(2016) 12 AHC CK 0090

In the Allahabad High Court

Case No : Writ C. No. 13626 of 1985

M/s. Modi Rubber Ltd. APPELLANT

Vs

Pradeshiya Industrial RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Citation : (2017) 1 ADJ 297 : (2017) 2 AllWC 1488

Hon'ble Judges : Sudhir Agarwal and Shamsher Bahadur Singh, JJ.

Bench : Division Bench

Advocate : Ashish Misra and A.K. Shukla, Advocates with Ashish Mishra, S.C, for the Respondent; K.C. Sinha, G. Goswami, K.L. Grover, L.K. Verma, Ramesh Singh, S.C. Maheshwari, Shubham Agrawal and V.B. Upadhyay, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Sudhir Agarwal, J. - Petitioner, by way of filing this writ petition under Article 226 of Constitution, has challenged demand notice dated 5th September, 1985 issued by Pradesiya Industrial and Investment Corporation of U.P. Limited (hereinafter referred to as ''PICUP''), whereby it has required petitioner to pay Rs.80,57,583/-, latest by 15th September, 1985, along with interest from the date of default to date of payment, failing which, it will be free to proceed according to provisions of Sales Tax Loan Scheme (hereinafter referred to as ''STLS'').

2. Brief factual matrix necessary to give backdrop of dispute is that State of U.P. decided to grant various incentives for establishment of new industries in State of U.P. One of the measures approved is, grant of interest free loan in lieu of sales tax on finished products sold within the State, for certain periods, after the start of production as enunciated in Government Order dated 10th November, 1972. It was termed as scheme for grant of interest free loan to industries i.e. ''STLS''. PICUP was chosen as agent of State of U.P. for implementation of this scheme. The scheme had two parts, one relating to new units, and second

relating to units carrying out substantial expansion.

3. The term "new unit" was defined in scheme as under;

(vi) "New Unit" means a new industrial unit, registered under the Factories Act, which has gone, or goes into production on or after January 1, 1972.

Provided that an existing unit would not be treated as a new unit simply because its ownership passes on to a new organisation or the existing organisation undergoes structural change:

Provided also, that expansion of existing unit will not be covered under this part of the Scheme.

4. Procedure for disbursement of loan is contained in Chapter 6 of ''STLS''.

5. Petitioner M/s. Modi Rubber Ltd. is a company set up at Modipuram, District Meerut for manufacture of automobile tyres and tubes in technical collaboration with M/s. Continental Gonaiverka A.G. Hanover (W.Germany). On 05.06.1973 petitioner submitted an application in Form 1 for registration in pursuance of Clause 2 of STLS. PICUP granted registration certificate dated 22.06.1974 in terms of clause 3 of ''STLS''. Petitioner commenced commercial production on 26th October, 1974. On 14th December, 1974, petitioner submitted an application to PICUP on prescribed Form for grant of eligibility certificate under STLS. Eligibility certificate was granted on 08.05.1975. Petitioner, thereafter, submitted an application in Form 5 on 29.05.1975 to PICUP for sanction of loan of Rs. 61,27,406.32 for Financial Year 1974-75 (1st April, 1974 to 31st March, 1975) on the basis that petitioner had paid a similar amount towards sales tax to respondent no.2 on intra state sale. PICUP on 16.07.1975 sanctioned interest free loan under STLS of Rs. 61,27,406/-. Along with sanctioned letter, PICUP sent a draft agreement to petitioner which was signed on 18th July, 1975. Clause 6 of agreement dated 18th July, 1975 provided that petitioner shall repay loan in three equal annual instalments and first instalment shall fall due at the end of 10th year from the first day of disbursement of loan of first instalment i.e. on 29.07.1985. Two subsequent instalments shall become due on same day and month of each succeeding year i.e. 29.07.1986 and 29.07.1987. In the event in default of payment of aforesaid instalments, petitioner shall pay interest on the amount in default from the date of default to date of repayment, at the rate of 18% per annum, or such rate as may be fixed by PICUP, from time to time.

6. Likewise two more agreements were executed on 16.07.1976 and 20.01.1980 details whereof are as under;

Date of sanction

Date of agreement

First date of disbursement of interest free loan

Repayment Instalment

First instalment

Second instalment

Third instalment

03.07.1976

16.07.1976

26.07.1976

24.07.1986

23.07.1987

09.09.1987 to 23.07.1988

18.12.1979

20.01.1980

21.02.1980

19.02.1990

18.02.1991

20.02.1992

7. For Financial Year 1975-76 for which second agreement dated 16.07.1976 was executed, loan amount was about Rs.80.86 lacs. Similarly, for the Financial Year 1976-1977, third agreements dated 20.01.1980 was executed for loan amount of about Rs. 161 lacs.

