IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED : ON 11.11.2019

ORDER DELIVERED : ON 24.01.2020

CORAM:-

THE HONOURABLE MR. JUSTICE T.RAJA

WRIT PETITION NO.2718 OF 2016
AND
W.M.P.NOS.2271 AND 2272 OF 2016

M/s.NMR Industries,
Rep. By its Proprietor Mr.M.Raja,
having office at
No.4, Parthasarathy Street,
Muthamizh Nagar,
Pammal, Chennai - 75. ... Petitioner

vs.

1.The Managing Director,
The TIIC Ltd.,
No.692, Anna Salai,
Nandanam, Chennai - 35.

2.The Director,
MSME Development Institute,
Sheheed Captain Gaur Marg,
Okhla, New Delhi - 110 020.

3.The Director,
MSME Development Institute,
65/1, GST Road, Guindy,
Chennai - 32. ... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus to direct the first respondent to release all the collateral documents submitted by the petitioner to the first respondent for the purpose of availing loan vide Borr.No.1199/5668 and to issue 'No Objection Certificate' for the loan obtained by him vide Borrower No.1199/5668 without insisting the payment of CLCS amount of Rs.3,18,000/- along with interest.

For Petitioner : Mr.S.Arivazhagan

For R1 : Mr.I.Sathish, Standing Counsel
For R2 & R3 : No Appearance

ORDER

M/s.NMR Industries, represented by its Proprietor Mr.P.Raja, has filed this writ petition seeking for issuance of a writ of mandamus to direct the first respondent / the Managing Director, the Tamil Nadu Industrial Investment Corporation (TIIC) Limited, Chennai, to release all the collateral documents filed by him to the first respondent for the purpose of availing loan Vide Borrower No.1199/5668 and to issue 'No Objection Certificate' for the said loan obtained by him without insisting the payment of Credit Linked Capital Subsidy (CLCS) amount of Rs.3,18,000/- along with interest.

2. Learned counsel appearing for the petitioner submitted that the petitioner had made an application before the first respondent to purchase CNC Lathe Machine under 15% CLCS from the Central Government on 22.07.2011. Being eligible to obtain loan in two phases, namely, Phase-I and Phase-II, the petitioner had also paid fees towards investigation fees in CLCS, documentation charges, service tax totaling to the tune of Rs.41,219/- as per the said loan scheme. Subsequently, on 19.10.2011, he had paid the cost of Rs.2,206/- to the first respondent so as to get CLCS amount and he was promised that within 24 months, he would get CLCS amount of Rs.3,18,000/- and he was further advised that till such time, he would require to pay the interest for the said CLCS amount of Rs.3,18,000/-. Thereafter, the said term loan was sanctioned to the petitioner Company on 12.01.2012 vide Borrower No.1199/5668.

3. Adding further, learned counsel for the petitioner would submit that as per the conditions stipulated in the said term loan, although he was eligible to receive the term loan under Phase-II, he did not receive the same and for the amount obtained by him under Phase-I, he had paid the same without any default to the first respondent as on 21.12.2015. He further submitted that till 21.12.2015, the petitioner had paid a sum of Rs.1,93,128/- as interest towards CLCS amount of Rs.3,18,000/-. But, till May, 2015, the petitioner did not receive any information regarding CLCS amount. Hence, when a request was made to the first respondent under the Right to Information Act,

he came to know that the first respondent had caused undue delay in forwarding his CLCS application to the second respondent. Further, although the first loan was paid to the petitioner on 12.01.2012, but to his surprise, he was informed that his CLCS application was forwarded by the first respondent to the second respondent only in the month of September, 2012, therefore, his CLCS application was not sanctioned by the second respondent. Since the first respondent did not inform the second respondent that the petitioner's CLCS summon was sanctioned, he was compelled to pay the interest and as stated above, he had also paid a sum of Rs.1,93,128/- with other cost of Rs.14,922/- , totalling Rs.2,08,050/-, to the first respondent.

4. Continuing further, learned counsel for the petitioner submitted that the first respondent, vide letter dated 13.11.2015, directed the petitioner Company to clear the overdues to the tune of Rs.3,98,825/- towards principal and a sum of Rs.11,357/- towards interest. Therefore, the grievance of the petitioner is that after settling the entire amount of Rs.4,21,000/- including interest on 21.12.2015, although the petitioner had sent a letter dated 28.12.2015 requesting the first respondent to issue 'No Objection Certificate' and to release the collateral securities issued by him for the said loan obtained vide Borrower No.1199/5668, to the shock and surprise of the petitioner, the first respondent sent a notice dated 05.01.2016 requesting to settle the CLCS outstanding amount of Rs.3,18,000/- along with broken period interest till the date of settlement. This is unacceptable and unjustifiable, he pleaded. When the petitioner had approached the first respondent to assign the reason for the same, he did not get any response. Thus, the present writ petition with a prayer cited supra.

