# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.923 of 2008**
**IN**
**Civil Writ Jurisdiction Case No. 5755 of 2005**

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T S R Financial Services Pvt. Ltd. B-26, Shivalik Malviya Nagar, New Delhi 110 017, through its Managing Director (Managing Director wrongly stated in the writ petition, the correct fact is Director).

.... .... Respondent-Appellant/s

Versus

1. Central Bank of India, a Government of India undertaking (having its Central Office at Chandra Mukhi, Nariman Point, Mumbai-400 021 and its Zonal office at Club Road, Pawapuri, Bhagwanpur, Town and District-Muzaffarpur and its Branch at Jawahar Lal Road, Ghirni Pokhar, Muzaffarpur, through its Senior Manager, Sri Bharat Mahto.

Petitioner/ Respondent 1st Set.

2. The State of Bihar through the District Collector, Muzaffarpur.
3. The Bihar State Credit and Investment Corporation Ltd., Indira Bhawan, 4th Floor, Ram Charitra Singh Path, Patna 800 001 through its Managing Director.
4. Managing Director, Bihar State Credit and Investment Corporation Ltd., Indira Bhawan, 4th Floor, Ram Charitra Singh Path, Patna- 800 001.
5. M/s Deepak Electro casting (India) Pvt. Ltd., a Company having its registered office situated at Jawahar Lal Road, Muzaffarpur and its Industrial unit situate at Fardogola, Riba Road, Muzaffarpur through one of its Directors Arun Kumar Agrawal, son of Sudarshan Kumar Agrawal, resident of Jawahar Lal Road, town and district Muzaffarpur.

.... .... Respondents-Respondent 2nd Set.

With

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**Letters Patent Appeal No. 943 of 2008**
**IN**
**Civil Writ Jurisdiction Case No. 4407 of 2005**

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T S R Financial Services Pvt. Ltd. B-26, Shivalik Malviya Nagar, New Delhi 110 017, through its Director.

.... .... Respondent-Appellant/s

Versus

1. The State of Bihar through the District Collector, Muzaffarpur
2. The Superintendent of Police, Muzaffarpur.
3. The Bihar State Credit and Investment Corporation Ltd., Indira Bhawan, 4th Floor, Ram Charitra Singh Path, Patna 800 001 through its Managing Director.
4. Managing Director, Bihar State Credit and Investment Corporation Ltd., Indira Bhawan, 4th Floor, Ram Charitra Singh Path, Patna- 800 001.
5. Central Bank of India, Main Brach, Saraiyaganj, Muzaffarpur through its Sr. Manager.

Respondents/ Respondents.

6. M/s Deepak Electro casting (India) Pvt. Ltd., a Company incorporated under the provisions of the Companies Act 1956 having its registered office situated at Jawahar Lal Road, Muzaffarpur and its Industrial unit situate at Fardogola, Rewa Road, Muzaffarpur through one of its Directors Mr. Arun Kumar

Agrawal, son of Sudarshan Kumar Agrawal, At & PO. Jawahar Lal Road, Muzaffarpur.

.... .... Respondents

With

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**Letters Patent Appeal No. 972 of 2008**
**IN**
**Civil Writ Jurisdiction Case No.4407 of 2005**

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1. The Bihar State Credit & Investment Corporation Ltd., Indira Bhawan, 4th Floor, Ram Charitra Singh Path, Patna-800 001 through its Managing Director.
2. Managing Director, Bihar State Credit & Investment Corporation Ltd., Indira Bhawan, 4th Floor, Ram Charitra Singh Path, Patna-800 001.

.... .... Respondents-Appellant/s

Versus

1. M/S Deepak Electrocasting (India) Pvt. Ltd., a company incorporated under the provisions of Companies Act, 1956 having its registered office situated at Jawahar Lal Road, Muzaffarpur and its Industrial Unit situated at Fardogola, Rewa Road, Muzaffarpur through one of its Directors, Arun Kumar Agarwal S/o Shri Sudarshan Kumar Agarwal, resident of Jawahar Lal Road, P.O. & P.S., Town and District-Muzaffarpur.

.... .... Petitioner-Respondent/s

2. The State of Bihar through the Collector, Muzaffarpur.
3. Central Bank of India, Main Branch, Saraiyaganj, Muzaffarpur through its Sr. Manager.
4. TSR Financial Services Pvt. Ltd., B-26, Shivalik Malviya Nagar, New Delhi-110017.
5. The Superintendent of Police, Muzaffarpur.

Respondents-Respondents.

