IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 4970 of 2012
and
M.P. Nos. 1 and 2 of 2012
and
W.M.P. Nos. 5806 and 12952 of 2017

M/s. Intergrated Digitial Info Services Ltd.,
(Formerly known as ICNET Limited),
Plot No. 163, Dr. Vikram Sarabhai Indutrial Estate,
Perungudi,
Chennai - 600 096,
Rep. by its Chairman and Managing Director … Petitioner

-vs-

1. State of Tamil Nadu,
   Rep. by the Secretary to Government,
   Industries Department,
   Secretariat,
   Fort St. George,
   Chennai - 600 009.

2. The Special Commissioner and Director of Industries & Commerce,
   Chepauk,
   Chennai - 600 005.

3. The Tamil Nadu Industrial Investment Corporation Limited,
   Rep. by its Branch Manager,
   Special Recovery Branch,
   692, Anna Salai,
   Nandanam,
   Chennai - 600 035. ...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Third Respondent comprised in its impugned auction notice date 31.01.2012 addressed to the Petitioner proposing to auction the factory of the Petitioner at Plot No. 163, Development Plot, Electrical & Electronic Estate, Perungudi, Chennai admeasuring 71 cents and quash the same as being arbitrary and consequentially forbearing the Respondents, their men, officers, subordinates, agents or any other persons(s) claiming or acting under them from in any manner selling, disposing of, alienating or otherwise dealing with or from taking any steps under the provisions of the State Financial Corporation Act, 1951, in respect of the property admeasuring 71 cents comprised in S. No. 129 (part) and 130 (part) situate in Developed Plot No. 163, Dr. Vikram Sarabhai Industrial Estate, Perungudi, Chennai - 600 096 in exercise of their powers under Section 29 of the State Financial Corporation Act and in violation of the conditions imposed by the First and Second Respondent under the Deed of Assignment dated 24.09.1992, the No Objection Letter dated 30.04.1993, the Sale Deed dated 27.03.2008 and the Memorandum of Undertaking dated 27.03.2008.

For Petitioner : Mr. R.Parthasarathy

For Respondents : Mr. T.Arun Kumar,
Additional Government Pleader
(for R1 & R2)

Mr. P.S.Raman, Senior Counsel for
Mr. P.T.Rakesh (for R3)

Mr. N.Balamurali Krishnan,

Advocate Commissioner

O R D E R

Heard Mr. R.Parthasarathy, Learned Counsel for the Petitioner, Mr. T.Arun Kumar, Learned Additional Government Pleader appearing for the First and Second Respondents and Mr. P.S.Raman, Learned Senior Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the self-explanatory notice dated 31.01.2022 sent by the Third Respondent to the Petitioner, which is extracted below:-

"*You have availed loan from our Corporation as detailed below:*

Type of Loan	***Date of Sanction***	***Amt. Sancd***	***Amt. Disbd***	***Prl. O/s***	***Overdues***		
					Prl.	***Int.***	***Others***
STL	*29-03-1996*	*85.00*	*85.00*	*--*	*--*	*4977.08*	
HP	*29-04-1996*	*250.00*	*250.00*	*176.05*	*176.05*	*42888.05*	
TL-I	*02-08-1991*	*12.00*	*12.00*	*7.76*	*7.76*	*137.45*	
TL-II	*17-03-1993*	*73.00*	*33.79*	*11.67*	*11.67*	*135.41*	*0.43*
TOTAL							

Total Overdues ==> Rs. 48333.90 lakhs

You have mortgaged the factory at Plot No. 163, *Development Plot, Electrical & Electronic Estate, Perungudi measuring 71 cents by the Deed of Mortgage, dated 01/12/1993. Due to the default, we took possession of the factory on 05/06/1997. You have approached High Court and obtained stay. There were subsequent litigations on the subject. In the meantime, you offered to remit Rs. 465.00 lakhs as One Time Payment of settlement of loan account. The Board of our Corporation rejected your offer on 23/12/11. The Writ Petition No. 3919/2010 also dismissed on 31/10/2011. Hence we propose to auction the factory within two weeks hereof. You are given an opportunity of 15 days time to settle the loan account."*

In view of the order of interim injunction restraining the Respondents from bringing the property in question for sale by auction until further orders passed on 01.03.2012, the Third Respondent has not proceeded further in the matter till date.

3. The Advocate Commissioner, viz., Mr. N.Balamurali Krishnan, who was appointed by order dated 20.12.2017 in W.M.P. No. 27902 of 2016 passed by this Court, has after inspection of the property, filed a report dated 20.02.2018

stating that the value of the property would be between Rs. 11,91,15,396/- and Rs. 13,00,00,000/-, which is apparently far less than the liability of Rs. 4,83,33,90,000/- owed by the Petitioner to the Third Respondent in the impugned notice.

4. It is vociferously canvassed by Learned Counsel for the Petitioner that repayments so far made by the Petitioner towards the dues have to be first appropriated towards the principal amount that had been borrowed, but the same has been adjusted against interest, which is contrary to the mandate of Sections 59 to 61 of the Indian Contract Act, 1872. It has been unequivocally held by the Hon'ble Supreme Court of India in ***Industrial Credit and Development Syndicate -vs- Smithaben H.Patel*** [(1999) 3 SCC 80] that the provisions of Sections 59 to 61 of the Indian Contract Act, 1872, are applicable in cases where a debtor owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on a single debt, which clearly runs against the claim made to the contrary in this case.