8. PICUP, however, committed default in disbursement of loan. As per chart filed as Annexure-11, the date of disbursement of instalments of loan amount and loan amount during Financial Year 1975-76 and 1976-77 is as under;

Date of disbursement of Instalment

Loan Amount

29.07.75

10,00,000.00

29.09.75

10,00,000.00

.12.75

5,00,000.00

25.02.76

18,00,000.00

25.03.76

18,27,000.00

61,27,000.00

26.07.76

5,77,518.06

28.07.76

25,00,000.00

22.08.76

2,22,481.94

27.09.76

6,80,640.64

03.12.76

10,00,000.00

03.12.76

10,00,000.00

20.04.77

21,05,270.36

80,85,911.00

21.02.80

50,00,000.00

01.04.80

70,00,000.00

12.06.80

20,00,000.00

08.04.81

10,00,000.00

17.08.84

2,00,000.00

08.11.84

8,86,839.00

1,60,86,839.00

Grand Total

3,02,99,750.00

9. Actual repayment of loan was made by petitioner within agreed time but since dates of disbursement of loan under three separate agreements relating to three different periods were different, hence date of repayment being linked with date of disbursement of loan, were also different.

10. When petitioner received third agreement mentioning wrong dates of repayment filled by PICUP, it sent a registered letter dated 09.06.1980 and 13.04.1981 requesting for correction of date of repayment mentioned in third agreement. Due to fault in execution of scheme by PICUP, petitioner sustained heavy loss, inasmuch as funds did not become available in time and all financial projections went wrong upsetting the entire planning of Company. Third loan was sanctioned only after petitioner served a legal notice dated 14.06.1985 upon PICUP. Further due to nonavailability of funds, petitioner had to borrow money from other Financial Institutions on which it had to pay exorbitant rate of interest. The amount whatever due to petitioner paid in time but PICUP served a notice dated 6th September, 1985 asking petitioner to pay Rs.80,57,583/- in addition of Rs. 20,42,334/- by September, 1985 along with interest at the rate of 18% per annum. Petitioner replied the said notice stating that there was no default on its part and it has not contravened any provisions of STLS and only Rs.20,42,334/- was payable, hence demand of Rs.80,57,583/- was illegal. PICUP, since insisting upon petitioner for aforesaid payment, hence this writ petition.

11. Respondent-1 has filed a counter affidavit in which scheme as also registration and grant of eligibility certificate to petitioner is admitted. It is said that eligibility certificate was issued on 08.05.1975 for the period of 20th October, 1974 to 25th October, 1977. Petitioner by application dated 23rd May, 1975 requested for grant of loan of Rs. 61,27,406/- for the period, 26th October, 1974 to 31st March, 1975. Loan was sanctioned and disbursed in five instalments on 29.07.1975, 29.09.1975, December 1975, 27.02.1976 and 25.03.1976. Another application for grant of loan of Rs. 80,85,911 for the period, 1st April, 1975 to 31st March, 1976 was submitted by petitioner and loan amount was disbursed in instalments dated 26.07.1976, 28.07.1976, 22.08.1976, 27.09.1976, 03.12.1976 and 20.04.1977. There was an amendment in ''STLS'' on 04.12.1976 and a ceiling of Rs. 40 lacs was fixed for grant of loan. Since PICUP had already paid more than ceiling limit as interest free sales tax loan, it referred the matter to Joint Secretary, Industries and Government vide letter dated 14.12.1976. In the meantime, it permitted a sum of Rs.10 lacs, disbursed to petitioner, with a condition, if any contrary view is taken, petitioner would refund the amount. State Government vide letter dated 14th April, 1977 informed that payment of balance amount be released with observation that no

further disbursement during 1977-78 will be made without prior permission of Government or Commissioner Sales Tax. Petitioner''s application for grant of loan for financial year 1976-77 was received by PICUP on 25.05.1977 for Rs.67,01,810.93/-. There was a raid conducted by Income Tax Department and Sale Tax Department, hence matter was referred to Government in view of Rule 9(ii) to decide whether further sanction and disbursement of loan be made to petitioner or not. Accountant General and Auditors raised certain objections and matter remain undecided. Subsequently, PICUP in 51st meeting dated 05.12.1979 approved sanction of interest free loan of Rs. 1,60,86,839/- for the period of 1st April, 1976 to 25th October, 1977 and the said amount was disbursed in six instalments. Vide agreement dated 28.01.1980, petitioner had agreed to pay the entire loan in three equal annual instalments i.e. 29th July, 1985, 29th July, 1986 and 29th July, 1987. A total sum of Rs.3,02,99,750/- was paid to petitioner as interest free sales tax loan under ''STLS'' by PICUP. Petitioner committed default in repayment of loan amount, therefore, under Clause 5 of agreement, PICUP became entitled to demand entire disbursed interest free loan along with interest at the rate of 18% per annum. The claim of petitioner, that there was some error in mentioning of date of repayment in agreement is incorrect. In any case, it is said that terms of agreement cannot be avoided by petitioner on the plea that there was some mistake in mentioning dates of repayment. It was always open to petitioner to seek execution of fresh agreement or to take legal recourse for rectification of instrument which is permissible subject to Section 26 of Specific Relief Act, 1963 (hereinafter referred to as ''Act, 1963''). However, within the period of limitation, no legal steps have been taken by petitioner and now it is bound by terms of the agreement.

