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W.P.No.28460 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.28460 of 2017
and W.M.P.No.28503 of 2021

M/s.Integrated Finance Company Ltd.,
Rep. by its Authorised Signatory Mrs.A.Hema Jothi,
having its Regd. Office at No.10,
R-Block, Second Floor,
Prem Nagar Colony,
South Boag Road, T.Nagar,
Chennai - 600017.

.. Petitioner

Vs.

1. Government of Tamil Nadu,
Rep by Additional Director General of Police,
Economic Offences Wing-II,
SIDCO Old Garments Complex,
Tiru-Vi-Ka-Nagar, Guindy,
Chennai - 600 032.

2. Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
seeking a Writ of Mandamus directing the respondents to attach the



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properties or collect money to the extent of the default as contemplated under Section 3 of the Tamil Nadu Protection of Interests of Depositors Act, 1997 from 525 borrowers / guarantors of petitioner company as enumerated in the representations dated 18.06.2013 & 30.06.2017 against whom decrees have been obtained by the petitioner company.

For Petitioner : Mr.V.P.Raman
For Respondents : Mr.P.Kumaresan
Addl. Advocate General
Asst. by Mr.V.Nanmaran, AGP

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ORDER

This writ petition has been filed seeking a direction to the respondents to take appropriate action for recovery of the amount by way of attachment from the borrowers of the petitioner company.

2. It is the case of the petitioner that the petitioner company is a Non Banking Finance Company incorporated in the year 1983. In the year 2005 due to certain financial difficulties, amounts which were lent to various borrowers could not be realised and thus the petitioner suffered some financial difficulties and the RBI has also prohibited the petitioner company



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from accepting deposits and bonds.

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3. A company petition has also been filed before this Court which reached up to the Hon'ble Supreme Court, wherein, it has been held that the amount has to be paid to the depositors. While the matter is pending before the Hon'ble Supreme Court, based on the complaint made by some of the depositors, prosecution has been initiated under the Tamil Nadu Protection of Interests of Depositors Act, 1997 and some of the properties have also been attached and the Government Orders have also been passed.

4. It is the contention of the writ petitioner that about 558 borrowers have borrowed the amount from the petitioner company and they did not pay the same to the petitioner company. The petitioner company has also obtained several decrees as against the borrowers, despite that the above amount has not been realised by the Government. Hence, Mandamus has been sought.

5. In the counter a stand has been taken that though they have taken steps to realise the amount from the borrowers, some of the borrowers are not in existence and that the case is still under investigation.



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6. The learned counsel appearing for the petitioner would submit that though the offence is made punishable under Section 5 of the Act, the very object of the Act is to recover the amount from the borrowers and pay the same to the depositors. The learned counsel further submitted that the counter filed by the respondents though referred about nine companies that is already a subject matter in other W.P.No.38762 of 2015, whereas, counter is silent about 558 borrowers. Hence, he raises doubt about the competent authority or the Government to recover the amount from the borrowers or attach the properties of such borrowers. He further submitted that many properties were purchased from borrowal from financial company. Hence, it is his contention that the amount payable to the company by the borrowers would come around Rs.52,11,69,715/-. Hence seeks Mandamus.

7. The learned Additional Advocate General appearing for the respondents would submit that they have also taken steps for recovery and some of the borrowers were not in existence and they are making sincere attempts to recover the amount from the borrowers. It is further submitted that most of the borrowers borrowed on the basis of hire purchase agreement and therefore no immovable property could be secured.



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WEB COPY 8. I have heard the learned counsel on either side and also perused the entire materials.

9. As rightly pointed out by the learned counsel appearing for the petitioner that the very object of Tamil Nadu Protection of Interests of Depositors Act, 1997 is to recover the money lost by the depositors. Section 3 deals with attachment of properties on default of return of deposits. Sub Clause (ii) makes it clear that if the Government is satisfied that such financial establishment is not likely to return the deposit or to make payment of interest or to provide the service, the Government may, in order to protect the interest of the depositors of such financial establishment, pass ad interim order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of any other person from and out of the deposits collected by the financial establishment.

10. The above Section also makes it clear that any money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said financial establishment or a person who has borrowed money from the financial establishment to the extent of



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their default or such other properties of that person in whose name properties were purchased from and out of the deposits collected by the financial establishment, the Government is competent to recover from them.

11. It is the case of the petitioner that 558 borrowers borrowed amounts to the tune of Rs.52,11,69,715/-. With regard to that they have filed a suit and obtained a decree and judgment. Despite the same, the Government is not taking any action in this regard.

12. Now the issue is with regard to the recovery of the money from the borrowers of the petitioner company. As the amount payable by the borrowers comes around Rs.52 crores, this Court is of the view that the competent authority / Government has to initiate action for recovery of the amount from various borrowers of the financial institution, so that all the depositors who lost the money with the writ petitioner's institution may be paid their money. It is for the Government to find out if there are any properties immovable or movable owned by such borrowers and the same can be attached for the purpose of recovery of the amount.

13. Such view of the matter, the petitioner is directed to furnish all



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the details relating to the borrowers and the decree obtained against the said borrowers to the respondents so as to enable them to take action as per law for recovery of the money. With the above direction the writ petition is allowed and the petitioner is directed to furnish such details to the respondents within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

No costs.

03.11.2022

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To

1. The Additional Director General of Police,
Economic Offences Wing-II,
SIDCO Old Garments Complex,
Tiru-Vi-Ka-Nagar, Guindy,
Chennai - 600 032.
2. Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
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N.SATHISH KUMAR, J.

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