

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5043 of 2010

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M/s Grihastha Cold Storage Pvt Ltd., G.T. Road, Pusauli, P.S -Kudra District -Kaimur (Bhabhua) Bihar, through its Managing Director, Sachchidanand Singh, son of Late Banshidhar Singh, resident of Village Rampur, P.S- Sonhan, District - Kaimur (Bhabhua)

... .. Petitioner

Versus

1. The State of Bihar.
2. The Bihar State Credit & Investment Corporation Ltd. Indira Bhawan, 4th Floor, R.C. Singh Path, Patna through its Managing Director.
3. The Managing Director, the Bihar State Credit and Investment Corporation Ltd., Patna
4. The Assistant Manager (Accounts), the Bihar State Credit and Investment Corporation Ltd., Patna
5. The Dy. Manager (Rec & Administration), the Bihar State Credit & Investment Corporation Ltd., Patna
6. The Director (Industries), Department of Industries, Govt. of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Hemendra Prasad Singh, Sr. Advocate Mr. Jai Prakash Singh Mrs. Arti Kumari Mrs. Usha Rai Mr. Hitesh Suman, Advocates.
For the BICICO	:	Mr. Nirmal Kumar Mr. Lokesh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 22-11-2018

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

2. The present writ petition has been filed for the
following reliefs -

“(a) For issuance of an appropriate writ and/or writs
in the nature of mandamus commanding upon the
respondent Bihar State Credit & Investment
Corporation Ltd. (BICICO) to give benefit of OTS-2009
in terms of calculation made by the petitioner company



based on net disbursement of terms loan amount which comes to Rs. 77.00 lakh only and not Rs. 90.00 lakh.

(b) For a direction upon the respondent to charge interest at the rate of 12% + 1% as PLR which is the rate of interest on which SIDIBI financed loan to the BICICO.

(c) For a direction upon the respondent to adjust amount of subsidy released by National Horticulture Board (NHB) towards in favour of company's reserve account which was directly received by BICICO so as to calculate interest after deducting subsidy amount to the tune of Rs. 38.16 lakh.

(d) For a direction upon the respondent to extend time for a period of five years for repayment of amount settled under OTS Scheme 2009 after recalculation on the net disbursement of loan to the company.

(e) For issuance of writ of certiorari to quash the letter dated 24.02.2010 issued under the signature of Assistant Manager (Accounts), respondent no. 4 whereby and whereunder a time limit has been arbitrarily fixed to pay balance amount under OTS Scheme 2009 by 31.03.2010.

(f) For any other relief or reliefs to which the petitioner company is found entitled to."

3. The short facts of the case according to the petitioner are that it was incorporated in the year 1997 and for the purposes of setting up a cold storage with ice plant, it was sanctioned a term loan of Rs.85.00 lakhs @ 18% interest with half yearly rests by



BICICO and a letter of intent was issued in favour of the petitioner on 29.04.1998. The said term loan was revised to Rs. 90.00 lakhs subsequently. The said amount of loan was disbursed to the petitioner in stages with the final instalment of Rs. 43,66,000/- given on 31.01.2002. An amount of Rs. 38.16 lakhs (Rs. 20.66 lakhs + Rs. 17.50 lakhs on 25.03.2002 and 31.03.2004 respectively) was also sanctioned by the National Horticulture Board (for short, 'the NHB') as Back End Capital Investment Subsidy to the petitioner, which was to be credited to BICICO in a separate account. Subsequently, One Time Settlement Scheme-2009 (for short, 'the OTS-2009') was floated by BICICO and as required thereunder, the petitioner made payment of Rs. 10 lakhs by way of 10% of the Principal Outstanding (for short, 'POS') as minimum subscription against the settlement amount of Rs. 99.80 lakhs, with Rs. 89.80 lakhs remaining payable under the OTS-2009.

4. Learned Senior counsel Mr. Hemendra Prasad Singh appearing on behalf of the petitioner submits that the petitioner duly satisfied the terms and conditions of the OTS-2009 and was entitled to the benefits thereunder. It is stated that as on the cut-off date namely 30.06.2009 for purposes of calculation of the POS, the amount of 10 lakhs by way of 10% out of the total settlement amount of Rs. 99.80 lakhs was duly deposited within time. The total payments through Bank account as on the next cut-off date namely 30.09.2009 within which the remaining amount as per OTS-2009



was required to be paid, came to over Rs. One Crore Twelve Lakhs as follows -

1.	Rs. 13,00,000/-	by way of deduction on 30.01.2002 against interest.
2.	Rs. 50,98,500/-	through Demand Drafts variously from 26.07.2002 to 17.11.2008.
3.	Rs. 38,16,000/-	total subsidy amount credited on 31.03.2002 and 01.06.2004.
	Sub Total: Rs. 1,02,14,500/-	(Annexure-7) (Page-54)
4.	Rs. 10,00,000/-	by way of minimum subscription for OTS-2009 paid on 26.08.2009 (Page-62)
	Grand Total- Rs. 1,12,14,500/-	

5. It is submitted that rather than grant the benefit of OTS-2009, the respondents have arbitrarily charged exorbitant interest of Rs. 135.88 lakhs as on 30.06.2009 and have required the petitioner to make payment of the dues together with up-to-date interest.