12. Impugned demand notice has been challenged by petitioner on the ground that repayment of loan would be governed by Clause 6 read with 11 of agreement and Rules 21 and 33 of amended scheme cannot be pressed into service. It is submitted that PICUP cannot insist for repayment relying on dates mentioned in agreement when loan itself was not disbursed in terms of agreement.

13. In other words, it is urged that since disbursement of loan was neither in accordance with scheme nor in terms of agreement, its repayment or demand of entire amount of repayment premature is illegal, unfair, unjust and contrary to the specific terms of contract read with STLS.

14. Respondents, on the contrary, contended that repayment of disbursed amount of loan has to be strictly as per time schedule mentioned in the agreement which is binding on parties. Since petitioner has committed default in repayment as per agreement, PICUP was within its right and validly demanded entire defaulted amount by impugned notice and it warrants no interference.

15. It appears that amendment of scheme by Government Order dated 4th December, 1976, amending Clause 6, caused confusion with PICUP. Hence, it

could not maintain time schedule of disbursement of loan and that had continued thereafter. It is also on record that State Government vide letter dated 14th April, 1977 made it clear that amendment in scheme vide Government Order dated 4th December, 1976 is not retrospective, hence will not affect disbursement of loan to petitioner as per existing scheme i.e. ''STLS''.

16. Now we may examine relevant stipulation in STLS and agreements. Clause 11 of STLS reads as under;

"11. (i) The loan granted under clause 10 shall be repayable in 3 equal annual instalments. The first instalment shall be paid on the 12th anniversary of the date of disbursement of the 1st instalment whether of provisional or final payment of the Loan, in case of unit in backward areas and 10th anniversary in case of units in ordinary areas.

(ii) Since PICUP will be acting as agent of the State Government, for purpose of recovery it shall be treated as if the Loan has been given directly by the State Government".

17. Similarly, Clause 21 of ''STLS'' provides disbursement of entire sanctioned loan at one time or in two equal instalments and reads as under;

"21. The amount of interest free loan, sanctioned free loan, sanctioned provisionally or finally on annual basis, may at the discretion of the PICUP be disbursed fully at one time or in two equal instalments."

18. Agreement needed to be executed between parties as contemplated under Clause 23 of ''STLS'' which reads as under;

"23. Before the disbursement of loan to a unit eligible under this Scheme, the unit shall enter an agreement with the PICUP and execute such other documents as PICUP''s Solictors may decide."

19. Recovery of interest free loan is governed by Clause 25 of ''STLS'' which reads as under;

"25. Subject to the provisions contained in clause 28, and 29 the eligible unit shall repay to PICUP the loan disbursed to it in three annual instalments. The first instalment shall be due at the end of 10 or 12 years as the case may be, from the date of disbursement of 1st instalment whether provisional or final whichever is earlier. The second and third annual instalments shall be due respectively after the interval of 12 months from the due date of the previous instalment."

20. In actual agreement which has been executed between parties, however, some terms and conditions are not in accordance with ''STLS''. Clause 1(1) of agreement states that interest free loan shall be disbursed to entrepreneur in a lumpsum or in a suitable instalments, for such interval as PICUP may decide.

21. With regard to repayment of disbursed loan, Clause 6 of first agreement

dated 18th July, 1975 reads as under:

"6. The entrepreneurs also agree to repay the interest free loan in three equal annual instalments. The first of such instalments shall become due at the end of ten years from the date of disbursement of the loan or first instalment thereof, i.e. on 29.7. 1985 the two subsequent instalments shall become due on the same day and month of each succeeding year, i.e. on 29.7.1986 and 29.7.1987 and in the event of any default in payment of the instalments as aforesaid, the Entrepreneurs shall pay interest on the amount in default from the date of default to the date of payment, at the rate of 18% per annum or at such rate as may be fixed by PICUP from time to time."

