IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23636 of 2013

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M/s Mukesh Raj Re-Rolling Mills Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office situated at P.O, P.S & Town & District- Khagaria, through one of its Directors, Mukesh Kumar S/O Shri Manohar Prasad, Resident of Thana Road, P.O, P.S & Town & District- Khagaria.

... ... Petitioner

Versus

1. The Bihar State Credit & Investment Corporation. Ltd. Patna, Indira Bhawan, 4th Floor, Ram Chatritra Singh Path, Patna- 80000, through its Managing Director.
2. The Managing Director, BICICO, Indira Bhawan, 4th Floor, Ram Charitra Singh, Path, Patna- 800001.

.. ... Respondents

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Appearance :

For the Petitioner	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Alok Kr. Agrawal, Mrs. Priya Gupta, Mr. Mohit Agrawal, Advocates
For Respondent-BICICO:		Mr. Nirmal Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date : 11-12-2018

The present writ petition has been filed for the following reliefs –

> *"(i) For a direction to the Respondents to accept the One Time Settlement proposal of the Petitioner and to accept the payment made by the Petitioner under the One Time Settlement 2013 Scheme;*
>
> *(ii) For a direction to the Respondents to give credit of the amount of Rs. 26.50 lacs which was deposited by the Petitioner as an adhoc payment under the order of this Hon'ble Court in Cr. Misc. N. 31457/2006, in view of observation and direction of the Hon'ble Court in that petition;*
>
> *(iii) For a direction to grant No Dues Certificate after the deposit of entire amount of OTS upon giving due*

credit of Rs. 26.50 lacs which is lying with the Respondents, and not to levy other charges etc. and/or for any other relief(s) for which the Petitioner may be found entitled to in the facts and circumstances of the present case."

2. The short facts of the case according to the petitioner are that it set up a Rolling Mill in the year 1995 with Rs. 55.00 lacs as promoter contribution and Rs. 70.00 lacs sanctioned by way of term loan from the respondent-Bihar State Credit & Investment Corporation Limited (hereinafter for short, "BICICO"). Subsequently, the UCO Bank declined to sanction and disburse the working capital which thus created a major impediment for the petitioner. However, production was carried out in the Unit for two years up to 1998 but soon had to be suspended from 28.10.1998. Despite every effort, the petitioner-unit could not sustain itself and was declared sick in terms of the minutes of the meeting of the Apex Committee held on 11.10.2004 as communicated to the petitioner in terms of the letter of the Small Industries Service Institute, Government of India dated 23.12.2004 (Annexure-3). In view of One Time Settlement Scheme, 2004 ("the OTS-2004" for short) having been announced in 2004, the petitioner approached the BICICO by letter dated 07.12.2004 for settlement of the dues which was responded to by BICICO in terms of the letter dated

07.12.2004 (Annexure-5) informing that tentatively an amount of Rs. 81,72,000/- plus surcharge was payable under OTS-2004 and sought supporting documents from the petitioner for the purpose. It appears however that at the same time, BICICO lodged an FIR on 11.12.2004 for recovery of the term loan, alleging that the petitioner was trying to dismantle and dispose of the plant and machinery, thus committing the offences of breach of trust and cheating. Soon thereafter, further action was taken by the BICICO by filing Complaint Case No. 57(M)/2004 on 31.12.2004 under various sections of the Indian Penal Code and the Arms Act. Apprehending arrest in view of the FIR having been instituted as Khagaria P.S. Case No. 539 of 2004, the Director of the petitioner-company moved this Court in Cr. Misc. No. 31457 of 2006 for quashing the order taking cognizance dated 07.06.2006, in course of which this Court made observations and issued directions, including for payment of certain amounts by the petitioner for claiming benefits of OTS-2004 under the sick category. The OTS Scheme was however not made available by BICICO. In due course, the petitioner applied for grant of benefit of One Time Settlement (OTS), 2013 (Term Loan) Scheme (for short, "the OTS-2013") and made requisite payments thereunder, except to the extent of Rs. 26.50 lacs which had already been deposited by the petitioner pursuant to the direction of this Court in Cr. Misc. No. 31457 of 2006 referred to above. The respondent-BICICO however has not finally settled the claim of the petitioner under OTS-2013 till date.

