(2014) 03 MAD CK 0108

In the Madras High Court

Case No : W.P. No. 27731 of 2013

M/s. Jayasakthi Leathers Pvt. Ltd. APPELLANT

Vs

Pondicherry Industrial Promotion Development and Investment Corporation Ltd. RESPONDENT

Date of Decision : 17-03-2014

Acts Referred:
Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : (2014) 03 MAD CK 0108

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Raja, J.—This writ petition has been filed by M/s. Jayasakthi Leathers Private Limited under Article 226 of the Constitution of India, seeking to quash the impugned letter dated 3.4.2013 issued by the Chief General Manager of Pondicherry Industrial Promotion Development and Investment Corporation Limited and direct the respondent to extend the OTS for another one year to enable the petitioner to settle the dues to the respondent under the OTS scheme. Learned counsel for the petitioner submitted that the petitioner Company submitted an application dated 28.9.95 requesting the respondent-Corporation to provide financial assistance for setting up of a SSI unit at R.S. No. 2, Kurumbapet, Villianur Commune, Puducherry for manufacturing leather shoe uppers. Accepting the said request, the respondent-Corporation also sanctioned a term loan of Rs. 26,25,000/- on 20.12.95 and intimated the same on 11.1.96 and also subsequently issued a corrigendum on 3.5.96 relating to the same. As per the terms, the petitioner should repay the term loan amount along with interest at the rate of 18.5% per annum and if it commits any default, it was made clear that the petitioner should pay additional interest at the rate of 4% per annum for the period of default. That apart, the petitioner also made an application on 11.3.99 with a request to provide working capital loan of Rs.

3,50,000/-. Accordingly, by passing a sanction order dated 18.3.99, the Corporation also sanctioned the working capital loan of Rs. 3,50,000/- on 18.3.99 subject to the terms and conditions prescribed thereof. As per the terms and conditions, the petitioner should repay the working capital loan amount along with interest at the rate of 15% per annum and if it commits any default, it was made clear that the petitioner should pay additional interest at the rate of 4% per annum for the period of default. Moreover, as per condition No. 42 of the sanction order, the petitioner also executed a hypothecation deed on 10.5.99 and its Directors viz., Mrs. G. Vasantha Leela, W/o Mr. P. Gopalan and Mr. P. Gopalan had executed equitable mortgage by way of deposit of title deeds, mortgaging their plots bearing Nos. 15, 16, 17 & 18 at R.S. No. 2, Kurumbapet, Puducherry as collateral security for the loan on the same day.

2. Adding further, it was also stated that as per the terms and conditions of the sanction order and corrigendum, the petitioner had also executed a deed of mortgage on 6.5.96 mortgaging its plots bearing Nos. 19, 20, 21, 22, 23 & 24 comprised in R.S. No. 2 corresponding to Cad. No. 3 at Kurumbapet Revenue village, Puducherry measuring 6000 sq. ft., as security for due repayment of the term loan amount. As per the first sanction order, having executed the hypothecation deed and the equitable mortgage deed on 6.5.96 as security, after the expiry of the moratorium period of 1 = years from the date of first disbursement, the petitioner had to repay the above term loan amount in 32 quarterly instalments, namely, the first 4 instalments at Rs. 18,750/- each, the next 4 instalments at Rs. 50,000/- each, the next 4 instalments at Rs. 87,500/- each and the last 20 instalments at Rs. 1,00,000/- each. Therefore, on this basis, it was further submitted that the petitioner had availed the entire term loan amount of Rs. 26,25,000/- on various dates from 18.6.96 to 22.8.97 and again the respondent-Corporation had provided the working capital loan of Rs. 3,50,000/- on 18.3.99. After the expiry of the moratorium period of 3 months from the date of first disbursement, the petitioner had to repay the working capital loan in 16 quarterly instalments, namely, the first 14 instalments at Rs. 22,500/- each and the last two instalments at Rs. 17,500/- each and the petitioner availed the entire working capital loan amount of Rs. 3,50,000/- on various dates from 17.5.99 to 22.6.99.

