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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12023 of 2011

Pandian Extractions (P) Ltd,
Rep by its Managing Director,
Mr.P.Ramani Mohan @ P.R.Mohan
48, Karnan Street, Mannapuram,
Virudunagar District, Tamil Nadu,
Pincode - 626 110.

...Petitioner

Vs.

1. Ministry of Finance,
Rep by its Secretary,
Room No. 134, North Block,
New Delhi : 110 001,
Delhi.
2. Industrial Investment Bank of India Ltd.,
Rep.by the Chief General Manager,
19, Nethaji Subash Road,
Kolkata - 700 001.
3. Industrial Investment Bank of India Ltd.
Rep.by the Chief General Manager,
Southern Zonal Office, "The Nest"
2A- 19/1, Mc.Nicholas Road, 3rd Lane,
Chetpet, Chennai 600 031.
- R4.Indian SME Asset Reconstruction Co.Ltd.,
rep by its authorized Signatory,
(R4 impleaded vide order dated 02.12.2021
in WMP No.27113/2021 in WP No.12023/2011 by SMSJ)

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in the letter IIBI:CO: 439: 11 dated 07/03/2011 and quash the same and direct the respondents to accept the one time settlement for sum of Rs.14 lakhs and release all the documents from the respondents Bank to the petitioner.



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For Petitioner : Mr.R.Venkata Jalapathy
For Mr.S.Kadarkarai

For Respondents: Mr.Bala Murali
For M/s.Shivakumar and Suresh
[For R2 and R3]
No appearance -R1

ORDER

The writ on hand has been instituted, questioning the order dated 07.03.2011 and direct the respondents to accept the one time settlement for a sum of Rs.14 Lakhs and release all the original documents belongs to the petitioner from the respondent Bank.

2. The petitioner is a private limited company registered with the Registrar of Companies Act in the year 1978. The Company is in the business of extracting oil from rice- bran.

3. Admittedly, the petitioner borrowed a sum of Rs.62 Lakhs by way of loan from the second respondent- Industrial Investment Bank of India Ltd. The petitioner had committed a default in repayment of their installments and actions were initiated by the second respondent-Bank. The Bank was also facing some financial issues during the relevant point of time and admittedly, the second respondent Bank was Government of India undertaking, steps were taken to resolve the issues at the Ministry of Finance level. At that point of time, the second respondent-Industrial Investment Bank of India Ltd., issued a letter based on the proposals submitted by the writ petitioner that they are agreeing for one time settlement of the loan dues. The letter dated 14.09.2010 reveals that the petitioner has paid a sum of Rs.14 Lakhs towards full and final settlement of the Petitioner Company.

4. The learned counsel for the petitioner made a submission that the letter dated 14.09.2010 issued by the Chief General Manager of the second respondent-Industrial Investment Bank of India Ltd., would clarify that the proposal submitted by the writ petitioner for one time settlement was agreed by the second respondent. Thus, the respondents are bound to accept the one time settlement offer made by the writ petitioner. In view of the fact that the impugned order has been passed rejecting the one time settlement offer, the petitioner is constrained to move the present writ petition.

5. The sum of Rs.14 Lakhs paid by the petitioner was returned by the second respondent-Industrial Investment Bank of India Ltd., on 07.03.2011 itself and the said order is under



challenge.

6. The learned counsel for the petitioner mainly contended that the proposal submitted by the petitioner for one time settlement was agreed by the second respondent and a letter was issued to that effect. While so, there is no reason to return the payment made by the petitioner by way of cheque. A sum of Rs.14 Lakhs was agreed between the parties and the petitioner also paid the same amount.

7. This being the factum, the subsequent decision taken by the Ministry would not have any effect for the purpose of depriving the petitioner from settling the issues as per the acceptance made by the second respondent.

8. The learned standing counsel appearing on behalf of the respondents made a submission that the second respondent -Industrial Investment Bank of India Ltd., is the Government of India undertaking and was functioning under the control of Ministry of Finance, Government of India. The issues as well as the proposals are to be approved by the Ministry of Finance and as far as the case of the petitioner along with the other cases were placed before the Oversight Committee constituted by the Ministry of Finance, Government of India for sale of assets of IIBI. The said Oversight Committee convened a meeting on 30.12.2010 at 03.00 p.m in the office of the Department of Financial Services, New Delhi. The Joint Secretary, Department of Financial Services, Ministry of Finance, Government of India was the Chairperson and the said Oversight Committee passed a resolution as under :

"The Committee took up this agenda item along with the addendum on the same issue relating to modification of the recommendation of the Board in respect of five Non-Performing Assets of IIBI.

