

(2019) 12 PAT CK 0164

In the Patna High Court

Case No : Letters Patent Appeal No. 45 Of 2018 In Civil Writ Jurisdiction Case
No. 11381 Of 2011

Bihar State Credit And Investment Corporation Limited And Anr APPELLANT

Vs

M/S Pine Builders Private Limited And Anr RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Bihar State Financial Corporation Act, 1951 — Section 29
Contract Act, 1872 — Section 196

Citation : (2019) 12 PAT CK 0164

Hon'ble Judges : Ashwani Kumar Singh, J;Prakash Chandra Jaiswal, J

Bench : Division Bench

Advocate : Anjani Kumar, Nirmal Kumar, K.N. Chaubey, Manish Kumar

Final Decision : Dismissed

Judgement

1. Heard Mr. Anjani Kumar, learned Senior Advocate for the appellants and Mr. K.N. Chaubey, learned Senior Advocate for the respondents.

2. The present appeal under Clause X of the Letters Patent is directed against the judgment dated 16.10.2017 passed by learned Single Judge in C.W.J.C. No.11381 of 2011 whereby the letter dated 10.06.2011 issued under the signature of the appellant no.2 communicating the decision of the Board of Directors of the Bihar State Credit and Investment Corporation Limited (for short "BICICO") to hand over the assets to M/s Neeraj Newspapers Associates Private Limited to BICICO so as to make the same available for auction through advertisement and the letter dated 07.07.2011 by which the respondents were directed to hand over the assets to the BICICO within seven days have been quashed and the appellants were directed to execute the sale deed in favour of the respondents in furtherance of the agreement arrived at between the parties.

3. The facts which are not in dispute and are relevant for the present case are as under:-

4. In 1982-83 a loan of Rs.32.44 lacs was sanctioned to M/s Neeraj Newspapers Associates Private Limited (for short "Loanee") by the BICICO. The Loanee defaulted on repayment of loan. As a result of accumulation of interest, the balance outstanding as on 31.01.2002 became Rs.399.88 lacs. Accordingly, assets of the Loanee were taken over on 21.03.2002 by the BICICO.

5. In order to realize its loan, the BICICO issued a sale notice which was published in the newspaper on 10.04.2002 for the sale of the assets of the Loanee unit in terms of Section 29 of the SFC Act. In response to the said advertisement, bids were received. The highest Bidder was one Choudhary Kumar Consultants (for short "Bidder") who made an offer of Rs.78 lacs which was subsequently enhanced to Rs.84 lacs in the course of negotiations with the BICICO.

6. The aforementioned Bidder had deposited the entire amount offered through different cheques. Following the deposit of the amount, the BICICO issued a letter of offer dated 26.04.2002 to the Bidder. By the said letter, the Bidder was intimated that offer for the purchase of the unit of the Loanee was tentatively accepted by the BICICO subject to final approval of the sale by the Board of Directors.

7. On 02.05.2002, a Memorandum of Understanding was also executed between the BICICO and the said Bidder. However, at this stage, the BICICO returned the entire amount of Rs.84 lacs deposited by the said Bidder under 8 different cheques along with its letter dated 17.05.2002 mentioning therein that the amount would be accepted only after obtaining necessary approval from the Board of Directors.

8. In the meantime, a new One Time Settlement scheme (for short "OTS Scheme") came into operation with effect from 15.07.2002. According to this scheme, the BICICO proposed for a settlement policy so that entrepreneur may get an opportunity to clear up all the balance outstanding. Under the said OTS Scheme, the borrower unit could settle their accounts as per following formula:

"(for units more than 10 years old as on 31.03.2002) Pay= [Cash Principal disbursed x 2.5] -[Cash repayments received till 31.03.02]

(For units less than 10 years old)

Pay=[Cash Principal disbursed x 2.0]-[Cash repayments received till 31.03.02]."

9. In other words, according to this scheme, a loanee could make settlement of the entire loan regardless of the amount outstanding, by making payment of a sum equal two times of the amount disbursed in case of loans that were ten years old, and two and half times of the amount disbursed in case of loans that were more than ten years old.

