IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.12640 of 2021

Perundurai Leather Industries Eco Security Private Limited (PLIES)
Through its Managing Director,
Having its office at
450, Bhavani Main T. Road, B.P. Agraharam,
Erode 638 005, Tamil Nadu. .. Petitioner

Vs.

1.Union of India,
Through its Secretary,
Department of Industrial Policy & Promotion,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi 110 011.

2.Central Leather Research Institute
Through its Director,
Sardar Patel Road Adyar,
Near Indian Institute of Technology,
Adyar, Chennai 600 020.

3.Government of Tamil Nadu,
Through its Secretary,
Micro, Small and Medium Enterprises Department,
Department of Industries & Commerce,
SIDCO Corporate Office Building,
Guindy Industrial Estate,
Chennai 600 032. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to permit the petitioner to use the amount sanctioned to it for the upgradation of its Common Effluent Treatment Plant project for the reasons stated in the present affidavit.

For Petitioner : Mr.M.S.Krishnan (Senior Counsel)
for M/s.Najeeb Usman Khan
For RR1 & 2 : Mr.R.K.Gandhi
Central Government Standing Counsel

For R3 : Mr.R.Kumaravel
Additional Government Pleader

O R D E R

This Writ Petition is filed for a direction to the respondents to permit the petitioner to use the amount sanctioned to it for the upgradation of its Common Effluent Treatment Plant project for the reasons stated in the present affidavit.

2.The petitioner is a Common Effluent Treatment Plant (in short 'CETP') promoted by its MSME Category Member Tanneries, located in the Tannery Zone of SIPCOT Industrial Growth Centre, Perundurai, Erode District, Tamil Nadu. The petitioner has implemented the basic CETP for a capacity of 2000 m^3/day with the contribution of member tanneries and partial support from the Government of Tamil Nadu through Assistance to States for Infrastructure Development of Exports (in short 'ASIDE') Scheme. The first phase of project was implemented successfully with the Technical support and guidance of the 2nd respondent. But in the year 2008, when the project was about to be commissioned, the treatment system, based on the initial approvals of Tamil Nadu Pollution Control (in short, 'TNPCB'), Zero Liquid Discharge (in short, 'ZLD') was implemented. Hence, the petitioner herein came forward to set up the ZLD system with partial financial assistance from the ASIDE scheme of the Government of Tamil Nadu, which included installation of Reverse Osmosis System with recovered water distribution, Reject Management System (in short 'RMS') with a capacity of 1 Million Litres Per Day (in short 'MLD'), Disposal unit for the solid from RMS, Disposal of sludge from CETP among others. The Council of Leather Exports (in short 'CLE') had engaged M/.Indian Industry Foundation (in short 'ILIFO') to be the 'Technical Consultant' for the said Project. For the implementation of ZLD project, the CLE floated a tender, in which M/s.Hydroair Tectonics (PCD) Ltd., was selected as the successful bidder. But due to the limited funds, only about 30% of the project cost was funded by Government of Tamil Nadu, so with the concurrence of CLE, the petitioner herein entered into a Memorandum of Understanding with the M/s.Hydroair Tectonics (PCD) Limited, that the M/s.Hydroair Tectonics (PCD) Limited would fund the rest of the project which would be treated as 'loan' by the M/s.Hydroair Tectonics (PCD) Limited and the same would be recovered by selling water recovered from RO system of the project to the petitioner over a period of 10 years from the date of Commissioning of the said project.

2(a). It was agreed by the petitioner that M/s.Hydroair Tectonics (PCD) Limited may avail the loan facilities from their bankers and the petitioner offered their land, building and proposed plant as collateral security for the loan availed. Accordingly, M/s.Hydroair Tectonics (PCD) Limited obtained loan from Axis Bank, Bandra (East) Branch, Mumbai, for which the petitioner also executed the necessary Corporate Guarantee Agreement and equitable mortgage hypothecation agreement. The said charges were also registered with the Registrar of Companies in favour of Axis Bank for securing the Term Loan – II availed by the M/s.Hydroair Tectonics (PCD) Limited, for implementation of the project. Subsequently, the petitioner came to know that M/s.Hydroair Tectonics (PCD) Limited committed default in payment of amounts due to the Axis Bank and Axis Bank obtained ex-parte decree from the Debt Recovery Tribunal-II, Mumbai. On coming to know of the same, the petitioner has filed an application to review the same and set aside the ex-parte decree. The said application is pending. While so, the petitioner submitted a proposal to the 1st respondent for upgradation of its CETP with a total cost of Rs.54.97 Crores under the said programme. The 1st respondent approved the same at the cost of Rs.31,68,63,290/- and agreed to fund 70% of the project cost. The 3rd respondent agreed to fund 15% of the said cost. The 1st respondent sanctioned an amount of 5,54,51,076/- to the petitioner towards the release of first installment for upgradation of the existing CETP. The 3rd respondent also sanctioned 25% of the 15% grant i.e., Rs.1,18,82,373/- towards the first installment, for the petitioner's project. The petitioner has started the project by engaging contractors. While so, the 2nd respondent instructed the petitioner not to use the funds released by the 1st respondent. Hence, the petitioner has come out with the present Writ Petition.

