.Senthil Kumar
for Mr.N.Muthukumar
For Respondents : Mr.Dominic

O R D E R

The relief sought for in this writ petition is to quash the communication dated 28.12.2012, issued by M/s.New Tirupur Area Development Corporation Limited, stating that in terms of the Service Agreement and the Bank Guarantee dated 21.04.2005, an amount of Rs.2,00,000/- has been recovered by en-cashing the Bank Guarantee. In respect of the similar issues, this Court has disposed of the writ petitions in W.P.Nos.754 to 758 of 2014 dated 25.06.2014, and the relevant paragraphs are extracted hereunder:-

"8.As rightly pointed out by the learned Additional Government Pleader appearing for the respondents, it is well settled proposition of law that the

respondents cannot be injuncted from invoking the bank guarantee especially when the petitioners have not even pleaded or alleged that the respondents have resorted to fraud. In the absence of any pleading to that effect, the relief as claimed by the petitioners cannot be granted.

9. It is contended on behalf of the petitioners that as per clause 7.2 & 7.3 of the service agreements, in the event of any force majeure, the obligation on the part of the petitioners to perform their duties shall be suspended till the cessation of such event. In the present case, the petitioners term the closure of the units by virtue of the order passed by this Court as a force majeure. The very same contention has been raised and agitated by the petitioners in the earlier writ petitions filed before this Court and they were withdrawn without any liberty. Therefore, such an argument advanced on behalf of the petitioners cannot be countenanced.

10. The dispute involved in these writ petitions are contractual disputes. The prayer in these writ petitions is to forbear the respondents from in any manner demanding, collecting or enforcing the demand for "Take or Pay Charges" for the period during which Units were shut down due to Court Order and to consequently direct the respondents not to enforce their demand for outstanding charges on the basis of invoices raised by them and to refund the 10% charges of along with interest at 18% per annum from the date of deposit till date of repayment. As regards refund of the 10% of the amount paid by the petitioners, such amount was paid pursuant to the Addendum which provides for payment of the outstanding amount in instalments. The 10% of the amount paid by the petitioners is towards outstanding amount. Therefore, the relief sought for in these writ petitions in so far as it relates to refund of the 10% amount paid by the petitioners towards outstanding cannot be countenanced. In any event, these are all disputed questions relating to the particular period of closure of the petitioners unit, the quantum of water utilised by them and their obligation under the contractual agreements. Such a disputed questions of fact cannot be gone into by this Court in exercise of

jurisdiction under Article 226 of The Constitution of India. It is noteworthy to mention that when the petitioners have entered into Addendum and availed certain concessions and such concessions have also been accepted by the petitioners to their benefit, it is no longer open to them to file the present writ petitions. Therefore it is clear that the petitioners entered into service agreements on various dates with the first respondent, unable to perform their obligations and taking note of such difficulties, the first respondent granted certain concessions which are duly incorporated in the Addendum. When the petitioners could not even perform their obligations under the Addendum, they have come forward with these writ petitions. In fact, by virtue of the Addendum, the petitioners were given certain concession to pay the outstanding amount in instalments and the mandatory procurement of quantity of water, reflected in the Service Agreements, were reduced. In those circumstances, this Court is not inclined to issue any Mandamus to the respondents."

Even, recently in W.P.No.4399 of 2013, the very same judgment has been followed, an order was passed on 10.07.2018, dismissing the writ petition.

2.In view of the orders passed in respect of the very same issue, no further adjudication is required in the present writ petition. If at all, any other grievances exist to the writ petitioner, it is left open to the writ petitioner to adjudicate the same in the manner known to law.

3.Accordingly, the writ petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

mbi/kp

+ 1 cc to Mr.B.Muthukumar, Advocate SR.63256

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