
(2008) 04 JH CK 0095
In the Jharkhand High Court

Bokaro Roller Flour Mill etc.	Vs	APPELLANT
Bihar State Financial Corporation and Others etc.		RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 30

Citation : (2008) 2 JCR 507

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Since these appeals arose out of the common judgment passed in W.P.C. No. 4386 of 2002 and W.P.C. No. 885 of 2007 both dated 19.4.2007, these appeals have been heard together and are being disposed of by this common order.

2. In L.P.A. No. 227 of 2007, the appellant-Bokaro Roller Flour Mill have challenged that part of the judgment dated 19.4.2007 passed in W.P.C. No. 885 of 2007 whereby the learned Single Judge observed that petitioner will not be entitled to raise any claim on account of deposit of Rs. 2.5 lakhs which was deposited by the petitioner under 2004 One Time Settlement application (in short "O.T.S. application").

3. In L.P.A. No. 230 of 2007, the appellant-Bihar State Financial Corporation, is aggrieved by the same judgment dated 19.4.2007 passed in W.P.C. No. 885 of 2007 by which the learned Single Judge allowed the writ petition and directed the appellant-Corporation to adjust Rs. 15,00,000/- deposited by the petitioner as condition of stay order passed in W.P.C. No. 4386 of 2002 under O.T.S. Scheme.

4. In L.P.A. No. 285 of 2007, the appellant-Bihar State Financial Corporation is also aggrieved by the same judgment passed in W.P.C. No. 4386 of 2007 whereby direction has been issued to refund/adjust Rs. 15,00,000/- deposited by

the petitioner against further payment to be made under O.T.S. scheme.

5. The petitioner Bokaro Roller Flour Mill filed W.P.C. No. 4386 of 2002 for quashing the order dated 19.7.2002 issued by Managing Director, whereby Rs. 1,26,19,160.68 was demanded, on the ground that the said demand is arbitrary and further for a direction upon the respondents-Corporation to give detailed calculation sheets to enable the petitioner to ascertain as to how the Corporation has reached to the said figure. The said petitioner filed another writ petition being W.P.C. No. 885 of 2007 for quashing the order dated 2.2.2007 issued by the corporation by which petitioner-firm was directed to deposit Rs. 22 lacs towards retention money, after deposit of which one time settlement proposal of the petitioner shall be considered.

6. The brief facts of the case are as under:

In the year 1986, M/s. Bokaro Roller Flour Mill, a partnership firm (in short "the appellant-firm") was sanctioned a term loan of Rs. 30,00,000/- by the Bihar State Financial Corporation (in short "the Corporation") for setting up an industrial unit at Bokaro. The appellant executed registered loan agreement mortgage and other document in 1986 and thereafter the entire sanctioned loan was disbursed. The appellant made repeated default in payment of principal and interest lying due with the Corporation and on failure to repay the dues, notices under Sections 29 and 30 of the State Financial Corporation Act, 1951 were issued for auction sale of the property of the appellant in the year 1991. Accordingly, in the year 1995, the unit was advertised for auction sale under the provisions of the State Financial Corporation Act, 1951. In response to the said advertisement, offers were received and after considering the best offer, the sale order was issued in favour of Sri Bijay Kumar Kakarania vide memo dated 19.7.2002 for total consideration amount of Rs. 88,00,000/- with condition of initial cash down payment of an amount equivalent to 25% of total consideration price within 30 days and remaining amount in 12 quarterly installments of Rs. 5,50,000/-. The appellant-firm was also given option to retain the mortgaged assets on matching terms and conditions by making payment as stipulated in the sale order within 21 days and submitting suitable repayment plan for the different amount. Instead of accepting the offer, the appellant-firm preferred writ petition being W.P.C. No. 4386 of 2002 before this Court for quashing the order dated 19.7.2002 and also the demand notice and further for a direction upon the respondents to give detailed calculation sheet to enable the petitioner to ascertain as to what has the amount outstanding against the appellant. In the said writ petition, interim order was passed on 9.8.2002 directing the appellant-firm to deposit Rs. 15,00,000/- by 6th September, 2002 and on such deposit, the Corporation will not enter into any agreement with the auction purchaser. The appellant in terms of the said order deposited Rs. 15,00,000/- and the Corporation accordingly did not enter into any agreement with the auction purchaser. Accordingly, in terms of interim order, the appellant continued possession of the unit and enjoyed the said property. In the meantime, auction

