

(2009) 07 DEL CK 0218

In the Delhi High Court

Case No : Writ Petition (C) 1286 of 2006

Cutler Hammer Provident Fund T and Bhartia Culter-Hammer
Ltd. EMP

APPELLANT

Vs

Pradeshiya Industrial and Invest.

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2009) 07 DEL CK 0218

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Sudhir Kumar and Rakesh Wadhwa, for the Appellant; Sandeep Aggarwal, for Respondent Nos. 1 to 5, Gautam Avasthi, for State of U.P., Aarohi Bhall and Shekhar Raj Sharma, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—The petitioners herein are two trusts created for the benefit of the employees of the company Bhartia Cutler-Hammer Ltd. now known as BCH Electric. The two trusts have been forced to file the present PET petitions as the Pradeshiya Industrial and Investment Company of U.P. Ltd (PICUP for short) and State of Uttar Pradesh have failed to pay the interest and principal amount on the bonds issued by PICUP and guaranteed by the State of Uttar Pradesh. The petitioner trusts had purchased these bonds from M/s. Lotus Gilts Pvt. Ltd and M/s. Lotus Securities. The two petitioners were paid interest in some bonds up to 14th September, 2002 and in other cases up to 14th October, 2002.

2. The respondent PICUP and State of Uttar Pradesh do not dispute purchase of bonds by the petitioner or the fact that the purchase was duly recorded/registered. The amount due towards the principal and interest is also not disputed. It is stated that PICUP is facing financial crisis and is in financial difficulties and State of Uttar Pradesh does not want to honour their guarantee, which was admittedly extended at the stage when bonds were issued to the

public.

3. It is obvious that on merits, the liability is admitted and failure to pay off that liability is also admitted. In these circumstances, counsel for the respondents has raised two technical objections. Firstly, it is submitted that the writ petition is not maintainable and an appropriate remedy for recovery of contractual dues. Secondly, High Court of Delhi does not have territorial jurisdiction to entertain the present writ petitions.

4. The first contention was considered and rejected by this Court in an identical case of Modern Food Industries (India) Limited v. State of Uttar Pradesh and Ors. 125 (2005) DLT 463. In this case, the bonds issued by U.P. Co-operative Spinning Mills Federation Ltd., which were guaranteed by State of Uttar Pradesh were not honoured and discharged. Learned single Judge of this Court referred to decisions of the Supreme Court in case of Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, and State of Jammu and Kashmir Vs. Ghulam Mohd. Dar and Another, and observed that a writ petition was maintainable against a State in an appropriate case, even if the same pertains to a contractual obligation.

5. The aforesaid Delhi High Court decision of the learned single Judge was challenged before the Division Bench and thereafter before the Supreme Court. The Hon^{ble} Supreme while dismissing the civil appeal directed the State Government to pay principal amount and interest. The Hon^{ble} Supreme Court made the following observations:

5. Though several contentions were urged by the State Government and the Federation, when the matter came up today, the learned Counsel for the State Government handed over a Pay Order for Rs. 15,00,000/- (Rupees fifteen lakhs) to the learned Counsel for respondent towards the refund of the principal amount. In regard to interest, the learned Counsel for the Federation and the State Government submitted that as the Federation is under liquidation and as the State Government has paid the principal amount, the respondent should be relegated to other remedies in law for recovery of interest.

6. Such contention is not tenable. The amount invested by first respondent belongs to the workmen of first respondent. The amount was invested in the bonds of the Federation in view of the express guarantee by the State Government that the same will be repaid with interest upto 15.5% p.a. The very purpose of the State Government guarantee is to ensure payment in case the Federation was not able to make payment. In the circumstances, the fact that the Federation is in financial difficulties cannot be a ground for the State Government to say that it will not make payment of interest, even though it had guaranteed the repayment with interest. If such a contention is accepted, the very purpose of the guarantee will be defeated. We are indeed surprised that such a plea is put forward on behalf of the State of Uttar Pradesh.

7. In the circumstances, we are of the view that the State Government should pay the interest also. However, on the facts and circumstances, we are of the view that interest should be paid at the rate of 14.9% p.a. for a period of five years from the date of deposit and thereafter at the rate of 9.5% per annum (which is equal to the minimum rate of interest that is payable by the first respondent to its workers on the provident fund dues). The above concession regarding interest is granted on the peculiar facts of these appeals. Three months' time is granted to the Government of Uttar Pradesh to pay the balance interest.

(emphasis supplied)

6. The first contention is rejected following the aforesaid decision. As stated above, on merits all facts and liability to pay is admitted by the respondents.

7. Learned Counsel for the petitioner has filed before me a copy of SLP filed in the case of Modern Food Industries. One of the questions and pleas raised before the Supreme Court in the said SLP relates to territorial jurisdiction of High Court.

8. Photocopies of the bonds and memorandum of private placement of bonds have been placed on record. Photocopies of the bonds do not reveal that there was an exclusion clause, which gives exclusive territorial jurisdiction to courts at Lucknow or to courts in the State of Uttar Pradesh. In fact no such plea is raised by the counsel for the respondent. Counsel for the respondent, however, submitted that the bonds were issued at Lucknow and the registered office of PICUP is at Lucknow. He further submitted that the transfer in the name of the petitioner was registered at Lucknow and, therefore, the courts at Lucknow alone have exclusive jurisdiction and no cause of action has arisen in Delhi. He relied upon *Kusum Ingots & Alloys Ltd. v. Union of India and Anr.* (2004) 6 SCC 254.

9. The Memorandum of private placement of bonds reveals that PICUP had appointed three arrangers, namely, Bajaj Capital Limited, HB Portfolio Limited and RR Financial Consultants Limited. The three arrangers were in Delhi. The Memorandum does not state that courts at any location/place will have exclusive jurisdiction. The Memorandum provides that a person interested in applying for bonds can pay the amount by cheque or demand draft in favour of PICUP Ltd in any of the collection centres specified in this document. The respondents have not filed on record the original application form, which was submitted by M/s. Lotus Gilts Pvt. Ltd and M/s. Lotus Securities for the issue of said bonds. It is admitted that both companies are Delhi based. The only possible reason why these application forms have not been filed is that these forms were received in Delhi. The bonds were transferable and negotiable as promissory notes. The petitioners purchased these bonds in Delhi. It is admitted by the respondents that payments towards dividends/interest of the bonds were made to M/s. Lotus Gilts Pvt. Ltd and M/s. Lotus Securities and subsequently to the petitioners at Delhi. It is well settled that a part of cause of action arises at the place where the amount due is payable. In these circumstances, I do not think that the

respondents can derive any support from the decision of the Supreme Court in the case of Kusum Ingots & Alloy Ltd. (Supra). It is unfortunate that the respondent State under Article 12 of the Constitution have taken this technical plea, inspite of the decision of the Supreme Court on merits. The liability to pay bond amount is admitted. There is no dispute about the rate of interest as mentioned in the bond. It is also not disputed by the respondents that principal amount as well as the interest amount has not been paid.

10. In these circumstances, the writ petition is allowed. The respondents including the State of Uttar Pradesh will pay the principal amount and the interest as stipulated in the bond till the date bonds matured. Thereafter, as held by the Supreme Court, the respondents including State of Uttar Pradesh will pay interest @ 9.5% per annum. Three months? time is granted to the respondents including State of Uttar Pradesh to make payment of the said amount i.e. the principal amount and the interest. The respondents including State of Uttar Pradesh will pay costs of Rs. 25,000/- in each case to the petitioners. The said cost will be paid along with the principal amount and interest.