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WPO/723/2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KUSUM PRODUCTS LIMITED

-VERSUS-

THE STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 20th August, 2024.

Appearance:
Mr. Subhashis Sengupta, Adv.
Mr. Soumyajit Mishra, Adv.
…. for the petitioner.

Ms. Ashmita Chakraborty, Adv.
...for the State.

The Court: This writ petition has been filed challenging an order passed by the Secretary, Public Enterprise and Industrial Reconstruction Department. By the said order, the company/petitioner was directed to take the following steps:

"1. The company will make necessary arrangement to first repay the principal out of 2nd loan to the tune of Rs. 14,94,128/-. For this DS (PKB) will communicate the Head of Account details by 5th July.

2. After the above is done, the company will submit a prayer to this Deptt. citing reasons for delayed repayment along with proposed schedule of repayment of outstanding dues.

3. Kusum Products Ltd. will also share the present status of the company along with BIFR Order, Orders of the Hon'ble High Court / Supreme Court etc. in connection with settlement of outstanding dues including Asset Sale Committee (ASC).

Next Hearing date has been fixed on 26.07.2024 at 12 noon."

Learned Advocate for the petitioner submits that the order was contrary to the scheme floated by the Board for Industrial and Financial Reconstruction (BIFR), when the company had became sick and inoperative. Reference has been made to the order and Clause 13.5(b) thereof, which is quoted below:

"b) To reschedule the Soft Loan and interest granted for an amount of Rs. 255.80 lakh earlier, to be repaid within a period of 9 years with a moratorium of 2 years from the cut-off date.

The Government of West Bengal vide its Letter No. 526-IR/O/3M-46/2001 (Pt-II) dated 28th April 2011 has stated as under:-

The actual dues towards this Sales tax loan of Rs. 255.80 lakh and the accrued interests as on the cut off date i.e.31st March, 2010(COD) may be considered for conversion into a fresh loan. The principal amount of loan and interest shall have to be paid by Kusum within maximum period of 11yrs. With moratorium of first 3 years for the reassessed amount of loan. The interest @ 9.25% (2% rebate for timely payment) pa shall have to be paid by the company from the first anniversary of sanction of reschedulement of the loan by the Government.

Views of Govt. of West Bengal were accepted by the Bench."

The petitioner relies on the said direction and submits that the principal amount of loan and interest should have been paid by Kusum within a maximum period of 11 years with moratorium of first 3 years for the re-assessed amount of loan, only after restructuring was done by the Government of West Bengal. According to the petitioner, unless the authorities re-scheduled the loan, the liability of the petitioner to repay under the said order did not arise. It is contended that such order was passed in 2012 and the Government of West Bengal did not take any initiative to follow the said order. Ultimately, the company turned around, its net worth became positive and the company went out of the BIFR. Only in 2020, for the first time, the Government issued the annual statement of balance of loan to the petitioner which indicated that Rs.2,55,79,817/- was the outstanding. Similar communication was also made sometime in 2022. Finally, the petitioner was informed sometime in 2023 that the interest component had gone upto Rs.4,08,60,436.56. The demand was raised by the Deputy Secretary to the Government of West Bengal, on the Managing Director of the petitioner/company, by a letter dated 29th August, 2023. The principal due claimed was Rs.2,55,79,817/- and the interest due claimed was Rs.4,31,70,109.43.

According to the learned Advocate for the petitioner, such demand was not only contrary to the order of BIFR, but also reflected the non-compliant attitude of the Government. Without any break-up and without reflecting how such interest had been calculated and for which period, the demand had been raised.

It appears that ultimately a hearing was given to the petitioner with regard to the loans availed of and the order impugned was passed. The petitioner contested the demand by appearing at the hearing. The authorized representative of the petitioner made his submissions. The proceeding has not concluded and is continuing. As an ad-interim measure, the order impugned was passed.

Learned advocate appearing for the State submits that the first loan of Rs. 2,40,85,689/- was availed of by the petitioner on November 12, 2002. The second loan was availed of on July 1, 2005. The sanction letters have been annexed to the writ petition, which support such contention. It is further contended that the BIFR had directed the State Government to consider the rescheduling and it was not a mandate. Reference has been made to several letters written to the petitioner company which would indicate that the Government had time and again asked the petitioner to appear before the Authority for necessary action, but the petitioner failed to do so.

In any event, it appears to this Court that the fact that the loans were availed of is not in dispute. The principal amounts are not in dispute. Failure to repay is not in dispute. It is also a fact that the petitioner's net worth is positive and petitioner went out of BIFR, sometime in 2013. Under such circumstances, there is no reason why the petitioner should not repay the outstanding dues, upon re-scheduling as proposed by the Government and as recorded in the order of BIFR. The question which arises before this Court is whether the rescheduling was done or not. It appears from the order impugned that the petitioner has been asked to pay the principal amount of second loan amounting to Rs. 14,94,128/- and also go back with a proposal as to how the outstanding dues could be paid. It appears that the representative of the petitioner had made a suggestion for one time settlement.

In my opinion, the State Government and the petitioner did not sit together for the rescheduling. The issue should be now taken up and the proposal of the petitioner may be forwarded to the Authority who is in seisin of the matter. Considering the quantum of the outstanding dues, this Court is of the view that the direction to pay Rs. 14,94,128/- is justified. Under such circumstances, the amount shall be paid by the petitioner within a month from date and the proposal shall be forwarded to the Secretary, Public Enterprise and Industrial Reconstruction Department/ the Hearing Authority along with the payment. Time for payment as fixed by the Authority is hereby extended as directed hereinabove. Thereafter, the hearing shall continue and reach its logical conclusion. It is expected that the State Government, whose conduct does not appear to be positive in the past, should take steps to resolve the issue upon considering the proposal of the petitioner, and its own proposal before the BIFR. The payment and acceptance shall be on an adhoc basis till the final settlement is arrived at or the rescheduling becomes final.

This Court has not gone into the merits of the issue which is yet to be decided by the Hearing Authority, but has restricted the consideration to the reasonableness of the interim direction passed.

WPO 723 of 2024 stands disposed of accordingly.

All parties shall act on the basis of server copy of this order.

(SHAMPA SARKAR, J.)

A/s./TR