With

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**Letters Patent Appeal No. 996 of 2008**
**IN**
**Civil Writ Jurisdiction Case No. 5755 of 2005**

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1. Managing Director, Bihar State Credit & Investment Corporation Ltd., Indira Bhawan, 4th Floor, Ram Charitra Singh Path, Patna-800 001.
2. The Bihar State Credit & Investment Corporation Ltd., Indira Bhawan, 4th Floor, Ram Charitra Singh Path, Patna-800 001 through its Managing Director.

.... .... Respondents-Appellant/s

Versus

1. M/S Deepak Electrocasting (India) Pvt. Ltd., a company having its registered office situated at Jawahar Lal Road, Muzaffarpur and its Industrial Unit situated at Fardogola, Rewa Road, Muzaffarpur through one of its Directors, Arun Kumar Agarwal S/o Shri Sudarshan Kumar Agarwal, resident of Jawahar Lal Road, Town and District-Muzaffarpur.

.... .... Petitioner-Respondent/s

2 The State of Bihar through the District Collector, Muzaffarpur.

3. Central Bank of India, a Government of India undertaking (having its Central Office at Chandra Mukhi, Nariman Point, Mumbai-400 021 and its Zonal office at Club Road, Pawapuri, Bhagwanpur, Town and District-Muzaffarpur and its

Branch at Jawahar Lal Road, Ghirni Pokhar, Muzaffarpur, through its Senior Manager, Sri Bharat Mahto.

4. TSR Financial Services Pvt. Ltd., B-26, Shivalik Malviya Nagar, New Delhi-110017 through its Managing Director.

Respondents-Respondents.

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**Appearance :**

**(In LPA No. 923 of 2008)**

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| For the Appellant/s | : | Mr. R.K.Sinha 2, Advocate |
| | | Mr. A. Anand, Advocate |
| For the Respondent no1. | : | Mr. R. R. Prasad, Advocate |
| For the respondents 3 and 4 | : | Mr. Amit Shrivastava, Advocate |
| | | Mr. Girish Pandey, Advocate |
| For the respondent no.5 | : | Mr. S. D. Sanjay, Senior Advocate |
| | | Mr. Abhishek Kumar, Advocate |

**(In LPA No. 943 of 2008)**

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| For the Appellant/s | : | Mr. R.K.Sinha 2, Advocate |
| | | Mr. A. Anand, Advocate |
| For the respondent no.1 | : | Mr. Arun Kumar Prasad, A.C. to SC 7 |
| For the respondents 3 & 4 | : | Mr. Amit Shrivastava, Advocate |
| | | Mr. Girish Pandey, Advocate |
| For the Respondent no.5 | : | Mr. R. R. Prasad, Advocate |
| For the respondent no.6 | : | Mr. S. D. Sanjay, Senior Advocate |
| | | Mr. Abhishek Kumar, Advocate |

**(In LPA No. 972 of 2008)**

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| For the Appellant/s | : | Mr. Amit Shrivastva, Advocate |
| | | Mr. Girish Pandey, Advocate |
| For the Respondent no.1 | : | Mr. S. D. Sanjay, Senior Advocate |
| | | Mr. Abhishekh, Advocate |
| For the respondent no.3 | : | Mr. R. R. Prasad, Advocate |

**(In LPA No. 996 of 2008)**

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| For the Appellant/s | : | Mr. Amit Shrivastva, Advocate |
| | | Mr. Girish Pandey, Advocate |
| For the Respondent no.1 | : | Mr. S. D. Sanjay, Senior Advocate |
| | | Mr. Abhishekh, Advocate |
| For the respondent no.3 | : | Mr. R. R. Prasad, Advocate |
| | | Mr. Nilanjal Chatterjee, Advocate |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**And**
**HONOURABLE MR. JUSTICE SUDHIR SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 20-05-2015**

These four appeals are preferred against the common judgment dated 23.09.2008 rendered by the learned Single Judge in CWJC Nos.4407 and 5755 of 2005.

The subject matter of the proceedings was the sale of an industrial unit, by name M/s Deepak Electro Casting India Pvt. Limited, by the Bihar State Credit and Investment Corporation (for short, 'the BISCICO').

For the sake of convenience, the parties are referred, as arrayed in LPA No.923 of 2008 since they would cover the entire dispute.

The 5th respondent M/s Deepak Electro Casting (India) Pvt. Ltd. is an industrial undertaking, with one of its unit at Muzaffarpur of Bihar. It applied to BISCICO- the 3rd respondent for credit facility in the year 1992. An amount of Rs.80 lacs was sanctioned, and after proper documentation, the amount was released. The repayment schedule was spread over eight years. With the approval of the 3rd respondent, the 5th respondent is said to have borrowed some amount from the Central Bank of India, the 1st respondent, for expansion of the unit.

