IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10230 of 2011

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M/s Maurya Jute Industries Pvt. Ltd. a company incorporated under the Companies Act, 1956 having its Registered office situated at Mo-Mathuraia, P.O & P.S.- Biharsharif, Distt.- Nalanda through one of its Directors Banarashi Prasad S/O Late Dhanik Sahu R/O Mohalla- Mathuraia, P.O. & P.S.- Biharsharif, Distt.- Nalanda

.... Petitioner

Versus

1. The Bihar State Credit & Investment Corporation Ltd, having office its Office situated at Indira Bhawan 4th Floor, Ram Charitra Singh Path, Patna 8000001 through its Managing Director.
2. The Managing Director, Bihar State Credit And Investment Corporation Ltd, Indira Bhavan, 4th Floor, Ram Charitra Singh Path, Patna- 800001
3. The State Of Bihar Thru The Principal Secretary-Cum-Commissioner Department Of Industries, Govt., Of Bihar, New Secretariat, Patna
4. The Director Of Industries, Department of Industries Govt., of Bihar, New Secretariat, Patna
5. The District Magistrate, Nalanda, Biharsharif

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Alok Agrawal, Advocate
For the BICICO	:	Mr. Alok Ranjan Mr. Nirmal Kumar, Advocates.
For the Respondents	:	Mr. Krishna Kumar Singh, AC to GP-22

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 18-07-2018

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

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

"(i) For issuance of a writ in the nature of certiorari for quashing of the notice of demand issued under Sections 29 and 30 of the State Financial Corporation Act, 1951 (hereinafter to be referred as 'the Act') whereby the petitioner has been called upon to deposit with the respondent no. 1 a sum of Rs. 1406.45 lacs within a period

of 21 days from the date of issuance of said notice dated 17.05.2011 bearing Reference No. Legal/177 failing which the assets of the petitioner under mortgage lying as security with the respondent-the Bihar State Credit and Investment Corporation Limited (hereinafter to be referred as 'the BICICO') would be sold in terms of the provisions of the Act;

(ii) For issuance of a writ in the nature of certiorari for quashing of the notice published by the respondent in the newspaper on 10.06.2011 whereby auction sale of the assets mortgaged by the petitioner has been put for auction sale on 30.06.2011 in order to realize the outstanding dues against the loan in spite of pendency of Title Suit No. 65 of 2002 before the Civil Court, Nalanda to the best of the knowledge of the petitioner;

(iii) For issuance of a writ in the nature of Mandamus directing the respondents especially respondent BICICO and its authorities to provide an opportunity to the petitioner to pay the Principal outstanding of the loan extended to the petitioner by allowing the petitioner to sale the movable assets under mortgage through its own resources and after arranging a potential buyer in presence of the respondent BICICO;

(iv) For issuance of a writ in the nature of Mandamus directing the respondent BICICO and its authorities to waive the entire interest having mounted over the principal amount of money disbursed to the petitioner initially but on account of none disbursement of entire sanctioned amount, the petitioner having suffered huge and irreparable loss attracting its entitlement to compensation;

(v) For issuance of writ in the nature of Mandamus

directing the respondent BICICO and its authorities to await the final judgment of Title Suit No. 65/02 wherein the respondent BICICO has already appeared and the prayer of the petitioner is principally with respect to claim of compensation to the tune of Rs. 2 crores against the Respondents on account of non disbursement of the entire loan sanctioned by the said Respondent for proper operation of the Industries by the petitioner;

(vi) For issuance of a writ in the nature of Mandamus directing the Respondent BICICO and its authorities to co-operate the petitioner in repayment of the principal amount of loan borrowed by the petitioner by effecting sale of part or the whole of the mortgaged assets by arranging a potential buyer from its own ends and the sale of the assets at reasonable and prevailing open market, price; and for any other relief(s) for which the petitioner may legally be found entitled to in the facts and circumstances of the present case."

3. Learned counsel for the petitioner submits that the impugned notice dated 17.05.2011 granting time of 21 days to discharge in full the entire liability to the extent of Rs. 1,406.45 lacs under threat of auction sale of the mortgaged property is wholly arbitrary and liable to be quashed. It is submitted that admittedly the BICICO was required to disburse a term loan of Rs. 70 lacs in terms of the sanctioned letter dated 07.01.1992 (Annexure-1), which however was not done and the petitioner was ultimately disbursed only a total amount of Rs. 45,59,794/-. The promoters escalated their investment beyond the requirement of 24 lacs to somehow keep the project viable

and managed to bring the unit into running condition. It is submitted that by reason of failure of the BICICO to disburse the full extent of the term loan of Rs. 70 lacs, the other agencies namely, the Allahabad Bank did not also grant the loan of Rs. 9.30 lacs nor the State Government also made the subsidy of Rs. 14 lacs available. The various inspection reports dated 17.08.1994, 23.07.1994 and 10.04.1996 found nothing adverse against the petitioner. It is submitted that in view of the failure of the respondent BICICO to provide the entire amount of the term loan, while at the same time charging exorbitant interest which has mounted to Rs. 1,350.66 lacs, the petitioner's unit has been forced to close down.

4. Learned counsel for the respondent BICICO, on the other hand, opposes the writ petition, primarily submitting that from the prayer made in the writ petition, it is evident that the petitioner has mainly sought a direction to the respondent BICICO to grant the petitioner an opportunity to pay the principal outstanding of the loan by allowing the petitioner to sell the movable assets under mortgage by arranging a potential buyer, and to waive the entire interest charged by BICICO. It is pointed out that the issue of non-disbursement of loan by BICICO is already the subject matter of Title suit No. 65 of 2002 pending before the Civil Court, Nalanda. In any event it is pointed out that the entire amount of the term loan could not be disbursed to the petitioner as the same was not availed and the conditions enumerated

in the sanction letter dated 07.01.1992 (Annexure-1) were not fulfilled. A specific stand has been taken in paragraphs 6 to 9 of the counter affidavit that the petitioner did not fulfill the terms and conditions for disbursement of the entire term loan, such as sanction of working capital, electric power, etc. He has referred to letter dated 27.05.1994 (Annexure-C to the counter affidavit) issued by BICICO which showed that the IDBI had considered to extend the validity period of sanction of refinance only upto 30.06.1994, and this was another breach of the terms and conditions for disbursement of the balance term loan.

5. Having heard the parties and on a consideration of materials on record, this Court is not inclined to interfere in the matter. It is the petitioner's own stand that the issue of non-disbursement of the full amount of a term loan by BICICO is pending in Title Suit No. 65 of 2002 before the Civil Court, Nalanda in which the petitioner has claimed compensation of Rs. 2 crores. Even otherwise, the stand of the respondent BICICO that the petitioner did not fulfill the terms and conditions subject to which the term loan had been sanctioned has not been satisfactorily controverted, except with a vague statement raising counter allegations against the BICICO as stated in paras 16 and 18 of the petitioner's rejoinder. The respondents have also stated that the petitioner never sought to avail the benefit of various OTS Schemes such as OTS-2002, OTS-2004, OTS-2006 and OTS-2009, the last of which remained operational till 31.03.2011, despite persuasion to do

so. This aspect of the matter has also not been denied in para 15 of the petitioner's rejoinder.

6. As regards the prayer for being permitted to sell the moveable assets under mortgage through the petitioner's resources, the respondent BICICO has no objection in publishing a fresh auction notice to enable the petitioner to bring forward any potential purchasers to participate in the auction sale to be held pursuant to such fresh auction notice.

7. The writ petition accordingly stands dismissed with the above observations.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.07.2018
Transmission Date	N.A.