

11 **08.12.2021**

gd/ssd

MAT 1200 OF 2021
IA NO: CAN/1/2021
PURULIA METAL CASTING PVT. LTD. AND ANR.
VS
DAMODAR VALLEY CORPORATION AND ORS.
(Through Video Conference)

Mr. Kalyan Kumar Bandopadhyay,
Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das,
Mr. Neil Basu
..for the Appellants

Mr. Jaydip Kar,
Mr. Prasun Mukherjee,
Mr. Deepak Agarwal
..for DVC

This appeal is directed against the order of the learned Single Judge dated 7th of October, 2021 whereby WPA 16756 of 2021 has been dismissed.

The appellants had approached the writ court with a plea that it is a private limited company doing the business of manufacturing of TMT Bar etc. and having the high voltage industrial electric connection. The grievance which was raised by the appellants was in respect of the electricity bill for the period August, 2021 for which the electricity consumption bill dated 01.09.2021 for a sum of Rs.5,61,08,242/- was raised. On account of non-payment of the electricity charges notice of disconnection dated 20th of September, 2021

was issued. In the writ petition the petitioners had prayed for a direction to grant instalment for payment of the electricity bill and had also prayed for restraining the respondents from disconnecting the electricity connection.

Learned Single Judge has reached to the conclusion that the discretion to grant instalments is a commercial decision that rests exclusively within the jurisdiction of the licensee and the courts do not interfere with such discretion. Learned Single Judge has also found such a prayer in direct violation of the earlier order of the Hon'ble Supreme Court dated 14th of August, 2020 passed on the Civil Appeal No.2952 of 2020.

Learned counsel for the appellants has submitted that the earlier order of the Hon'ble Supreme Court was for a different period i.e. July, 2020 wherein the instalments were directed by the Division Bench, therefore, on that basis the prayer made in the present petition could not have been refused. He submits that the appellants have a general right to pray for such instalments and six instalments should be fixed to make the payment.

Learned counsel for the respondents has submitted that the average monthly bill of the appellants is about Rs.5 crores and that at the earlier

occasion the instalments were fixed by this court which was not approved by the Hon'ble Supreme Court and that the appellants are in the habit of approaching the court seeking fixation of instalment. He has pointed out that after the refusal of the prayer by the learned Single Judge in the present case, the appellants have paid the entire amount which shows that the appellants have capacity to pay but he repeatedly takes chance by filing the writ petition seeking the instalment.

Having heard the learned counsel for the parties and on the perusal of the record, we have noticed that the appellants have failed to point out any legally enforceable right in respect of fixing the instalment to pay the electricity charges. For want of such a legal right, he is not justified in seeking writ of mandamus.

That apart at earlier occasion when the appellants had approached this Court seeking fixation of the instalment for the period of March and April, 2020 by filing W.P. 5458 (W) of 2020, the same was dismissed by the learned Single Judge and in appeal the Division Bench by order dated 07.07.2020 passed in MAT 473 of 2020 had fixed the instalment and the matter had travelled to the Hon'ble Supreme Court in SLP (C) No.8732 of 2020 (Civil Appeal No.2952 of 2020) wherein the Hon'ble Supreme Court on 14th of August, 2020 had passed the following order.

“Leave granted.

After hearing learned counsel for parties, we have not the least hesitation in coming to the conclusion that the impugned directions are unsustainable and the High Court could not have taken upon itself to reschedule the payments, more so, when the State Commission was already in seisin of the matter.

The impugned order is accordingly set aside.

At this stage, learned senior counsel for the respondents requests for sometime to pay the arrears along with the current charges being paid. He submits that this arrears will be cleared along with the late payment surcharge. The prayer is made on the basis that the respondents have already paid more than Rs.11 Crores and the Covid situation has created some problem, that the parties had a long relationship, and the balance amount would be cleared on or before 31st December, 2020.

Learned senior counsel for the appellants expresses an apprehension that this may create some sort of a precedent which will create complication in other matters.

We make it clear that we are passing some orders in the given facts of the case which shall not be treated as a precedent and we give time to the respondents to pay the balance amount along with late payment surcharge in four equal installments starting from the first week of September, 2020 payable on or before the 7th of each succeeding month so that all the amount is cleared on or before the 7th December, 2020. There should also be no default in the current charges which should be paid in time.

It is also make clear that no further application for extension of time shall be entertained in respect of the aforesaid and any single default would activate the right of the appellants to take suitable action for disconnection and any other measure as permissible.

The appeal is disposed of leaving parties to bear their own costs.”

The opening paragraph of the order itself reveals

that the Hon'ble Supreme Court had reached to the conclusion that the High Court could not have taken upon itself to reschedule the payment. Hon'ble Supreme Court had granted certain concession to the appellants by clear mentioning that the same will not be treated as precedent, and it was also made clear that the appellants will not make any default in the current charges which should be paid in time.

Having regard to the above order of the Hon'ble Supreme Court, it is not open to the appellants to approach this Court seeking fixation of instalments that too without any proper justification.

It is also noticed that in the meanwhile, the appellants have already paid due amount.

In these circumstances, we are of the opinion that the learned Single Judge has not committed any error in dismissing the petition. No case for interference in the order of the learned Single Judge. The appeal is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

