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W.P.No.34917 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34917 of 2022

and

W.M.P.No.34350 of 2022

1. Yes Bank limited,
Rep. by Authorized representative Raj Chordia,
Yes Bank House,
Off western Express Highway,
Santacruz East, Mumbai-400 055.

2. J.C. Flowers Asset Reconstruction Private Limited,
Acting in its capacity as Trustee of JCF YES Trust
2022-2023/15 Reg office at,
12th Floor, Crompton Greaves House,
Dr. Annie Besant Road,
Worli, Mumbai - 400 030.

(P2 impleaded vide order dated 08.08.2023 made in WMP.10944/2023 in
WP.34917/2022 by NSSJ) ... Petitioner

Vs.

1. Union of India,
Rep. by secretary to Government,
Ministry of Ports, Shipping and Waterways,
North Block, New Delhi-110 001.

2. Ministry of Port, Shipping and Airways,
Rep. by its Secretary,
Parivahan Bhawan,
1, Sansad Marg, New Delhi-110 001.



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3. M/s. Kamarajar Port Limited,
17, Jawahar Building,
Rajaji Salai, Chennai-01.

4. SICAL Logistics Limited,
Rep. by Insolvency Resolution Professional,
Mr. Sripatham Venkatasubramanian RamKumar,
(Regd No. IBBI/ IPA- 001/ IP-P00015/ 2016- 2017 / 10039)
South India House, 73, Armenian Street,
Chennai-01.

5. SICAL Iron Ore Terminal Limited,
Rep. by Insolvency Resolution Professional,
Mr. Shivshankar,
(Regd No. IBBI/ IPA- 001/ IP- P02141/ 2020- 2021/ 13294) ,
South India House, 73, Armenian Street,
Chennai-01.

6. UCO Bank,
Chief Manager,
Flagship Corporate Bench,
1st Floor, Mafatlal Center,
Nariman Point, Mumbai-400 021.

... Respondent

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, to direct the 3rd respondent to take steps as per the Office Memorandum dated 10.05.2022 issued by the Ministry of Ports, Shipping and Waterways in Ref. No. PD- 13/ 1 /2018 - PPP Cell/ e- 330932 .

For Petitioner : Mr.Om Prakash, Senior Counsel for
Mrs.Abitha Banu



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For Respondents : Mr.T.V.Krishnamachand (for R1 & R2);

Mr.AR.L.Sundaresan, ASGOI, assisted
by Mr.Krishna Ravichandran (for R3);

Mr.P.V.Bala Subramanian, Senior Counsel,
for Mr.Akhil R.Bhansali (for R4 & R5);

Mr.P.S.Ganesh (for R6).

ORDER

The writ of mandamus has been instituted to direct the 3rd respondent to take steps as per the Office Memorandum dated 10.5.2022 issued by the Ministry of Ports, Shipping and Waterways in Ref. No. PD-13/ 1 /2018 - PPP Cell/ e- 330932 .

2. The petitioner is Yes Bank Limited. The 3rd respondent is a company incorporated under the Companies Act, 1956. The 4th respondent is a company incorporated in the year 1955. The 5th respondent is a special purpose vehicle promoted by SICAL Logistic Limited and L&T Infra Development Projects Ltd. and MMTC for development of Iron ore berth to handle capacity of 12 MMTPA. The 5th respondent has entered into a license agreement dated 23.09.2006 with the



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3rd respondent for the development of Iron ore berth to handle a capacity of 12 MMTPA and it is called as Iron Ore License Agreement.

3. The project was to be developed in two phases of 6 MMTPA each. Phase 1 of the project was constructed in November 2010. The 5th respondent could not complete the trial run and load test and could not commission the project and the project and facilities were lying idle. In order to operationalize the terminal the 5th respondent submitted its technical and financial proposal to the 3rd respondent in order to modify the existing project and also handle common user coal up to 12 MMTPA capacity at Kamarajar Port on DBFOT basis.

4. Admittedly the project has not been completed and the company faced certain difficulties. As of now, the matter is pending before NCLT and liquidator has been appointed. The Kamarajar Port also raised certain disputes and claimed compensation. They are armed with an award to pay compensation to the tune of Rs.4.85 Crores and still they are pursuing for securing higher compensation to the tune of Rs.11.25 Crores.

5. The learned Senior Counsel, Mr.Om Prakash, appearing on



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Projects which have become sick/stressed on account of being categorised as Non-Performing Assets and/or facing CIRP in NCLT's initiated by Lenders, vide its Office Memorandum (OM) dated 10.05.2022. The OM dealt with cases where the License Agreement was alive. But given the fact that the SIOTL project License Agreement stands terminated with effect from 20.06.2021, KPL vide its letters dated 09.06.2022 requested Ministry of Ports Shipping Waterways, to confirm the applicability of the Office Memorandum dated 10.05.2022 on SIOTL project, also since M/s.SIOTL was before the NCLT, the 3rd respondent has followed up with MoPSW on 26.08.2022 through reminder letter and however the Ministry's decision is still awaited.

8. Relying on the above counter affidavit, Mr. Om Prakash, learned Senior Counsel appearing for the petitioner would reiterate that the Ministry's decision being avoided, the guidelines is to be scrupulously followed for the purpose of resolving disputes which exist between the parties. Prolonged delay is causing financial loss to all the parties and thus, a decision in this regard by the Ministry would be imminent.

