

(2016) 04 KAR CK 0150
In the Karnataka High Court
Case No : W. A. No. 100780 of 2014

Karnataka State Industrial

APPELLANT

Vs

Rayaji Hospitals and Research Institute Pvt. Ltd.

RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Industrial Areas Development Act, 1966 — Section 14
State Financial Corporations Act, 1951 — Section 29, 31

Citation : (2016) 4 AirKarR 265 : (2016) ILRKarnataka 2529 : (2016) 6 KantLJ 362 : (2016) 4 KCCR 3002

Hon'ble Judges : H.G. Ramesh and G. Narendar, JJ.

Bench : Division Bench

Advocate : Veeresh R. Budihal, Advocate, for the Appellant; M.V Seshachala, Senior Counsel, and Omkaresha, for P.G. Chikkanaragund, Advocate, for the Respondent No. 1; Dinesh M. Kulkarni, Advocate, for the Respondent No. 2; Jagdish Patil, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

G. Narendar, J.—I.A.No.3/2014 filed for dispensation and 1. A.Nos. 1 & 2/2016 filed to produce certain documents in W.A No. 100780/2014 are allowed. I.A.No.2/2014 filed for dispensation in W.A.No. 100802/2014 is allowed.

2. These appeals arise out of the common order rendered in W.PNo.41433/2010. In these intra-court appeals, the appellants are respondent Nos. 1, 2 and 3 respectively in the writ petition. The writ petition was preferred by respondent No. 1 herein praying for the following reliefs:

"i) The order dated 30.11.2010 passed by the respondent No. 1 in No. MD/KSSIDC/2010-11/- 2056 vide Annexure-G.

ii) Direct the respondent Nos.1 and 2 revive the One Time Settlement offer made on 06.09.2006 to the Petitioner Company and settle entire claim as per the said terms and conditions.

iii) Quash the proceedings of the Auction Negotiation held on 31.07.2007 and respondent shall not confirm the sale after the lapse of 5 years, without evaluating the property in question.

iv) Pass any such order or orders as deem fit by this Hon''ble Court on the facts and circumstances of the case in the interest of justice and equity."

3. The writ petition was preferred primarily praying for quashing of the order dated 30.11.2010 passed by respondent No. 1 rejecting the request of the petitioner for extension of time under One Time Settlement Scheme (for short "OTS Scheme") sanctioned by respondent No.1 vide proceedings dated 09.06.2006 and to quash the Auction Negotiation dated 31.07.2007 and the sale confirmation after lapse of 5 years. The said order of rejection dated 30.11.2010 is produced and marked as Annexure-G to the writ petition. It is relevant to note that the impugned Annexure-G came to be passed on the representation dated 11.10.2010 (Annexure-F) which was submitted pursuant to a direction issued by this Court in W.P.No.8601/2007 dated 01.10.2010.

4. Appellants are referred to as "Corporation and Auction purchaser" and the contesting respondent is referred to as the "petitioner" for the sake of brevity and convenience.

5. A marshallng of the facts is necessary for a better appreciation of the case on hand in view of the multiple rounds of litigation.

6. The narration of facts is necessitated to clear the cob-webs created by the multiple rounds of litigations between the parties and as the pleadings in the present round of litigation do not throw light upon various factual aspects of this case and also as the appellants have raised the ground of res judicata. The records relating to W.P.No.8601/2007 were summoned, as it is the genesis for the present litigation and arises out of the order dated 01.10.2010 rendered in W.P.No.8601/2007. which is hereinafter referred to as the first petition for the sake of convenience.

7. The petitioner is a private limited company constituted by the couple who are medical professionals. The endeavour of the doctor couple was to establish a 25 bedded hospital with the state-of-art facility to cater to the medical needs of the middle and lower strata of the society. With this endeavour in mind, they purchased an extent of nearly 2 acres, to be more precise 1 acre 37 guntas of land on the outskirts of Hubli town (then), which is presently situated abutting the road to the Airport. In furtherance to its endeavour, the petitioner approached the corporation for financial assistance of Rs. 1.84 lakhs to construct a hospital. The corporation approved and sanctioned a sum of Rs. 70.00 lalchs only, vide its proceedings dated 06.07.1994. Thereafter, the said amount of Rs. 70.00 lakhs came to be released in seven instalments between the period 01.01.1995 to 30.04.1998. Thereafter, a year later, on 31.03.1999 another term loan came to be approved and a sum of Rs. 30.00 lakhs was sanctioned. It is the admitted case that, though the said amount was sanctioned as a loan, the entire