The Committee was informed that out of 274 NPA Cases, bids were received in respect of 180 cases while for the remaining 94 cases, no bid was received. Out of 180 cases, OTS offers in respect of 20 cases were recommended by the Board as the offer amount was higher than the highest bid received and in one case, the Board recommended withdrawal of the asset from the auction process and await recovery through DRT for better/higher realisation. As regards remaining 159 cases, recommendation of the Board for acceptance of the bid is for 94 cases while in respect of 65 cases, Board recommended rejection/retention of the assets as the bids were too low.



11. The proposal made by the petitioner for one time settlement, undoubtedly, shocking the conscious of this Court. The writ petitioner borrowed a sum of Rs.62 Lakhs in the year 1992 and submit a proposal to settle a sum of Rs.14 Lakhs in the year 2010. The said Rs.14 Lakhs was agreed by the second respondent during the relevant point of time. Such an agreement between the petitioner and the representative of the second respondent itself provides a scope for drawing a factual interference that there is a possibility of collusion between the parties. The second respondent-Industrial Investment Bank of India Ltd., admittedly is an undertaking of the Government of India. Public money is involved and every authority is bound to protect the interest of the State Public Exchequer.

12. In the present case, even the principal amount had not been offered by the petitioner. The principal amount borrowed was Rs.62 Lakhs i.e., in the year 1992 and the petitioner offered a sum of Rs.14 Lakhs in the year 2010. The petitioner admittedly was a defaulter. Even in the year 2000, the due was a sum of Rupees One Crore and Eighty Five Lakhs. The Bank proceeded by filing original application and decree was passed in favour of the Bank. Certificate was also issued subsequently. Now, the respondents are holding a certificate and they are bound to proceed in accordance with law.

13. It is the duty of the Public authorities to ensure that the Tax payers' money is protected. The Government of India invested for the development of Industrial Investment Bank and the Bank sustained certain monetary loss and found difficult and under those circumstances, actions were initiated to close the Bank. Thus, any such one time settlement must be in a reasonable manner and in commensuration with the dues. No Banker will accept a sum of Rs.14 Lakhs as one time settlement in respect of the arrears of loan amount of more than a Crore of Rupees. Thus, the very proposal and the letter issued by the second respondent cannot be trusted upon with reference to its genuinity. However, the fact remains that the issues were taken before the Oversight committee appointed by the Ministry of Finance and the said Oversight Committee considered the issues in respect of one time settlement offers and the letter issued by the Bank authorities and then passed resolution, declining the proposal and initiated steps to accept one time settlement proposal only if it is made in a reasonable manner.

14. However, in the present case, the proposal itself is unreasonable and this Court of the opinion that against the public interest and the public policy and thus, a one time settlement, which is not in consonance with the public policy and against the public interest, at no circumstances, be accepted and therefore, the decision of the Oversight Committee,



which was accepted by the Ministry of Finance is in accord with law and there is no infirmity as such.

15. This being the factum established, the petitioner is bound to settle the dues, failing which, the respondents are empowered to initiate all further actions by following the procedures based on the decree and certificate issued by the Debt Recovery Tribunal or otherwise.

16. The learned counsel for the petitioner made a submission that the Cheque sent by the second respondent is yet to be realised. However, it is left open to the petitioner to realise the same or otherwise. Contrarily, by keeping the cheque, the petitioner cannot establish any right in respect of the dues or repayments to be made by the petitioner.

17. With these observations, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary,
Ministry of Finance,
Room No. 134, North Block,
New Delhi : 110 001,
Delhi.
2. The Chief General Manager,
Industrial Investment Bank of India Ltd.,
19, Nethaji Subash Road,
Kolkata - 700 001.
3. The Chief General Manager,
Industrial Investment Bank of India Ltd.
Southern Zonal Office, "The Nest"
2A- 19/1, Mc.Nicholas Road, 3rd Lane,
Chetpet, Chennai 600 031.

+1cc to Mr.S.Kadarkarai, Advocate SR.No.68936

W.P.No.12023 of 2011

AJS (CO)
GMY (05/01/2022)