purchaser being frustrated by non-implementation of the sale order, filed a writ petition being W.P.C. No. 6923 of 2002 for refund of the earnest money and this Court by order dated 24.2.2003 directed the Corporation to refund the earnest money to the auction purchaser within 15 days. In terms of the said order, the earnest money of the auction purchaser was refunded by the Corporation. As stated above, after payment of Rs. 15,00,000/- in compliance of the interim order, the appellant continued possession and enjoyed the property despite the sale order issued in favour of the auction purchaser. The case of the Corporation is that the amount of Rs. 15,00,000/- deposited by the appellant was adjusted against the outstanding dues as per the established and standard accounting principle and after adjustment of the said amount, the total balance outstanding as on 6.9.2002 was Rs. 1,19,68,084.68. Since the auction purchaser was not allowed to take possession in the light of the interim order and he got the earnest money refunded, the unit remained in the hand of the appellant. Curiously enough, in 2006, the outstanding together with interest reached to Rs. 2,10,73,357.00.

7. Further facts relevant for consideration are that in 2006, the Corporation introduced One Time Settlement Scheme, 2006 for settlement of dues by providing opportunity to the defaulters. The appellant applied for One Time Settlement Scheme, 2006. However, the said scheme was not extended to the promoters like appellant's unit against which sale orders have already been issued and action for retention of unit as per the terms of sale order had not been preferred by them. However, in terms of the modified scheme, it was made applicable even to the defaulters/promoters like the appellant. The appellant-firm, therefore, contacted the Corporation and an application form was issued to the appellant for making application under the said scheme. The appellant submitted the application along with the application money i.e. 50% of the principal outstanding which comes to Rs. 9,19,495/-.

8. The case of the Corporation was that in terms of explanation to Clause 1(d) of the original scheme, the respondents-firm was not even eligible for applying under O.T.S. scheme, but due to inadvertence, the application form was issued in favour of the respondent along with settlement amount and the principal amount payable was Rs. 24,38,900/-. Out of the said amount, 50% was required to be deposited along with application form. It appears that the appellant challenged the conditions contained in the OTS scheme as being ultra vires, illegal and arbitrary.

9. The matter was heard by the learned Single Judge and the writ petition was disposed of with the direction to the Corporation to refund/adjust Rs. 15,00,000/- deposited by the firm against further payment to be made under OTS scheme. The learned Single Judge further held that since the petitioner has not raised any claim on Rs. 2,50,000/- which was deposited by it in 2004 with OTS application, the petitioner will not be entitled to raise any claim in future on this account.

10. We have heard Mr. Anubha Rawat Choudhary, learned Counsel appearing for the appellant-firm M/s. Bokaro Roller Flour Mill and Mr. Anoop Kumar Mehta, learned Counsel appearing for the Corporation.

11. As noticed above, a sum of Rs. 30,00,000/- was sanctioned and disbursed to the firm by way of loan in the year 1986 and because of default in payment of installment, the outstanding reached to Rs. 88,00,000/- in 2002. Since the firm defaulted in liquidating the dues, the Corporation ultimately served notice u/s 29 of the Act and the unit was put in auction. The auction purchaser deposited part of the auction amount, but neither the transfer deed was executed in favour of the auction purchaser, nor possession of the unit was delivered because of writ petition filed by the firm being W.P.C. No. 4386 of 2002. In the said writ petition, further step for execution of agreement and delivery of possession to the auction purchaser was stayed on the condition of deposit of Rs. 15,00,000/- by the firm. The firm deposited the aforesaid amount of Rs. 15,00,000/- which was adjusted against the balance outstanding dues. The firm on the basis of interim order continued possession of the industry and enjoyed the fruits but failed to deposit the balance amount. Because of non-deposit of loan amount till 2006, the outstanding together with interest reached to Rs. 2,10,73,357/-. Instead of making payment of the outstanding dues, the petitioner-firm challenged the conditions of the One Time Settlement Scheme.

