

(2009) 07 PAT CK 0029

In the Patna High Court

In Re: Hatwa Metals and Tubes Limited (In Liquidation)

Date of Decision : 09-07-2009

Acts Referred:

Citation : (2011) 1 PLJR 1008

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Judgement

Ramesh Kumar Datta, J.

I.A. No. 1145/2009:

1. The interlocutory application has been filed for a direction to the Bokaro/Santhal Pargana Industrial Area Development Authority to transfer the leasehold land in the name of M/s. Anmol Feeds Pvt. Ltd. to enable it to get it registered with the Industry Department and also for auction sale to be completed and further to set aside/quash the office order Nos. 530 and 1086/D dated 17.5.2007 and 18.11.2003 respectively and further to direct the Official Liquidator to consider the claim of the Bokaro/Santhal Pargana Industrial Area Development Authority.

2. M/s. Anmol Feeds Pvt. Ltd. (the applicant-company) is the auction purchaser of the assets (free of all encumbrances) of M/s. Hathwa Metal & Tubes Ltd. (in liquidation) located at Jasidih Industrial Area, District-Deoghar within the present State of Jharkhand. The auction sale was confirmed in favour of the applicant-company by order dated 31.5.2007 of this Court. Thereafter the deed of assignment was executed at Deoghar, Jharkhand by the Official Liquidator in favour of the applicant-company and registered in the District Sub-Registry there.

3. The grievance of the applicant-company is that when it approached the Santhal Pargana Industrial Area Development Authority (SPIADA) for incorporating the name of the applicant-company in place of the company under liquidation, the authority refused to do the same till the dues/claim amounting to Rs. 21,53,041.27 to the Authority by the Company in liquidation was settled and further demand was made of 10% of the market value of the land in terms of the

Government letter No. 11/48 dated 7.7.1982 and the memo No. 530 dated 17.5.2007 of the Bokaro Industrial Area Development Authority which has been adopted by the SPIADA.

4. Learned Counsel for the applicant submits that the aforesaid demands of the SPIADA are contrary to law. It is submitted that whatever dues were owed by the Company in liquidation to the SPIADA can only be recovered by it by making a claim from the Official Liquidator as one of the creditors of the company in liquidation and the same cannot be demanded from the applicant-company.

5. So far as the demand in terms of the Government letter dated 7.7.1982 and Authorities letter dated 17.5.2007 are concerned, it is submitted by learned Counsel for the applicant-company that by a decision of this Court in the case of Badri Mehrotra Vs. The State of Bihar and Others, , a similar notification No. 1086/D, dated 16.11.2003 issued by the Bihar Industrial Area Development Authority imposing additional burden of 15% land value and for permission to sell the land had been quashed by this Court holding that the said decision is not in terms of the Industry Department letter dated 7.7.1982 and BIADA has taken such decision without any consultation with the State Government which is not permissible.

6. Learned Counsel for the SPIADA on the other hand submits that so far as the dues of the Company in liquidation are concerned, the SPIADA may not insist upon the applicant depositing the same but seeks liberty to file its claim before the Official Liquidator since the date for filing claims by the creditors has already expired. With respect to the dues under the notification dated 17.5.2007 learned Counsel submits that the same relates to policy decision of the SPIADA for the purpose of effecting the transfer of lease on its registers and the same is in no way connected with the dues of the Company in liquidation, rather the condition is applicable to all concerned who seek such a transfer in the register of SPIADA, and it is not open to the applicant-Company to challenge the said provisions in the present proceedings.

7. On a consideration of the rival submissions this Court is inclined to agree with the submissions of learned Counsel for the SPIADA.

8. So far as the past dues owed by the Company in liquidation is concerned, the same cannot be claimed by the SPIADA, once the order of winding up of the Company has been passed, from any auction purchaser and such claims being against the company in liquidation, they can only be made under the present proceedings by filing the claim like any other creditor of the Company in liquidation before the Official Liquidator.

9. In the facts and circumstances of the case, the SPIADA is permitted to file its claim before the Official Liquidator within a period of six weeks from today with respect to its past dues pertaining to the company in liquidation.

10. So far as the challenge to the letter dated 15.7.2007 is concerned, it is true

that a similar letter issued by the Bihar Industrial Area Development Authority has been set aside by this Court in Badri Mehrotra's case (supra) but the same issue does not pertain to company proceedings. The applicant-company having purchased the assets of the company in liquidation is required to obey all local and national laws for the purpose of running its industry in the State of Jharkhand. Hence, the said plea of the applicant-Company is rejected. However, it is made clear that it is open to the applicant-company to contest the said demands of SPIADA before the appropriate forum.

11. I.A. No. 1145/2009 is accordingly disposed of with a direction to the authorities of SPIADA to transfer the name of the applicant-company in its registers in place of the company in liquidation without insisting on payment of the past dues of the company in liquidation but subject to other terms and conditions applicable for the said purpose.