It is stated that the 5th respondent became sick in the year 2002, and from then onwards, there were irregularity in the payment of instalments to the respondents 1 and 3.

The 3rd respondent introduced One Time Settlement

Scheme, i.e. OTS in the year 2004, which was initially to remain in force up to 31.12.2004. Thereafter it was extended up to 31.03.2005. At a time when the OTS was in force, sale notice is said to have been issued to the 5th respondent by the 3rd respondent proposing to sell the property, offered as security for repayment. The plea of the 5th respondent was that it offered to pay the amount as provided for under the OTS, but there was no cooperation on the part of the 3rd respondent, and, even the amount due was not specified.

The industrial unit of the 5th respondent was first put to sale on 29.09.2004, and since the auction did not fetch the expected amount, the sale did not fructify. Thereafter the industrial unit was put to sale on 24.11.2004. Even that did not fructify and on 22.03.2005, the appellant i.e. M/s TSR Financial Services Pvt. Ltd. is said to have offered a sum of Rs.60.21 lacs. The possession of the unit was taken in the month of March itself. At that stage, the Unit i.e. the 5th respondent, as well as the Bank- the 1st respondent approached this Court by filing CWJC Nos.4407 and 5755 of 2005 respectively, challenging the sale of the unit.

In the writ petitions, it was pleaded that the sale of the unit by the 3rd respondent, without reference to the 1st respondent was totally illegal, and that the sale was surreptitious and clandestine, in nature. It was also pleaded that when the OTS was very much in force, i.e. upto 31.12.2004, there was absolutely no basis to bring the unit, to sale. The 5th respondent has also taken the plea that the unit was not properly evaluated, and that the delivery of possession even before any sale is effected, was totally illegal. It was also mentioned that the Board of Directors of the 3rd respondent has disapproved the sale and still, further proceedings were taken.

The writ petition was opposed by the appellant as well as by the 3rd respondent. They pleaded that though the OTS was in force, the 5th respondent did not avail the benefit thereof, and it was only after issuing notices, that the unit was brought to sale. It was also stated that though the Board of Directors disapproved the sale through the resolution dated 05.09.2005, the appellant made a revised offer for Rs.74 lacs on 24.01.2006 and since the writ petitions were pending, the transaction did not reach finality.

The learned Single Judge allowed both the writ petitions by taking the view that the sale of the unit, even while OTS was in force, was improper, the unit was not valued correctly, the procedure prescribed for selling such properties was not followed, and that the Unit was handed over to the appellant in violation of the interim order passed in the writ petition.

LPA Nos.923 and 943 of 2008 are filed by the appellant M/s T S R Financial Services Pvt. Ltd. against the judgment in

CWJC No.5755 and 4407 of 2005 respectively. The other two appeals are preferred by the 3rd respondent, namely BICICO.

Sri R. K. Sinha, learned counsel for the appellant submits that the 5th respondent committed default in payment of loan amount and left with no alternative, the unit was brought to sale, duly invoking the power under Section 29 of the State Financial Corporations Act. It is also argued that the name of the 5th respondent was mentioned in several sale notices, apart from addressing individual letters, and it was only when there was no response, that the unit was put to sale. As regards the disapproval of the sale by the Board, it is pleaded that the possession of the unit was handed over to the appellant by that time, and a revised improved offer was received on 24.01.2006. Similar arguments are advanced by Sri Amit Srivastava on behalf of the 3rd respondent. They submit that the learned Single Judge did not take into account, certain relevant aspects and has set aside the sale deed, which was otherwise valid and legal.

Sri S.D. Sanjay, learned senior counsel for the respondent no.5 and Sri R. R. Prasad, learned counsel for the respondent no.1, on the other hand, submit that the very fact that the sale was effected even while the OTS was in force and the possession of the unit was handed over, to the appellant much before the consideration was paid and without execution of any sale deed, speaks about lack of bonafides in the entire exercise. It is also pleaded that the learned Single Judge has taken into account, the judgments rendered by the Hon’ble Supreme Court as well as this Court and that the appeals do not merit consideration.

The $3^{rd}$ respondent is a creature under the State Financial Corporations Act. The principal activity undertaken by it is to extend financial assistance and to help the entrepreneurs with the objective of promoting industrial growth, in the State.

