

(2008) 06 PAT CK 0043
In the Patna High Court

Deepak Kumar

APPELLANT

Vs

Bihar State Credit and Investment

RESPONDENT

Date of Decision : 23-06-2008

Acts Referred:

Citation : AIR 2008 Patna 150

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J.—Heard learned Counsel for the petitioner and learned Counsel for the Bihar State Credit and Investment Corporation Limited.

2. The petitioner has approached this Court for a direction upon the respondent-Bihar State Credit and Investment Corporation Limited in short BICICO) to produce the resolution dated 12-12-2006 of the Board of Directors of BICICO by which it has been resolved to conduct a fresh valuation of the assets of M/s. Ambuja Electrocastings Pvt. Ltd. and to readvertise the unit for sale and then issue a writ of certiorari for quashing the resolution dated 12-12-2006 of the Board of Directors. Further prayer of the petitioner is to quash the letter dated 22-1-2007 (Annexure-8) issued by the Deputy Manager, BICICO (respondent No. 2) through which the petitioner has been informed about the rejection of his re-offer for the purchase of assets of M/s. Ambuja Electrocastings Ltd., on an enhanced consideration amount of Rs. 49.11 lakhs and also for a direction to command the respondents to execute a deed of absolute sale of the unit of M/s. Ambuja Electrocastings Pvt. Ltd. on an enhanced consideration amount of Rs. 49.11 lakhs in favour of the petitioner and to issue a no dues certificate to the petitioner regarding the payments received by them.

3. The relevant short facts for the decision of the present case are that the defaulting unit, namely, M/s. Ambuja Electro-castings Pvt. Ltd. was advertised by the BICICO for sale in terms of the provisions of the State Financial Corporation

Act. In the said advertisement dated 5-12-2004 published in daily Hindi Newspaper "Hindustan" the outstanding principal amount was shown as Rs. 34.50 lakhs. It was also stated that the Corporation reserves the right to accept, reject/ re-negotiate the offer without assigning any reasons. The petitioner made an offer in terms of the said advertisement and ultimately the sale was finalised by the officials of the BICICO in favour of the petitioner for a total consideration of Rs. 34.50 lacs. By letter No. 2895 dated 10-2-2005 the BICICO communicated tentative acceptance of the offer made by the petitioner for purchase of the mortgaged assets of M/s. Ambuja Electrocastings Pvt. Ltd. In the said tentative acceptance, it was mentioned that the acceptance was subject to the final approval of the sale by the Board of Directors of BICICO and/or such other conditions that may be imposed by the Board of Directors and it was also stipulated that all the terms and conditions given in the M.O.U. shall be binding upon the purchaser as well as the BICICO and shall be treated as an integral part of the terms of the offer. Subsequently, a deed of Memorandum of Understanding was also signed between the parties and the In-charge, Legal on behalf of the BICICO.

4. The said MOU stipulated that the possession of the assets shall be handed over to the purchaser-petitioner on payment of 50% of the sale amount of Rs. 34.50 lacs, i.e. Rs. 17.25 lakhs, but the said possession shall be in the custody of the purchaser only as the Trustee of the BICICO till the sale transaction is finalised in terms of the M.O.U. and the petitioner shall not be entitled to create third party interest during the period till the full amount is paid. It was further laid down in paragraph No. 7 of the M.O.U. that the M.O.U. is subject to the approval of the Board of Directors of the BICICO. The petitioner having paid an amount of Rs. 18 lakhs on 15-2-2005, the possession of the unit was handed over to him on 19-2-2005. Thereafter in its meeting dated 5-9-2005, the Board considered the Agenda note as circulated with respect to the sale of assets of M/s. Ambuja Electrocastings Pvt. Ltd. and disapproved the sale of said assets as the consideration money of Rs. 34.50 lakhs was below the then valuation of the assets of the Government approved valuer at Rs. 49.03 lakhs and, accordingly, directed that the consideration amount of Rs. 34.50 lakhs already deposited by the purchaser be refunded after taking back first the possession of the assets of the company. It is the stand of the BICICO that the decision of the Board in the counter-affidavit was communicated to the petitioner by letter No. 1825 dated 31-10-2005 and the same has not been denied by the petitioner by filing any reply to it. As a matter of fact in the writ petition, the petitioner has admitted the knowledge of the fact that the BICICO vide its resolution dated 5-9-2005 has disapproved the sale of assets for the reasons mentioned therein.

5. After the decision of the Board of Directors, the petitioner again wrote a letter dated 22-4-2006 and made an offer for purchasing the property at Rs. 49.11 lacs which was above the valuation of Rs. 49.03 lakhs and further paid the difference of amount of Rs. 14.41 lakhs towards the same by three cheques. The said offer made by the petitioner was considered by the Board of Directors of BICICO in its

meeting held on 12-12-2006 and it was resolved that a fresh valuation be conducted and the assets of the Unit be readvertised for sale. The same was communicated to the petitioner through letter dated 21-2-2007 by the BICICO stating that In view of the Board's decision the re-offer for the purchase of assets of the said company is rejected and the petitioner was again requested to hand over the possession of the assets back to the representative of the BICICO along with the inventory of the assets within a fortnight from the date of issue of letter and, thereafter, the amounts deposited by the petitioner shall be refunded to him after receipt of complete assets.