3. Mr. S. D. Sanjay, learned senior counsel appearing on behalf of the petitioner, submits that the respondents have acted arbitrarily in not allowing the petitioner to settle its claim under the OTS-2013 on the pretext that the amount of Rs. 26.50 lacs which had been paid around the year 2004 could not be adjusted against OTS-2013. It is submitted that the petitioner had in fact completed all the necessary formalities for grant of benefit of the OTS-2004, but BICICO had failed to grant the benefits thereof. Reference is invited to various orders of this Court passed in Cr. Misc. No. 31457 of 2006. By order dated 19.11.2008 it was clearly directed that the amount of Rs. 26.50 lacs which had been paid by the petitioner to BICICO shall be computed and adjusted towards total dues of the petitioner in the account so fixed for One Time Settlement Scheme and the petitioner would file its application for OTS under sick category which BICICO would consider and pass a reasoned order within a time frame of 30 days of its receipt. By the next order dated 04.03.2009, this Court took note of various documents by which the petitioner had sought to establish that it

had been declared as a sick unit and the petitioner's claim of having already furnished sickness certificate to BICICO pursuant to the requisition dated 21.01.2009.

4. It has further been submitted that despite the direction of this Court to BICICO for taking a positive decision with regard to the claim of the petitioner for OTS-2004, BICICO offered no further response. Taking note of the payment of Rs. 26.50 lacs as made by the petitioner under the orders of this Court to enable the petitioner to claim the benefit of OTS-2004, this Court, by its order dated 06.05.2009, quashed the order taking cognizance dated 07.06.2006 against the Directors of the petitioner-company upon finding the dispute between the parties relating to recovery of term loan to be out and out a civil dispute.

5. Reference has been invited to the petitioner's offer to participate in OTS-2013 for settling its dues with the BICICO, for which purpose an amount of Rs. 21,75,000/- was deposited by way of 15% of the tentative amount under OTS-2013 in terms of the letter dated 14.11.2013 (Annexure-10). The respondent-BICICO by letter dated 19.11.2013 (Annexure-11) acknowledged receipt of 15% of the subscription amount and required payment of the residual tentative OTS amount by 31.12.2013. Accordingly, the petitioner made payment of the balance amount from time to time

aggregating to Rs. 91.75 lacs (Rs. 60 lacs + Rs. 31.75 lacs). It is stated that the amount of Rs. 25.00 lacs was kept in the respondent's suspense account which had been paid under the orders of this Court apart from another amount of Rs. 1.5 lacs deposited to the BICICO. The petitioner is also not liable to pay the other charges as it was not responsible for non-finalization of OTS-2004 as claimed by the petitioner. Accordingly, the petitioner is entitled to credit for the following amounts towards OTS-2013 –

Serial No.	Date	Amount	Annexures
1	13.11.2013	Rs. 21,75,000/-	Annexure-10 series Page 49
2	02.12.2013	Rs. 60,00,000/-	Annexure-12 series Page 56
3	09.12.2013	Rs. 31,75,000/-	Annexure-13 series Page 61
4	Vide order dated 06.05.2009 passed in Cr. Misc. 31457 of 2006	Rs. 25,00,000/-	Annexure-7 series Page 42
5.	Details not available	Rs. 1,50,000	Para 9 of the writ petition
	Grand Total	**Rs. 1,40,00,000**	

6. Learned counsel for the respondent-BICICO resists the writ petition, submitting that no fault can be found in the action of the respondents. Reference is invited to paragraph 23 of the counter affidavit wherein it has been stated, *inter alia*, that the

petitioner had filed its application for OTS-2004 under sick category, as follows —

