IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.4708 of 2009
and
WMP.No.1 of 2009

M/s. Pondicherry Industrial Promotion
Development and Investment Corporation Ltd.,
represented by its Managing Director,
60, Romain Rolland Street,
Puducherry -605 001.

..Petitioner

vs

1. The Board for Industrial & Financial
Reconstruction-Bench-I,
Jawahar Vyapar Bhavan,
1, Tolstoy Marg,
New Delhi-110 001.

2. Bharath Technologies Auto Components Ltd.,
Unit No. 708, Beta Wing,
7th Floor, Raheeja Towers,
177, Anna Salai,
Chennai- 600 002.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ in the nature of a writ of certiorarified mandamus or any other appropriate writ, direction or order, calling for the records relating to the order dated 22.10.2008 made in Case No.46/1998 on the file of the 1st respondent and quash the same and consequently direct the 2nd respondent to (i) make an application to the petitioner Corporation, requesting for transfer of the leasehold right on the Industrial Land in his favour, (ii) pay the premium Lease amount of Rs.19,80,000/- or the amount prevailing on that day along with interest at 12.5% from 14.01.2004 till that day to the Corporation, (ii) enter in to a Regd. Lease Agreement with the Corporation and (iv) get the lease transferred in its name within the time that may be fixed.

For Petitioner : D. Ravichander

For Respondents : Mr. T.K. Basker for R2

O R D E R

The learned counsel for the petitioner submitted that the Pondicherry Government established the petitioner State Financial Corporation for the purpose of promotion and industrial activities in the Union Territory of Puducherry. The petitioner is a Government Company registered under the Indian Companies Act, 1956. The petitioner is utilising public money, developing and allotting Industrial plots to bonafide entrepreneurs by way of lease and also providing financial assistance for the needy entrepreneurs Industries in the Union Territory of Puducherry. Like that way, the petitioner entered lease agreement with one M/s. UCAL Power System Ltd. (for brevity 'UPSL') on 15.10.1993. Thereafter, the Corporation had transferred the leasehold right in the Industrial land in favour of UPSL and it was operating its Medium Scale Industry therein. The said industry becomes sick industry, thereafter the second respondent company takes over the industrial activities by way of amalgamation before the BIFR first respondent. In order to take over the UPSL, the second respondent company submitted a revival proposal of merger, envisaging the merger of UPSL. A Draft Rehabilitation Scheme was submitted by the operating Agency to the BIFR vide letter dated 16.12.2001. The said DRS was duly circulated under Section 19 of the Sick Industrial Companies (Special Provisions) Act, 1985 (herein referred as SICA) which was confirmed by order dated 14.01.2014 in Case No. 46 of 1998. Under the Scheme of Amalgamation sanctioned by the first respondent the undertakings of UPSL including all immovable properties and all rights, benefits and interest therein of UPSL stood transferred to the second respondent with effect from 1.7.2002. In terms of the above said order of the first respondent, the second respondent is entitled to continue as a lessee of the scheduled property for the remaining tenure of the allotment made to UPSL. However, the petitioner refused to recognize the second respondent as the successor in interest of UPSL. Then, the second respondent approached the BIFR for recognising the second respondent as lessee in terms of the agreement entered into by the petitioner in favour of the UPSL. The BIFR issued a direction under section 18(12) of the SICA to the petitioner to recognize the second respondent as lessee in the place of UPSL, against which the present Writ Petition is filed, seeking a further direction to the second respondent to pay the premium lease amount to the petitioner.

2. Learned counsel for the petitioner would submit that as per the terms of the agreement dated 15.10.1993 entered into between the petitioner and UPSL, the lease agreement, specifically as per Clause 19 the UPSL shall not directly or indirectly transfer, assign or encumber or part with its interest, either in portion or whole in any manner whatsoever without previous approval of the petitioner. Further Clause 24 imposed a condition that any changes in the ownership or constitution of the UPSL should be immediately communicated to the petitioner. Hence, as per clause 24 of the lease agreement, it is mandatory that the UPSL has to communicate the transfer of rights in favour of the 3rd party to the petitioner. However without considering the above said two clauses in the Agreement, passing orders in favour of the second respondent by the first respondent is unsustainable one and accordingly prayed for allowing the Writ Petition.

3. Per contra, learned counsel for the second respondent would submit that the order passed by the BIFR under the SICA viz under section 18(12) of the SICA is valid for the reason that what was transferred was only the industrial activities in favour of the second respondent. In order to promote the industrial activities in the property area only industrial activities are transferred in favour of the second respondent when the lease hold right still exist only with the petitioner. Hence, the second respondent took over the sick company by way of amalgamation with the approval of the first respondent. Therefore, it is not necessary to pay premium lease amount to the petitioner and the order passed by the first respondent is in perfectly valid. In support of his contention, the learned counsel relied upon the decision of this Court in T.T.Krishnamachari and Co. Vs. Joint Sub-Registrar I and and Another reported in (2009) 2 MLJ 245, wherein it has been categorically held as follows:

> "20. Similarly when a Scheme is approved by the BIFR, as I have already held, the properties of the erstwhile company automatically stands transferred and vested in the company in whose favour the scheme is issued by operation of law. Both in the case of amalgamation under the Companies Act, as well as in the case of any Scheme under the BIFR, the transfer is not effected on the act of parties, but it is by operation of law. It is an involuntary transfer which takes place as soon as the statutory authority, namely, the BIFR passes the order. Any other document which is executed subsequent to the

said order does not transfer the title from the erstwhile owner of the company to the other company. The ration laid down by the Kolkatta High Court sparely applies to this case".

4. On perusal of the records, it is seen that initially the petitioner Corporation granted lease in favour of the UPSL in which there was a specific condition not to transfer or assign or encumber in favour of any third party. However, in the present case, the UPSL has become sick industry after the lease and the second respondent company came forward to take over the sick industry by way of amalgamation before the first respondent. The first respondent sanctioned the scheme in favour of the second respondent under Section 18(4) of the Sick Industries Companies (Special Provisions) Act, 1985. Subsequently, the second respondent approached the petitioner for transferring the name in favour of the second respondent in respect of UPSL.

5. On a perusal of the decision of this Court in T.T.Krishnamachari and Co. Vs. Joint Sub-Registrar I and and Another reported in (2009) 2 MLJ 245, particularly paragraph 20 according to which, when a scheme is approved by the BIFR, the properties of the erstwhile company automatically stands transferred and vested in whose favour the Scheme is issued by operation of law. The said decision is squarely covered to the facts of the present case. Hence, demanding the lease premium by the petitioner is unsustainable one. Accordingly I do not find any error in the order passed by the first respondent. However, the second respondent has to complied with the other terms in the lease agreement. The Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

mrn

To
1. The Board for Industrial & Financial
Reconstruction-Bench-I,
Jawahar Vyapar Bhavan,
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2. The Bharath Technologies Auto Components Ltd.,
Unit No. 708, Beta Wing,
7th Floor, Raheeja Towers,
177, Anna Salai,
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+1 CC to M/s. Srinath Sridevan, Advocate sr 58235.

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GP(CO)
SP(13/09/2019)