# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No 1218 of 2014**
**IN**
**Civil Writ Jurisdiction Case No 5423 of 2008**

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M/s Pargeet Air Products Pvt Ltd, a Company incorporated under the provisions of the Companies Act, 1956 having its Industrial Area at Donar, Darbhanga, District Darbhanga through its Managing Director, Sushil Kumar Gupta, son of Late Indra Deo Prasad Gupta, Resident of Lahalaganj, P.O. + P.S. Lalbagh, Dist. Darbhanga

.... .... Appellant/s

Versus

1. The Bihar State Credit & Investment Corporation Limited, null having its Registered Office at Indira Bhavan, 4th Floor, Ram Chariter Singh Path, Patna through its Managing Director
2. The Managing Director, Bihar State Credit & Investment Corporation Limited, having its Registered Office at Indira Bhavan, 4th Floor, Ram Chariter Singh Path, Patna
3. The Bihar Industrial Area Development Authority, (Earlier Being the Darbhanga Industrial Area Development Authority) having its Registered Office at Udyog Bhavan, East Gandhi Maidan, Patna- 800 001 through its Managing Director.
4. The Managing Director, Bihar Industrial Area Development Authority, having its Registered Office at Udyog Bhavan, East Gandhi Maidan, Patna- 800 001
5. The Executive Director, Bihar Industrial Area Development Authority having its Registered Office at Udyog Bhavan, East Gandhi Maidan, Patna

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr S D Sanjay, Sr Advocate with
Ms Sushila Agarwal,
Ms Parul Prasad &
Ms Vipula Kanoria, Advocates

For the Respondent/s : Mr Piyush Lall,
Mr Nirmal Kumar, Advocates

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**CORAM: HONOURABLE MR JUSTICE AJAY KUMAR TRIPATHI**
**And**
**HONOURABLE JUSTICE SMT NILU AGRAWAL**

**<u>ORAL JUDGMENT</u>**

**(Per: HONOURABLE MR JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 24-04-2017**

The appellant has filed the Letters Patent Appeal aggrieved by the judgment and order dated 14.07.2014 by virtue of which the learned Single Judge dismissed the writ application refusing to pass any order or direction upon Bihar State Credit and Investment Corporation Limited (BICICO) to either take back the unit or write off the obligation and liability created upon the appellant-Company in terms of the auction sale taken by the Company on terms and conditions indicated in letter dated 02.01.1995, copy of which is Annexure 1 to the writ application.

**2** The appellant-Company was the auction purchaser of the assets and liability of what was known as M/s Deoraha Industrial Gases Private Limited. The terms and conditions on which BICICO offered the said Unit to the appellant is very clearly spelt out in paragraphs 1 to 8. This letter of sale has been issued under the signature of the Managing Director of BICICO.

**3** The reading of the said letter, it is evident, that the obligation created by virtue of the asset's sale primarily put the onus upon the appellants and there is no indication as to what the BICICO was required to do for fulfillment of the terms and conditions of the letter of sale.

**4** It seems that the Unit did not take off for a long period of time and now has virtually become non-existent. Except for an initial payment, which was made by the appellant-Company to BICICO amounting to Rs 17.65 lacs, not a penny has been paid by the Company out of a total sum of Rs 101.10 lacs.

**5** The learned Senior Counsel for the appellant submits that the learned Single Judge has committed a basic error of fact by putting the onus on the appellant-Company when there are enough indications as well as evidence to show as to how the Company was prevented at every stage because of hurdles created which came in the way of the unit going functional. Because of the same, the liabilities created kept mounting by way of interest. It was because of the failure on the part of the respondent-authorities of BICICO and BIADA, the appellant-Company could not meet the obligation. The respondents cannot be allowed to take advantage of their wrong and put the onus of the liability with running interest upon the head of the unit.

**6** The learned Single Judge has taken note of the series of conducts of the appellants as well as the plea which had been taken before him. The finding of the learned Single Judge, after due deliberations of all the submissions and perusal of evidence, reads as under:

> *"True it is that from November, 1995, the petitioner started developing its strategy on the one ground or the other. The electric connection being one of them. By now, it is well settled that the electric connection is a matter between the consumer and the generating company and/or licensee. The BIADA or BICICO have no role to pay in the same and, therefore, if the petitioner for any good or bad reason was refused the electrical connection, that cannot be treated to be the breach of term on the part of the BICICO. Similarly, the issue of transfer of land in the name of the petitioner on fulfillment of the requisite*

*demand by BIADA was to be dealt by the petitioner in a very systematic manner in the sense that if the total amount to the petitioner for sale was communicated in writing to be Rs 101.10 lacs and if any further demand from BIADA had come, all that he had to do was to go to BICICO and BIADA and explain that he was not liable to pay. That could not have at least a ground for rescinding the same order as this Court does not find anything in this regard in any one of the eight of the conditions enumerated, as quoted in this judgment.*

*As a matter of fact, it becomes very clear from this that the petitioner himself had not carried out the terms and conditions of the same order because he had to pay the entire amount of Rs 101.10 lacs in a period of five years commencing from 02.01.1995. There was of course a moratorium period of one year but, then, the entire payment was to be paid within a period of five years. Admittedly, in the period of five years, no such payment was made because the entire payment, as per records, by the petitioner to the BICICO has been made only to the tune of Rs 17.65 lacs vide Annexure-7 to the writ application.*

*A question now would be who is the defaulter? Obviously not BICICO or BIADA. It is the petitioner who is out and out defaulter since the year 2000 and has now filed this writ application in the year 2008 with a wholly unreasonable demand. The whole idea was to circumvent the BICICO from taking any coercive steps against the petitioner for realization of those dues and the petitioner has also been partly successful in doing so because this case has remained pending for last six years on account of which BICICO has taken no coercive action against the petitioner.*

*Having regard to the aspects, this Court will have no hesitation in dismissing this writ application which is out and out a frivolous litigation at the instance of the petitioner."*

**7** The respondent's counsel representing BICICO and BIADA take a similar stand as it was taken before the learned Single

Judge. According to them, the letter of sale created an obligation upon the appellant. Ever since 1995, after initial payment of Rs 17 lacs, the whole effort on the part of the appellant has been to shake off the liability without meeting the unambiguous obligation created under the letter of sale. It is also their plea before this Court that whatever help or assistance, which could be extended by the BICICO or BIADA, had been extended but there was failure on the part of the appellant in getting the unit functional as well as paying the balance amount of the auction sale, which was fixed in terms of the letter at Annexure 1 of the writ application.

**8** This Court in fact is not interested in fault finding or default. The obligation upon the appellant in terms of the letter of sale is unambiguous. The obligation, therefore, cannot be wished away by any law. That liability cannot be knocked out from its very foundation.

**9** In absence of the same, the impugned order of the learned Single Judge needs no interference. Appeal has no merit and is dismissed.

**(Ajay Kumar Tripathi, J)**

**(Nilu Agrawal, J)**

***M.E.H.***/-

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