6. Learned Counsel for the petitioner submits that the action of the BICICO in rejecting the offer made by the petitioner is arbitrary and unreasonable and hence, the same is fit to be set aside. It is submitted that the valuation at the relevant time being only 49.03 lakhs and the only reason assigned by the Board for rejecting the offer of the petitioner was that Rs. 34.50 lakhs was lower than the valuation of the assets made by the Government approved valuer, It was not open to the BICICO to have rejected the re-offer made by the petitioner which was higher than the said valuation and with respect to which the difference amount had also been paid by the petitioner along with the offer made by him. It is contended that the action of the Board in its resolution dated 12-12-2006 as well as the consequential letter dated 22-1-2007 (Annexure-8) of BICICO is arbitrary and unreasonable for the said reasons and amounts to the Board going back on its own reasons for having rejected the offer at the Initial stage.

7. Learned Counsel for the petitioner also contends that the petitioner was required to deposit the entire amount before the assets were handed over to him. It was unreasonable for the BICICO to have merely written a letter to the petitioner to hand over the assets back to the BICICO without tendering the amount already deposited by the petitioner to the BICICO.

8. Learned Counsel for the BICICO submits that it is evident from the advertisement as well as the acceptance of offer dated 10-2-2005 and the memorandum of understanding that the petitioner was fully made aware that the acceptance of offer by the officials of BICICO was subject to the approval of the Board of Directors. It is argued by learned Counsel that the Board of Directors of the BICICO is the only competent authority to make a final decision in such matters and any other proceeding and action of the officials of the BICICO does not have any binding effect on the organisation and the same having been made clear to the petitioner at every stage. It is not open to him to challenge the decision taken by the Board of Directors. It is also submitted that the rejection of the offer on 31-10-2005 made by the petitioner by the BICICO cannot be considered as unreasonable and arbitrary as proper grounds have been assigned for rejecting the said offer. Learned Counsel submits that the process for sale of the assets initiated by the advertisement dated 5-12-2004 came to an end by rejection of the offer of the petitioner by the Board of Directors of BICICO and any further action of the petitioner raising the amounts subsequently of Rs.

49.11 lakhs cannot have any binding effect on the BICICO. The said offer of the petitioner having been once rejected by the Board of Directors, it was open for the BICICO to take further steps for sale of unit through re-advertisement and the BICICO was not obliged to accept any fresh offer made by the petitioner in this regard. It is submitted by learned Counsel that the decision of the Board of Directors in its meeting dated 12-12-2006 to have a fresh valuation made of the assets of the unit and thereafter assets of the unit be readvertised for sale cannot be held to be arbitrary or unreasonable.

9. In the consideration of the aforesaid facts and circumstances and the submissions of learned Counsel for the parties, this Court does not find any force in the submission of learned Counsel for the petitioner. It is evident from the advertisement and moreso from the letter dated 10-2-2005 making tentative acceptance of offer for purchase made by the petitioner as also on the terms of conditions of the memorandum of understanding signed subsequently that the tentative acceptance of the offer made by the officials of the BICICO was subject to the approval of the Board of Directors of BICICO. The same was made clear from the very beginning and it cannot be argued by learned Counsel for the petitioner that the principle of promissory estoppel would come in the way of BICICO in the present matter. The petitioner has been aware from the very beginning that the tentative acceptance of offer by the officials of the BICICO was subject to the approval of the Board of Directors which had considered and rejected the same after assigning good reasons, namely, that the consideration money of Rs. 34.50 lacs was much below the valuation of the assets at Rs. 49.03 lacs made by the Government approved valuer. Accordingly, the decision taken by the Board of Directors of the BICICO to take back the possession of the assets and refund the amount deposited by the petitioner was rational in view of the said ground. The said decision of the Board taken on 5-9-2005 was also communicated to the petitioner by letter dated 31-10-2005. In the said circumstances, the process for sale of assets through the advertisement dated 5-12-2004 stood concluded by the rejection of the offer made by the petitioner by the Board of Directors by its resolution dated 5-9-2005. Thereafter, any further offer made by the petitioner could only be considered by the Board of Directors on its own terms and it could not be held to be in continuation of the process of the advertisement dated 5-12-2004. The offer of the petitioner having been once rejected, it was open to the BICICO to take fresh steps in the interest of the public financial institution as also the borrower so as to realise the highest price for the unit in question. Subsequent rejection of re-offer made by the petitioner, thus, cannot be considered unreasonable or arbitrary and it was open to the Board to direct a fresh valuation of the assets of the unit and thereafter to get the unit readvertised for sale.

10. In the aforesaid facts and circumstances, this Court does not find any merit in the present application and it is, accordingly, rejected.

11. The petitioner is directed to handover the assets of M/s. Ambuja

Electrocastings Pvt. Ltd. back to the BICICO within a period of six weeks from today. The authorities of the BICICO are directed to take over possession of the same after preparing a proper inventory and within six weeks thereafter refund the entire amount deposited by the petitioner subject to making adjustments for any shortage being found on the making of such inventory of the assets of the unit.