3. When the matter remained as above, the erstwhile Director Mr. P. Gopalan approached the petitioner company for transfer of the management and taking over the assets and liabilities of the company on the sale price of Rs. 65 lakhs. On the basis of the above, the petitioner took over the management on payment of Rs. 28,50,000/- to Mr. P. Gopalan and Rs. 5,00,000/- to the respondent towards arrears before communicating the change of management with an undertaking to pay the balance amount of Rs. 31,50,000/- as per the agreed term loan, without knowing that the above company is a sick unit. After the respondent Corporation passed an order changing the management in favour of the petitioner and Tmt. A. Alamelu on relieving Mr. P. Gopalan and Mrs. V. Vasantha Devi with a condition that the petitioner shall execute personal

guarantee for the outstanding term loan and to deposit the shares of the new promoters, the said conditions were also complied with by the petitioner. But, in view of the fact that the petitioner company being a sick unit, the learned counsel for the petitioner submitted that the petitioner was not in a position to revive the unit, as the earlier management had not properly administered the business, as a result, there was delay in repayment of the instalments, and the petitioner had paid only Rs. 28,500/- to Mr. P. Gopalan. In view of that, the respondent-Corporation was constrained to initiate action u/s 29 of the State Financial Corporation Act, 1951 and took possession of its assets on 26.8.2003. Thereafter, the respondent Corporation also formulated a one time settlement scheme and informed the same to the petitioner on 12.1.2004 with a request to remit 20% of the principal arrears as upfront. But, unfortunately, the petitioner was not able to avail the same. However, the petitioner company submitted a proposal to pay a sum of Rs. 75,000/- within 30 days from the date of handing over the assets to the petitioner and also further undertook to pay Rs. 60,000/- to Rs. 75,000/- regularly for three months and also further assured the respondent Corporation that the petitioner would submit the repayment schedule for payment of the balance outstanding dues.

4. Adding further, the learned counsel for the petitioner submitted that although the respondent agreed and redelivered the assets to the petitioner on 15.7.2004, after taking over the assets, the petitioner company paid the arrears and instalments as much as possible. But, after some time, again the petitioner was unable to make the repayments, resultantly, once again the respondent Corporation took over the possession of the petitioners company on 28.2.2007. Thereafter, the petitioner company again approached the respondent with a further assurance to repay the entire amount without default and the respondent also redelivered the possession of the unit. Once again the respondent Corporation formulated another scheme for repayment. As per the said scheme, the petitioner had to repay only a sum of Rs. 36,36,154/- against the outstanding loan amount of Rs. 72,34,321/- and Rs. 6,60,827/- against the loan amount of Rs. 9,71,216/- as on 31.3.2007. Unfortunately the petitioner again was unable to comply with the said scheme. Further, when the petitioner approached the respondent Corporation to consider extending one more opportunity explaining the difficulties faced by the petitioner at the time of taking over the sick unit, the respondent once again extended the scheme as per their letter dated 19.9.2007 by intimating the petitioner to repay 30% of the amount on or before 31.10.2007. But again the petitioner was unable to avail the same, for the reason that there was no purchaser to buy the property at the market rate. In view of that, the respondent Corporation had issued the letter dated 11.7.2007 calling upon the petitioner to avail the scheme on payment of Rs. 72,34,321/- against the outstanding amount of Rs. 2,14,08,479/- and the 30% amount which worked to Rs. 7,31,000/- was to be paid as upfront amount on or before 31.3.2007 to become eligible under the scheme and the balance amount should be paid and the loan settled on or before 31.12.2007. Although the

respondent Corporation extended the said scheme upto 30.6.2009, the learned counsel for the petitioner again submitted that the petitioner company was unable to repay the entire amount, as the petitioner company was not doing its business comfortably.

5. Adding further, it was stated that it is not the case of the respondent that the petitioner never paid any amount to clear the balance outstanding dues. When the respondent Corporation extended the special OTS scheme through their letter dated 10.5.2012 and permitted the petitioner to pay a sum of Rs. 79,16,015/- on or before 31.5.2012 against the actual loan amount of Rs. 2,14,08,479/-, the petitioner had already paid a sum of Rs. 3,00,000/- by way of demand draft, which was received by the respondent on 22.3.2012 and the balance amount payable by the petitioner was Rs. 76,16,015/- on or before 31.5.2012. Since the petitioner was given insufficient time to pay the huge amount of Rs. 76,16,015/- on disposing of the assets of the company within 15 days from the receipt of the notice or scheme, in view of the fact that there was no purchaser to buy the property, the petitioner was unable to repay the amount, as a result, the special OTS scheme extended by the respondent Corporation could not be made use of by the petitioner. Therefore, the learned counsel for the petitioner sought for one year time limit on giving possession of the unit, so that the petitioner would be in a position to find out a suitable purchaser for buying the property, in which event the petitioner could be in a position to clear the entire dues. Since the respondent Corporation has not offered sufficient time on the earlier occasions, if one year time limit is given, the petitioner will be able to settle the entire dues, with the result the respondent would not be put to any prejudice, and the outstanding loan of the petitioner also would be cleared and the respondent also would not lose any money from the petitioner company.