5. It is further argued that since the first respondent has promised 15% CLCS from the Central Government, the petitioner preferred to avail the loan from the first respondent and the first respondent had also sanctioned the term loan on 12.01.2012. As per the conditions stipulated in the term loan, the petitioner was eligible for the Phase-II term loan, but, he did not receive the same and in the meanwhile, he had also paid the interest to the tune of Rs.1,93,128/- without any default on 21.12.2015. When the first respondent had sanctioned a term loan of Rs.33.45 lakhs as against CLCS of Rs.6.36 lakhs to the petitioner, the said loan is for the purpose of purchase and erection of machinery to set up a unit at No.7/115, Kumaran Street, C.Pallavaram, Chennai, for manufacture of turned components like control rod, studs, bolts, nuts, flanges, etc. The said loan was secured by way of collateral security apart

from primary security, viz. machinery. Moreover, the petitioner was permitted to avail loan in two phases, i.e. Phase-I and Phase-II. The petitioner had also availed the loan of Rs.16.53 lakhs and Term Loan against CLCS of Rs.3.18 lakhs under Phase-I on 12.01.2012 for the purchase of one CNC Lathe. However, he did not avail the loan under Phase-II, but, that does not mean that the petitioner is not entitled to get the subsidy. The first respondent was responsible for the delay in sending the CLCS application to the second respondent. In view of such delay on the part of the first respondent, the very purpose of availing the loan from the first respondent got defeated. Besides, the petitioner had paid the first term loan including the interest and there is no due on his part. Therefore, the first respondent has to honour their commitment to issue No Objection Certificate and to release all the collateral documents given by him. On this basis, he prayed for allowing the writ petition.

6. Per contra, learned Standing Counsel appearing for the first respondent submitted that the Tamil Nadu Industrial Investment Corporation (TIIC) Limited is a Government Company incorporated under the Indian Companies Act, 1913, and it was established with an object of extending financial assistance to various entrepreneurs in the State of Tamil Nadu for development of Industries in the State and it also obtains refinancing facility from Banks/Financial Institutions and lends the same to entrepreneurs at a reasonable rate of interest. It is further submitted that the respondent Corporation sanctioned a term loan of Rs.33.45 lakhs against the Credit Linked Capital Subsidy (CLCS) of Rs.6.36 lakhs to the petitioner herein and the said loan is for the purpose of purchase and erection of machinery to set up a unit at No.7/115, Kumaran Street, C.Pallavaram, Chennai -43, for manufacture of turned components like control rod, studs, bolts, nuts, flanges, etc. The loan was secured by way of collateral security apart from primary security, viz. machinery. The petitioner, being a borrower, executed necessary documents mortgaging/hypothecating the above assets in favour of the first respondent Corporation to secure the loan sanctioned and thereupon, the petitioner was permitted to avail the loan in two phases, namely, Phase-I and Phase-II. Subsequently, the petitioner availed the loan of Rs.16.53 lakhs and TL-CLCS of Rs.3.18 lakhs under Phase-I on 12.01.2012 for purchase of 1 No. CNC Lathe. But, he has failed to avail the balance loan amount under Phase-II and requested the respondent Corporation, vide letter dated 17.08.2012, to lapse the undrawn loan amount and to grant subsidy for the machinery purchased out of the loan availed. As per the CLCS scheme, the application for grant of CLCS has to be submitted before the competent authority, namely,

respondents 2 and 3 within three months or the next quarter from the date of last disbursement of the loan, but, in the present case, after availing the loan in Phase-I during January, 2012, the petitioner informed the respondent Corporation about the non-availment of the balance loan in Phase-II only on 17.08.2012, hence, the first respondent Corporation communicated the request of the petitioner seeking CLCS loan for the purchase of machinery during October, 2012. But, the same was not considered by the respondents 2 and 3 as the request was not made within three months from the date of availment of the loan.