10. Taking a view that the BICICO may get a better offer by re-advertising the sale notice, another advertisement was issued on 22.07.2002 which was

challenged by the Bidder in C.W.J.C. No.11067 of 2002 on the ground that his offer in response to the earlier advertisement has been disregarded.

11. Meanwhile, the Loanee approached the BICICO for final settlement of the loan. After due negotiation, a Quadripartite agreement of settlement dated 31.07.2002 was entered into between the BICICO, the Loanee, M/s Badrika Construction Ltd and the respondent no.1 M/s Pine Builders Private Limited.

12. It is also an admitted position that in past several years the original Loanee had gone into the hands of M/s Badrika Construction Ltd., who together introduced the respondent no.1 M/s Pine Builders Private Limited as the ultimate buyer of the unit. In terms of the agreement dated 31.07.2002, the BICICO received a total negotiated amount of Rs.85 lacs from the respondents whereafter the assets of the Loanee unit were handed over to the respondents on 23.09.2002.

13. The writ petition bearing C.W.J.C. No.11067 of 2002 filed by the Bidder was ultimately dismissed by this Court vide order dated 20.02.2003.

14. Being aggrieved by the said dismissal, the Bidder filed an intra court appeal vide LPA No.223 of 2003 which was subsequently disposed of as not pressed withdrawn vide order dated 29.07.2004.

15. After disposal of the said LPA the Board of Directors of the BICICO took up the matter for approval of the sale in favour of the respondents. The Board decided that the Managing Director may re-examine the settlement under the agreement.

16. Since the sale deed was not executed, the respondents sent a legal notice dated 09.08.2007 for execution of the deed.

17. The notice was responded by the BICICO informing that the matter regarding execution of sale deed was pending for approval before the Board of Directors and the Board of Director has directed the Managing Director to re- examine the issue.

18. It was informed that the matter is under re- examination and further development would be communicated after getting outcome from the Board.

19. Subsequently, several legal notices were sent by the respondents to the appellants to execute the sale deed. After a long lapse of time, on 30.05.2011, the Board in its meeting resolved that the total sum of Rs. 85 lacs received from the respondents be refunded back and the assets of the unit be auctioned through advertisement.

20. The decision of the Board of Directors was communicated by the appellants to the respondents vide letter dated 10.06.2011 requesting them to hand over the assets of the Loanee unit to the appellants and take back the sum of Rs. 85 lacs deposited by them in July 2002. A reminder in this regard was issued on 07.07.2011.

21. Being aggrieved by the aforementioned decision of the Board of Directors of the BICICO communicated to the respondents vide letters dated 10.06.2011 and 07.07.2011, the respondents filed a writ petition before this Court vide C.W.J.C. No.11381 of 2011. During pendency of the writ petition, the appellants did not take any action and the respondents continued in possession of the property in question. The said writ petition was allowed vide judgment dated 16.10.2017 passed by the learned Single Judge. The learned Single Judge quashed the letters dated 10.06.2011 and 07.07.2011 issued under the signature of the appellant no. 2 and directed the appellants to execute the sale deed in favour of the respondents.

22. Challenging the aforesaid judgment dated 16.10.2017, passed by learned Single Judge, Mr. Anjani Kumar, learned Senior Advocate appearing for the appellants submitted that the learned Single Judge has failed to appreciate that the agreement dated 31.07.2002 was an agreement for settlement and not an agreement for sale. She has also failed to appreciate that no vested right has been created in favour of the respondents by virtue of the agreement dated 31.07.2002 as no legally binding contract had concluded between the parties. The learned Single Judge failed to appreciate that the agreement dated 31.07.2002 was in the nature of an understanding between the parties and was not a final document duly approved by the Board of Directors. According to him, no sale deed could have been executed without final approval of the Board of Directors, who are the supreme authority of the BICICO in view of the Articles of Association. He has further contended that learned Single Judge also failed to appreciate that the agreement had been entered into by a Deputy Manager of the BICICO, who was not competent, whatsoever to bind the appellants into a contractual relationship. The contractual relationship could have arrived only when the Board of Directors would have approved/ratified the agreement in terms of Section 196 of the Indian Contract Act.