6. A detailed counter affidavit has been filed by the respondent Corporation. The learned counsel appearing for the respondent submitted that it is not the case of the petitioner that the respondent Corporation has unreasonably refused to accept the request of the petitioner for grant of OTS, since on more than three occasions, one time settlement scheme were repeatedly framed and offered to the petitioner from the year 2004. In spite of the three OTS schemes framed and offered from 2004 to 2012, the petitioner was not in a position to make use of the three opportunities given. Therefore, the prayer made by the petitioner challenging the letter issued by the respondent Corporation with a direction to the respondent to offer one another OTS scheme to the petitioner should not be espoused, for the simple reason that when the petitioner, having received the three OTS schemes, was unable to comply with any one of the OTS schemes, the one year time sought for by the petitioner in 2013 is far from acceptance. Adding further, it was stated that when the petitioner came to the respondent Corporation with an application dated 28.9.95 to provide financial assistance for setting up of a SSI unit for manufacturing leather shoe uppers, a sum of Rs. 26,25,000/- was sanctioned on 20.12.95 with a condition that the petitioner should repay the term loan amount along with interest at the rate of 18.5% per

annum, for which the petitioner had executed a deed of equitable mortgage on 6.5.96 mortgaging its plots bearing Nos. 19, 20, 21, 22, 23 & 24 comprised in R.S. No. 2 corresponding to Cad. No. 3 at Kurumbapet Revenue village, Puducherry measuring 6000 sq. ft., as collateral security. Once again the respondent Corporation also provided working capital loan of Rs. 3,50,000/- on 18.3.99 with a condition that the petitioner should repay the working capital loan amount along with interest at the rate of 15% per annum, for which the petitioner also executed a hypothecation deed on 10.5.99 mortgaging their plots bearing Nos. 15, 16, 17 & 18 at R.S. No. 2, Kurumbapet, Puducherry as collateral security.

7. Thereafter, the petitioner company approached the respondent Corporation with a request seeking approval to induct Mr. P. Adimoolam and Mrs. A. Alamelu as its directors and to relieve Mr. P. Gopalan and Mrs. G. Vasantha Leela from directorship. The respondent Corporation placed the said request in the loan committee meeting held on 29.3.2001 and accorded approval for such induction subject to the following conditions, namely, the incoming directors shall arrange to pay Rs. 5,00,000/- towards arrears before communicating the approval of change in management; Mr. P. Adimoolam and Mrs. A. Alamelu shall execute Deeds of Personal Guarantee in favour of the Corporation as security for the outstanding term loan amounts and the petitioner shall arrange to deposit the shares of the new promoters which shall not be less than stake of the old promoters i.e., Rs. 10,00,000/-. In view of the above, the incoming directors had executed the deeds of personal guarantee and also paid a sum of Rs. 5,00,000/- on 1.10.2001, but the petitioner did not comply with the other condition, namely, the deposit of the shares of the new promoters with the Corporation. In the meanwhile, when the petitioner has not come forward to show any gesture of repayment, after seeing the repeated defaults made by the petitioner, the Corporation initiated recovery action u/s 29 of the State Financial Corporation Act, 1951 by taking possession of its assets on 26.8.2003. Even after taking possession of the petitioner''s company including its assets as early as in January, 2004, the respondent Corporation formulated a one time settlement scheme and offered the same to the petitioner on 12.1.2004 with a request to remit 20% of the principal arrears as upfront. But, unfortunately, the petitioner has not availed the said opportunity and the benefit provided by the Corporation under the said OTS by remitting any amount. At this point of time, the petitioner company came forward with a proposal to pay a sum of Rs. 75,000/- within 30 days from the date of handing over the assets to the petitioner and also further undertook to pay Rs. 60,000/- to Rs. 75,000/- regularly for three months and also further assured the respondent Corporation that the petitioner would submit the repayment schedule for payment of the balance outstanding dues.