6. Mr. Nirmal Kumar, learned counsel for the respondent-BICICO appears and opposes the writ petition. It is pointed out that the petitioner failed to make payment of the entire settlement amount of Rs. 99.80 lakhs within the due date namely 30.09.2009 and in view of such default the benefit of OTS-2009 was not available to it. No fault can therefore be found in requiring the petitioner to make payment of the remaining amount of dues together with up-to-date interest treating the term loan in the normal course, shorn of the benefits of the OTS-2009. It is stated that the total payment out of the settlement amount of Rs. 99.80



lakhs fell short and the petitioner only made payments to the following extent -

1.	Rs. 13,00,000/-	by adjustment on 31.01.2002.
2.	Rs. 50,65,051/-	variously by Bank from 31.01.2004 to 17.11.2008.
3.	Rs. 10,00,000/-	towards minimum subscription under OTS-2009 on 28.08.2009.
	Grand Total Payment- Rs. 73,65,051/-	(Page-119)

7. Learned counsel for the BICICO invites reference to the OTS-2009 (page-88) and in particular the definition of POS as given in Clause 2 (b) thereof as follows -

“POS : Principal Out Standing : POS will be worked out considering after all payments as received/adjusted/forfeited as on 30/06/2009. Subsidy amount will not be considered as payment towards OTS-2009 (Term Loan) while working out POS.”

8. Similarly, he refers to the following provisions of the said OTS-2009 -

“THE SCHEME
OTS-2009 (Term Loan settlement amount)

In all such cases fulfilling eligible criteria as per OTS-2009 (Term Loan) as laid down at 1 a)/b)/c) above, the OTS-2009 (Term Loan) settlement amount shall be the POS as on 30/6/2009 plus a one time concessional rate of interest at 10% of POS. Other Charges for legal cases, advertisement etc as prescribed by BICICO time to time will also be payable with the above OTS settlement amount.



Settlement below POS will not be considered. Subsidy amount will not be considered as payment towards OTS-2009 (Term Loan) while working out POS as on 30/6/2009. NO REFUND IN ANY CASE SHALL BE ALLOWED UNDER OTS-2009 (Term Loan).”

9. It is therefore submitted that it has been expressly provided that subsidy amount shall not be considered for the purposes of OTS-2009. In other words, the amount of subsidy of Rs. 38.16 lakhs sought to be adjusted by the petitioner to bring up the total payment to cover the entire settlement amount of Rs. 99.80 lakhs, is on the face of it untenable as it is only the payments made by the petitioner but excluding subsidy that requires to be considered for considering the total payments made in satisfaction of the settlement amount.

10. Having heard the parties and on consideration of the materials on record, I find merit in the writ petition. It is not in dispute that the petitioner applied for the OTS-2009 and upon demand by the respondent-BICICO, the minimum subscription of 10% amounting to Rs. 10 lakhs was duly paid by the petitioner in order to participate in OTS-2009. The core dispute between the parties is limited to the question whether or not the petitioner was entitled to be granted the benefit of the subsidy amount of Rs. 38.16 lakhs to be adjusted by way of payment towards the OTS-2009 for the purposes of determining whether the entire settlement amount



was paid within the cut-off date of 30.09.2009 in accordance with the OTS-2009. I am of the view that the submission of the respondent-BICICO proceeds on a misreading of the OTS-2009 (Page-88). The definition of POS relied upon by BICICO to submit that subsidy amount was not to be considered for purposes of OTS-2009 is clearly misconceived. A bare perusal of the definition of POS in Clause 2(b) referred to by BICICO makes it clear that the subsidy amount was to be excluded only for purposes of working out POS. This is clear also from the subsequent provision which reiterates that subsidy amount will not be considered as payment towards OTS-2009 (Term Loan) while working out POS as on 30.06.2009. Nothing has been pointed out from the OTS-2009 to show that subsidy amount was to be excluded entirely and for all purposes while reckoning the payments made by the petitioner. As a matter of fact the respondent-BICICO on being required by this Court to give a proper calculation of the payments made by the petitioner, has enclosed a chart comprising Annexure-C of the second supplementary counter affidavit, according to which it is admitted that the total payment made by the petitioner stood of Rs. 112.11 lakhs which includes Rs. 38.16 lakhs by way of subsidy.

11. Having regard to the Scheme of OTS-2009 and particularly that the subsidy amount is required to be excluded only while working out POS and not for all purposes thereof, I am therefore of the view that the total payments made by the petitioner



would include adjustment by way of subsidy amount of Rs. 38.16 lakhs, which adequately covered the required amount of Rs. 99.80 lakhs by way of settlement amount under the OTS-2009 and the benefits thereof had to be granted to the petitioner.

12. The writ petition is disposed of with a direction to the respondent-BICICO to proceed in the matter in the light of the observations and directions hereinabove and after granting the benefit of OTS-2009 to the petitioner.

(Vikash Jain, J)

lbrar/BT

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	29.11.2018
Transmission Date	N.A.