sum of Rs. 30.00 lakhs was appropriated by the corporation and not a single penny came to be released in favour of the petitioner. In the interregnum and thereafter, as the sum of Rs. 70.00 lakhs was insufficient to complete the project, the petitioner by letter dated 28.08.1997 requested the corporation to release an extent, of 15 guntas of land out of the 77 guntas mortgaged to it to enable them to mortgage the said extent of 15 guntas in favour of Shree Gurusiddeshwar Cooperative Bank, Hubli, who had agreed to release a sum of Rs. 20.00 lakhs based on the mortgage of the land to an extent of 15 guntas. It was also pointed out that the valuation of land on the said date as per the Government rates itself was Rs. 300/- per sq.ft. and that the market value of the land alone on the said date was in excess of Rs. 2.00 crores. Further, the petitioner by letter dated 24.05.2000 intimated the corporation that one Mahalaxmi Co-operative Bank, Hubli was also prepared to extend financial assistance enabling the petitioner to complete the project and as on the date of communication, the petitioner had put up a construction spread over 11000 sq.ft and that they had fully equipped hospital with equipment like x-ray, ultra sound scanner, ICU, neonatal care unit, operation theaters, delivery room along with special as well as semi-special wards. Electricity supply is by a 100 KVA H.T. line with separate transformer installed in the hospital and they had also installed a backup generator of 75 KVA capacity. They have also brought out the difficulties faced by them in the execution and implementation of the project including obtaining exemption under the Urban Land Ceiling Act, which was in force at the relevant point of time. The aforesaid two letters are marked as Annexures-B and C in the first writ petition, i.e., W.P.No. 8601/2007.

8. Thereafter, by representation dated 14.03.2002, the petitioner prayed for extension of the benefit of OTS scheme, as the officers of the corporation had commenced recovery proceedings. The petitioner by letter dated 29.09.2004 once again requested for extension of OTS scheme. The representations dated 14.03.2002 and 29.09.2004 seeking extension of OTS scheme to the petitioner are produced and marked as Annexures-D and E respectively in W.P.No.8601/2007. It is the case of the petitioner that, in anticipation of the sanction of OTS scheme, they had deposited a sum of Rs. 12.00 lakhs between 22.03.2002 to 10.07.2006 and that apart, they had also paid a sum of Rs. 8,21,194/- between the period 18.09.1995 to 06.09.2001. It is their further case that, the above said amount were apart from Rs. 30.00 lakhs appropriated by the corporation after sanctioning the same as a term loan without releasing the same in favour of the petitioner.

9. It is stated that, after prolonged delay, the corporation vide proceeding dated 09.06.2006 approved the OTS scheme proposal placed by the petitioner and the petitioner was called upon to pay a sum of Rs. 1,20,79,000/- in full and final settlement of the financial assistance. As per the terms of the OTS Scheme, the petitioner was required to pay first instalment of 25% within 30 days and the balance 75% by way of second instalment within next three months thereafter, and that the said amount settled under OTS scheme would not carry any interest

for the said period and as per the OTS scheme delayed payments beyond the stipulated period would attract interest at different rates depending upon the length of the delay. As per the OTS scheme, the said amount of Rs. 1,20,79,000/- was inclusive of the initial amount paid. Further, as per condition No.5, the corporation put the petitioner on notice that, in the event of the petitioner failing to abide by the terms and conditions with regard to payment of the amount derived it would entail penal action by the corporation in the form of withdrawal of OTS scheme. Further, as per condition No.7, the corporation reserves the right to withdraw the OTS scheme if it comes to know subsequently that the petitioner has furnished false or misleading or incorrect or untrue information or any material information having a bearing on the OTS decision had been suppressed. That apart, no other condition of any consequence is imposed under the proceedings of the corporation dated 09.06.2006. Copy of the proceedings sanctioning OTS scheme is produced and marked as Annexure-R5 to W.P.No.8601/2007. The corporation has also produced and marked the initial proceedings dated 06.07.1994 sanctioning the project loan as Annexure-R1. The corporation has also produced and marked the proceedings sanctioning Rs. 30.00 lakhs as additional term loan as Annexure-R2. The corporation has also produced demand letters dated 08.03.2001 and 13.11.2001 as Annexures-R3 & R4. The corporation has also produced letters dated 13.10.2006, 18.11.2006 and 13.02.2007 and mahazar dated 21.04.2007. The above annexures are produced and marked as Annexures-R6 to R9 in W.P.No.8601/2007.