5. In furtherance to the order passed on 16.11.2022 by this Court, the Third Respondent has filed Statement of Accounts on 28.11.2022 showing the calculation for the amount claimed as due under the mortgage from the

Petitioner in this case. However, factual disputes relating to calculation of amount due under a mortgage cannot be conveniently determined in a Writ Petition following summary procedure under Article 226 of the Constitution and would have to be only agitated in a properly framed suit for accounts and/or redemption of mortgage before the jurisdictional civil court.

6. That apart, the Hon'ble Supreme Court of India in the authoritative pronouncement in ***Haryana Financial Corporation -vs- Jagadamba Oil Mills*** [(2002) 3 SCC 496] has explicated the limited scope of judicial review by High Courts for action taken against defaulting borrowers under Section 29 of the State Financial Corporations Act, 1951, as in this case, in the following words:-

> *“5. The object for which the Act was enacted needs to be noted. Central Industrial Financial Corporation was originally set up under the Industrial Financial Corporation Act, 1948 with a view to provide medium and long-term credit to industrial undertakings which fall outside the normal activity of commercial banks. Several State Governments desired to set up in the States similar Corporations with a view to supplement the work of Industrial Financial Corporation. The intention was that*

State Financial Corporations shall confine to the medium and small industrial units and as far as possible to such cases as are outside the scope of Industrial Financial Corporation. Since the incorporation, regulation and winding up of such Corporations fall within the purview of Parliament by Entry 43 of the Union List, request was made to the Government of India to enact necessary enabling legislation, and that is how the Act was enacted.

6. The Corporation as an instrumentality of the State deals with public money. There can be no doubt that the approach has to be public-oriented. It can operate effectively if there is regular realization of the instalments. While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time-frame, it will disturb the equilibrium of the financial arrangements of the Corporations.

They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand in the way of a deserving borrower getting financial assistance.

....

9. In matters like the present one, fairness cannot be a one-way street. Corporations borrow money from the Government or other Financial Corporations and are required to pay interest thereon. Where the borrower has no genuine intention to repay and adopts pretexts and ploys to avoid payment, he cannot make the grievance that the Corporation was not acting fairly, even if requisite procedures have been followed.

10. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 *in **A.K. Kraipak -vs- Union of India** [(1969) 2 SCC 262]. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an Appellate Authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred" (as per Lord Diplock in **Secy. of State for Education and Science -vs- Metropolitan Borough Council of Tameside** [1977 AC 1014 : (1976) 3 All ER 665 : (1976) 3 WLR 641], All ER at p. 695f). The court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would* *have taken that action, can the court intervene. To quote the classic passage from the judgment of Lord Greene, M.R. in* ***Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn****. [(1947) 2 All ER 680 : (1948) 1 KB 223 (CA)] : (All ER pp. 682H-683A)*

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible

person could ever dream that it lay within the powers of the authority."

....

13. The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. As was observed by this Court in ***U.P. Financial Corpn. -vs- Naini Oxygen & Acetylene Gas Ltd.*** *[(1995) 2 SCC 754] in commercial matters the courts* *should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in* ***Karnataka State Financial Corpn. -vs- Micro Cast Rubber & Allied Products (P) Ltd.*** *[(1996) 5 SCC 65] in the matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act, the scope of judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of State Financial Corporation, or (b) where State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India (in short "the Constitution"), the High Court does not sit as an Appellate Authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action under Section 29 of the Act unless the aforesaid two situations exist.*

14. As was observed in ***Chairman and Managing Director, SIPCOT -vs- Contromix (P) Ltd.*** *[(1995) 4 SCC 595] in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be* *achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at a public auction. In that event, any other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price. These are aspects which the Corporations have to keep in view while dealing with disposal of seized units.*

....

16. Section 29 gives a right to Financial Corporation inter alia to sell the assets of the industrial concern and realize the *property pledged, mortgaged, hypothecated or assigned to Financial Corporation. This right accrues when the industrial concern, which is under a liability to Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations as envisaged in Section 29 of the Act. Section 29(1) gives Financial Corporation in the event of default the right to take over the management or possession or both and thereafter deal with the property."*

Viewed from that perspective, there is nothing reflected in the affidavit filed in support of this Writ Petition by which this Court could interfere with the impugned notice, which merely calls upon the Petitioner to pay the dues, as otherwise it would necessitate action for recovery by auction sale of the mortgaged property that has been conferred under Section 29 of the State Financial Corporations Act, 1951. In such circumstances, it is not possible to grant any of the reliefs as sought in the Writ Petition, though it would not preclude the Petitioner from seeking redemption of the mortgage on making full payment of the debt due claimed by the Third Respondent before auction sale of the mortgaged property takes place.

In the upshot, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

28.11.2022

vjt

Index: Yes/No

Note: Issue order copy by 06.01.2023.

To

1. The Secretary to Government of Tamil Nadu,
   Industries Department,
   Secretariat,
   Fort St. George,
   Chennai - 600 009.

2. The Special Commissioner and Director of Industries & Commerce,
   Chepauk,
   Chennai - 600 005.

3. The Branch Manager,
   Tamil Nadu Industrial Investment Corporation Limited,
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   692, Anna Salai,
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P.D. AUDIKESAVALU, J.

vjt

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