3.The learned Senior Counsel appearing for the petitioner submitted that unless the funds transferred by the 1st respondent and 3rd respondent are utilized, the entire project will come to a standstill and many industries, tanneries and workers will be affected and prayed for allowing the Writ Petition.

4.The 1st respondent filed counter affidavit. The learned Central Government Standing Counsel appearing for the respondents 1 and 2, after narrating the scheme and role of the 1st respondent in providing funds for the project, contended that the 1st respondent has received the communication from Axis Bank that they obtained decree against the petitioner and a sum of Rs.65,86,09,281/- is due and payable to the Axis Bank. In view of the same, the 1st respondent has instructed the petitioner through the 2nd respondent not to use the funds already released. Unless the petitioner settles the issue with the Axis Bank, the 1st respondent is not in a position to permit the petitioner to use the funds already released and will not be in a position to release further amounts and prayed for dismissal of the Writ Petition.

5.Heard the learned Senior Counsel appearing for the petitioner, learned Central Government Standing Counsel appearing for the respondents 1 and 2 as well as the learned Additional Government Pleader appearing for the 3rd respondent and perused the entire materials available on record.

6.From the materials narrated above, it is an admitted fact that the petitioner entered into a Memorandum of Understanding with M/s.Hydroair Tectonics (PCD) Limited for funding a sum of Rs.65,86,09,281/- towards upgradation of CETP. M/s.Hydroair Tectonics (PCD) Limited availed loan from Axis Bank and as per the Memorandum of Understanding, the petitioner furnished collateral security by creating equitable mortgage and executed necessary documents. M/s.Hydroair Tectonics (PCD) Limited committed default in payment of amounts to the Axis Bank and the Axis Bank initiated proceedings before the Debt Recovery Tribunal – II, Mumbai and obtained decree against the petitioner also. The petitioner has stated the reasons for not able to appear and contest the Debt Recovery Tribunal – II proceedings. The petitioner has stated that they have filed Review Application to set aside the ex-parte decree. Admittedly, no stay has been granted and Review application filed by the petitioner is still pending before the Debt Recovery Tribunal – II, Mumbai. According to the Axis Bank, a sum of Rs.64,68,9278/- is due and payable. It is the contention of the learned Senior Counsel appearing for the petitioner that as per the judgment passed by the Debt Recovery Tribunal – II, Mumbai in O.A.No.184 of 2012, only Rs.2,63,07,268/- together with interest at the rate of 15.25% from the date of filing of Original Application dated 25.08.2012 is pending. The petitioner is ready to pay a sum of Rs.2,00,00,000/- to the Axis Bank. As per the decree, the land in which upgradation CETP is carried out is mortgaged to Axis Bank by way of equitable mortgage. The petitioner is also a party to the loan document. Unless the petitioner settles the issue with the Axis Bank, the Axis Bank may at any time proceed for sale of the mortgaged property to realise the due as per the decree dated 25.02.2015 passed by the Debt Recovery Tribunal – II, Mumbai. In view of such circumstances, the 1st respondent has rightly instructed the petitioner not to use the funds released by the 2nd respondent and in the counter affidavit it has been stated that unless the petitioner settles the issue with the Axis Bank, no further amounts will be released. The stand taken by the 1st respondent is valid and legal and such stand is taken in order to avoid wastage of funds allotted for upgradation of CETP. The petitioner is not entitled for the relief sought for in the Writ Petition. It is open to the petitioner to settle the amount with Axis Bank as per the decree passed against them and approach the 1st respondent for permission to use the amounts already sanctioned and for release of further amounts.

With the above observations, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Secretary,
Union of India,
Department of Industrial Policy & Promotion,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi 110 011.

2.The Director,
Central Leather Research Institute
Sardar Patel Road Adyar,
Near Indian Institute of Technology,
Adyar, Chennai 600 020.

3.The Secretary,
Government of Tamil Nadu,
Micro, Small and Medium Enterprises Department,
Department of Industries & Commerce,
SIDCO Corporate Office Building,
Guindy Industrial Estate,
Chennai 600 032.

Copy to:
The Presiding Officer,
Debt Recovery Tribunal - II, Mumbai.

+1 cc to Mr.R.K.Gandhi, Advocate Sr.NO.19449
+1 cc to M/s.Najeeb Usman Khan, Advocate Sr.NO. 19769

W.P.No.12640 of 2021

skm(CO)
A.SK(30/03/2022)