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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.27651 of 2017(O&M)
Date of Decision: 03.12.2021

Price Waterhouse Officers Provident Fund and others
-Petitioners

Versus

State of Punjab and others
-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Rai, Sr. Advocate with
Ms. Ashima Mor, Advocate and
Ms. Rubina Virmani, Advocate
for the petitioners.

Mr. Vikas Mohan Gupta, Addl., A.G., Punjab.

Mr. Gaurav Mohanta, Advocate
for respondent Nos.2 and 3.

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RAJ MOHAN SINGH, J. (Oral)

CM No.18201 of 2021

For the reasons mentioned in the application, the same is allowed.

Accompanying document is taken on record.

Main case

Petitioners have preferred this writ petition for the issuance of an appropriate writ, order or direction especially in the nature of mandamus, directing the respondents to fulfill their financial obligation arising out of bonds issued by respondent No.2/Punjab State Industries Development Corporation Limited (hereinafter referred to as PSIDC) in favour of the petitioners.

Reply filed by respondents No.2 and 3 is taken on record.

Respondent No.1 stood as guarantor in the context of unconditional and irrevocable guarantee and that guarantee still subsists until all the bonds issued by respondent No.2 are redeemed and notification dated 28.07.2010 has been issued in this context.

Perusal of the record would show that respondent No.2 invited investments by making representations that said investments are guaranteed with timely payment of interest and repayment of principal amount unconditionally and irrevocably by respondent No.1. Petitioners collectively invested a sum of Rs.11,29,00,000/- with respondent No.2 by purchasing the bonds from 2006 onwards till 2010. On 29.11.2016, a sum of Rs.7,04,38,294/-, Rs.1,08,675/-, Rs.56,96,317/- and Rs.22,80,905/- became due and payable by respondent No.2 to the petitioners collectively.

The grievance of the petitioners is that despite representations, respondent No.2 has not honoured the commitment despite admitting its liability in reply to the legal notice dated 27.09.2017. According to the stand taken by respondent No.2, delay has occurred due to financial crunch faced by respondent No.2. Various requests have been made to State of Punjab for grant of funds in order to answer liability towards the petitioners and others. Respondent No.2 showed its inability to pay the amount to the bond holders in due time as the delay has occurred in repayment to the bond holders in respect of principal as well as interest amount. Board of Directors of respondent No.2 has taken a decision in the meeting dated 25.02.2014 that even for the delayed period, same rate of interest shall be paid, on which the bonds were issued. For ready reference, para No.7 of the reply reads as under:-

> *"7. That as the answering respondent is unable to pay amount to the bond holders in due time and there occurred a delay in repayment to the bond holders with respect to principal as well as interest amount, the Board of Directors of PSIDC in its meeting held on 25.02.2014 has taken a decision that even for the delayed period, same rate of interet shall be paid on which such bonds have been issued. The decision of the Board of Directors in this*

respect is extracted hereunder:-

"16 <u>To take note of the status of private placement of bonds aggregating Rs.150 Crores with green shoe option upto Rs.50 Crores against State Government guaranteee for redemption of bonds and also to meet other financial commitments.</u>

Based on the memorandum placed before it, the Board took note of the status of the private placement of Bonds aggregating Rs.150 Crores with green shoe option upto Rs.50 Crores against State Government guarantee with special reference to the applicability of the RBI guidelines issued by RBI vide circular dated 27.06.2013 according to which only secured bonds could be raised and thereafter, the Board resolved as under:-

PSIDC should approach the Administrative Department with a request to allow PSIDC to approach Chandigarh Administration for permission to mortgage the land and building of PSIDC i.e. Udyog Bhawan for the purpose of creating security in favour of debenture trustees for raising funds through proposed private placement of bonds. The Board further resolved that PSIDC may pay delayed period interest of 7.80% per annum to the bond holders who submit their consent for acceptance of delayed period interest @ 7.8% as full and final settlement of their dues on the same pattern as already approved by Board in respect of 7.7% Bonds."

Learned Senior Counsel for the petitioners relies upon order dated 15.10.2008 passed in ***<u>Civil Appeal No.6126 of 2008 (arising out of SLP(C) No.3146 of 2006)</u>*** titled ***<u>State of UP Vs. Hindustan Unilevers Ltd. and others, Pradeshiya</u>***

Industrial Development Corporation Limited, Uttar Pradesh Vs. Hindustan Aeronautics Limited (Lucknow Division) and others, (2018) 5 SCC 216, CWP No.24188 of 2018 titled ***Hindustan Aeronautics Ltd. and another Vs. State of Punjab and others*** decided on 18.11.2019 and ***CWP No.37948 of 2018*** titled ***Ashok Leyland Employees Hosur Provident Funds Trust and others Vs. State of Punjab and another*** decided on 28.08.2019 to contend that respondent No.2 is liable to pay principal along with interest even as per stand taken by it in the written statement. In ***State of UP Vs. Hindustan Unilevers Ltd. and others (supra)***, it has been held while negating the contention of the authority that the amount invested by the bond holders belongs to them and the same was invested in the form of bonds in view of express guarantee given by the State that the same shall be repaid with interest upto due date. The very purpose of the State Government giving guarantee to ensure payment in the facts and circumstances was sufficient to order payment of interest as well otherwise, purpose of executing guarantee would be defeated. The plea taken by the State of UP was negated and it was ordered that the State Government should pay interest as well. The ratio of aforesaid judgment was followed in ***Pradeshiya Industrial Development Corporation Limited, UP case (supra)*** and the appeals were disposed of with observations that the bond holders shall be entitled to contractual rate of interest as per the bonds till the principal amounts were repaid from that day. Bond holders shall be paid interest @ 11%. The payment shall be made positively within the time prescribed. In case, the payments are not made within the time prescribed, bond holders shall be entitled to interest @ 18% and the officer(s) responsible for the delay will be personally liable for the same.

While relying upon the aforesaid judgment of the Hon'ble Apex Court, this Court in ***Hindustan Aeronautics Ltd. and another's case (supra)*** and ***Ashok Leyland Employees Hosur Provident Funds Trust and others case (supra)*** has taken the same view while accepting the plea of bond holders, thereby directing respondent No.2 to make payment of the bonds amount along with interest in terms of bonds executed between the parties. The interest was directed to be paid as per para No.7 of the reply.

Since respondent No.2 has taken conscious decision to pay interest as per para No.7 of the reply, therefore, respondent No.2 shall abide by its stand. Let follow up action be completed within two months. In view of ***Pradeshiya Industrial Development Corporation Limited, UP case (supra)***, if the payment is not made within a period of two months as directed above, the rate of interest shall be @ 18% per annum from the date of accrual till realisation of the amount and the concerned officer/official shall be liable to answer such delay.

Disposed of.

03.12.2021 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No