

W.P. No.31542 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 11.06.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.P.No.31542 of 2018
and W.M.P.No.36758 of 2018

Manoharlal Tandon
S/o.Late Darbarila Tandon,
Unit No.9, SDF - 1 SEEPZ-SEZ
Andheri (East), Mumbai 400 096

Petitioner

Vs

1. The Debts Recovery Tribunal
At Chennai, Rep. by its Registrar
2. Indian Bank,
Madras Export Processing Zone,
Chennai, Rep. by its Deputy General Manager.
3. J.T.S. Technology Ltd.,
(Formerly Known as Modular Electronics
(Bombay) Private Ltd.,
Subsequently Changed as Modular
Electronics (India) Pvt Ltd.



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Rep by its Managing Director,
No.406, Dalamal Towers,
Nariman Point Mumbai 400 021
And factory at Madras Export Processing Zone
Kadapperi Tambaram, Chennai 600 045.

4. The Development Commissioner,
Madras Export Processing Zone,
Kadapperi Tambaram,
Chennai 600 45.
5. ICICI Limited,
C - 15, G. Block,
Bandra Kurla Complex.
Bandra (E) Mumbai, 400 051
6. Exim Bank of India,
UTI House, 1st Floor,
No.29 Rajaji Salai, Chennai 600 001.
7. V.N. Archana Reddy,
D/o. Mr. Venkatarama Reddy,
No.88 -C, Velachery Road,
Guindy Chennai 600 032.
8. The Assistant Commissioner of Customs,
Madras Export Processing Zone,
Kadapperi Tambaram,
Chennai 600 045.

Respondents

[Respondent Nos.5 to 8 given up
vide endorsement of the counsel on the bundle.]



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records relating to the impugned order passed by the 1st respondent in RA.No.4 of 2010 dated 2nd August 2017, quash the same.

For Petitioner: Mr.P.S. Raman
Senior Counsel
for Ms. Krithika Jaganathan
and Ms. Deepika Krishnan
for M/s.Lakshmi Kumaran
and Sridharan Attorneys

For Respondents: R1- Tribunal

Mr.Rajendran Raghavan
for respondent No.2

Mr.B.Rabu Manohar
Sr. Central Govt. Standing Counsel
for respondent No.4

R3 - No Appearance

ORDER

(Order of the Court was made by *Sunder Mohan, J.*)

The writ petition impugns an order of the first respondent dated 2nd



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August, 2017 in R.A.No.4 of 2010.

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2. The short facts leading to the filing of the writ petition are as follows:

(a) Petitioner was the Chairman and Managing Director of a Company by name JTS Technology Limited, formerly known as Modular Electronics (Bombay) Private Limited, the third respondent herein [hereinafter referred to as '**the company**'].

(b) Second respondent herein had sanctioned working capital facilities to third respondent after taking a personal guarantee from petitioner, which also covered the enhanced limits sanctioned to third respondent. Third respondent, thereafter, decided to collaborate with JTS Corporation, a company incorporated under the laws of United States of America (USA). Subsequent to the investment made by JTS Corporation, USA, the Board of Directors of the Company was reconstituted and three Directors were inducted into the Company.

(c) Petitioner's share in the Company was reduced after the

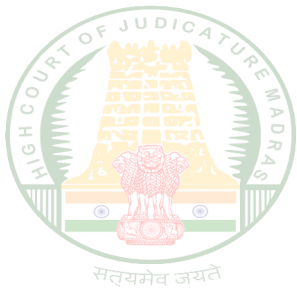


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investment made by JTS Corporation, USA and, therefore, on 14.11.1997, he resigned as Chairman and the Managing Director of the Company.

Pursuant to his resignation, petitioner had sent a letter dated 14.11.1997 to second respondent requesting the bank to release him from personal guarantee with immediate effect. On 25.11.1997, the Company also requested the bank to release petitioner from personal guarantees. In the said letter, the Company had stated that the corporate guarantee of third respondent is available and, therefore, it would not be in the fitness of things to request a minority shareholder to stand as the guarantor. Second respondent addressed a letter dated 19.06.1998, to third respondent stating that the personal guarantee of Mr.M.L.Tandon is waived. It also stated that the corporate guarantee of JTS Corporation, USA, is to be obtained by the Company/borrower.

