

(2003) 05 PAT CK 0051

In the Patna High Court

Case No : C.W.J.C. Nos. 4702 and 10582 of 2002

Bala Paper Mills (Bihar) Pvt. Ltd. and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Citation : (2003) 05 PAT CK 0051

Final Decision : Dismissed

Judgement

P.K. Deb, J.—All these cases have been heard analogous at the admission stage as per the view expressed by this Bench in the order dated 23-1-2003 passed in M.J.C. No. 1722/2002 and being endorsed by Hon"ble the Chief Justice by His Lordship"s order dated 9-4-2003.

2. The parties to the case are almost the same and the dispute pivoted round the same Unit in the name and style of M/s. Bala Paper Mills Private Limited, the original promoter being the writ petitioners of the above two writ petitions. Before entering into the facts, the admitted position may be stated in brief as follows.

3. The writ petitioners are Private Limited Company registered under the Companies Act, 1956 and its incorporation in the Register of Companies had been done on 1-8-1981. The purpose behind the establishment of the Company was for manufacturing papers and boards. The capital cost was estimated at a few lakhs of rupees. The scheme was examined by the Bihar State Credit and Investment Corporation Ltd. (in short as "BICICO") and the technical cell of the Bihar State Financial Corporation (in short "BSFC") and the scheme of the petitioner was approved being technically feasible and mechanically viable. Both the BSFC and BICICO had sanctioned loans to the petitioner while BICICO sanctioned a loan of Rupees Fortysix Lakhs and BSFC twentysix Lakhs in the year 1981. BICICO sanctioned loan of Rupees Fortysix Lakhs on 20-11-1982 as required under equitable mortgage agreement and it was executed by the writ petitioner in the year 1983 in favour of BICICO and BSFC sanctioned loan of

Rupees twenty-six Lakhs on the basis of land, building structure etc. etc. It appears that the Company started production in the year 1985 but soon after its start the factory was closed for several months for various grounds. The Company remained closed till 1990 itself, but according to the petitioner, it restarted its production in 1990 itself and it also started paying dues of both the BICICO and BSFC and also applied for rehabilitation scheme. The proposal for rehabilitation was cancelled on 12-8-1983. Since the Unit could not pay the amount of dues to the BICICO, then admittedly BICICO took over the possession of the Unit on 26-8-1996 alongwith assets and on the same day inventory of the Company was also prepared. BICICO then advertised a Sale notice of the Unit on 31-1-2001 and ultimately sold the Company on 5-3-2002 to M/s. Patna Rolling Mills owned by Sri S.L. Khaitan (Respondent No. 11 in CWJC No. 4702/2002, Respondent No. 7 in CWJC No. 10582/2002 and Petitioner in MJC No. 1722/2002). It is the further case of the writ petitioner that on 5-3-2002 a letter was issued to the petitioner stating that the petitioner has failed to clear its dues and in that letter the value of the Unit was assessed at Rs. 38.79 Lakhs only. The highest offer to purchase the assets was sum of Rupees Fortysix Lakhs and the terms and conditions of the sale was also mentioned in that letter. According to the petitioner, he did not receive the said letter but on 25-3-2002 he received the same letter of that very date. He offered to BICICO to accept the offer given by the purchaser but with some conditions to the effect that some payment towards instalment shall be made at the site itself only when the BICICO officials shall give possession of Unit with all its accessories as per its inventory. Such letter was sent by the petitioner on 30-3-2002. But BICICO did not respond to the offer given by the writ petitioner and hence, CWJC No. 4702/2002 was filed before this Court for quashing the sale notice dated 31-1-2002 published in the Times of India, Patna Edition and further the letter dated 25-3-2002 regarding the sale of the Unit to Respondent No. 11 and all their actions taken or to be taken on such sale being made and to accept the offer made by the petitioner on 30-3-2002.

