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(2006) 07 JH CK 0001

In the Jharkhand High Court

Case No : WPC No''s. 1129 of 2005 and 866 of 2006

Ankit Enterprises and Adarsh Paper Board Co. (Pvt.) Ltd. APPELLANT

Vs

Bihar State Credit and Investment Corporation Ltd. and Others RESPONDENT

Date of Decision : 03-07-2006

Acts Referred:
State Financial Corporations Act, 1951 — Section 29

Citation : (2006) 4 JCR 203

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Kalyan Roy, R.M. Singh, B. Singh, N.K.P. Sinha and S.L. Agrawal, for the Appellant; A.K. Das and D. Jerath, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard Mr. Kalyan Roy, learned Counsel for the petitioner and Mr. A.K. Das, learned Counsel for the Bihar State Credit and Investment Corporation Ltd. I have also heard Mr. Delip Jerath, learned Counsel for the private respondent.

2. In these writ petitions, since common question of law and facts are involved, they have been heard and disposed of by this common order

3. In WPC No. 866 of 2006 the petitioner M/s Ankit Enterprises has challenged the order 31.10.2005 passed by respondent No. 2 Managing Director, Bihar State Credit and Investment Corporation Ltd. (in short BICICO), Patna whereby auction sale of assets of M/s Adarsh Paper Board Industries Pvt. Ltd. Jamshedpur in favour of the petitioner has been cancelled and the petitioner was directed to handover possession of the assets of the said company.

4. In WPC No. 1129 of 2005 the petitioner M/s Adarsh Paper Board Company (P) Ltd has challenged the order of auction made in favour of M/s Ankit Enterprises

5. The facts of the case lie in a narrow compass:

The petitioner M/s Adarsh Paper Board Industries Pvt. Ltd. was granted loan by the respondent-BICICO. On account of default in payment of loan respondent-BICICO proceeded u/s 29 of the State Financial Corporation Act and auction sale notice was published in the daily newspaper dated 28.12.2004. Pursuant to the aforesaid notice, petitioner submitted his tender quoting the price of assets of the company at Rs. 10.1 lacs. After negotiation the deal with the petitioner was finalized at Rs. 11 lacs and the same was communicated to the petitioner vide letter-dated 4.2.2005. Pursuant to the terms and conditions, petitioner deposited 50% of the bid amount at Rs. 5.5 lacs and also issued post-dated cheque for the remaining amount. Petitioner was handover possession of the assets of the company from 8.2.2005. Petitioner M/s Ankit Enterprises alleged to have constructed the boundary wall and also an office building and staff quarter. However, all of a sudden petitioner received the impugned order containing memo dated 31.10.2005 whereby the Managing Director cancelled the sale of assets of the company and asked the petitioner to hand over the possession of the assets within fifteen days. Petitioner''s case is that after handing over the assets of the company, petitioner invested sufficient fund to purchase machineries and construction of office and staff quarters. The auction done by respondent No. 2 is, therefore, illegal and wholly arbitrary

6. Respondent-BICICO in their counter affidavit has stated that the auction sale in favour of the petitioner was subject to final approval by the Board of Directors of BICICO. The proposal of sale of the Unit was placed before the Board of Directors in the meeting dated 5.9.2005 and the Board disapproved the sale. Petitioner was duly informed about the decision of the Board of Directors. It is stated that petitioner duty bound to wait for the decision of the Board of Directors of the Corporation before constructing boundary wall etc. During the pendency of the writ application an intervention application was filed by M/s Everest Electrical Engineering Company Limited with a prayer to implead him as party respondent. It was contended in the application that respondent No. 1 BICICO published auction sale notice dated 24.1.2006 putting the assets of the said company for auction sale and the intervener offered to purchase the said unit for a total consideration of Rs. 39 lacs. The BICICO informed the intervenor about tentative offer for purchase of M/s Adarsh Paper Board Industries and for which the intervenor deposited earnest amount of Rs. 19 lacs vide cheque No. 828149 dated 1.2.2006.

7. Heard learned Counsel for the parties.

8. The only question that falls for consideration is as to whether auction sale of the assets of the Unit in favour of the petitioner at a price of Rs. 11 lacs was final and binding on the respondent-BICICO. In this regard, I would like to refer the acceptance of offer made by the respondent for purchase of unit at Rs. 11 lacs. The said letter of acceptance was issued by the BICICO on 4.2.2005 and the same has been annexed by the petitioner as Annexure-1 to the writ application. In the said letter of acceptance, it is very categorically mentioned that the sale of

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the mortgaged assets of the company at a price of Rs. 11 lacs has been accepted. This acceptance was subject to the final approval of sale by the Board of Directors of BICICO and such other conditions that may be imposed by the Board of Directors of BICICO.

9 It appears that after issuance of letter of acceptance in favour of the petitioner the matter was placed before the Board of Directors of BICICO for its consideration. It was found by the Board of Directors that valuation of assets of the Company assessed by Government approved valuer was Rs. 38.94 lacs while the sale was for Rs. 11 lacs only and the Managing Director of BICICO therefore disapproved the sale. Besides the above, it is also contended that when the unit was re-auctioned, the prospective purchaser offered Rs. 39 lacs for purchase of the Unit. In my opinion, therefore, the tentative auction sale in favour of the petitioner which was subject to approval of the Board of Directors has been rightly disapproved by the Board of Directors of BICICO. The impugned decision, therefore, needs no interference by this Court. The writ application being WPC No. 866 of 2006 is, accordingly, dismissed.

10. However, petitioner M/s Ankit Enterprises will be entitled to receive the amount so deposited with the respondent-BICICO towards the sale price of the unit together with interest at the rate of 9% per annum from the date of deposit till the date of payment.

11. Consequently, WPC No. 1129 of 2005 stands disposed of.

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