(d) When the Company defaulted in repayment of the loan, the second respondent filed O.A.No.543 of 1999 before the Debts Recovery Tribunal. The Debts Recovery Tribunal found that petitioner would not be liable, as he was released from his guarantee and, therefore, a certificate of recovery cannot be issued against him.



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WEB COPY (e) Aggrieved by the said finding of the Debts Recovery Tribunal, second respondent filed an appeal before the Debt Recovery Appellate Tribunal being R.A.No.4 of 2010. The Debt Recovery Appellate Tribunal *inter alia* found that second respondent had not released petitioner from his guarantee and, therefore, he would also be liable to pay the debt. Petitioner, therefore, is before us challenging the said order.

3. (a) Shri P.S.Raman, learned Senior Counsel for petitioner, would submit that, by the letter dated 19.06.1998, second respondent had waived the personal guarantee of petitioner and it was not a conditional waiver; that the bank had only asked the borrower to obtain corporate guarantee of JTS Corporation, USA; that the Debts Recovery Tribunal held that petitioner severed his relationship with second respondent; that he ceased to be a Director; that he therefore revoked his guarantee on 14.11.1997; that the Debts Recovery Tribunal also found that the waiver is unconditional and it is independent of the obligation of second respondent stipulated in the letter dated 19.06.1998; and that the Debts Recovery Tribunal also found



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that in the letter dated 19.06.1998, there was only a suggestion to explore the possibility of obtaining some other guarantee in place of corporate guarantee and not a condition to release petitioner from his guarantee.

(b) The learned Senior counsel further submitted that the Debt Recovery Appellate Tribunal, however, had erroneously set aside the well-reasoned order of the Debts Recovery Tribunal by making an observation that the release of petitioner has to be construed as conditional and the bank cannot be left without any guarantee; and that the said observation is based on surmises and conjectures. He would further submit that the observation of the Debt Recovery Appellate Tribunal is on wrong appreciation of the letter issued by the bank and therefore, the impugned order is liable to be set aside.

4. *Per contra*, Shri S.Rajendran Raghavan, learned counsel appearing for second respondent, would submit that the reasons assigned by the Debt Recovery Appellate Tribunal are in accordance with the law and justified. The learned counsel submitted that the debt cannot be without any guarantee and, therefore, the waiver of guarantee was conditional and since



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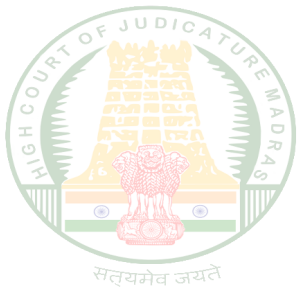
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third respondent had not fulfilled the condition to obtain a corporate guarantee from JTS Corporation, USA, the waiver of guarantee did not take effect. The learned counsel, therefore, submitted that the impugned order of the Debt Recovery Appellate Tribunal does not call for any interference.

5. The short issue involved in this writ petition is whether second respondent's letter dated 19.06.1998, which waived the personal guarantee of petitioner, is based on the condition that third respondent has to obtain a corporate guarantee of JTS Corporation, USA or independent of that.

6. For ease of reference, the relevant portion of the letter dated 19.06.1998 is extracted hereunder:

“2. Personal Guarantee of Mr M L Tandon is waived. Corporate guarantee of M/s.JTS Corporation, USA is to be obtained (Net worth – US dollars 12.4 million as on 02.02.97). (As per RBI guidelines, no direct or indirect outgo of foreign exchange be allowed by way of commission or otherwise for the corporate guarantee to be extended by JTS Corporation, USA.)”