4. The second writ petition CWJC No. 10582/2002 was filed by the petitioner to quash the order dated 19-8-2002 as contained in Annexure-5 to that writ petition by which the assets of M/s. Bala Paper Mills, Fatua, had been handed back to M/s. Patna Rolling Mills in pursuance of the order passed in CWJC No. 8578/2002. There is also further prayer in this writ petition for directing the Respondent Nos. 2 to 6 not to accept the negotiated sale price which was offered by M/s. Patna Rolling Mills and also to get the premises vacated from Respondent No. 7 etc. It should be mentioned here that the first writ petition was filed by the writ petitioner M/s. Bala Paper Mills on 11-4-2002 while the second writ petition was filed on 18-9-2002. But in the meantime it appears that M/s. Patna Rolling Mills filed a writ petition being CWJC No. 8578/2002 and after hearing learned counsel for the petitioner and also the learned counsel for the BICICO the writ petition was disposed of by the order dated 29-7-2002. In that writ petition M/s. Patna Rolling Mills had challenged the further sale notice being published from the side of the BICICO on the ground that when the sale was already confirmed

in favour of the petitioner and Memo of Understanding has also been reached at and possession delivered, there is no scope to get the Unit re-advertised for auction, This Court had considered the Memorandum of Understanding and the agreement arrived at between M/s. Patna Rolling Mills and the BICICO and found that when sale had already been made in favour of M/s. Patna Rolling Mills and only the sale document could not be made as approval of the Board of Directors were being required. At this stage there is no scope of making further advertisement for sale. But then it was also considered that public money being involved and if the BICICO feels that the Unit could fetch more money on auction sale, then BICICO may negotiate with M/s. Patna Rolling Mills alone and not others for such higher price and hence on such clause being incorporated in the order itself, the writ petition was allowed vide order dated 29-7-2002 by quashing the tender etc. of fresh sale.

5. It also appears that such fresh sale notice was also challenged by M/s. Bala Paper Mills Ltd. before this Court in CWJC No. 8672/2002, but as such sale notice and tender itself had already been quashed in CWJC No. 8578/2002 as stated above the said writ petition was also dismissed as being infructuous vide order dated 31-7-2002. But a rider has been given to the BICICO to the effect that action in respect of the Unit shall be taken by the BICICO subject to the order passed in CWJC No. 4702/2002 as by this time M/s. Bala Paper Mills by suppression of facts could be able to take protection by the interim order from a Bench of this Court on 24-4-2002 which runs as follows:

"As an interim measure, it is directed that until further order of this Court the Respondent Nos. 2 to 4 or their officers or employees shall not handover the possession of the premises to the said Respondent No. 11 or to any third party."

But it appears that this Court was not aware of the order being passed on 24-4-2002 in CWJC No. 4702/2002 when order was passed on 29-7-2002 in CWJC No. 8578/2002.

6. It has been vehemently argued that M/s. Patna Rolling Mills had suppressed the fact before this Court but it does not appear that by that time M/s. Patna Rolling Mills had knowledge about that order passed on 24-4-2002 in CWJC No. 4702/2002. There was no restraint order on M/s. Patna Rolling Mills as it had already got possession on 16-3-2002 before order in CWJC No. 4702/2002 was passed and definitely the order dated 24-4-2002 was passed in CWJC No. 4702/2002 when the writ petitioner M/s. Bala Paper Mills had definite knowledge about the possession being delivered to M/s. Patna Rolling Mills on 16-3-2002 which would appear from the facts being stated from the side of the BICICO in the writ petition itself in the counter-affidavit. Be that what it may, this matter would be considered at the relevant time.

7. Now, the case of the BICICO is in the following manner:--According to BICICO, the writ petitioner M/s. Bala Paper Mills was found to be a chronic defaulter and when all opportunities were given to M/s. Bala Paper Mills they could not run the

business nor they could be able to pay huge dues of the BICICO. Then after giving proper Demand Notice at various points of time the Unit was taken over possession by the BICICO on 26-8-1996 and the same was retained by the BICICO till auction sale was made in favour of M/s. Patna Rolling Mills. The meagre payment being made till 30-9-1996 from the side of the writ petitioner was shown in a Chart by annexing Annexure-D. According to BICICO, the writ petitioner M/s. Bala Paper Mills was to pay a sum of Rs. 196.20 lakhs till 30-9-1996. From the original records it appears that during the period from 1996 to 2002 when ultimately it was sold in auction, attempts were made by BICICO to sell out the Unit several times. But it appears that nobody appeared for the purpose of purchasing the Unit. Ultimately, a sale notice was published in Times of India, Patna Edition and auction sale was being made in which also M/s. Bala Paper Mills having knowledge of the auction sale did not come as Auction purchaser or could not be able to set up any person on their behalf and ultimately the sale was made in favour of M/s. Patna Rolling Mills for a sum of Rs. 40.01 Lakhs as highest bidder. The letter to such an offer by M/s. Patna Rolling Mills was dated 8-3-2002, then it appears that some wrong legal advice or wrong notion of facts as per the case of Mahesh Chandra, similar offer was given with corresponding effect to the writ petitioner also being original Promoter. But they did not come up with any response and in the meantime possession had already been given to M/s. Patna Rolling Mills on 16-3-2002. But still then it appears that correspondence continued with M/s. Bala Paper Mills on 25-3-2002 also and ultimately on 30-3-2002 M/s. Bala Paper Mills came up with a response to the effect that the Unit was agreeable on the price as has been given by the highest bidder but several conditions were attached to the offer to the effect that such part payment of Rs. 16 Lakhs would be made available to the BICICO officials at the site itself, if the BICICO officials were in a position to give up possession of all the assets as per inventory, then BICICO definitely did not act on such response of the writ petitioner as there was no question of putting any conditions by the writ petitioner as on the date the Unit with its assets (as it was) had already been given possession to M/s. Patna Rolling Mills.

