
(2009) 05 JH CK 0091
In the Jharkhand High Court

J.D. Sarda Industries Private Limited	APPELLANT
Vs	
Bihar State Financial Corporation and Others	RESPONDENT

Date of Decision : 25-05-2009

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2010 Jhar 23 : (2010) 3 BC 423 : (2010) 7 RCR(Civil) 1051

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The case of the petitioner is that M/s. Singhbhum Flour Mills had set up a Flour Mill at Sundernagar, Jamshedpur on being financed by Bihar State Financial Corporation, respondent No. 1 but the said M/s. Singhbhum Flour Mill could not repay the dues of the Corporation and, hence, the Corporation took over the industry and sold the same in auction sale to M/s. Bipasha Investment Pvt. Ltd, Nasik, respondent No. 3 for Rs. 1.25 crore and as against that the respondent No. 3 deposited only Rs. 50 lacs and the balance amount of Rs. 75 lacs was never paid by M/s. Bipasha Investment Pvt. Ltd. Therefore, the respondent corporation floated a tender for sale of the assets of the said unit. Pursuant to that, the petitioner, J.D. Sarda Industries Private Limited submitted its tender on 31.8.2006 with earnest money of Rs. 1 lac for purchase of the mortgaged assets of M/s. Bipasha Investment Pvt. Ltd. On receiving the same, Bihar State Financial Corporation, respondent No. 2, vide its letter dated 19.10.2006 informed the petitioner that the price quoted by the petitioner is much below the value of the assets and thereby request was made to enhance the offer. On query being made in this respect by the petitioner, respondent No. 2 again vide its order dated 12.12.2006 requested the petitioner to enhance the offer. Upon it, the petitioner vide its letter dated 30.12.2006 informed the respondent that he is prepared to offer to purchase the unit for Rs. 2.05 crore but the respondent No. 2 never informed about its acceptance or rejection. However, it could be known that the Corporation is dealing with M/s. Bipasha

Investment Pvt. Ltd. dubiously to settle the unit on a meager sum of less than Rs. 1 crore under the scheme called "one time settlement", though the Corporation is not entitled to settle it to the respondent No. 3 as the Corporation had invited tender for sale of the assets of the unit, more so, when the Corporation did not chose to intimate about the cancellation of the bid. Under this situation, this writ application was filed on behalf of the petitioner praying therein to direct the Corporation respondent No. 1 to accept the bid submitted by the petitioner pursuant to notice inviting tender for purchase of the mortgaged assets of respondent No. 3, M/s. Bipasha Investment Pvt. Ltd and to forebear the Corporation from entering into one time settlement with the respondent No. 3.

2. On the other hand, it is the case of the Corporation as well as respondent No. 3 M/s. Bipasha Investment Pvt. Ltd. that when respondent No. 3 could not repay the dues of the Corporation, the respondent-Corporation issued an advertisement for auction sale by exercising power u/s 29 of the State Financial Corporation Act and pursuant to that, the petitioner did submit its tender by depositing earnest money of Rs. 1 lac but by the time any decision could be taken in the matter of settlement of the mortgaged property of respondent No. 3 to the petitioner, the Corporation came up with a scheme circulated on 15.9.2006 to settle the dues of entrepreneur called as "one time settlement". The respondent No. 3 falling within the Clause 1(C) of the Schedule appended to the scheme, applied for settlement on 15.12.2006 by depositing a sum of Rs. 7.50 lacs with the Bihar State Financial Corporation. Subsequently, the Corporation came with the modified "one time settlement 2006" which was circulated on 27.12.2006 and under that scheme the petitioner applied on 31.1.2007 for settlement of the assets under Plan A and deposited a sum of Rs. 30 lacs on 2.2.2007. Thereupon, Managing Director of the Corporation passed the settlement order on 10.5.2007 whereby the petitioner was required to deposit a sum of Rs. 45,22,529/- as against the total settlement amount of Rs. 82,72,557/- which the petitioner deposited with the Corporation. Thus, it has been pleaded that the petitioner is not entitled to any relief.

3. It has been pleaded on behalf of the Corporation that after the unit was settled to respondent No. 3, it was informed to the petitioner, vide letter dated 25.9.2007 and, thereby the petitioner was asked to take back Rs. 1 lac which had been deposited by the petitioner as earnest money.

4. When such affidavit was filed with respect to settlement of the unit to respondent No. 3, the order of settlement dated 3.5.2007/10.5.2007 was sought to be quashed by way of amendment petition.