10. The facts and circumstances which led to the filing of the first writ petition are, the sanction of OTS scheme (dated 09.06.2006) and the failure of the petitioner to strictly adhere to the terms and conditions imposed thereunder. As a consequence of its failure, the corporation exercised the powers vested in it under Section 29 of the State Financial Corporation Act (for short "the Act") and took the possession of the running hospital on 21.04.2007. The mahazar was drawn up and the premises were locked and the corporation deployed its own security. Thereafter, the corporation got issued the sale notice dated 25.05.2007 and the same was advertised in the newspaper inviting the tenders on or before 26.06.2007. Aggrieved by the sale notice, the petitioner preferred the first writ petition praying for the following reliefs:

- a) Issue a writ of mandamus or any other appropriate writ or directions directing the 1st and 2nd respondent to drop all proceedings as against the sale notice and close the loan as per the OTS proposal issued by the petitioner.
- b) Issue a writ or any other writ quashing the alleged sale notice dated 25.05.2007 (Annexure-F) appeared in the Samyuktha Karnataka daily and subsequent proceedings in the same, etc.

11. The reliefs prayed included a direction to the corporation to drop the sale proceedings and to close the loan as per the OTS scheme extended to the petitioner and for quashing the sale notification dated 25.05.2007, issued in consequence of the exercise of power under Section 29 of the Act. Upon

consideration, this Court was pleased to grant an interim order. During the pendency of the first writ petition, the corporation got issued a second sale notification 05.07.2007, as the corporation received only one offer pursuant to earlier sale notification dated 25.05.2007 and in the second sale notification, the last date for submitting the bids was fixed as 30.07.2007. In the writ petition, the corporation was directed not to conduct the sale subject to the petitioner depositing Rs. 25.00 lakhs on or before 25.06.2007 and another Rs. 25.00 lakhs within two months thereafter and on the failure of the petitioner depositing the said amount, the corporation was entitled to continue with the sale. That on 31.07.2007 the corporation opened the bids in the morning session and found that there were 14 bidders including the auction purchaser herein. Initially the appellant-auction purchaser had offered a sum of Rs. 110 lakhs only, and out of the 14 bidders, he was the 12th highest. Thereafter, the corporation counsel moved this Court complaining that the petitioner had not complied with the conditional interim order dated 19.06.2007. This Court also taking cognizance of the fact that the petitioner was tendering first payment of Rs. 25.00 lakhs on the said date, i.e., on 31.07.2007, the interim order granted earlier came to be modified permitting the petitioner to pay the instalment of Rs. 25.00 lakhs by way of cheque on the said date and also stipulated that the second instalment of Rs. 25.00 lakhs to be paid on or before 18.08.2007. In the afternoon of the said date, at the instance of the counsel for the corporation, the writ petition was taken up for rehearing and an affidavit came to be filed by the manager of the corporation stating that, though a cheque had been issued by the petitioner for Rs. 25.00 lakhs, on enquiry, the said manager was informed by the petitioner's banker that no sufficient funds were available in the account. Relying on the said affidavit of the manager of the corporation, the Court further modified the interim order and directed the corporation to enter into a negotiation pursuant to the opening of the bids in the morning session, but directed that confirmation shall not take place. Though the affidavit came to be filed stating that there was insufficient balance in the account of the petitioner to honour the cheque for Rs. 25.00 lakhs, the fact remains that the said cheque was encashed on the very next day i.e., on 01.08.2007 and the second instalment of Rs. 25.00 lakhs was also paid by the petitioner on 18.08.2007. Pursuant to the modification of the interim order, the corporation proceeded with the negotiations and the negotiations were conducted by the Asset Sale Committee at 3.00 p.m. As per the terms and conditions settled on the said debts, the successful bidder was required to pay 25% of the sale amount (less EMD paid) within 15 days from the date of sale communication letter and the balance 75% ought to be paid within 30 days thereafter. It was also notified that, any default in these payment terms would automatically disqualify and nullify the sale transaction with forfeiture of all amounts paid including EMD. The bidders were further notified that the corporation retains the right to put the same assets for re-sale and complete the sale transaction in all respects.