23. Mr. Anjani Kumar, learned Senior Advocate has argued that the learned Single Judge has failed to appreciate that after disposal of the L.P.A. filed by the Bidder, the matter was again placed before the Board for approval of the sale in favour of the respondents which was considered by the Board and it was decided that the Managing Director may re-examine the settlement/sale under the agreement in view of the fact that there is no provision of absolving the original Director/Guarantors under the State Financial Act without liquidating the entire dues. The delay, if any, in taking action on the part of the appellants was because of the pendency of the litigation before the Court. Lastly, he contended that the learned Single Judge has failed to appreciate that no prejudice has been caused to the respondents in as much as the appellants are ready and willing to return the amount of Rs. 85 lacs received by them subject to the handing over of the possession of the assets of the Loanee unit.

24. On the other hand, Mr. K. N. Chaubey, learned senior advocate appearing on behalf of the respondents submitted that there is no error in the judgment

passed by the learned Single Judge in the writ petition. He contended that all the points taken by the appellants were considered by the learned Single Judge while passing a reasoned and speaking order. He has further contended that after handing over the assets of the Loanee Unit on 23.09.2002, the respondents came into exclusive, vacant and peaceful possession of the property in question including the machinery and plant and started utilizing the same since then.

25. He has further contended that earlier the BICICO had instituted a certificate proceedings against the Loanee and its guarantors. However, after receiving Rs.85 lacs from the appellants in accordance with the agreement for settlement dated 31.07.2002, when the guarantors and others of the Loanee Unit approached this Court by instituting various writ petitions vide CWJC No.6254 of 2002, CWJC No.6738 of 2002, CWJC No.7223 of 2002, CWJC No.7892 of 2002, CWJC No.8220 of 2002 and CWJC No.9267 of 2002 challenging the institution of the certificate proceedings against them, the counsel appearing for the BICICO stated that the controversies raised in the writ petition stood concluded in terms of an agreement dated 31.07.2002 between the Loanee, the BICICO, M/s Badrika Construction Ltd and M/s Pine Builders Private Limited. In view of the statement made at the Bar on behalf of the BICICO, those writ petitions were disposed of by a Bench of this Court vide order dated 29.11.2012, holding that since the dispute stood concluded between the parties, in terms of an agreement, no further order was required to be passed by the Court. He submitted that the appellants cannot change their stand from time to time. They themselves appeared before the Court and pleaded that the dispute stood concluded between the parties in terms of agreement arrived at by the BICICO with the respondents. They cannot plea now that the quadripartite agreement arrived between the parties is not executable. He has contended that in absence of any illegality in the order passed by the learned Single Judge, the instant appeal is fit to be dismissed.

26. Having heard the rival submissions and perused the record, the learned Single Judge has recorded her findings in Paragraphs-35 to 46 as under :-

"35. Having heard learned counsel for the petitioners and the learned counsel for the BICICO, the main issue which is to be decided is as to whether the petitioner-M/s Pine Builders Private Ltd. has acquired any right by virtue of the Agreement of Settlement dated 31.07.2002, which was entered into by the petitioners and one M/s Neeraj Newspapers and Associates Private Limited and M/S Badrika Constructions Private Limited and also the Bihar State Credit and Investment Corporation Limited (BICICO), which is the contesting respondent in the present case. The respondent- BICICO, apparently, do not recognize the right of the petitioners for the following reason:

The petitioner M/s Pine Builders Private Limited is not a "borrower" who can avail the benefit of the OTS Scheme on the basis of the said four party agreement between the original borrowers, namely, M/s Neeraj Newspapers and Associates Private Limited and M/s Badrika Constructions Private Limited (borrowers) and

the BICICO. However, The petitioner was described as the person, who had made the offer (Fourth Part) to purchase the assets and to pay the sum of Rs.85 lacs, which had been willingly accepted by the First and Third Part of the Agreement, towards liquidation of the dues of the borrower Company to the creditor-BICICO. The terms as enunciated in the Agreement at para 4 are stated to be in the following terms :