7. Learned Standing Counsel for the first respondent further argued that the petitioner, being a borrower, did not repay the loan as per the terms of contract and committed default in repayment of the loan. Therefore, when the amount due to the respondent Corporation was mounting, the respondent Corporation, through letter dated 13.11.2015, directed the petitioner to clear the overdues within 10 days, failing which to face legal action against the primary and collateral securities to recover the legitimate dues. Thereafter, although the petitioner cleared the loan by remitting the amount on 23.11.2015, 09.12.2015 and 21.12.2015, he had failed to remit the term loan against CLCS amount of Rs.3,18,000/- along with broken period interest. Subsequently, the first respondent Corporation in their letter dated 05.01.2016 advised the petitioner to settle the TL-CLCS together with interest at contractual rates till the date of settlement to enable the respondent Corporation to issue No Due Certificate and to release the documents. But, without remitting the same, the petitioner has wrongly approached this Court seeking a direction to the first respondent to release the collateral documents and to issue No Due Certificate without insisting payment for CLCS amount with interest. Therefore, the writ petition is not maintainable.

8. Heard the learned counsel appearing on either side and perused the materials available before this Court.

9. The petitioner approached the first respondent Corporation for sanction of Term Loan against Credit Linked Capital Subsidy (TL-CLCS) on 22.07.2011. The first respondent, on considering the loan proposal, sanctioned the Term Loan of Rs.33.45 lakhs and TL-CLCS of Rs.6.36 lakhs on 16.08.2011 for purchase of machinery in two phases, namely, Phase-I and Phase-II. One of the conditions mentioned in the CLCS scheme says that the borrower has to avail the loan for purchase of entire machinery under the said scheme and from the last date of final disbursement done by the first respondent, the claim under CLCS has to be lodged within the next quarter before the respondents

2 and 3 for disbursement of CLCS. If the claim is lodged beyond the next quarter, the respondents 2 and 3 can disallow the belated claim. In the case on hand, although the petitioner had availed the loan in Phase-I during January, 2012, he had informed the first respondent Corporation only on 17.08.2012 requesting to lapse the undrawn loan amount in Phase-II and then to make arrangements for getting CLCS for the machinery purchased out of the loan availed under Phase-I. The said request made by the petitioner on 17.08.2012 for disbursement of CLCS was lodged by the first respondent Corporation on 19.12.2012 with the respondents 2 and 3 and therefore, the claim of the petitioner was rightly rejected by the respondents 2 and 3 on the ground that the claim was lodged beyond the time limit given under the CLCS scheme.

10. Secondly, the first respondent Corporation sanctioned the Term Loan of Rs.33.45 lakhs and TL-CLCS of Rs.6.36 lakhs for purchase of machinery for not only under Phase-I, but also under Phase-II. As per the prevailing norms for availing subsidy, the borrower has to purchase all the machineries as envisaged in the project. But, in the present case, only on 17.08.2012, the petitioner, after availing the loan under Phase-I on 12.01.2012, informed belatedly to the first respondent Corporation that he is not interested to avail the loan for purchase of machinery under Phase-II. When the petitioner was reminded repeatedly that the claim for the purchase of machinery has to be lodged before the respondents 2 and 3 on or before 30.06.2012 as per the CLCS scheme, the petitioner belatedly made a request vide letter dated 17.08.2012 to lapse the undrawn loan amount in Phase-II and to grant subsidy for the machinery purchased out of the loan availed under Phase-I, therefore, in view of such delay committed by him, I am of the view that he has no locus-standi to ask for a subsidy under CLCS scheme.

11. Besides, as per the CLCS scheme, the project would be completed only after the purchase of both the machineries by the petitioner in two phases, namely, Phase-I and Phase-II. But, in the present case, the petitioner had failed to avail loan in two phases. As stated above, although he had availed the loan in Phase-I in January, 2012, he had intimated about the non-availment of the loan under Phase-II only during the month of August, 2012. Therefore, this Court is of the view that the petitioner, having failed to make a request in time about the non-availment of loan under Phase-II, cannot maintain this writ petition.

12. Hence, for the reasons stated above, this Court is not inclined to entertain the writ petition and accordingly, the writ petition stands dismissed as devoid of any merit. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Managing Director,
The TIIC Ltd.,
No.692, Anna Salai,
Nandanam, Chennai - 35.

2.The Director,
MSME Development Institute,
Sheheed Captain Gaur Marg,
Okhla, New Delhi - 110 020.

3.The Director,
MSME Development Institute,
65/1, GST Road, Guindy,
Chennai - 32.

+1cc to Mr.S.Arivazhagan, Advocate sr.6147
+1cc to Mr.I.Sathish, Advocate sr.6271



W.P.No.2718 of 2016

ev(co)
nr 03/03/2020