8. The respondent Corporation, in order to give opportunity to the petitioner to repay the loan amount and also to run its unit, accepting the said proposal and the assurance given by the petitioner to clear the outstanding dues, redelivered the assets to the petitioner on 15.7.2004. Even thereafter, as assured by the

petitioner, the petitioner company did not repay the loan amounts. Therefore, the respondent Corporation once again initiated recovery action u/s 29 of the State Financial Corporation Act, 1951 against the petitioner by taking possession of its assets on 28.2.2007. Again the respondent Corporation, in order to give one more opportunity to the petitioner to repay the loan amount, formulated one another scheme for repayment and as per the said scheme, the petitioner had to repay only a sum of Rs. 36,36,154/- against the outstanding loan amount of Rs. 72,34,321/- and in respect of the working capital loan, the petitioner had to repay a sum of Rs. 6,60,827/- against the loan amount of Rs. 9,71,216/- as on 31.3.2007. When the respondent Corporation had made it clear that to avail the benefit of the said scheme the petitioner had to repay 30% of the amount as upfront on or before 31.8.2007, again the petitioner has failed to comply with the conditions. In view of these things, the request made by the petitioner to grant one more year to clear the outstanding dues is truly unimaginable, therefore, the request made by the petitioner is liable to be rejected.

9. This Court finds merit in the submissions made by the learned counsel for the respondent. As pleaded by the learned counsel for the respondent in support of the impugned order, when the petitioner company, for manufacturing leather shoe uppers, had received a term loan of Rs. 26,25,000/- on 20.12.95, the petitioner had agreed to pay interest at the rate of 18.5% per annum. Further, it was also agreed to pay additional interest at the rate of 4% per annum, if there was any default in the repayment. As per the terms and conditions of the sanction order and corrigendum, the petitioner had also executed a deed of mortgage on 6.5.96 mortgaging its plots bearing Nos. 19, 20, 21, 22, 23 & 24 comprised in R.S. No. 2 corresponding to Cad. No. 3 at Kurumbapet Revenue village, Puducherry measuring 6000 sq. ft., as security for due repayment of the term loan amount. In addition to that, the petitioner company also executed the hypothecation deed and equitable mortgage deed on 6.5.96 as security for the same. That apart, the petitioner also made another application on 11.3.99 with a request to provide working capital loan of Rs. 3,50,000/- and accepting the same, the respondent Corporation also issued a sanction order on 18.3.99 sanctioning the working capital loan of Rs. 3,50,000/- subject to the terms and conditions prescribed thereof. As per the terms and conditions mentioned in the sanction order, the petitioner should repay the working capital loan amount along with interest at the rate of 15% per annum. Again it was made clear that if the petitioner committed any default, the petitioner was liable to pay additional interest at the rate of 4% per annum for the period of default. In addition to that, as per condition No. 42 of the sanction order, the petitioner also executed a hypothecation deed on 10.5.99 and its Directors viz., Mrs. G. Vasantha Leela, W/o Mr. P. Gopalan and Mr. P. Gopalan had executed equitable mortgage by way of deposit of title deeds, mortgaging their plots bearing Nos. 15, 16, 17 & 18 at R.S. No. 2, Kurumbapet, Puducherry as collateral security for the loan on the same day. Thereafter, the former directors Mrs. G. Vasantha Leela, Mr. P. Gopalan and Mr. G. Ramesh had executed deeds of personal guarantee in favour of the

Corporation as security for the loan amounts.

10. Thereafter, the respondent Corporation, after receiving the request from the petitioner to induct Mr. P. Adimoolam, the present petitioner and Mrs. A. Alamelu as its directors and to relieve Mr. P. Gopalan and Mrs. G. Vasantha Leela from directorship, approved the induction, after relieving the previous directors, subject to the conditions, namely, the incoming directors shall arrange to pay Rs. 5,00,000/- towards arrears before communicating the approval of change in management; Mr. P. Adimoolam and Mrs. A. Alamelu shall execute Deeds of Personal Guarantee in favour of the Corporation as security for the outstanding term loan amounts and the petitioner shall arrange to deposit the shares of the new promoters which shall not be less than stake of the old promoters i.e., Rs. 10,00,000/-. Even though the present directors of the company came to take over the company, unfortunately, knowing pretty well that the company had availed the term loan of Rs. 26,25,000/- on 20.12.95 and the working capital loan of Rs. 3,50,000/- on 18.3.99, after repeated extensions of time granted by the respondent Corporation in terms of the formulation of one time settlement schemes on 12.1.2004 and 31.3.2007 and the same were extended on three occasions i.e., on 19.9.2007, 30.6.2009 & 10.5.2012, the petitioner has not shown any genuine gesture to believe that the petitioner would be able to make use of this one year time for repaying the entire loan amounts.

