IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12563 of 2012

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IFCI Ltd, a company incorporated and registered under the provisions of the Companies Act 1956, having its registered office at IFCI Towers , 61, Nehru Place, New Delhi-110019 and one of its other offices at Maurya Lok Commercial Complex, Block-'C'(3rd Floor), Dak Bunglow Road, Patna- 800001, through its Assistant General Manager

.... Petitioner

Versus

1. Bihar State Financial Corporation Limited, a body corporate constituted under the State Financial Corporation Act 1951 and having its Office at Frazer Road, Patna-1, through its Managing Director.
2. The Managing Director, Bihar State Financial Corporation
3. The Branch Manager, Bihar State Financial Corporation, Purnea Branch, Distt- Purnea
4. Sun Biotechnology Ltd. having its Registered Office at Milanpur Rehabari Guahati and its Administrative Office at 21A, Shakespeare Sarani, Kokata through its Director.

.... Respondents

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Appearance :

For the Petitioner : Mrs. Sheela Sharma, Advocate
Mr. Jitendra Kumar Roy, Advocate
Mr. Shivendra Kumar Roy, Advocate

For the Respondents : Mr. Vinay Krishna Tripathy, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 04-07-2016

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the order dated 29.03.2012 passed by the Chairman-cum-Managing Director, Bihar State Financial Corporation, Patna (for short, “BSFC”) issued vide letter bearing memo no. 193/ZII/11/12 whereby and wherein the representation filed by the petitioner

for release of its pro-rata share out of the sale proceeds which has been already received by the BSFC in lieu of the sale of assets of M/s Katihar Jute Mills Ltd. has been found to be not acceptable and therefore, rejected; as well as for directing the BSFC to make remittance to the petitioner of 59.36% of the total amount that the BSFC has already received from Respondent No. 4 till date in pursuance of sale of the movable and immovable property of M/s Katihar Jute Mills Ltd., on which *pari passu* charge was created in favour of the petitioner and the respondent Corporation.

3. The facts of the present case are undisputed, and briefly stated are that the petitioner and the respondent BSFC advanced loans to M/s Katihar Jute Mills Ltd. Upon default in repayment of the said loans, the hypothecated and mortgaged properties, movable and immovable, of the defaulting unit were put on sale. The petitioner and the respondent BSFC had *pari passu* charge over the properties in question in view of the loan advanced by each of them against the said properties. It appears that the respondent BSFC received an offer of Rs. 4.45 crores for the assets of the defaulting company from the respondent no. 4 and the petitioner by letter dated 18.04.2000 gave a no-objection to the proposed sale of the assets of M/s Katihar Jute Mills Ltd. to the respondent no. 4 at a negotiated total consideration of Rs. 4.50

crores, requesting for remittance of its proportionate share out of the initially obtained payment of 15% of the consideration money. In due course, a sale order dated 16.06.2000 was issued, followed by an agreement for sale to be signed by the concerned parties.

4. Learned counsel for the petitioner submits that till date, an aggregate of Rs. 2.30 crores has already been received by the respondent BSFC from the respondent no. 4. However, even though the petitioner is entitled to 59.36% thereof which works out to Rs. 1,36,52,800/-, the respondent BSFC has not released any part of the amount collected from the respondent no. 4. The petitioner's representation dated 17.01.2012 filed before the respondent BSFC pursuant to liberty granted by this Court in its order dated 05.01.2012 in CWJC No. 17203 of 2011 also has not yielded any results.

5. Learned counsel for the respondent BSFC on the other hand, invites attention to the impugned order and submits that though the pro-rata share of the petitioner in respect of the amount collected is not in dispute, however the quantification of the amount is subject to the final decision in Money Suit No. 46 of 2002 filed at the instance of the respondent no. 4. The amount can therefore be paid only upon such final determination.

6. Having heard the parties and on consideration of the

materials on record, this Court finds merit in the submissions of learned counsel for the petitioner, who admittedly has *pari passu* charge on the subject properties and is entitled to pro-rata share to the extent of 59.36% of the collections. This Court finds little justification in the action of the respondent BSFC in not parting with the proportionate share of the petitioner, having already collected an aggregate amount of Rs. 2.30 crores from the respondent no. 4 merely on the plea that final quantification is yet to be made in the Money Suit. In view of the *pari passu* charge and the pro-rata share of the collection to which the petitioner is entitled, the respondent BSFC assumes the role akin to an agent or a trustee in respect of the petitioner's share and there appears no valid reason for withholding the same.

7. This Court accordingly directs the respondent BSFC to make over the proportionate amount of the collection at the rate of 59.36% out of the total collection of Rs. 2.30 crores to the petitioner without undue delay and in any event within a period of eight weeks from the date of receipt/production of a copy of this judgment, subject to appropriate deductions by way of expenses incurred over legal expenses and process of sale as incurred in accordance with the terms recorded in clause 6 of the Sale Order dated 16.06.2000 (Annexure-4).

8. It is made clear that such amount shall be paid by the respondent BSFC subject to final quantification as may be determined in Money Suit No. 46 of 2002 referred to above. If upon such final quantification, any amount paid to the petitioner pursuant to the present judgment is found to be in excess of its entitlement, such excess amount shall be refunded by the petitioner to the respondent BSFC.

9. The writ petition stands allowed as above.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	-
Uploading Date	11.07.2016
Transmission Date	-