5. Learned Counsel appearing for the petitioner submits that once the tender was invited much before the circulation of one time settlement scheme and the petitioner did submit its bid by depositing earnest money and also subsequently enhanced the bid amount, pursuant to request made by respondent No. 2, the Corporation should not have settled the unit to respondent No. 3 under one time settlement scheme and that by taking decision under order dated

3.5.2007/10.5.2007 for settlement in favour of respondent No. 3 the Corporation has incurred loss of Rs. 4.40 crore as outstanding dues had risen to the extent of Rs. 5,15,78,842.90 whereas the petitioner has deposited about Rs. 80 lacs and, therefore, action of the respondent-Corporation is not only unreasonable but unfair particularly when the petitioner had offered a sum of Rs. 2.05 crore and that the Financial Corporation is always expected to try and realize the maximum sale price but in the instant case, the Corporation instead of settling the unit to the petitioner for a sum of Rs. 2.05 crore has settled the unit to respondent No. 3 at Rs. 80 lacs and, therefore, action of the respondent cannot be said to be fair and reasonable and under this situation, the petitioner is entitled to relief as whenever the courts have found the action of the respondent unreasonable and unfair by not realizing maximum sale price, action of the respondent has always been negated by the court.

6. In this respect learned Counsel appearing for the petitioner has referred to a decision rendered in a case of Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others, .

7. As against this, learned Counsel appearing for the respondent No. 3 as well as the respondent-Corporation submits that though the Board under the statute is expected to act on business principle but at the same time, it is expected to give due regard to the interest of industry, commerce and general public and keeping in view the said statutory duty, the Board adopted a scheme of one time resolution giving opportunity to entrepreneur to settle their dues so that unit may revive or be made functional and under that scheme, the unit has been settled to respondent No. 3, who fell within the ambit of the scheme and thereby action of the respondent can never be said to be unreasonable or unfair.

8. Having heard learned Counsel appearing for the parties, it does appear that unit had been settled to respondent No. 3 under the scheme called "one time settlement" leaving the claim of the petitioner whereby he had offered much more than the amount on which it has been settled but the question would be whether the decision taken by the Financial Corporation warrant any interference by this Court. In this respect, I may straightway refer to a decision rendered in a case of U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, wherein the Hon'ble Supreme Court has held that it was not the matter for the courts to decide as to whether the Financial Corporation should invest in the defaulting unit, to revive or to rehabilitate it and whether even after such investment the unit would be viable or whether the Financial Corporation should realize its loan from the sale of the assets of the Company. The Court goes further to observe that Corporation being an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge, in the discharge of its functions, it is free to act according to its own right. The views it forms and the decisions it takes would be on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. In such a

situation, more so in commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned. The Court further held that:

Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it maybe, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

9. Further in a case of U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, it has been held that the High Court while exercising its jurisdiction under Article 226 of the Constitution cannot sit as an appellate authority over the acts and deeds of the Corporation and seek to correct them and that the doctrine of fairness evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities.

10. Of course in a case of Karnataka State Industrial Investment and Development Corporation Limited v. Cavelet India Ltd and Ors. (supra) which was relied upon by learned Counsel appearing for the petitioner the Court accepting the aforesaid principle has also observed that in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer and that Financial Corporation is always expected to try and realize the maximum sale price by selling the assets by following procedure which is transparent and acceptable after due publicity and that reasonableness is to be tested against the dominant consideration to secure the best price for the property. This observation seems to have been made in the perspective of the provisions as contained in Section 29 of the Act as the Financial Corporation is accepted to exercise its right fairly and reasonably but at the same time it has been observed as to whether action of the Financial Corporation is bona fide or not would depend on the facts and circumstances of each case. I may indicate that in that decision, question of settlement under one time settlement scheme was never under challenge whereas in the instant case, settlement has been made to respondent No. 3 under "one time settlement scheme 2006" which has been adopted by the Board of Directors of the Corporation in order to reduce its N.P. account and enhance recovery from them perhaps keeping in view its statutory duty as enshrined u/s 24 of the State Financial Corporation Act which scheme is never under challenge before this Court and therefore, action of the respondent-Corporation for settlement of the unit to respondent No. 3 on the lower amount than what it was offered by the petitioner which never took the shape of concluded contract cannot be said to be mala fide or unreasonable.

11. From the statement made in the counter affidavit it appears that as per the terms of the scheme, the unit has been settled on the amount which according to provision of the scheme, the petitioner was liable to pay and under this situation,

action of the respondent-Corporation can never be said to be mala fide. Once the action of the respondent is found to be bereft of mala fide, it needs no interference in terms of the decision referred to above by the Hon''ble Supreme Court.

12. Thus, this application is devoid of any merit and hence, it is dismissed.