IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.257 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 7305 of 2005

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M/s Patliputra Kanch Udyog Pvt. Ltd., A Company registered under Companies Act, 1956, having its factory and registered office at behind Bazar Samitee, Noorpur, Patna through Mr. Parma Nand Singh, S/o Late Bhola Pd. Singh, Managing Director, M/s Patliputra Kanch Udyog (P) Ltd., Bazar Samittee, Distt. Patna

.... Appellant

Versus

1. The State of Bihar, Industries Department through Director of Industries cum Chairman, Apex Body, Bihar, Patna
2. Bihar State Credit and Investment Corporation Limited, through its Managing Director, Indira Bhawan, Ram Charitra Singh Path, Patna- 1

.... Respondents

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Appearance :

For the Appellant : Mr. Arvind Kumar Jha, Advocate.

For Respondent No.1: Mr. Shashi Shekhar Pd. Sinha, Advocate.

For Respondent No.2 : Mr. Nirmal Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 13-07-2016

Heard learned counsel for the parties.

2. The order dated 28th of February, 2012 passed by the learned Single Bench of this Court in C.W.J.C. No. 7305 of 2005 is subject matter of challenge in the present Letters Patent Appeal,

whereby the writ application filed by the appellant to restrain Respondent No. 2 from taking any action under Section 29 of the State Financial Corporation Act, 1951 till the finalization of the rehabilitation proceeding initiated by joint effort of Government of India, Ministry of Industry; and Small Industries Department, Government of Bihar. The appellant has also sought One Time Settlement Scheme as agreed in the meeting of the Apex Body for rehabilitation on the payment of principal amount disbursed less repayment.

3. The appellant is a Company set up to manufacture glass shell and other items with an installed capacity of 3300 MTPA. As per the appellant, it applied for a Term Loan which was sanctioned on 11.10.1998. Against the total project cost of Rs. 98.43 lacs; Rs. 64.94 lacs loan was sanctioned by the respondent Corporation. The remaining amount was either by way of a promoters' contribution or by subsidy. The Corporation disbursed a sum of Rs. 58.43 lacs against the loan sanctioned of Rs. 64.94 lacs. The project was completed but the Unit required working capital for which the appellant applied for loan but the same was rejected by the State Bank of India. The stand of the appellant is that out of the disbursed amount of Rs. 58.43 lacs, it had paid back an amount of Rs. 36.28 lacs.

4. It is the further stand of the appellant that Unit of

the appellant was declared sick in the 5^{th} meeting of the Apex Body. Thereafter, the Director, Industries communicated to the Corporation to rehabilitate the Unit by arranging working capital fund for the Unit. Thereafter the matter was considered in the 12^{th} State Level Inter Institutional Committee held on 19^{th} of April, 1999 wherein it was decided to find out the fate of the working capital application of the Unit with S.B.I./P.N.B. The Director, Industries in its letter dated 9^{th} of January, 2000 referred the matter of the appellant to the S.L.B.C. so that working capital problem of the appellant can be solved.

5. It is further pointed out that in the 19^{th} meeting of the Ministry of Industries to settle the dispute by making One Time Settlement, a meeting of the Apex Body was held on 29^{th} of October, 2002. On the said proposal, the Corporation communicated on 22^{nd} of November, 2004 accepting One Time Settlement, if the appellant deposits a sum of Rs. 57,72,000/-. The appellant did not accept the offer and submitted representation. Since no action was being taken, the appellant moved the writ jurisdiction of this Court.

6. In the counter affidavit filed on behalf of the Corporation, it was stated that appellant availed disbursement of Rs. 58.43 lacs against the sanctioned amount of loan of Rs. 64.94 lacs. The appellant was to submit proof of availing working capital before availing last instalment of the loan amount which it had failed to do

so. It is also pointed out that the amount paid by the appellant is Rs. 35.77 lacs as against the total outstanding amount of Rs. 352.31 lacs as on 31st of March, 2005. The appellant had no intention to avail O.T.S. Scheme for settling its dues on payment of Rs. 57.71 lacs against the total due amount of Rs. 352.31 lacs. It is also pointed out that the Corporation does not provide working capital support which the appellant had to arrange from any commercial bank.

7. The parties have filed supplementary and counter affidavits from time to time. After considering their respective contention, the learned Single Bench dismissed the writ application. Earlier, the learned Single Bench vide order dated 21st of July, 2011 directed the authorities to finalize the rehabilitation proceedings within two months. The matter was considered in the 5th meeting of the State Level Apex Committee on 25th of August, 2011. A sub-committee was constituted consisting of three members to verify the Unit of the appellant physically and submit a report focusing on the possibilities of rehabilitation of the Unit in accordance with the R.B.I. Guidelines. Such sub-committee submitted its report dated 13th of September, 2011 and found all assets to be only of scrap value and not suitable for further use in the production process. The Unit was found to be under huge liability of loan which made it non-viable for rehabilitation. Such report of the sub-committee was placed before the

Apex Committee in its meeting held on 25th of September, 2011. Thereafter, the Apex Committee unanimously came to the conclusion that in the event of huge liability and physical assets of being scrap value, the Unit cannot be revived at all. Such decision of the Apex Committee was communicated by the Director, Industries on 23rd of September, 2011. In view of the said decision, the learned Single Bench found that there is no occasion for interference in the matter in a proceeding under Article 226 of the Constitution of India.