It is not in dispute that a sum of Rs.80 lacs was sanctioned to the $5^{th}$ respondent in the year 1992 by the $3^{rd}$ the respondent. Though the full details are not before us, it was stated that up to the year 2002, a sum of Rs.60 lacs was repaid, and since the unit became sick, it did not pay the subsequent instalments. Another thing which needs to be taken note of is that the $5^{th}$ respondent borrowed the another amount from the $1^{st}$ respondent, with permission and approval of the $3^{rd}$ respondent, for expansion of the industry. Since the property was under mortgage with the $3^{rd}$ respondent, it became necessary to execute *pari passu* agreement in favour of the $1^{st}$ respondent for additional amount. The result is that the property was offered as security in favour of the two organizations.

In consonance with the policy decision taken at national level, the 3rd respondent has announced the scheme of One Time Settlement (OTS) in the month of September, 2004 and it was to remain in force up to 31.12.2004. Thereafter, it was extended up to 31.03.2005.

There is lack of agreement as to the nature of steps that ensued between the 3rd respondent, on the one hand, and the 5th respondent, on the other hand, during this period. According to the 5th respondent, it approached the 3rd respondent with a request to extend the benefit of OTS and requested to indicate the amount to be paid, and to furnish the necessary particulars was not acceded to. The case of the 3rd respondent on the other hand is that it did not receive any proposal from the 5th respondent, at all.

Assuming that there was no response from the 5th respondent for the OTS, the 3rd respondent as a State Financial Agency was under obligation to withhold any punitive action till 31.12.2004. An industrial unit is entitled to avail the benefit under the OTS till the expiry of the last date. However, the 3rd respondent has proceeded against the unit of the 5th respondent, even when the OTS was in force. The specific allegation in the writ petition that the unit was not valued properly and a totally inadvertent figure was shown as the value, remains un-rebutted.

The learned Single Judge took the view that the evaluation of the unit was not done at all. To the specific question put by us to the learned counsel for the appellant and the 3rd respondent as to whether such evaluation was done, the answer was in the negative. Though there is some controversy as to whether the name of the 5th respondent- unit was mentioned in the sale notice, we do not give much importance to that. The fact that an attempt was made to sell the unit even while the OTS scheme was in force, is not disputed. Such a course was frowned at, by the Supreme Court and High Courts. Things would have been different, had it been a case where the sale of the unit became absolute even during the subsistence of the OTS. In such cases, the Court would be slow to interfere, if the transaction is otherwise complete. In the instant case, however, a semblance of offer is said to have been made by the appellant by offering Rs.60.21 lacs, and without even waiting for the acceptance of the offer by the Board and execution of the sale deed, physical possession of the unit was surreptitiously handed over.

Curious part of the matter is that though the learned Single Judge passed an interim order on 26.04.2005, staying all the proceedings, the possession was handed over by resorting to ante dating certain other exercises. It is rather shocking that the possession is said to have been handed over, even before the consideration was deposited. Added to that, the Board of Directors disapproved the sale through its Resolution dated 05.09.2005. This should have put to an end the entire controversy, and the so called sale should have given a quietus, by refunding the amount whatever received from the appellant and restoring possession of the unit, to the 5th respondent or to the 3rd respondent itself.

The patent illegality, favouritism, arbitrariness and highhandedness on the part of the authorities of the 3rd respondent were such that in utter disregard of the resolution of the Board disapproving the sale in favour of the appellant, an improved offer is said to have been received on 24.01.2006 for a sum of Rs.74 lacs from the offer. The fact that the writ petitions were pending and interim orders were passed did not deter them. Hardly one comes across such brazenness. In a way, it can be said that the learned Single Judge was very soft towards officials. Since they were handling the State Organization, their conduct was liable to be deprecated and strictures should have been passed against the highhandedness on the part of the officials of the 3rd respondent and the overreaching conduct of the appellant. We take serious exception to the patent illegalities committed by the officials of the 3rd respondent in collusion with the appellant.

The learned Single Judge has taken note of the relevant facts as well as the precedence on the subject. We do not find any basis to interfere with the same.

We, therefore, dismiss the appeals. We leave it open to the 5th respondent to work out the remedies, be it for restoration of the unit or to claim damages. It is also brought to our notice that in pursuance of interim order passed by this Court, the 5th respondent submitted an application for OTS which was introduced at a later point of time and has also deposited the stipulated amount. If that be so, the same shall be examined by the 3rd respondent in accordance with law.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

**(L. Narasimha Reddy, CJ)**

**(Sudhir Singh, J)**

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