BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.10.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.1429 of 2013
and
M.P.(MD)Nos.1 to 3 of 2013

Siva Cotton Mills (India) Private Limited,
Represented by its Managing Director,
Mr.P.Nagarajan. ... Petitioner

vs.

1.Board for Industrial and Financial Reconstruction (BIFR),
New Delhi,
Represented by its Chairman.

2.The Principal Secretary,
Chairman and Managing Director,
State Industries Promotion Corporation of Tamil Nadu Limited,
19-A,Rukmani Lakshmipathy Road,
Post Box No.7223,
Egmore, Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pursuant to the impugned order passed by the second respondent in Ref.No.F&R/833/2012 dated 02.01.2013, and quash the same and consequently directing the second respondent to charge 8% of interest as per SIPCOT O.O.7/2005 dated 24.05.2005, and also to consider the representation dated 10.04.2012.

For Petitioner	:	Mr.K.Mahendran
For R-1	:	Mr.C.Nanda Gopal
For R-2	:	Mr.N.Adithya Vijayalayan

ORDER

The prayer sought for herein is a Writ of Certiorarified Mandamus to call for the records pursuant to the impugned order passed by the second respondent in Ref.No.F&R/833/2012 dated 02.01.2013, and quash the same and consequently directing the second respondent to charge 8% of interest as per SIPCOT O.O.7/2005 dated 24.05.2005, and also to consider the representation dated 10.04.2012.

2.It is the case of the petitioner that the petitioner is a company, which borrowed a term loan of Rs.250 lakhs from the respondents for setting up a spinning mill, in the year 1996. As against the said loan, the petitioner also offered collateral security to the second respondent. However, after sometime, the Company became sick and therefore, the petitioner approached the Board for Industrial and Financial Reconstruction [BIFR] ie., the first respondent herein. Thereafter, some proceedings went on before the BIFR and ultimately, the second respondent approved an One Time Settlement Scheme (hereinafter referred to as "OTS Scheme" in short) dated 10.12.2012, under which, a sum of Rs.440.10 lakhs to be paid by the petitioner with certain term that 25% of the OTS amount should be paid within 15 days and the remaining amount shall be paid within 90 days.

3.However, the said amount could not be paid by the petitioner due to sickness of the industry and ultimately, on 02.01.2013, the second respondent passed an order, whereby quoting the aforesaid development, where 25% of the OTS amount since has not been paid, they issued a communication stating that if the petitioner do not come forward to remit 25% of the OTS amount immediately and to pay the balance within 90 days, the earlier communication of the second respondent dated 10.12.2012, approving the OTS Scheme would stand automatically cancelled. Felt aggrieved over the said order passed by the second respondent, dated 02.01.2013, the present Writ Petition has been filed.

4.The Writ Petition has been pending for all these years and when it is taken up for hearing during last hearing, Mr.K.Mahendran, learned counsel appearing for the petitioner, on instructions from the petitioner, would submit that, the petitioner is ready and willing to make the entire due payable to the second respondent, therefore, a revised figure under OTS Scheme can be calculated and reported before this Court by the second respondent and that amount would be paid within 90 days.

5.In response to the same, this Court directed the second respondent to calculate the present due, as per the OTS Scheme and to report before this Court.

6.Pursuant to the said direction, the second respondent has filed additional typed-set of documents, where they have stated that, as per the policy of the second respondent, an application has to be submitted for approving OTS Scheme by paying Rs.25,000/- towards processing fee, also Rs.4500/- towards GST & upfront fee and once such application filed in format along with an affidavit, the same would be considered and cleared by the Board and thereafter, the amount, which has been figured in the communication of the second respondent for making payment under OTS Scheme has to be paid as per the terms to be indicated therein.

7.In this regard, the learned standing counsel appearing for the second respondent has relied upon the annexure-I, dated 25.10.2021 issued by the second respondent, where, the second respondent has communicated that, as on 30.11.2021, in respect of the petitioner Cotton Mills, the balance amount under OTS to be remitted by the petitioner is Rs.355.07 lakhs and if the said amount is paid by the petitioner within 90 days, the OTS Scheme, subject to the approval of the Board, can be accepted against the petitioner.

8.However, the learned standing counsel would submit that, atleast 25% of the OTS amount should be paid within 15 days by the petitioner to show its bonafide.

9.In response to the said stand taken by the second respondent, as projected by the learned standing counsel for the second respondent, the learned counsel appearing for the petitioner, after getting instant instructions from the petitioner, would submit that, since it is the festival season ie., Diwali, lot of commitments are there to the petitioner, therefore, to show the bonafide on the part of the petitioner, the petitioner would pay a sum of Rs.50 lakhs (Rupees Fifty Lakhs only) within two weeks immediately after Diwali. Therefore, after paying the said amount, the entire remaining due payable by the petitioner, as per the latest calculation dated 25.10.2021, made by the SIPCOT as OTS, would be completely paid by the petitioner within a period of 90 days.

10.I have considered the said submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

11. Now the petitioner himself comes forward voluntarily to pay the due under OTS Scheme and in this regard, after having calculated the principal as well as the interest amount at the rate of 6%, which is the revised rate as per RBI guidelines, the second respondent, through his proceedings, dated 25.10.2021, has come forward to state that the entire balance including interest is Rs.355.07 lakhs. Therefore, if that amount is paid by the petitioner, there could be no impediment further on the part of the second respondent to accept the same.

12. Therefore, having considered the aforesaid factual matrix of the case and also the latest communication of the second respondent dated 25.10.2021, this Court is inclined to dispose of this Writ Petition with following orders:

> that the petitioner on or before 23.11.2021, shall deposit a sum of Rs.50 lakhs (Rupees Fifty Lakhs only) in the loan account at the second respondent along with the format application and affidavit with Rs.25,000/- towards processing fee, also Rs.4500/- towards GST & upfront fee. On receipt of the said partial amount and the format application, the Board shall consider the same and to pass orders with regard

to the approval of the Scheme and such communication has to be made to the petitioner within four weeks thereafter and on receipt of the said approval communication from the second respondent, remaining due ie.,

355.07 lakhs - 50 lakhs = 305.07 lakhs

shall be paid by the petitioner within 60 days thereafter.

13. It is made clear that, if there is any default on the part of the petitioner on the aforesaid schedule of payment, it is open to the respondent SIPCOT to initiate further persuasive action against the petitioner in accordance with the provisions of the State Finance Corporation Act, 1951.

14. It is further made clear that, on completely wiping out of the OTS as indicated above by the petitioner, the second respondent SIPCOT shall handover all original documents, which had already been filed with the second respondent by the petitioner at the time of availing loan.

15. With these directions, this Writ Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gbg/sm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.The Chairman
Board for Industrial and Financial Reconstruction (BIFR),
New Delhi,

2.The Principal Secretary,
Chairman and Managing Director,
State Industries Promotion Corporation of Tamil Nadu Limited,
19-A,Rukmani Lakshmipathy Road,
Post Box No.7223,
Egmore, Chennai.

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-33280[F] dated 29/10/2021)

Order made in
W.P.(MD)No.1429 of 2013
29.10.2021

TSK(CO)
RS/JC (02.11.2021) 5P 4C