"4. In view of the offer made by the FOURTH PART to purchase the assets and to pay the sum of Rs.85 lacs and the willingness of FIRST and THIRD that the same may be accepted towards liquidation of dues of the borrower company to the Creditor and the creditor hereby agrees to accept the consideration money of Rs.85 lacs and also agrees to transfer the land, buildings, plant and machinery as mentioned in schedule-1 to this agreement and to execute the Sale Deed in favour of buyer as and when the buyer so desires at their cost but subject to payment and credit amount of Rs.85.00 lacs as set out above. The buyer shall thereafter enjoy right, title and possession free from all encumbrances of the assets of Borrower Company."

(emphasis added)

36. Thus, from a perusal of this paragraph of the Agreement, it is apparent that the creditor agreed with open eyes to accept the consideration money of Rs.85 lacs and also agreed to transfer the land, buildings, plant and machinery as was mentioned in Schedule-1 of the Agreement and to execute the sale deed in favour of the buyer and when the buyer so desires at their own cost but subject to the payment and credit amount of Rs.85 lacs. Thus, the recital in the deed clearly enunciates that thereafter, the buyer, being the present petitioner, would enjoy right, title and possession free from all encumbrances of the assets of the borrower Company. At para 5(iii) of the said Agreement it has been further clearly stated that:

"5 (iii) The creditor will execute the necessary Sale Deed in favour of the buyer on receipt and credit of the amount of Rs.85 lakhs in its account as mentioned in para-3 above at the risk and cost of the buyer and the buyer will become entitle to enjoy the property from the date of actual realization of the full consideration amount and written letter of possession thereafter will be issued by the creditor forthwith in favour of the buyer."

On careful consideration of such recitals, this Court clearly finds that the respondents were now estopped from resiling from the Agreement to the detriment of the petitioners. As argued, this Court also holds that the respondents have no justification for issuing the impugned order directing refund of Rs.85 lacs and also refusing to register the sale deed.

37. It appears from the record of the case (Annexure 3) that the entire amount of Rs.85 lacs was handed over to M/s Pine Builders Private Limited on 23.09.2002 by and on behalf of the BICICO. The signatory Shri S.P. Singh has been described as the Deputy Manager of the BICICO. It further appears from

the record of the case that in a collateral proceeding which came before this Court in CWJC No.11067 of 2002, which was filed by a party who had agreed to purchase, in response to a sale notice issued by the BICICO, the petitioner, namely, one M/s Choudhary Kumar Consultants had been declared as the highest bidder in a proceeding under Section 29 of the Bihar State Financial Corporation Act, 1951. Nevertheless, the unit of the defaulting borrower, namely, M/s Neeraj Newspapers and Associates Private Limited, was not sold to him but was settled by the BICICO on the basis of the four party agreement to another buyer, namely, M/s Pine Builders Private Limited, which came to be under challenge.

38. It appears that prior to the agreement entered into between the present petitioner, the sale offered to the petitioner of CWJC No.11067 of 2002 was recalled and the amount of Rs.84 lacs was returned to him. Thereafter, came a new One Time Settlement Scheme dated 15.07.2002. The contents of the Scheme have already been described in the earlier paragraphs.

39. The Court after considering the entire facts and circumstances dismissed the said writ application (CWJC No.11067 of 2002) in view of the submission of the BICICO that a settlement had already been made in favour of M/s Pine Builders Private Limited, as the loan was settled in terms of the OTS Scheme which had come into operation with effect from 15.07.2002. In the said case, it was observed that once the Scheme had come into force, the original borrower like any other loanee is free to take advantage of the Scheme and get its loan settled under the said scheme.

