IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition No.9341 of 2021
and
W.M.P.Nos.9928 and 9929 of 2021

M/s.BSK Cotspin Ltd.
Represented by its Director
Thiru.B.Pattabiramaraja
No.2A, Saroj Prayag Apartment
No.66, Barathi park, 7th cross street
Saibaba colony, Coimbatore – 641 011.

.. Petitioner

Vs.

1. The State Industries Promotion Corporation of Tamil Nadu Ltd., (SIPCOT) (Government of Tamil Nadu Undertaking) Represented by its Managing Director
No.19-A, Ruckmani Lakshmipathi Road
Egmore, Chennai-600 008.

2. The General Manager
The State Industries Promotion Corporation of Tamil Nadu Ltd., (SIPCOT)
(Government of Tamil Nadu Undertaking)
No.19-A, Ruckmani Lakshmimathi Road
Egmore, Chennai-600 008.

3. The Project Officer
State Industries Promotion Corporation of Tamil Nadu Ltd.,
Sipcot Industrial Growth Center
Perundurai, Erode District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order dated 18.02.2021 in F/F&R/783/2020 of the 1st respondent and the order dated 23.03.2021 in Ref.No.Po/SIGCP/F&R/BSK Cotspin/2021 of the 3rd respondent and quash the same and directing the 1st respondent to consider the OTS proposal of the petitioner in accordance with the order dated 18.11.2019 in O.O.No.40/2019 of the 1st respondent.

For Petitioner : Mrs.A.L.Gandhimathi
For R1 : Mr.S.Girish
for Mr.M.Karthikeyan

O R D E R

Writ Petition is filed challenging the order of the 1st respondent dated 18.02.2021 in F/F&R/783/2020 and order of the 3rd respondent dated 23.03.2021 in Ref.No.Po/SIGCP/F&R/BSK Cotspin/2021 and directing the 1st respondent to consider the OTS proposal of the petitioner in accordance with the order dated 18.11.2019 in O.O.No.40/2019 of the 1st respondent.

2.The petitioner company is a spinning mill. The petitioner availed various loans from the SIPCOT, the Respondent Corporation as well as Tamil Nadu Industrial Investments Corporation Ltd. (hereinafter referred to as 'TIIC'). The petitioner could not repay the amount borrowed and approached the Respondent Corporation and TIIC for One Time Settlement (OTS). There was no response from the Respondent Corporation. The petitioner settled the amounts due to TIIC by OTS. Subsequently, on 26.03.2013, the Respondent Corporation approved OTS for a sum of Rs.209.70 lakhs as on 31.03.2013 towards settlement of loan on condition that petitioner pays 25% of the amount within 15 days from the date of communication and balance amount within 90 days from the date of communication of SIPCOT's letter. The petitioner paid a sum of Rs.35 lakhs on 20.04.2013 and prayed for extension of time for payment of balance amount. In spite of extensions given by the Respondent Corporation, the petitioner could not pay the amounts. The Respondent Corporation informed the petitioner that the OTS given to the petitioner on 28.03.2013 was cancelled and directed the petitioner to apply afresh OTS. The petitioner made request on 11.08.2014 and paid a sum of Rs.7.38 lakhs towards OTS upfront fee by way of Demand Draft. The said request for OTS was pending from 2014.

2(i) While so, the Respondent Corporation issued circular by its Office order dated 18.11.2019 had in super session of all arrear proceedings, in respect of the categorization of the assisted units and concessions to be extended for OTS of term loan dues by the assisted units as approved by the Board on 31.12.2019 and stated that if the market value of the collateral security is more than the principal outstanding amount, OTS would be principal plus other dues plus 6% simple interest on the principal outstanding as per the books of accounts of SIPCOT and interest already paid by the company will be adjusted. The Respondent Corporation, by the letter dated 17.08.2020 approved the sanction of OTS amount of Rs.209.70 lakhs with waiver of interest on interest, penal interest and part of simple interest after deducting Rs.11.08 lakhs, which was already paid by the petitioner towards upfront fee, the balance OTS was worked out to Rs.198.62 lakhs. The petitioner sought for extension of time due to pandemic situation. The Respondent Corporation extended 30 days instead of 15 days to pay 25% of th OTS amount. However, the petitioner could not pay the amounts. The Respondent Corporation by the letter dated 18.02.2021 informed the petitioner that petitioner neither remitted 25% of OTS amount within 15 days from the date of communication nor entire OTS amount within the time fixed as per the sanctioned letter dated 17.08.2020 and rejected the request of the petitioner for extension of time. The Respondent Corporation, on 23.03.2021 issued a letter stating that it has been decided to proceed under Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as 'SFC Act') to take possession of the mortgaged assets of the company and immediately, possession notice was pasted in the premises of the petitioner and the company building was kept under seal. In such circumstances, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that collateral security given by the petitioner is more than the value of the principal amount and as per the revised Office order of the respondents dated 18.11.2019, the petitioner is liable to pay only 6% interest. If the Respondent Corporation calculated amounts due at 6%, OTS amount will be only Rs.120 lakhs and not Rs.209 lakhs. The respondents ought to have extended the concessions to the petitioner to which, he is entitled in accordance with the existing order of the Corporation. The possession notice of the Respondent Corporation immediately on cancellation of OTS is against the provisions of the SFC Act and is liable to be set aside. The impugned notice of the Respondent Corporation is non-application of mind and prayed for setting aside the impugned order and allowing the Writ Petition.

