IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9032 of 2009

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M/S Bihar Metal Casting Corporation, B-1 Phase-I Industrial Area, Fatuha-803201, through Proprietor of Rajeshwar Prasad son of Late Lukhi Prasad, resident of village Ahiyapur, P.O. Gopalbad, P.S. Sarmera, Dist. Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Managing Director, Bihar State Financial Corporation Frazer Road, Patna-800001.
3. The Manager A/C (Zone V), Bihar State Financial Corporation, Frazer Road, Patna 800001.
4. The Branch Manager, Bihar State Financial Corporation Industrial Area Fatuha, 803201.
5. The Development Officer, Bihar Industrial Area Development Authority (BIADA) First Floor, Industry Bhawan East Gandhi Maidan, Patna-4.
6. Managing Director, Bihar Industrial Development Authority, First Floor, Industry Bhawan, East Gandhi Maidan, Patna-4.
7. M/S Raj Lakshmi Udyog (At present possession) B-1 Industrial Area, Fatuha-803201, through Proprietor Sri Ramesh Singh Pahalezaghat, Sonepur Chapra, Bihar Bearing TIN no. 10131617021.
8. M/S Shubham Raushan Enterprises Pvt. Ltd. through Proprietor Anil Kumar, WH-30 village Hidayatpur. P.O. Manjhauli, P.S. Bakhtiyarpur, Dist. Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandrashekhar Prasad
Ms. Alka Verma

For the Respondent/s : Mr.Partha Sarthy

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL ORDER

29 18-03-2016 The petitioner is the proprietor of M/S Bihar Metal Casting Corporation situated in the Industrial Area, Fatuha (hereinafter referred as the 'original promoter) which was sanctioned a term loan of Rs. 2.93 lacs by the Bihar State Financial Corporation (for short 'the Corporation') on 19.9.1975 out of which a sum of Rs. 2,74, 600 was disbursed on different

dates between 01.4.1977 to 9.3.1978. As the petitioner defaulted in payment of the loan installment it became liable for action under Sections 29 and 30 of the State Financial Corporation Act, 1951 (for short 'the Act'). The petitioner applied for soft loan and a sum of Rs. 3.04 lacs was sanctioned on 17.11.1989, which was, however, not utilized by the petitioner. On 3.8.1991, the soft loan was re-validated and the original promoter was allowed time till 31.8.1991 to complete the documentation which was completed on 29.8.1991. The petitioner having defaulted in payment of the loan was proceeded against under Sections 29 and 30 of the Act in order to realize the dues of the Corporation. A notice under the relevant provisions of the Act was issued on 28.3.1995. On 6.7.2007, the unit of the original promoter was advertised for sale. The valuation team valued the land, building etc. at Rs. 5.65 lacs which was approved by the Central Valuation Team (C.V.T). The intending buyer submitted the tender and deposited Rs. 20,000/- as the tender money. Later negotiation was made. The negotiation having failed the earnest money (tender money) was refunded. Again on 14.2.2008 the unit of the original promoter was advertised for sale and notice was published in the Hindi Daily. Respondent no.8 submitted the tender after depositing the earnest money. The tenderer was called for negotiation in which the tenderer raised offer from 3.04 lacs to 7.00 lacs. On 2.3.2009, the assets of the petitioner company was re-advertised in the daily newspapers disclosing offer in hand in the sum of Rs. 7.00 lacs. No fresh tender for purchase of the unit was received. The Managing Director of the Corporation on 4.5.2009 approved the auction sale of the assets of the petitioner company in favour of the respondent- purchaser. Copy of the sale order was communicated to the petitioner giving it option to have the unit retained on deposit of the amount of auction sale. Even after receipt of the communication, the original promoter failed to make payment within 21 days and thereby retain the assets. The purchaser on 26.05.2009, made payment of part of the offer and on 31.12.2010 sale/payment of the balance agreement was executed between the Corporation and the purchaser (respondent no.8). Subsequently, the purchaser made payment of total consideration amount and on 8.7.2011 the respondent Corporation issued order to take physical possession of the assets which was taken possession of on 27.10.2011 and handed over to the purchaser. In this factual background, the writ petition was filed on 30.7.2009 challenging the order of the Managing Director dated 4.5.2009 as also the order dated 1.6.2007 whereby the physical possession of the property of the petitioner was taken over.