11. Moreover, when the petitioner was repeatedly offered the above mentioned one time settlement schemes, the petitioner, without even making use of these OTS schemes, had gone before the learned Principal District Munsif, Pondicherry by filing O.S. No. 16 of 2013 seeking a decree for permanent injunction restraining the Corporation from conducting the public auction for sale of its assets and the learned Principal District Munsif, having granted the interim injunction in I.A. No. 47 of 2013 on condition that the petitioner should repay a meagre sum of Rs. 4,00,000/-, as against the actual loan amount of Rs. 2,54,52,096/- due and repayable by him to the respondent Corporation, on or before 21.5.2013, unfortunately, the petitioner was unable to comply with the said condition. In fact, the petitioner had sent a demand draft only for a sum of Rs. 1,00,000/-, that too on 22.5.2013. In view of the fact that the petitioner was unable to comply with the condition imposed in the order passed in I.A. No. 47 of 2013 in O.S. No. 16 of 2013, dismissed the application for interim injunction. In view of that, this Court is able to see that the petitioner had no intention to make use of the several OTS schemes offered by the respondent Corporation.

12. In this context, it is also relevant to refer to the judgment relied on by the learned counsel for the respondent in the case of U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, , wherein the Hon''ble Apex Court has held as follows:-

21. However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of

its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

13. The above ratio of the judgment clearly shows that this is not a matter for the High Court to step in and substitute its judgment for the judgment of the Corporation which should be deemed to know its interests better whatever the sympathies the Court had for the prosperity of the company. Therefore, in matters involving commercial interest of the company, the Courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. In view of that, this Court is not inclined to entertain the writ petition. Moreover, in one another judgment of the Hon''ble Apex Court relied on by the learned counsel for the respondent in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , it has been held that regular payment is the rule and non-payment due to extenuating circumstances is the exception, if the repayments are not received as per the scheduled timeframe, it will disturb the equilibrium of the financial arrangements of the Corporation. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the Installment by a defaulter may stand in the way of a deserving borrower getting financial assistance.

14. The above ratio also clearly shows that the repeated one time settlement schemes offered by the respondent Corporation to the petitioner-borrower had not been duly honoured. That shows that the borrower has no genuine intention to repay and settle the loan dues borrowed from the Corporation way back in the year 1995.

15. As highlighted above, even after taking over possession of the assets of the petitioner company on 26.8.2003 u/s 29 of the State Financial Corporation Act, 1951, the respondent Corporation formulated the one time settlement scheme (OTS) on 12.1.2004. But the petitioner failed to avail the opportunity. Therefore, again the possession of the assets of the company was taken over u/s 29 of the State Financial Corporation Act on 28.2.2007. Thereafter, when one another OTS scheme was formulated by the respondent Corporation for repayment and settlement of the dues on or before 31.3.2007, unfortunately, the second OTS scheme was not usefully availed of by the petitioner. Again the respondent Corporation extended the scheme by another letter dated 19.9.2007 to repay the upfront amount on or before 31.10.2007. Even that opportunity was not availed of by the petitioner. Moreover, the respondent Corporation unreasonably gave one more opportunity by extending the said scheme upto 30.6.2009, intimating

the petitioner to come and repay the amount. Even then the petitioner company failed to utilise the opportunity. In spite of the above repeated extensions of time and repeated defaults committed by the petitioner, a special OTS scheme was formulated by the Chairman of the Corporation and the same was communicated to the petitioner by letter dated 10.5.2012 to repay the sum of Rs. 76,16,015/- as OTS amount on or before 31.5.2012. Even on this occasion also, the petitioner, as usual, evaded from repaying the amount borrowed in the year 1995. This Court is rather shocked and surprised to see the ploy of the petitioner company to prolong the repayment from 1997 in spite of repeated OTS schemes offered to it. Equally this Court is unable to refrain from deprecating the unusual gesture shown by the respondent Corporation in recovering the dues, when the petitioner had repeatedly failed to avail the several OTS opportunities offered to it. Therefore, this Court finds no justification at all in the prayer made by the petitioner. In that view of the matter, this Court finds that no purpose would be served by granting one more year to the petitioner to settle the dues. On this basis, finding no substance, this Court is not inclined to answer the prayer in favour of the petitioner. Accordingly, the writ petition fails and it is dismissed. Consequently, M.P. No. 1 of 2013 is also dismissed. No costs.