4.The 1st respondent filed counter affidavit. The learned counsel appearing for the 1st respondent submitted that the petitioner company has not paid OTS amount within the stipulated time, even after giving further extension of time. In view of the same, the Respondent Corporation by the letter dated 12.03.2021 instructed the 3rd respondent, Project Officer, Perundurai, to take possession of the mortgaged assets of the company under Section 29 of SFC Act. The 3rd respondent took possession of the mortgaged assets located at Cholanoor village, Nanjegoundenpudur, Pollachi Taluk, Coimbatore District on 29.03.2021. The petitioner company was granted extension of time from 2013 onwards, but they did not settle the amount as they are not having sufficient funds or could not mobilise the funds to pay OTS amount. The learned counsel appearing for the 1st respondent referred to various extensions for payment from the year 2013 onwards. The petitioner having accepted the amounts approved by OTS and sought extension of time for payment, now cannot fix Rs.120 lakhs as OTS amount. The respondents have cancelled the OTS and taken the possession on 29.03.2021. The same is valid and legal. The present Writ Petition is only to delay the further proceedings to be taken by the respondents and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

6.From the materials on record, it is seen that the petitioner borrowed money from the Respondent Corporation for their business, but failed to repay the amount. The petitioner approached the Respondent Corporation for OTS and the same was accepted by the respondents. But the petitioner could not pay the amounts within the time limit granted by the respondents and therefore, OTS was cancelled in the year 2013. Again as per the instruction of the respondents, the petitioner submitted another request for OTS in the year 2014. The said request was considered by the respondents in the year 2019 and petitioner was directed to pay a sum of Rs.209.70 lakhs as OTS as per the conditions imposed by the respondents. Again the petitioner could not pay the amount as per the time limit granted by the respondents. The respondents cancelled OTS and took action as per Section 29 of SFC Act. The grievance of the petitioner is that as per the revised Office order contained in circular dated 18.11.2019, the respondents can charge only 6% interest, as value of the mortgaged property is more than the value of the principal amount. If the amount due is calculated at 6% interest per annum, OTS will be only Rs.120 lakhs and not Rs.209.70 lakhs.

7.During the hearing, the learned counsel appearing for the 1st respondent admitted that amount arrived as Rs.209.70 lakhs is calculated only at 12% interest. The learned counsel appearing for the 1st respondent did not deny the contention of the learned counsel for the petitioner that value of the property mortgaged by the petitioner is more than the principal amount, when the respondents calculated amounts due by the petitioner. In view of the Office order dated 18.11.2019, the respondents have to calculate interest payable by the petitioner only at 6% per annum to arrive the amount payable by the petitioner, as value of the property mortgaged by the petitioner is more than the principal amount. In view of the Office order dated 18.11.2019 and revised order, the impugned orders passed by the respondents 1 and 3 are set aside. The learned counsel appearing for the petitioner submitted that if the respondents calculate the amount at 6% interest within the time limit, the petitioner will pay the amount within the time limit fixed by this Court. In view of the same, the respondents are directed to deseal the petitioner's premises and calculate the OTS amount together with interest at 6% per annum and place it before the Board within two weeks from the date of receipt of a copy of this order. On submitting the proposal calculating interest at 6%, the respondents are directed to inform the petitioner with regard to OTS amount. On receiving the same, the petitioner is directed to pay the OTS amount within four weeks thereafter.

8.With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To
1. The Managing Director
The State Industries Promotion Corporation
of Tamil Nadu Ltd.,
(SIPCOT) (Government of Tamil Nadu Undertaking)
No.19-A, Ruckmani Lakshmipathi Road
Egmore, Chennai-600 008.

2. The General Manager
The State Industries Promotion Corporation
of Tamil Nadu Ltd., (SIPCOT)
(Government of Tamil Nadu Undertaking)
No.19-A, Ruckmani Lakshmimathi Road
Egmore, Chennai-600 008.

3. The Project Officer
State Industries Promotion Corporation of Tamil Nadu Ltd.,
Sipcot Industrial Growth Center
Perundurai, Erode District.

+1cc to Mrs.A.L.Gandhimathi, Advocate, S.R.No.27768

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SS[co]
NSK/13/05/2022