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WEB COPY 7. A reading of the above portion would show that waiver of petitioner's guarantee is not conditional. The statement that the '*Personal Guarantee of Mr M L Tandon is waived.*', is independent of the subsequent statement in the said paragraph. The facts of the case further confirm the above interpretation. This letter is preceded by two letters – one dated 14.11.1997 written by petitioner himself to release him from personal guarantee since he was no longer a Director of the Company and the other letter dated 25.11.1997 written by the Company asking second respondent to release petitioner from his personal guarantee with immediate effect. In fact, in the letter dated 25.11.1997, the Company had stated that the corporate guarantee of JTS Corporation, USA, is available and it would not be in the fitness of things to request a minority shareholder to stand as guarantor for loans availed by the Company. It is, in the background of these two communications, we have to interpret the paragraph, that we have extracted, of the letter dated 19.06.1998.

8. In fact, the Debts Recovery Tribunal, in our view, rightly found that the waiver is unconditional and it is independent of the obligation of third



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respondent herein in the letter and petitioner has nothing to do with the said obligation. The Debts Recovery Tribunal also rightly found that the direction to third respondent to obtain some other guarantee was also only a suggestion and not a condition precedent for releasing the petitioner from his guarantee. The observation by the Debt Recovery Appellate Tribunal, namely, that petitioner managed the bank to send a letter of waiver, in our view, is conjectural. That apart, the finding of the Debt Recovery Appellate Tribunal that second respondent bank cannot afford to exonerate the original borrower, promoter of the Company, without putting any person as guarantor in his place, is also a surmise and unfounded.

9. As stated earlier, we find that the waiver of the personal guarantee of petitioner was also since he became a minority shareholder and it would not be in the fitness of things to ask him to continue as a guarantor for the loans availed by the company. The act of waiver of the personal guarantee of petitioner by second respondent herein and his subsequent conduct, as seen from the records, establish that the personal guarantee is no longer in existence. Second respondent cannot alter its position to claim amounts with respect to loans availed by third respondent and cause injury to



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petitioner.

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10. Second respondent in fact acted on the promise of the company and ought to have proceeded against the company instead of imposing liability on petitioner, who had not made any such promise. The letter dated 14.11.1997 of petitioner was in accordance with the provisions of the agreement between him and second respondent as the said agreement had provided a right to him to issue three months' notice for revocation of his guarantee.

11. Thus, we are of the view that in the impugned order, the Debt Recovery Appellate Tribunal had taken into consideration irrelevant factors and it had erred in setting aside the well-reasoned order of the Debts Recovery Tribunal. The order of the Debt Recovery Appellate Tribunal in taking into account irrelevant considerations in reaching its decision is an error on the face of the record. The view taken by the Debts Recovery Tribunal, on facts, is more plausible and we are entirely in agreement with



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the observations made by the Debts Recovery Tribunal. Therefore, we are inclined to set aside the impugned order of the Debt Recovery Appellate Tribunal.

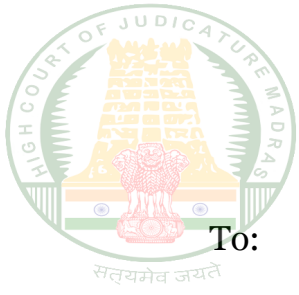
12. In the facts and circumstances of the case, we are of the view that the petitioner would be entitled to costs of the legal proceedings. Hence, the writ petition is allowed with costs quantified at Rs.2,00,000/- (Rupees Two Lakhs only). This amount shall be paid by the second respondent bank to petitioner within two weeks by way of a cheque drawn in favour of petitioner. Consequently, the interim application is closed.

(K.R.SHRIRAM, C.J.)

(SUNDER MOHAN, J.)

11.06.2025

Index : Yes
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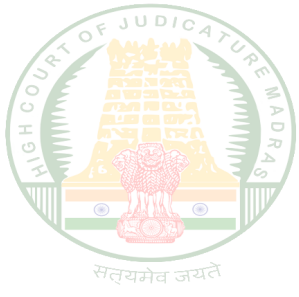


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To:

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Debts Recovery Tribunal
Chennai
2. The Deputy General Manager,
Indian Bank,
Madras Export Processing Zone,
Chennai,
3. The Development Commissioner,
Madras Export Processing Zone,
Kadapperi Tambaram,
Chennai 600 45.



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THE HON'BLE CHIEF JUSTICE
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SUNDER MOHAN,J.

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