12. After considering the entire facts of the case and hearing the learned Counsel appearing for the parties, in our considered opinion, the direction of the learned Single Judge to adjust Rs. 15,00,000/- deposited by the firm in 2002 against the further payment to be made under OTS scheme in 2006 is wholly unjustified and cannot be sustained in law. As noticed above, despite the offer of the auction purchaser was accepted by the Corporation, the said auction purchaser was not given effect to and the same was stayed on payment of Rs. 15,00,000/- by the firm. The said amount was adjusted against the outstanding dues. In our view, therefore, the claim of the respondent-firm for adjustment of Rs. 15,00,000/- against the OTS scheme is illegal and wholly misconceived.

13. The appellant-firm was sanctioned loan of Rs. 30,00,000/- in the year 1986 on the condition that the said amount shall be repaid together with interest within stipulated time. Since the beginning, the firm committed default in payment of said loan amount, as a result of which the loan together with interest reached to Rs. 2,10,73,357/-. After all, the amount of loan sanctioned by the Corporation is public money and no one can be allowed to retain the amount on one pretext or other. It is high time the Corporation should proceed in the matter in accordance with law.

14. In the case of Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr. (2002) 3 PLJR 13 (SC), the Supreme Court observed:

6. The Corporation as an instrumentality of the State deals with public money. There can be no doubt that the approach has to be public-oriented. It can

operate effectively if there is regular realization of the instalments. While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time-frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand in the way of a deserving borrower getting financial assistance.

7. As was observed by this Court in Gem Cap case the legislative intent in enacting the statute in question was to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a stipulated period. Though the Corporation is not like an ordinary moneylender or a bank which lends money, there is purpose in its lending i.e. to promote small and medium industries. The relationship between the Corporation and the borrower is that of a creditor and debtor. That basic feature cannot be lost sight of. A Corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. As noted above, it has to recover the amounts due so that fresh loans can be given. In that way industrialization, which is the intended object, can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money. As was rightly observed in Gem Cap case promoting industrialization does not serve public interest if it is at the cost of public funds. It may amount to transferring public money to private account. In Mahesh Chandra case this Court issued directions which were required to be observed by Financial Corporation while exercising power u/s 29. In this regard, it was observed at pp. 297-298 as follows:

Every endeavour should be made, to make the unit viable and be put in working condition. If it becomes unworkable:

- (1) Sale of a unit should always be made by public auction.
- (2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit-holder to enable him to file objection if any as he is vitally interested in getting the maximum price.
- (3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit-holder.
- (4) (a) If unit-holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in

instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment run in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by (sic) many normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.

(6) Request of the unit-holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account.

15. In the case of Chandrama Singh and etc. Vs. Bihar State Financial Corporation and Others Division Bench of Patna High Court observed:

At this stage it would be necessary for us to observe that the promoters were chronic defaulters. They had taken the loan long back, they did not pay the installments. For payment of the installment they had taken yet another loan. A part of the second loan was adjusted towards the first loan and some amount was used by them as mobilization amount. If a borrower is unable to make payment of the loan taken by him then it would be fool hardy on part of the creditor to give the same property for a lessor price to the same defaulter borrower rescheduling the payment of the money. It would be too much to expect from the creditor that in stead of recovering the full money from the borrower he would adjust the hypothecated property in favour of the borrower for a lessor amount and would again extend the facility of the installments.

16. As noticed above, in 2002 when the Corporation ultimately tried to recover the outstanding dues by taking recourse to Section 29 and 30 of the Act, petitioner-firm moved this Court and obtained interim stay and on the basis of interim order the petitioner continued possession of the industry. In 2006 when the Corporation accepted offer of the Firm for One Time Settlement on the condition of deposit of retention money, the Firm filed another writ petition challenging the condition of One Time Settlement. Admittedly, the appellant-firm is a chronic "defaulter and thereby succeed in retaining the loan amount for about 22 years.

17. It is therefore, high time the outstanding dues which reached up to Rs. 2 crores must be recovered from the Firm. Such huge amount of public money cannot be allowed to be retained by the Firm on one pretext or other.

18. For the reasons aforesaid L.P.A. No. 227 of 2007 filed by the appellant-firm is dismissed. L.P.A. No. 230 of 2007 and L.P.A. No. 285 of 2007 are allowed and the judgment passed by the learned Single Judge is set aside. Consequently, both the writ petitions filed by the Firm are dismissed.

D.K. Sinha, J.

19. I agree.