By filing I.A. No. 6823 of 2014, the petitioner sought amendment in the prayer to quash the order dated 8.7.2011 by which the respondent Corporation after taking physical possession of the property /asset of the petitioner handed over to the purchaser (respondent no.8).

Heard Ms. Alka Verma for the petitioner and Mr. Partha Sarthy for the respondent Corporation.

In the 5th supplementary counter affidavit of the Corporation, it has been stated that the petitioner is questioning the correctness of the accounts of the petitioner unit stating that several deposits were made by the petitioner which were not entered and adjusted against the outstanding dues of the petitioner unit. In paragraph no. 3 the details of the account of petitioner have been set out. It has been stated that total dues against the petitioner firm outstanding on 29.2.2016 comes to Rs. 29,40,408/- .After adjusting the amount paid by the petitioner the dues shall come to Rs. 18,55,843/-. In case the Corporation is made to refund the amount paid by the purchaser the interest component payable thereon up to 28.02.2016 would again come to Rs. 5,78,411/- .The details of the account and calculation of interest on the amount of purchaser have been enclosed at Annexure-(V). Be it noted that the case of the petitioner is that on several occasions payments were made by the petitioner which were either not entered or adjusted against the outstanding dues of the petitioner unit. There are error(s) in posting the payments made and calculating interest. The petitioner is/was always willing to make payment of the outstanding dues and retained the assets/properties of the unit.

On perusal of the communication dated 4.5.2009 (Annexure-1), it appears the petitioner was informed of the terms of the sale order and the original promoter was required to take steps to retain the assets of the unit on matching terms and conditions as contained in sale order by paying off the outstanding dues within 21 days and /or suitable repayment plan of the balance outstanding dues. With regard to the payment of the certain dues of the Corporation in the 3rd counter affidavit of the Corporation , it is stated that on verification of the account ledger it was found that payment of a sum of Rs. 1,03,306 through cheque was not received as the cheque was dishonoured. It further appears that the respondent Corporation upon receipt of the entire consideration amount of Rs. 7 lacs (excluding the dues of BIADA) from the purchaser the possession of the land/asset is already taken over on 27.10.2011 and handed over to the purchaser. The lease hold land has been transferred by the BIADA in the name of the purchaser. The petitioner tried to make out his case with reference to the order passed in CWJC No. 5811 of 2008 which pertains to the restoration of possession of the petitioner over the assets/land of the petitioner unit. It is not necessary to go into the said aspect of the matter except noticing that the stand of the respondent is that the unit remained in possession of the petitioner till 24.9.2010 who accepted the same by issuing land possession certificate dated 24.9.2010. Further, the contempt applications filed by the petitioner for non compliance of the order passed in CWJC No. 5811 of 2008 was dismissed as not pressed by this Court on 2.2.2011.

In **U.P. Financial Corporation & Ors. Vs. Naini Oxygen & Acetylene Gas Ltd. & Anr. (1995)2 SCC 754** the Hon'ble Apex Court cautioned the High Court to step into such matters 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 in commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. Similar view is expressed by the Apex Court in **Karnataka State Financial Corporation vs. Micro Cast Rubber & Allied Products (P) Ltd. & Ors. (1996)5 SCC 65** underlying the principle that in exercise of power of judicial review under Article 226 , the High Court does not sit in appeal over the acts of the Corporation. If the Corporation does not act in violation of any statutory provision(s) or wholly unreasonably Court's interference in such matter is not called for. The Court has only to see whether a conscious decision has been taken by the Corporation as to whether auction under Section 29 is required. In considering the fairness in the action of the Corporation it cannot be carried to the extent of disabling the Corporation from recovering what is due to them. The action is taken by the respondent Corporation on the basis of the information in its possession. So long it is not a proven case of malafide on the part of the Corporation even an erroneous decision by it normally is not open to challenge. Seen thus, it shall be inappropriate on the part of this Court to substitute its view, however, more prudent it may be.

In the considered view of the court, it is not a case where the petitioner has demonstrated any violation of the legal provisions in taking impugned action(s). As regards the updating of the accounts of the petitioner's unit, considering the rival submissions and contentions of the parties the Court finds it difficult to go thereinto in view of the legal principle settled by the Hon'ble Apex Court in this regard. The best judge in such matter is the Corporation which is a statutory body. There is no scope of intervention in the case by this court in exercise of its power of judicial review under Article 226 of the Constitution of India. The writ application fails and is dismissed.

No cost(s).

(Kishore Kumar Mandal, J)

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