8. From the above facts and circumstances, position emerges to the effect that on default being made by M/s. Bala Paper Mills regarding payment of instalments of loan with interest, possession of the Unit was taken as contemplated u/s 29 of the BSFC Act by the BICICO long back in the year 1996 and in the year 2002 BICICO on auction had sold the Unit to M/s. Patna Rolling Mills on an offer of Rs. 41 Lakhs out of which some instalments had already been paid by M/s. Patna Rolling Mills by means of a Cheque to BICICO. Possession was also handed over to M/s. Patna Rolling Mills of the Unit with all the accessories and M/s. Patna Rolling Mills had made expenditure in making boundary walls and other developmental works also. When the Unit was again being attempted to be sold further tender was published. Then both M/s. Patna Rolling Mills and M/s. Bala Paper Mills had challenged the same in two writ petitions before this Court. The writ petition filed by M/s. Patna Rolling Mills was allowed setting aside the tender

notice and direction was given to negotiate with M/s. Patna Rolling Mills alone if the BICICO felt that it would fetch more money. But when interim order was passed in CWJC No. 4702/2002 then lock was put on the Unit by the BICICO. But then on being moved from the side of M/s. Patna Rolling Mills on the basis of the order passed in CWJC No. 8578/2002, possession was returned to M/s. Patna Rolling Mills with all its accessories, When that proceeding was going on then again a writ petition was filed by M/s. Bala Paper Mills being CWJC No. 10582/2002 challenging such handing over of possession to Respondent No. 7 in that writ petition i.e. M/s. Patna Rolling Mills. Therein also again an interim order was obtained by M/s. Bala Paper Mills on 12-11-2002 in the following manner:

"During the pendency of this writ petition, the Respondent No. 7 shall not remove any machinery or equipment from the premises of the transferred Unit, namely, M/s. Bala Paper Mills nor shall it transfer the Unit to any third party or encumber it in any manner."

In the original writ petition i.e. CWJC No. 4702/2002 an amendment petition was also filed for challenging the Certificate proceeding but the same has not been pressed now as it is submitted that by an order of this Court such Certificate proceeding was held to be not maintainable. When orders were being passed by different Benches of this Court and as the BICICO were not in a position to make firm decision regarding the sale-deed being executed in favour of M/s. Patna Rolling Mills and that there were some resolutions of the Board of Directors for negotiating with M/s. Bala Paper Mills again then a Modification petition was filed by M/s. Patna Rolling Mills in MJC No. 1722/2002 regarding the order passed in its favour of CWJC No. 8578/2002, although, the same has not yet been finally given effect to as no sale-deed could be executed as approval of the Board of Directors could not be obtained upto now and such approval could not be obtained from the Board of Directors as the last resolution of the Board of Directors could reveal that Board of Directors were in a fix to come to a definite decision as this Court had passed different directions at different times and hence Managing Director was asked to keep the Board of Directors informed of the recent orders being passed by High Court in respect of the Unit.

9. Now, the only question remains as to whether M/s. Bala Paper Mills had got any right to claim for negotiation with it regarding the sale of the Unit or not, From the contentions made in the writ petition CWJC No. 4702/2002 the whole claim and exercisable right has been claimed by M/s. Bala Paper Mills on the basis of a decision in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . But when the writ petition was filed on the basis of Mahesh Chandra's case, practically the same had been overruled in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , The Judgment was passed in the month of January, 2002 and was published in the April issue of SCC of 2002. It also appears that on the principles being enunciated regarding the negotiation with the original promoters as contemplated in Mahesh Chandra's case, the Board of Directors had asked for

letters to be sent to the original promoter, namely, M/s. Bala Paper Mills. But practically and legally M/s. Bala Paper Mills cannot have any right to ask for any negotiation with it on the principle of Mahesh Chandra's case after the same was overruled in Jagdamba's case (supra).

