IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. NO. 13553 OF 2021
AND
W.M.P. NOS. 14422, 14423 & 14424 OF 2021

Karaikal Port Private Limited
CIN U45203PY2006PTC001945
having its registered office at
Khezhavanjoor Village
T.R.Pattinam, Karaikal
India – 609 602.

Having its corporate office at
No.145 (Old No.81)
Royapettah High Road,
Mylapore, Chennai
Tamil Nadu 600 004.

Represented by its Authorised Signatory
B.Venkataramanan – Chief Financial Officer
and Interim Chief Executive Officer

.. Petitioner

Versus

1. Government of Puducherry
represented by the Under Secretary
Department of Industrial Development (Port)
Central Secretariat
Puducherry.

2. EDELWEISS Asset Reconstruction Company Limited
represented by its Director
having its office at Edelweiss House
off CST Road, Kalina, Mumbai – 400 098

.. Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus directing the first respondent not to take any action based on any requests that may be made by any person, including any of the respondents to substitute / replace the petitioner as the concessionaire of the Karaikal Port.

For Petitioner : Mr.Aravind Pandian,
Senior Advocate
for M/s.Fox Mandal and Associates

For R1 : Mrs. N.Mala
Government Pleader (Puducherry)

For R2 : Mr.Sathish Parasaran,
Senior Advocate
for Mr. Anant Merathia

ORDER

Karaikal Port Private Limited, through its Chief Financial Officer and Interim Chief Executive Officer, has filed this writ petition for issuing a Writ of Mandamus directing the first respondent not to take any action based on the requests that may be made by any person, including any of the respondents to substitute /replace the petitioner as the concessionaire of the Karaikal Port.

2. The petitioner is a special purpose vehicle (SPV) incorporated at the instance of its promoters to undertake development of an all-weather deep water multi-purpose port at Karaikal, Puducherry on a public private (Built, Operate and Transfer) (BOT) Basis in terms of a concession agreement entered into with the first respondent. Earlier, such a concession agreement was entered into between the promoter of the petitioner namely Marg Limited and the first respondent on 25.01.2006. Subsequently, the petitioner entity was incorporated on 16.02.2006 and the rights, interests and obligations of Marg Limited under the concession agreement were assigned in favour of the petitioner through an assignment deed

dated 06.11.2006. Thus, as per the assignment deed, the petitioner is the Concessionaire and conservator of the Karaikal Port at Puducherry. According to the petitioner, the assignment deed is valid for 30 years upto 2039 with an option to extent the concession for a further period of 20 years. The petitioner also referred to various loans availed by it from lenders, including private banks and the development they have made all through these years, which resulted in the port handling more than 2100 vessels and 80 million tonnes of cargo. Reference was also made to the restructuring of the debt and the creation of a Retention Account with Indian Bank. According to the petitioner, a dedicated LNG (Liquified Natural Gas) terminal is also in the pipeline with other key developments such as ferry terminal and container terminal. The petitioner also referred to the generation of revenue to the first respondent besides direct and indirect employment opportunities to those residing in and around Karaikal and Nagapattinam Regions. The petitioner also states that ever since the operational of the Port, during 2009, they have repaid Rs.1,150 crores to the lenders which would stand testimony to the ability of the petitioner to generate revenue through calculated and meticulous planning of the projects undertaken by it. However, the lenders of the petitioner have initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002 and it ultimately resulted in the second respondent declared as the highest bidder of some of the assets of the petitioner.

3. The learned Senior Counsel appearing for the petitioner would contend that subsequent to the assignment of a majority of the debt in favour of the second respondent, the second respondent portrays it as a majority lender of the petitioner as also the equity shareholder. Even though the petitioner is making timely payment to the second respondent, the Covid-19 Pandemic has played a spoilsport as it reduced the movement of cargo as well as revenue generation. The learned Senior counsel for the petitioner invited the attention of this Court to various communications exchanged between the petitioner and the second respondent in which the petitioner had invoked the force majeure situation under the Concession Agreement and requested a moratorium on the debt obligations. Instead, the second respondent attempts to re-negotiate the terms of payment and all the efforts of the petitioner to get moratorium ended in

vain. The petitioner also submitted a proposal on 26.05.2021 to the second respondent for restructuring the loan and demonstrated their ability to generate adequate revenue. While so, the petitioner learnt that the second respondent is discreetly negotiating a potential acquisition of controlling the interest of the petitioner with their competitors and it was also confirmed by a news items published in reputed English dailies such as The Hindu business line. The learned Senior counsel for the petitioner also produced a copy of the news item published in The Hindu Business Line to substantiate his contention. Therefore, according to the learned Senior counsel for the petitioner, there is an imminent possibility of replacement of the petitioner and the apprehension of the petitioner that the second respondent may request the first respondent for substitution of the petitioner as a Concessionaire of the Karaikal Port is plausible. According to the learned Senior counsel for the petitioner, if the petitioner, as a Concessionaire is substituted and/or replaced, it would adversely affect the present and future projects proposed and undertaken by the petitioner. Therefore, the learned Senior counsel for the petitioner prayed this Court to issue appropriate direction to protect and safeguard the interest of the petitioner, especially the future projects which are on the anvil.

