

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.780 of 2014  
IN  
Civil Writ Jurisdiction Case No. 22283 of 2012**

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1. Bihar State Credit and Investment Corporation Limited having its office situated at Indira Bhawan 4th Floor Ramchandra Singh Path P.O. G.P.O. P.S. Sri Krishnapuri, Town & District - Patna, PIN - 800001 through its Managing Director  
2. Managing Director, Bihar State Credit and Investment Corporation Limited having its office situated at Indira Bhawan 4th Floor Ramchandra Singh Path P.O. G.P.O. P.S. Sri Krishnapuri, Town & District - Patna, PIN - 800001

.... .... Appellant/s

Versus

1. M/s Jai Ganga Foods Private Limited Registered Office Situated at Choti Usufpur At & P.O. Hazipur, District - Vaishali through Mr. Jai Lal Prasad  
2. Jai Lal Prasad Promoter and Managing Director M/S Jai Ganga Foods Private Limited Choti Usufpur At & P.O. Hazipur, District - Vaishali  
3. The State of Bihar through Principal Secretary, Department of Industry - cum - Chairman, Bihar State Credit and Investment Corporation Limited, New Secretariat, Patna

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Nirmal Kumar, Advocate  
For the Respondent/s : Mr. Kalikant Jha, Advocate  
Mr. Manish Jha, Advocate  
For the State : Mr. N. H. Khan, SC-1

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**ORAL JUDGMENT**

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

**Date: 21-03-2017**

Heard learned counsel for the parties.

The appeal has been filed by BICICO against the order, dated 19.12.2013, passed in C. W. J. C. No. 22283 of 2013.

The writ application came to be filed by the private-respondent, i.e., the unit, whose property was put on auction sale vide notice dated 05.10.2012. He raised grievances and objections



against such a sale. He offered and prayed for consideration of his decision to opt and avail the benefit of the first OTS scheme. Nothing came to be done, while the writ application was still pending, a second OTS scheme was notified and this is what the Learned Single Judge has observed about the said scheme.

**Apparently, the stand of the Corporation does not have any merit. The tender process was started earlier and the OTS Scheme has been floated by the Corporation in July, 2013 only. In the circumstances, petitioners could opt for settlement of their account under the said scheme only after that. Sub-Clause (C) of Clause 10 of the OTS Scheme reads as under :-**

**All borrowers /loanees / companies / including companies in liquidation/promoter(s)/guarantor(s) whose mortgaged assets have been sold and who have not repaid balance amount of outstanding as per OTS-2002/OTS-2004/OTS-2006/OTS-2009 or any other settlement scheme.**

**Thus, this sub-clause (C) shows that all borrowers/loanees/companies/including companies in liquidation/promoter(s)/guarantor(s) whose mortgaged assets had been sold could also avail this OTS Scheme. Hence, the auction sale of the property of the petitioners obviously could not make them ineligible to avail the benefits of the same. Therefore, the first ground for rejecting the application of the petitioners, as contained in Annexure-9, is non est. Apparently, pendency of this writ application also could not come in the way of the respondents in considering the application of the petitioners for settlement of their account under the Scheme as the**



**Scheme itself was floated in July, 2013, whereas the writ application was filed in December, 2012 itself and there was no order in this case which could debar the Corporation from considering the application of the petitioners on merits. The past conduct of the petitioners is not taken as a ground for rejecting their application under the Scheme. Therefore, the same is an extraneous matter and cannot be taken note of by this Court.**

**In the circumstances, this Court is of the considered opinion that the application of the petitioners for settlement of their account under the OTS Scheme has been rejected on non est and arbitrary ground. The decision of the Corporation, therefore, as communicated through letter no.534 dated 4.10.2013 of the Deputy Manager (A/C), is quashed. The respondents are directed to consider the application of the petitioners for settlement of their account under OTS Scheme, 2013 on merits and strictly in terms of the Scheme itself. Since the Scheme is going to close on 31.12.2013, this Court directs that any delay in consideration of the application of the petitioners under the Scheme shall not be get affected by closure of the Scheme. If the application of the petitioners is allowed under the said Scheme and demand is made from them for making one time payment, the same shall be done with one month time to them to deposit it.**

The interpretation given by the Learned Single Judge to the scheme and the manner of working of the Corporation so far as the private-respondent i.e. the writ petitioner is concerned, leads to only one conclusion that the Corporation has not been fair and



upfront in dealing with the offers made by the private-respondent and for a strange reason, have been denying the benefit of OTS scheme to the unit, when the OTS scheme is unambiguous that even for sold units the scheme can be availed of.

Learned counsel for the private-respondent submits that he is willing to abide by the direction issued by the Learned Single Judge, but the corporation is not willing to do so by dragging their feet.

Let the Corporation carry out the direction issued by the Learned Single Judge.

Appeal is dismissed.

**(Ajay Kumar Tripathi, J)**

**(Nilu Agrawal, J)**

SKM/-

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