(emphasis added)

22. Clause 6 of agreement dated 16th July, 1976 reads as under

"6. The entrepreneurs also agree to repay the interest free loan in three equal annual instalments. The first of such instalments shall become due at the end of ten years from the date of disbursement of the loan or first instalment thereof, i.e. the two subsequent instalments shall become due on the same day and month of each succeeding year, i.e. on and on and in the event of any default in payment of the instalment as aforesaid, the Entrepreneur shall pay interest on the amount in default from the date of default to the date of payment, at the rate of per annum or at such rate as the fixed up by PICUP from time to time."

23. Similarly, Clause 6 in agreement dated January, 1980 reads as under:

"6. The entrepreneurs also agree to repay the interest free loan in three equal annual instalments. The first of such instalments shall become due at the end of ten years from the date of disbursement of the loan or first instalment thereof, i.e. on 29th July, 1985 the subsequent instalments shall become due on the same day and month of each succeeding year, i.e. on 29th July, 1986 and 29th July, 1987 and in the event of any default in payment of the instalments as aforesaid, the Entrepreneur shall pay interest on the amount in default from the date of default to the date of payment, at the rate of 18% per annum or at such other rate as may be fixed by the PICUP from time to time."

(emphasis added)

24. The dates of repayment of dues under first agreement dated 18th July, 1975 are clearly mentioned therein. In second agreement dates are blank and Clause 6 mentions no date except that repayment/instalment shall become due at the end of ten years from the date of disbursement of loan or first instalment. In 3rd agreement dated January, 1980, on the one hand, agreement says that repayment shall be due after 10 years from the date of disbursement of loan or first instalment but thereafter it mentions specific dates also as 29th July, 1985, 29th July, 1986, 29th July, 1987. Clause 6 of 3rd agreement is self contradictory, inasmuch as, on one hand, it says that repayment shall be at the end of 10 years from the date of disbursement of first instalment, if entire amount is in a single

instalment but disbursement of loan itself commenced in 1980 yet repayment schedule mentions dates earlier to 10 years of the disbursement of first instalment. When we read Clause 6 of 3rd agreement, we find that specific dates mentioned for repayment do not conform to the period of repayment mentioned in agreement i.e. end of 10 years.

25. Considering the fact that first instalment under 3rd agreement was paid on 20th February, 1980, therefore, as per specific conditions in agreement, repayment would have fallen due on 21th February, 1990 and not before that but while mentioning dates, respondents have mentioned the dates which are much earlier to expiry of 10 years from the date of disbursement of first instalment of loan and that is not consistent with other part of agreement.

26. When there is an apparent inconsistency in terms of agreement, it is open to Court to read agreement in spirit and intent of parties as may be evident from reading of complete agreement. In the present case, we are benefited with existence of ''STLS'' which is foundation for disbursement of loan in question and also contains specific provisions with respect to repayment of disbursed loan. In order to make the agreement reasonable, clear and unambiguous, when we read Clause 6 along with Clause 11 of ''STLS'', we find that repayment of disbursed loan under 3rd agreement would not have fallen earlier to 21st February, 1990, since the first instalment of loan under 3rd agreement was disbursed on 21 February,1980.

27. When learned counsel for PICUP was confronted with the aforesaid situation, he could not reply at all and only insisted that petitioner has agreed with agreement and bound by it. We find no objection in accepting aforesaid submission but then it cannot be said that petitioner has agreed to abide by one part of agreement and not other part. The same Clause 6 of the agreement contemplates that repayment of loan instalment shall commence at the end of period of 10 years from the date of disbursement of loan or first instalment of loan. This period for repayment mentioned in agreement is also binding on both parties.

28. Having said so, we find that in the agreement, dates of repayment in Clause 6 of 3rd agreement mentioned as 1985, 1986, 1987 do not tally with earlier part of Clause 6 which provides a period of not less the 10 years for the purpose of repayment. It is for this reason, it become necessary for us to read Clause 6 harmoniously, consistently and in the light of scheme of disbursement of interest free loan against amount of sales tax paid by Entrepreneur.

29. In view of above, we have no option but to read Clause 6 along with Clause 11 of ''STLS'' and find that repayment could not have commenced on or before 21st February, 1990. Petitioner, therefore, cannot be said to have committed default in payment of any instalment under third agreement, having failed to make repayment on 21st July, 1985, and so on. The assumption on the part of PICUP that there was default on the part of petitioner is patently illegal and

cannot be sustained.

30. The writ petition is, accordingly, allowed. Impugned notice dated 5th September, 1985 is set aside. However, since we are now in 2016, we leave it open to respondent-PICUP to proceed to recover the amount, if any, due from petitioner, under aforesaid agreements, if not already paid, as per terms and conditions of agreement read with Clause 21 of ''STLS''.

31. Petitioner shall also be entitled to costs, which we quantify to Rs.20,000/-.