4. The learned Government Pleader (Puducherry) appearing for the first respondent would contend that so far the second respondent has not approached the first respondent with any proposal for substitution of the petitioner as Concessionaire of Karaikal Port Trust. While so, the writ petition is pre-mature and it is liable only to be dismissed.

5. On notice, the second respondent filed a counter affidavit repudiating the various averments made in the writ petition. The learned Senior counsel appearing for the second respondent vehemently contended that there is no cause of action at all for the petitioner to file the present writ petition and it is not maintainable. He further submitted that earlier, the petitioner has filed WP No. 12381 of 2021 before this Court against Marg Limited, a 7.70% shareholder of the petitioner, seeking to quash a private contractual communication dated 30.04.2021. The said writ petition was dismissed by this Court on 02.07.2021 holding that invoking writ jurisdiction to quash a

letter sent by a contracting party to another would amount to protecting the private interest of one of the parties against the interest of another. It was also held that the already stretched boundaries of writ jurisdiction for advancing the bona fide constitutional goals cannot be further stretched to bring all private disputes within the fold of judicial review. According to the learned Senior counsel for the second respondent, when orders were reserved by this Court in WP No. 12381 of 2021 on 08.06.2021, without waiting for pronouncement of the order, the petitioner has hastily filed the present writ petition. It is stated that there were several agreements entered into between the petitioner and the second respondent, as a financial lender. In case of failure on the part of the petitioner to fulfil their obligations, as a lender, the second respondent has all the rights to exercise its power under the Master Restructuring Agreement dated 26.07.2018, the Trust and Retention Agreement as well as Concession Agreement. If the second respondent takes recourse to the terms and conditions of the aforesaid agreements, the petitioner cannot approach this Court with a writ petition under the garb of protection of public interest. There is no element of public interest involved in this case and the petitioner is only intending to safeguard their skin. With respect to the apprehension of the petitioner that the second respondent is attempting to replace the petitioner as a Concessionaire, it is stated by the learned Senior counsel for the second respondent that if the petitioner, as a Concessionaire commits default and if the said default is not cured within the curative period, then the Lenders, by exercising their right under the Master Restructuring Agreement dated 26.07.2018 and other documents are entitled to appoint a substituted entity to take over the rights and obligations of the Concessionaire. It is further stated by the learned Senior counsel that in such an event, the Government of Puducherry shall not construe it as an Event of Default and shall not terminate the Concession Agreement and this will in no way hinder the port operations. Even if the Concessionaire is replaced or another party is to step in, then it can only be inferred that the petitioner shall be replaced by the said Concessionaire or third party and will have no impact on the port operations and the operations will continue to be carried on even after the replacement. The second respondent therefore prayed for dismissal of the writ petition.

6. Heard the learned Senior counsel for the petitioner, the learned Government Pleader (Puducherry) and the learned Senior counsel for the second respondent and perused the records.

7. It is apparent that as on date, the petitioner is functioning as the Concessionaire of Karaikal Port Trust. The petitioner has filed this writ petition apprehending that there is every likelihood of they being substituted or replaced by the first respondent as a Concessionaire of Karaikal Port Trust at the instance of the second respondent. To substantiate the apprehension, heavy reliance was placed on a news item published in The Hindu Business Line on 5th August 2021. However, the learned Government Pleader (Puducherry) has submitted that as on date, the second respondent has not approached the first respondent with any proposal for substitution and/or replacement of the petitioner as a Concessionaire of the Karaikal Port Trust. In the light of the above submission of the learned Government Pleader (Puducherry), the apprehensions expressed by the petitioner has to be allayed.

8. Even otherwise, the learned Senior counsel for the second respondent, during the course of his argument, has invited the attention of this Court to the various agreements entered into between the petitioner as well as the second respondent such as Master Restructuring Agreement dated 26.07.2018, the Trust and Retention Agreement as well as Concession Agreement. When such agreements have been entered into by the petitioner, it has to abide by the clauses contained therein. In case of any violation of the terms and conditions of those agreements entered into between two private firms, by any of the parties, invocation of writ law remedy is not desirable. It is needless to mention that the obligations of the petitioner as well as the first respondent under the agreements entered into between them shall be followed in letter and spirit and in case of breach of the conditions contained in those agreements, it is open to the aggrieved parties to take recourse under law.

9. Subject to the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

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To

The Under Secretary
Government of Puducherry
Department of Industrial Development (Port)
Central Secretariat
Puducherry.

W.P. No. 13553 of 2021
and W.M.P. Nos. 14422, 14423 & 14424 OF 2021

KSM(CO)
RLP(04/10/2021)