9. Mr.AR.L.Sundaresan, learned counsel appearing on behalf of 3rd



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respondent Kamarajar Port Limited, would oppose by stating that the Office Memorandum provides various stages where from the issues are to be dealt with. On account of efflux of time and due to the continuous existence of dispute, the matter went to NCLT and a liquidator has been appointed and therefore, it is to be dealt with from the stage as stipulated under clause 6 (B) of the Office Memorandum dated 10th May of 2022.

10. The said clause 6(B) reads as under :

“(B) Projects, both at Pre-COD and Post-COD stage, which became stressed due to borrowings being categorized by the lenders to the projects as NPA and/or lenders have approached NCLT for recovery of their dues, i.e., the PPP projects undertaken by the Major Ports where the work has stopped due to inability of Concessionaire to continue with the execution of the project, on account of borrowings of the Concessionaire having been categorized by lenders as NPA and/or proceedings initiated against it before the NCLT under the Insolvency and Bankruptcy Code 2016 or under Section 241(2) of the Companies Act 2013,

(i) Concessioneing Authority shall issue a common directive requiring the Concessionaire(s) to



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immediately inform the Concessioneing Authority in case the loan account of the concessionaire in respect of a particular PPP project at the Major Ports has been declared as 'NPA' by the lenders and/or if any insolvency resolution process has been initiated against the Concessionaire by the lenders.

(ii) In cases where the lenders after declaring the loan account of the Concessionaire as 'NPA' have initiated insolvency resolution process against the Concessionaire under the IBC or on being informed by Concessionaire or on having come to know otherwise of insolvency resolution proceedings having been initiated against the Concessionaire, the Concessioneing Authority should follow the process as given below

(a) Regularly monitor the insolvency resolution proceedings filed against the Concessionaire.

(b) Identify on its own or through the concessionaire, the status of the NCLT proceedings including the order(s) passed by the NCLT to appoint the Insolvency Resolution Professional (IRP) and the



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constitution of the Committee of Creditors (CoC).

(c) Be aware of the public notice that is issued by the IRP to invite claims from the creditors (i.e. financial creditors and operational creditors).

(d) After the issuance of public notice by the IRP, the Concessioneing Authority should file a claim with the IRP with respect to the outstanding dues against the Concessionaire.

(e) Subsequent to filing of claim by the Concessioneing Authority, follow up with the IRP must be done to monitor decisions of the CoC and a written request be made to the IRP for settlement of the Concessionaire's account based on foreclosure of Concession Agreement by way of a written document incorporating the terms that are mutually agreed and executed between the parties (i.e. Concessioneing Authority and the lenders). The amount that the Concessioneing Authority would offer in the request to IRP shall be equal to the lower of the following:



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(i) The value of the work done by the concessionaire in accordance with the Concession Agreement and found useful by the Major Port (ie. the Concessioneing Authority); or

(ii). Amount under claim in NCLT

(iii) Any other amount as may be mutually agreed in writing between the Concessioneing Authority and the Lenders

The valuation of useful work done will be as per Para 5(A)(iii) above,

(f) Such settlement should be proposed with the IRP / CoC with the exclusion of the Concessionaire's role as once the insolvency resolution process is initiated against the Concessionaire and the IRP is appointed, the IRP is the designated 'manager of the Concessionaire and foreclosure process can only be initiated or concluded after the IRP has received approval from the CoC. Accordingly, a declaration be also made in



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the foreclosure proposal to be submitted stating that beyond this, there will be no other liability on account of the said project on the Concessioneing Authority.

(g) Once the CoC approves the request for settlement by foreclosure, on the above lines, the Concessioneing Authority may conclude the foreclosure of the project / Concessioneing Authority's account as above.

(h) Once the foreclosure process is concluded as per the above terms, the Concessioneing Authority must take over the project site along with the useful assets created by the Concessioneing Authority at the project site; whereafter all ongoing legal proceedings between the Concessioneing Authority and the Concessioneing Authority in respect of the said project shall stand exhausted.

(i) If the request for settlement is not approved by the CoC, then the Concessioneing Authority shall follow the provisions of the IBC as the Concessioneing Authority would be regarded as an operational creditor' of the



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Concessionaire.”

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11. In view of the fact that the performance of obligations between the parties are governed under the contract agreements and the Ministry issued Office Memorandum to deal with the cases where projects discontinued, the writ Court cannot issue a direction as such sought for in the present writ petition. Such contractual obligations or enforcement of terms and conditions are to be made in the manner known to law. It is to be done through an adjudication and Writ Court cannot conduct a roving enquiry in respect of such terms and conditions agreed between the parties which all are technical and commercial in nature. All such disputed facts are to be adjudicated with reference to the documents in original and by following the procedure as contemplated. The parties are already facing proceedings before NCLT and the 3rd respondent Kamarajar Port Limited is claiming compensation. Thus, the 1st respondent Ministry shall take note of the complex nature of the dispute exists between the parties and take a decision as expeditiously as possible in order to avoid further financial loss to the parties.



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12. Since the 3rd respondent states that they are following up the matter with the Ministry of Port, they are directed to remind the issues before the Ministry for securing earlier clarifications or orders, as the case may be.

13. With this observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Speaking Order
Neutral Citation : Yes
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