40. Thus, the BICICO had categorically taken the plea that the petitioner-M/S Pine Builders Private Limited, who had joined the borrowers as 4th party to give effect to the OTS to be made in their favour, could not in the present writ application be derecognized at this stage and treated as a `stranger?', particularly because the BICICO had entered into the four- party agreement with open eyes and had taken advantage of the same in a collateral proceeding. The petitioners had also deposited a sum of Rs.85 lacs and taking notice of the said fact that the petitioners had deposited the entire amount, the respondent-BICICO had given possession of the entire properties of the original borrower to the petitioners and all that remained was execution of the sale deed which was kept in abeyance for a considerable length of time. Furthermore, there is not a whisper in the Agreement that the same was subject to the approval of the Board of Directors. On the contrary, it was said to be binding on the "assigns" of the parties.

41. This Court thus finds that the petitioners could not be penalized and the respondent-BICICO having enjoyed and availed the said Rs.85 lacs for a period of almost six years from the date of its deposit could not make a volte face and reject the plea of the petitioners for registering the sale deed by merely stating that the agreement lacked sanction from the concerned authority, namely, the Board of Directors.

42. Having examined the records of the case and on consideration of the principle of law, which has been sought to be applied, it is the considered opinion of the Court that the "doctrine of election" will apply against all the parties to the Agreement; more so against the BICICO as they have acted upon it and have handed over the physical possession of the properties after accepting the entire amount of Rs.85 lacs. The principle has well been incorporated in the decision of the Apex Court cited by the petitioners in (2011) 10 SCC 420 (supra). The respondents having enjoyed the amount of Rs.85 lacs for such a long period of over eight to nine years, they cannot take the stand at this stage that the transaction was not valid when the contract stood concluded and the property had changed hands. Therefore, "the principle of estoppel by election" will come into play against them because not only they have opted not to raise such objection for a considerable length of time, but have also permitted the petitioners to come into possession of the property. Thus, they cannot approbate and reprobate and are precluded from taking stand with respect to non-enforceability of Annexure 2.

43. This Court further finds force in the submission of the learned Senior Counsel appearing for the petitioners that the element of fraud, which has been raised during the course of arguments by the respondent-BICICO, is meant to purely mislead this Court as at no point of time did the respondents take such a plea during the course of eight to nine years, when they retained the money of the petitioners. Their contention is that the case must be decided on the basis of the reasons stated in the impugned order (Annexure 8). From a bare perusal of the same, it emanates that even in the said letter, no element of fraud has been alleged against the petitioners; even remotely, nor was such a stance taken by them down the years as being the reason for passing of the impugned order. The respondents will have to justify their action by passing the impugned order only on the basis of the reasons assigned therein and they cannot take recourse to any other material being brought on record by way of counter affidavit.

44. The reliance on the ratio laid down by the Hon^{ble} Apex Court in the case of Mohinder Singh Gill and also in the case of East Coast Railway, already referred to in the preceding paragraphs, stands fully justified and persuades this Court to accept such a plea. Thus, the argument of the respondents in raising the plea of fraud is also not tenable on both facts and law and is fit to be dispelled.

45. The plea taken by the respondents that the agreement was subject to the decision of the Board of Directors of the BICICO is also not tenable as the four party agreement did not say so and a bare perusal of the One-Time Settlement Policy clearly shows that the Managing Director was empowered and had the sanction to proceed with the OTS as per 2004 Policy but in 2002 Policy, there was a difference and in the same, the Managing Director was not authorized. The petitioners' agreement was executed on 31.07.2002. Therefore, to take any contrary stand at a stage when the BICICO has already enjoyed the money deposited by the petitioners for eight- nine years cannot find favour with this

Court. Thus, for that reason also, the impugned order cannot be sustained.

46. Though it has been argued by the learned counsel for the BICICO that the 2002 Policy was different from the 2004 Policy, which has been brought on the record as Annexure 10 by the petitioners in their reply to the counter affidavit, it appears from a perusal thereof that there was provision for joint finances, which is evident from page 4 of the OTS Policy, 2004. It further appears that the OTS Scheme, 2004 sought to adopt the 2002 OTS Policy. The Corporation had earlier announced OTS Policy on 15.07.2002, which was forwarded and extended till 31.05.2003 and has been re-adopted again with effect from 01.10.2004 without changing any parameters. The footnote also states that the OTS was approved by the Board of Directors of the BICICO, vide Agenda Item No.189/8 in the meeting held on 15.10.2004. Thus, the OTS itself having been approved by the Board of Directors of the BICICO, it could well be deemed that any action under authority of the Board of Directors by the signatory to the Agreement would be an act of the Corporation binding them to it. For such reason also, the plea taken by the Corporation that the four party Agreement did not have the approval of the Board do not hold good ground for accepting their submissions and are also, thus, rejected."

