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W.P.No.28332 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

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S.Duraiaraju
Suspended Director of
M/s.Subhashri Bio Energies Private Ltd
Residing at No.3/123, Senguttaikadu
Munjanur Post, Tiruchengode Taluk
Namakkal District – 637 403.

.. Petitioner

Vs

1 The Union of India
Rep by its Secretary
Ministry of New and Renewable Energy
Block-14, CGO Complex
Lodhi Road, New Delhi - 110 003.

2 The Managing Director
Indian Overseas Bank
763, Anna Salai
Chennai - 600 002.

3 The Assistant General Manager
Indian Overseas Bank
Asset Recovery Branch Management
11/952, Cross Cut Road
Gandhipuram Coimbatore - 641 012.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the impugned order passed by the 3rd respondent in his Ref.ARGB/94/2020-21, dated 30.09.2020 and the impugned order passed by the 3rd respondent in his Ref.ARGB/174/2021-2022 dated 03.03.2022 and quash the same and consequently direct respondents 2 and 3 to take appropriate steps to revive the petitioner company in the interest of the nation on the aspect of "Zero Waste".

For the Petitioner : Mr.K.Raja

For Respondents : Mrs.Ananda Gomathy Murugesan
2 and 3

For 1st Respondent : Mr.P.K.Ganesh
Central Government Standing Counsel

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

S.Durairaju, son of Meivazhi Subbaraya Ananthar, claiming himself to be the suspended Director of M/s.Subhashri Bio Energies Private Limited, has filed this writ petition seeking to quash the impugned orders dated 30.9.2020 and 3.3.2022 passed by the third respondent and to consequently direct respondents 2 and 3 to take



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appropriate steps to revive the petitioner company.

2. Learned counsel for the petitioner submitted that the petitioner is an agriculturist and poultry farmer and considering the fact that the poultry litter generated in and around Namakkal District is being dumped in open without proper disposal, the petitioner formulated and patented a technology for disposal of poultry litter through the process of fermentation. It is further stated that bio-gas is generated in the process, through which green electricity is generated without any pollution, on the principle of bio-methanation. The remaining substrate after bio-gas generation is upgraded to High Grade Fermented Organic Manure/Fertilizer. The remaining liquid would be bottled after fermentation as liquid organic manure/fertilizer and given to the farmers at free of cost. The core aim of the project is "Zero Waste" and "Zero Damage to the Environment". It is submitted that when an establishment has been set up with such an avowed object, both the Central and State Governments should come forward to encourage the same.



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3. It is further submitted that the petitioner borrowed a sum of Rs.62 Crore in the year 2003 and repaid a sum of Rs.14 Crore till date. There was a default in remitting the balance amount on account of financial crunch faced by the petitioner for the reasons beyond the control of the petitioner and, therefore, the account of the petitioner was declared as non-performing asset on 30.7.2005. It is stated that when the petitioner asked for one-time settlement vide letter dated 19.2.2020 by making an offer of Rs.22 Crore, the respondent/bank rejected the same vide email dated 20.2.2020 and requested the petitioner to improve the offer. Subsequently, the petitioner offered a sum of Rs.17 Crore towards one-time settlement vide letter dated 9.3.2020 and the same was also rejected by the respondent/bank vide email dated 17.3.2020 requesting the petitioner to still improve the offer.

4. Learned counsel for the petitioner also submitted that the petitioner has sent an email on 13.10.2022 stating that third-party investors are ready and willing to settle Rs.15 Crore towards full



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and final settlement and accepting the same, the petitioner may be relieved from the bank debts so that the project, which is of national importance, could be continued with the help of third-party investors. The said representation has not been considered by the respondent/bank till date. Learned counsel for the petitioner submitted that the respondent/bank may be directed to consider the email representation dated 13.10.2022, as no prejudice would be caused to anyone.

5. Learned counsel for the respondent/bank submitted that after the petitioner's account was declared as non-performing asset on 30.7.2005, the respondent/bank had decided not to revive the account as the petitioner had not shown any inclination to settle the due amount. In view of the default committed by the petitioner, the plant and machinery were sold by the respondent/bank in a public auction for around Rs.5 Crores and sale certificate has also been issued to the auction-purchaser.

6. We do not find any merit in this writ petition for the reason



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that no writ lies merely for directing one time settlement or for directing re-scheduling of the loan or for fixing installments in connection with the loan. Only the bank or the financial institution, which granted the loan, alone can re-schedule it or fix one time settlement or grant installments subject to the fact situation prevailing therein. This court exercising jurisdiction under Article 226 of the Constitution of India cannot direct the bank to accept the one time settlement offered by the petitioner.

7. The aforesaid view taken by this court is fortified by a decision of the Supreme Court in the case of ***Bijnor Urban Cooperative Bank Limited v. Meenal Agarwal and others, 2021 SCC OnLine SC 1255***, wherein it has been emphatically held as under:

*"30. The sum and substance of the aforesaid discussion would be that **no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the***



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eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove."

[emphasis supplied]

8. In view of the above, the writ petition is dismissed. However, considering the fact that the petitioner has sent an email representation dated 13.10.2022, we direct the respondent/bank to consider the same and pass appropriate orders within four weeks from the date of receipt of a copy of this order. There will be no



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order as to costs. Consequently, W.M.P.No.27639 of 2022 is closed.

(T.R., ACJ.) (D.K.K., J.)
26.10.2022

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To:

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T.RAJA, ACJ.
AND
D.KRISHNAKUMAR,J.

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