8. Before this Court, learned counsel for the appellant has produced Industrial Policy, 1995. Such Industrial Policy deals with constitution of a Committee under the chairmanship of Director of Industries to consider rehabilitation of Industries in Small Sector Area. The argument of the appellant is that in terms of such Policy, the respondents are bound to sanction Rehabilitation Package for the appellant. Since it is not being done, this Court is bound to direct the respondents for sanction of the Rehabilitation Package. The appellant also relies upon the Rehabilitation Package finalized in the year 1997 to assert that the said Package is to be honoured by the respondents.

9. We have heard learned counsel for the parties and find no merit in the present Letters Patent Appeal.

10. The Respondent No. 2 Corporation is a creation of a Statute. The Industrial Policy contemplates identification of Small

Scale Industries which requires rehabilitation. The claim of the appellant for rehabilitation has been considered number of times, lastly by the sub-committee in its meeting held on 21st of September, 2011. The proceedings of the Committee reads as under:-

> "Minutes of the 6th Meeting of the State Level Apex Committee constituted for rehabilitation of SMEs held on 21.9.2011 in the Conference Hall of Udyog Mitra, Indira Bhawan, Boring Canal Road, Patna in Compliance of the direction of the Hon'ble High Court, Patna.
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> In compliance of the direction of the Hon'ble High Court, Patna to finalize the rehabilitation proceedings with respect to M/s Patliputra Kanch Udyog Pvt. Ltd., Noorpur, Patna, the Director of Industries-cum-Chairman, Apex Committee, Government of Bihar, directed the Apex Committee to review the rehabilitation proposal of the said unit. Accordingly, the case of the said unit was placed before the Apex Committee in its 5th meeting held on 25.8.2011 to review the case. In its meeting the Apex Committee proposed to get the Asset of the unit physically verified by a competent authority. As such the Chairman of the Committee constituted a Sub-committee comprising 3 members namely- Director, MSME-DI, Patna, Dy. Director of Industries, Department of Industries, Government of Bihar and the Secretary General, Bihar Industries Association, Patna to physically verify the Asset of the said unit and submit the report thereon to the Director of Industries-cum-Chairman. The Sub-committee physically verified the Asset of the said unit on 5.9.2011 and submitted its report for further necessary action.
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> The report of the Sub-committee was placed for discussion in the 6th meeting of the apex Committee held on 21.9.2011 under the Chairmanship of Director of Industries, Govt. of Bihar (list of the participants enclosed). After very exhaustive deliberation on the report of the Sub-committee and

on the possibility of the rehabilitation of the said unit the Committee unanimously arrived at the conclusion that in the event of huge liability and the physical assets of the unit being of only scrap value, the unit cannot be revived at all as per the RBI guidelines for rehabilitation of sick units.

Moreover, it is to add here that the case of the unit was already dropped from the proceeding of the Apex Committee in its meeting held on 18-7-2003 and it was not pending before the Committee as informed by the proprietor of the unit to the Hon'ble Court.

The meeting ended with vote of thanks."

11. In view of the said minutes which were communicated to the appellant by the Director, Industries on 23rd of September, 2011, we do not find that there is any further possibility of consideration of Rehabilitation Package to the appellant. Appellant is defaulter of the huge amount and, therefore, the attempt of the appellant is to avoid the recovery process on one pretext or the other.

12. The judgment referred to by the appellant, reported as State of Bihar and others Vs. Kalyanpur Cement Limited, (2010) 3 SCC 274 is a case where the Rehabilitation Package was sanctioned by the Financial Institutions subject to exemption from the payment of Sales Tax by the State Government. The State Government has not issued Sales Tax exemption notification. The Hon'ble Supreme Court interfered in the matter keeping in view the doctrine of promissory estoppel against the State. The said judgment has no applicability

whatsoever in the present case. There was no promise at any point of time either by the respondent Corporation or by the State to grant any benefit. In terms of conditions of grant of loan, working capital was to be arranged by the appellant. Since the appellant failed to arrange for working capital from the commercial banks, consequences have to fall on the appellant alone. In terms of the Industrial Policy, the question of rehabilitation has been considered and it has been found that no such Rehabilitation Package can be granted to the appellant.

13. In view of the finding recorded by the Apex Committee, we do not find that the appellant is entitled to any interference from this Court in the present Letters Patent Appeal. We do not find any merit in the Letters Patent Appeal. Consequently, it is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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