27. Admittedly, the BICICO entered into quadripartite agreement through its Deputy Manager, pursuant to which, respondents deposited Rs.85 lacs in its account. Thereafter, the BICICO handed over possession of the entire assets of the Loanee unit to the respondents on 23.09.2002. Since then, they are in exclusive vacant and peaceful possession of the property in question.

28. We further find that in C.W.J.C. No.11067 of 2002 filed by the original Bidder, a direction was sought for from this Court to the BICICO to accept its offer and to hand over the unit to it. In the said writ petition, the BICICO was impleaded as a party respondent. The writ petition was filed on 17.09.2002. The sale of the assets of the loanee unit in favour of the respondents was made earlier on 31.07.2002. Thus, in the main writ petition, the relief prayed for was confined to a direction to the BICICO to execute sale of the unit in favour of the original bidder on the offer made on its behalf. However, when the original bidder came to know about sale of the unit having been made in favour of the respondents from the counter affidavit filed on behalf of the BICICO, an amendment petition was filed therein praying for impleadment of other parties and seeking a further direction to annul the sale made in favour of the respondents. The BICICO defended the case, Its plea was that the entire transaction in favour of the respondents was bonafide. Having heard the parties, the writ petition was dismissed by the learned single Judge vide order dated 20.02.2003 observing as under :-

"... Therefore, on the basis of the decision in M/s. Jagdamba Oil Mills, it cannot be held that BICICO had committed any irregularity, much less, any illegality in accepting the offer made by the petitioner conditionally and subject to the right of the original promoter to make a matching offer.

Secondly the appropriate stage to raise this objection was when the conditional offer was made to the petitioner by letter, dated 26.4.2002 or at any rate when the money deposited by it was returned by letter, dated 19.7.2002. At that stage the petitioner did not raise any objection or protest against the conditional acceptance of its offer by BICICO. It may be noted that there was a gap of two months when the BICICO wrote again to the petitioner asking it to redeposit the money. During this period of two months, there was ample opportunity for the petitioner to raise objection or protest against the return of its money because BICICO wanted to give an opportunity to the original promoter. But the petitioner did not do so.

Thirdly, the decision in M/s. Jagdamba Oil Mills has no direct bearing to the facts of this case because in this case the settlement in favour of the original promoter/ Ms. Pine Builder was not made on the basis of any matching or competing offer made by them in response to the offer by the petitioner. The basis on which the unit was sold in favour of M/s. Pine Builder is entirely different and the loan was settled and the sale was made in terms of the One Time Settlement Scheme coming into operation w.e.f. 15.7.2002. Once the scheme had come into operation, the loanee in this case, like any other loanee, was free to take advantage of the scheme and to get its loan settled under that scheme.

Mr. Sinha submitted that the entire transaction in favour of the original promoter and M/s. Pine Builder was tainted and malafide. In this regard Mr. Sinha submitted that the outstanding balance as on 31.10.1996 was slightly over Rs.190 lacs but at that stage BICICO had not accepted the offer of Rs.113 lacs for the settlement of the loan. But when the outstanding dues swelled upto Rs.399.88 lacs as on 31.1.2002, BICICO settled for the paltry sum of Rs.85 lacs for the settlement of the loan. The submission once again over looks the fact that the settlement was made under the One Time Settlement Scheme. In terms of the formula under the Scheme the original promoter could have settled the entire loan on payment of a sum of less than Rs.81.1 lacs. But the settlement was made for Rs.85 lacs for reasons already noted above.

