

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2094 of 2015
IN
Civil Writ Jurisdiction Case No. 18986 of 2010**

=====

M/s India Food Preservation Industries, a Dhrubgama, Distt. Samastipur through its Proprietor Sunil Kumar Singh S/o Late Amrendra Prasad Singh, R/o Village Dhrubgama, P.S. Kalyanpur, Distt. Samastipur.

.... Appellant

Versus

1. Bihar State Financial Corporation, Frazer Road, Patna through its Managing Director.
2. The Board of Directors of Bihar State Financial Corporation, Frazer Road, Patna through its Chairman.
3. The Branch Manager, Bihar State Financial Corporation, Mithila Branch Darbhanga.
4. Smt. Vibha Kumari W/o Santosh Kumar Singh, Resident of Rajpur Colony, Karamganj, Laheriasarai, P.S. Laheriasarai, Distt. Darbhanga At Present R/o Village Chandharpur, P.O. Muktapur, Distt. Samastipur.

.... Respondents

=====

Appearance :

For the Appellant : Mr. Arbind Kumar Jha, Advocate
For the Respondent BSFC: Mr. Partha Sarthy, Advocate
Mr. Utsav Kumar, Advocate

=====

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 16-03-2017

Heard counsel for the appellant and counsel for the Bihar State Financial Corporation.

The Court has gone through the order of the learned single Judge dated 05.01.2015 passed in C.W.J.C. No. 18986 of 2010. The writ application of the petitioner was dismissed by the learned single Judge refusing to interfere with the decision of the Corporation, which has rejected the so-called matching offer made



by the appellant with regard to the auction of the property in question, which was auctioned because of the default in payment of the outstanding dues and loans.

An opportunity was given to the appellant to approach the Corporation and the Corporation, after considering the entirety of the outstanding loan, i.e. the defaults and the outstanding dues, decided to reject the same because the offer of the petitioner was just for the sake of an offer not with the object of meeting the obligation created under the default which has been admittedly committed by the appellant over a long period of time.

The learned single Judge has considered the matter and concluded in the following terms: -

“9. The vagueness in the representation of the petitioner dated 23.9.2009 being writ large on the face of record, the Deputy Manager of the Corporation later on on 7.10.2009 had given an additional opportunity to the petitioner to submit his plan for payment of balance amount and, to that extent, it would be again relevant to reproduce the aforesaid letter of the Corporation dated 7.10.2009 vide Annexure-D to the counter affidavit which reads as follows:-

"To,

*Shri Sunil Kumar Singh,
Prop. M/s India Food Preservation Industries,
Atit Building, 2nd Floor
Sabita Sadan
Abul Aas Lane,
Machhua Toli,*



Patna-800004

Dear Sir,

Re:- CWJC No. 11802/09

*M/s India Food Preservation Industries,
Samastipur Vs. BSFC*

*With reference to the subject noted above and also in
reference to your letter dated 23.9.09, you have shown
your willingness to pay Rs. 7,15,000/-*

*As per direction of Hon'ble High Court you have to pay the
proposed amount alongwith matching amount as per terms
of sale order and plan for payment of Balance amount so
that necessary steps may be taken for disposal of your
application.*

*Yours faithfully
Sd./-
(A.K. Sinha)
Dy. Manager I/C (Z-II)*

Memo No. 171/ZII/09-10 dated 07.10.2009

*Copy forwarded to Branch Manager, BSFC,
Mithila Branch for information and necessary action.*

*Sd./-
7.10.09
(A.K. Sinha)
Dy. Manager I/C (Z-II)"*

10. It is an admitted fact that this letter dated 7.10.2009 despite being received by the petitioner was not answered. In other words, the petitioner did not show its inclination to pay any amount beyond Rs. 7,15,000/-. 11. A promoter whose property is put on auction does not absolve itself of its own liability of repayment of loan only on account of receipt of auction amount by the Corporation. To that extent, the Corporation had two options, firstly to put the



mortgaged asset on sale and realize whatever amount is recovered as well as also take steps for realization of rest of the amount from the original promoter. In the present case, therefore, whatever amount was offered by the respondent no.4 i.e. Rs. 6,51,000/- being the highest offer could have only reduced the liability of the petitioner from its balance outstanding but, then, if the petitioner truly wanted to retain its mortgaged asset, it had to also give its plan of action for repayment of entire balance outstanding as it was existing on 31.3.2008. This Court has been informed that the balance outstanding of the petitioner as on 31.3.2008 was 197.24 lacs and, therefore, the offer of the petitioner could not have been accepted only on his offer of tendering of payment of Rs. 7.15 lacs. 12. This Court, therefore, does not find any error in the impugned order rejecting the representation of the petitioner which is based on a resolution of the Corporation, and reads as follows:-

"Minutes of the 1st meeting (2010-11) of the Board of Directors of the Corporation held on 23.6.2010

Item No. 14251/14247 Re: Representation of Shri Sunil Kumar Singh S/o Late Amrendra Pd. Singh, Prop. of M/s India Food reservation Industries, At Dhobguma, P.S. Kalyanpur, Samastipur.

The Board of Directors perused the order of the Hon'ble High Court passed in CWJC No. 11802 of 2009, and decided to reject the representation of the original promoter since their representation did not contain the



repayment plan for the balance amount due against the unit, as per direction of the Hon'ble High Court. Request of the purchaser, who made full payment of the sale consideration amount, for early completion of legal formalities of sale was accepted.

*Sd./-
29.6.10
Manager (Co-ordination)
Bihar State Financial Corporation
Frazer Road, Patna-1"*

13. The submission of Mr. Srivastava that such sale by the Corporation of the mortgaged asset of the petitioner in favour of respondent no.4 was contrary to the provision of law, inasmuch as, the Corporation did not make true efforts to recover the best price has to be also only noted for its being rejected. Firstly, this Court now cannot allow the petitioner to raise anything as with regard to correctness of the sale order which was earlier challenged by the petitioner itself and was not interfered by this Court on any ground whatsoever. Merely because after disposal of its first writ application, a judgment has been delivered on 28.9.2010 in the case of M/s Shyam Cold Storage (supra) will not change the law. It has to be kept in mind that the sale order having been challenged by the petitioner on each and every ground in its earlier writ application when it was not interfered by this Court, the petitioner will be bound by the principle of *res-judicata* and constructive *res-judicata*. The petitioner, therefore, indirectly cannot question the correctness of the sale order in favour of the respondent no.4. As a matter of fact, such a situation was not prevailing in



the case of M/s Shyam Cold Storage (supra) which had not filed any writ application challenging the sale order. In the case of Ms/ Shyam Cold Storage (supra), the facts were in fact otherwise, inasmuch as, the offer given for retaining the unit was itself accepted but even then the Corporation had sold the property without making proper valuation.”

The rationale and the reasoning provided by the learned single Judge refusing to interfere with the order of rejection, therefore, are cogent and valid reasons.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.03.2017
Transmission Date	N/A