> *".... due to non-fulfillment of documentary and other requirements there remained a dispute over category i.e. general or sick and the proposal of the petitioner was not found tenable under OTS 2004 and the amount deposited to the tune of Rs. 25 Lac was adjusted against normal dues. In fact the entire amount communicated to the petitioner was also not offered or paid to BICICO under OTS 2004 and therefore, the petitioner was treated as unsuccessful subscriber of OTS 2004."*

7. Learned counsel for the respondent-BICICO then invites reference to Clause 10(b) of the OTS-2013 and submits that inasmuch as the petitioner did not fulfill the requisite conditions of OTS-2004 and failed to furnish the certificate of sickness, the amount of Rs. 26.50 lacs paid by it was adjusted against normal dues of BICICO, as also legal and miscellaneous expenses and interest calculated as per OTS-2013.

8. Having heard learned counsel for the parties and on careful consideration of the materials record, I find force in the submissions of learned senior counsel for the petitioner. The broad facts of the case are undisputed and the only bone of contention between the parties is whether the amount of Rs. 26.50 lacs paid by the petitioner under the orders of this Court to enable making a claim of settlement of OTS-2004 is eligible for credit towards OTS-2013. It is a fact borne out from the record that the petitioner

deposited the amount of Rs. 26.50 lacs in view of various orders of this Court passed in Cr. Misc. No. 31457 of 2006 for the purpose of claiming benefit of OTS-2004. It is also borne out from the order of this Court dated 04.03.2009 that the petitioner claimed to have furnished the certificate of sickness to BICICO and sought to establish its claim in that regard with reference to the minutes of the meeting of the State Level Committee dated 11.10.2004 as per communication of the Government of India. In this regard BICICO had sought time to take a positive decision for extending the benefit of OTS-2004 to the petitioner, but no further action was taken by the BICICO. In other words, BICICO not only retained the money paid by the petitioner but slept over the matter without taking a positive decision one way or the other. It did not also dispute the petitioner's claim of having been furnished various documents including the certificate of sickness. Even now, it has not taken the stand in the counter affidavit that the petitioner failed to furnish documents by reason of which the benefit of OTS-2004 was not extended to the petitioner.

9. I am unable to appreciate the stand of the respondent-BICICO. It is apparent that BICICO is taking advantage of its own fault. Instead of taking a decision with regard to OTS-2004, it has simply proceeded to appropriate the payment made by the

petitioner against normal dues against the term loan. In my view, reliance placed on Clause 10(b) of the OTS-2013 does not come to the aid of the BICICO inasmuch as the same contemplates such payments as are made under an earlier OTS to be treated as normal payments. Admittedly in the present case, the petitioner had not been extended the benefit of OTS-2004 even though the payment had been made by the petitioner specifically for the purpose of OTS-2004 in the light of the order of this Court dated 19.11.2008, observing as follows –

> *"... The sum of Rs.20,00000/- (twenty lacs) which has been paid by the petitioners to BICICO, pursuant to the interim order passed in this case shall however be computed and adjusted towards total dues of the petitioners in the amount so fixed for one time settlement scheme with the petitioners."*

10. The respondent-BICICO has thus clearly failed to appreciate the spirit and purpose of the payments being made by the petitioner under various orders of this Court.

11. In the above circumstances, I direct that BICICO shall grant credit of the amount of Rs. 26.50 lacs admittedly paid by the petitioner, and adjust the same towards payment under the OTS-2013 and re-compute the dues thereunder accordingly. If the petitioner is found to have satisfied the entire dues, a No Dues

Certificate shall be issued to the petitioner forthwith. It is made clear that if any amount remains payable as relatable to legal dues, advertisement charges and other similar charges and interest etc., the petitioner shall be at liberty to represent before the respondent-BICICO in that behalf which shall be considered and disposed of in accordance with law.

11. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

BT/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	**05.01.2019**
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