Mr. Sinha further submitted that the settlement in this case was in fact not made under the One Time Settlement Scheme and the learned counsel pointed out that the payments were made in three installments from 30.7.2002 to 15.9.2002 which was evidently contrary to a one time settlement as the name of the scheme suggested. I do not see any force in this submission either. It is correct that payments were made in installments through post-dated cheques, the last of which was, dated 15.9.2002 but the unit was handed over to the purchasers on 23.9.2002 only after the entire payment was received by BICICO.

In these facts and circumstances, I am satisfied that the petitioner has not been able to make out a case for any interference in this matter by this court. The amendment petition in so far as it relates to impleadment of private parties in this writ petition is rejected and the main writ petition also fails. It is accordingly dismissed but without any order as to costs."

29. The Bidder challenged the aforesaid order dated 20.02.2003 passed in CWJC No. 11067 of 2002 by way of filing LPA No. 203 of 2003. But the counsel appearing for the appellant Bidder sought permission to withdraw the appeal. Hence, the appeal was dismissed as not pressed. Apparently, the BICICO was conscious of the entire transaction under the One Time Settlement Scheme with the respondents. Accordingly, an agreement for sale was executed on 31.07.2002 between the BICICO on one side and the Loanee, M/s Badrika Constructions Limited and the respondents on the other side. In terms of this agreement, the BICICO received the entire sum of Rs.85 lacs and handed over the possession of the Loanee unit to the respondents on 23.09.2002.

30. We further find that when the guarantors and others of the Loanee unit approached this Court by instituting various writ petitions vide CWJC Nos. 6254 of 2002, 6738 of 2002, 7223 of 2002, 7892 of 2002, 8220 of 2002 and 9267 of 2002 challenging the institution of the certificate proceedings against them, the counsel appearing for the BICICO and the counsel representing other parties jointly stated that the controversy in these writ petitions stood concluded in terms of the quadripartite agreement dated 31.07.2002. The relevant order dated 29.11.2002 passed in the aforestated writ petitions reads as under :-

"Mr. Chitranjan Sinha, counsel representing the petitioner, Mr. R.K. Dutta, counsel appearing for the Bihar State Credit & Investment Corporation and counsel representing the other parties jointly stated that the controversy in these writ petitions stands concluded in terms of an agreement, dated 31.7.2002 between the (i) original promoters, namely, Neeraj Newspapers & Associates Private Limited through Shri Rajendra Prasad Singh, Director, (ii) Bihar State Credit and Investment Corporation, (iii) M/s. Badrika Constructions Limited and (iv) M/s. Pine Builders Private Limited. The agreement provides for the withdrawal of the certificate cases instituted by the Corporation against the borrowers, guarantors and others and hence, the proceedings in all those cases shall abate and the properties put under attachment in those proceedings shall be released from attachment forth-with.

As the dispute stands concluded between the parties in terms of an agreement between the parties no further order need be passed by this Court. Let the records of these cases be finally closed."

31. We are of the opinion that the appellant having consistently taken its stand in favour of the quadripartite agreement in different judicial proceedings before this Court, cannot take a different stand after several years that the agreement cannot be given effect to as it was subject to approval by the Board of Directors and the Board of Directors has not approved the same.

32. We have also perused the agreement and we find that it has nowhere been mentioned in the agreement that the same was subject to approval by the Board of Directors. The agreement itself clearly states to be binding on the assigns of the parties.

33. We are of the opinion that the learned Single Judge has rightly held that the respondents BICICO having enjoyed and availed Rs.85 lacs for a period of six years from the date of its deposit could not have made a volte face and rejected the plea of the respondents for registering the sale deed by merely stating that the agreement lacked sanction from the concerned authority namely, the Board of Directors.

34. The learned Single Judge has rightly held that the doctrine of election will apply against all the parties to the agreement and more so, against the BICICO as they have acted upon it and have handed over the physical possession of the properties after accepting the entire amount of Rs.85 lacs.

35. Regard being had to the facts and circumstances of the case, we are of the opinion that at this belated stage the appellant cannot argue that the quadripartite agreement entered into between the parties on 31.07.2002 should not be legally upheld or enforced.

36. In view of the discussions made above, we see no merit in the instant appeal.

37. It is dismissed accordingly.