10. It is true that due to some instructions being given by the Board of Directors, the officials of BICICO had to write on 5-3-2002 and also on 25-3-2002 to M/s. Bala Paper Mills giving option as was required to be done as contemplated in Mahesh Chandra's case. If such offer made by the BICICO would have been accepted by M/s. Bala Paper Mills then, perhaps, there could have been a case made out in its favour, although, legally it was not entitled to have any negotiation. But it appears that uptil now no such acceptance is there from the side of M/s. Bala Paper Mills. Rather, they were putting conditions after conditions and in the Court practically the Senior Counsel Mr. Dwivedi was bringing allegations against the officials of the BICICO as they were not acting as per the decisions/resolutions of the Board of Directors and their intentions were not being reflected in the actions of the officials of the BICICO. These are internal matters of the officials of the BICICO and Board of Directors on which the writ petitioner M/s. Bala Paper Mills can have no right to say and this Court on such allegations cannot enter into the same. Legally, what has been done uptil now from the side of the BICICO or its officials are totally in accordance with law. When sale has been negotiated with M/s. Patna Rolling Mills there is no way out for BICICO to go behind it. Memorandum of Understanding has already been entered into but the finality has not been concluded as already stated.

11. It was the contention of the learned counsel for the BICICO that sale was made at Rs. 41 Lakhs as per negotiation with M/s. Patna Rolling Mills, but as the question of public money is concerned, BICICO wanted to see whether any further amount can be fetched and for that reason the sale was being advertised again but such attempt has already been turned down by this Court in two writ petitions both filed by M/s. Patna Rolling Mills in CWJC No. 8578/2002 and M/s. Bala Paper Mills in CWJC No. 8672/2002 and those orders have reached their finality, the BICICO or M/s. Bala Paper Mills had not done anything against those orders and practically they could not do also as such orders were passed practically after hearing the counsel for the BICICO.

12. The conduct of M/s. Bala Paper Mills is also required to be seen when they are coming again and again before this Court with this plea or that plea to capture the Unit again. The Unit was closed soon after its start, Then again it started in 1990 but then also it could not proceed and failed to pay a huge amount of dues to the BICICO and then in the year 1996 the Unit was taken over by the BICICO. After that it does not appear that M/s. Bala Paper Mills had taken any action whatsoever to get back that Unit. They slept over the matter. Only after the Unit could be sold to M/s. Patna Rolling Mills, then the writ petitioner M/s. Bala Paper Mills rose up from their slumber and starting creating obstacles at every stage. But nowhere it could be shown that M/s. Bala Paper Mills after the

sale was being negotiated with M/s. Patna Rolling Mills paid back any amount of dues to the BICICO, rather for not paying the same they put several conditions, although, it is stated that on the date as communicated by them, they were ready with Drafts at the site. Be that what it may, the conduct of M/s. Bala Paper Mills do not inspire to hold that they had any bonafide and when no bonafide was there, then even if it is found that the Unit had been sold at a lower price and when M/s. Bala Paper Mills were not in a position to give that price also as the conditions of the sale, rather putting different other conditions, this Court can not give any relief in favour of M/s. Bala Paper Mills and practically when it has got no right accrued to them being the promoters, as Mahesh Chandra's case had already been overruled by the Apex Court in Jagdamba's case (supra). Moreover M/s. Bala Paper Mills are not coming with clean hands.

13. Thus, I am constrained to hold that there is no force in the writ petitions filed by M/s. Bala Paper Mills both in CWJC No. 4702/2002 and CWJC No. 10582/2002. The possession had already been handed over to M/s. Patna Rolling Mills, although, once being taken back. There is no need to give any clarification to the order passed by this Court in CWJC No. 8572/2002 rather that order stands till to-day. Now, it is upon the BICICO to proceed legally further with M/s. Patna Rolling Mills in respect of the Unit concerned. Thus, both the writ applications i.e. CWJC No. 4702/2002 and CWJC No. 10582/2002 are dismissed in the light of the observations and findings made above, but there will be no order as to costs. MJC No. 1722/2002 is also disposed of with the aforementioned observations.