12. Further, as per Sl.No.3 of the terms and conditions, the bidders were

required to indicate the break up details towards (a) land and building; (b) indigenous plant & equipment; and (c) imported plant & equipment. The bidders were also notified that the sale would be subject to confirmation of the jurisdictional court. Pursuant to the negotiations and during the inter-se bidding, the bidders substantially increased their offer and more particularly, the auction purchaser increased the bid from Rs. 1 crore 10 lakhs to Rs. 6 crores 50 lakhs. Thereafter, the auction purchaser who was the successful bidder got himself impleaded in the pending writ petition and statement of objections came to be filed by the corporation and the auction purchaser. The primary objection regarding maintainability of the writ petition was canvassed by the corporation by relying on the judgment of the Hon''ble Apex Court in the case of Haryana Financial Corporation and another v. Jagdamba Oil Mills and another reported in (2002) 3 SCC 496 : (AIR 2002 SC 834). It was contended that the transaction between the parties arises out of a contract and the matter being purely a contractual issue, petitioner is not entitled to invoke Article 226 of the Constitution. The said contention was negatived in the light of the law laid down by the Apex Court in the case of M/s Sardar Associates & others v. Punjab & Sindh Bank & others reported in AIR 2010 Supreme Court 218, wherein the Hon''ble Apex Court at paragraph 40 has held as follows:-

"If in terms of the guidelines issued by the Reserve Bank of India a right is created in a borrower, we see no reason as to why a writ of mandamus could not be issued. We would assume, as has been contended by Mr. Singh, that while exercising its power under Article 226 of the Constitution of India, the High Courts may or may not issue such a direction but the same, in our opinion, by itself, would not mean that the High Court would be correct in interfering with an order passed by the Appellate Tribunal which was entitled to consider the effect of such one time settlement."

13. Thereafter, the writ petition came to be disposed of by a detailed order, whereby several directions came to be issued and amongst the same, the petitioner was directed to file a representation before the corporation within a period of two weeks and in turn the corporation was directed to examine the same and take a decision keeping in mind the facts and circumstances of the case and the observations made by this Court in the matter of extending the benefit of settlement of the dues by extending the legally permissible concessions keeping in mind the benefits given to other similarly placed persons. Further, the corporation was also directed not to proceed with the finalisation of the sale till the consideration of the representation for one time settlement made by the petitioner. The operative portion of the order in W.R No.8601/2007 is extracted for the sake of convenience

a) The petitioner is permitted to file a representation before the Chairman and Managing Director of the respondent corporation within two weeks from the date of receipt of a copy of this order.

b) On such a representation being filed, the competent authority shall examine

the same and take a decision in the light of the facts and circumstances of this case keeping in mind the observation made herein above within a period of two months from today in the matter of extending the benefit of settlement of the dues by extending the legally permissible concessions keeping in mind the benefits given to other similarly placed persons.

c) The authorities are directed not to proceed further with the finalisation of the sale till the consideration of the matter as directed above and without communicating the decision taken on the representation to the petitioner.

d) In terms stated above this writ petition is disposed of."

14. After disposal of the first writ petition on the above terms, the petitioner submitted its case vide representation dated 11.10.2010. In the said representation, it was pointed out that the petitioner had already paid a sum of Rs. 1,02,75,000/- as on that date. The petitioner had also narrated the difficulties faced and progress it was making. It was contended therein that the sum of Rs. 120.79 lakhs determined by the corporation payable under the one time settlement scheme is contrary to the RBI guidelines dated 31.03.2004. According to the said guidelines, the liability of the petitioner would be restricted to principle amount due only. Copy of the RBI guidelines and the authoritative pronouncement of the Apex Court were also placed before the corporation. It was also pointed out that the closure of the unit had caused immense hardship to the petitioner. It was also pointed out that promoter couples had invested their hard earned money and also by selling their properties like a flat, plot, agriculture land, gold, jewelry and survival of the unit and family was in the hands of the corporation and fervently pleaded for extension of time to repay the balance. It was also pointed out that the corporation was empowered to condone the delay in making payments as per the OTS scheme and also that the delayed payment could be accepted by collecting simple interest for the delayed period. The petitioner also pointed out certain instances where the corporation had condoned the delay of two years in respect of three defaulters. The petitioner also pointed out the waiver of interest to the extent of 93.77 lakhs and also to the nature of default in the said case. The petitioner has also requested the corporation to take a sympathetic view in the light of the fact that the promoters are professional doctors and permit them to deposit the remaining sum of Rs. 58.79 lakhs within a reasonable time and further requested for waiver of the interest accrued on this amount. Another instance of relief granted to a third party at the instance of the Hon"ble High Court was also brought to the notice of the corporation and the petitioner requested for personal hearing.

15. It is also relevant to note that in the interregnum, during the pendency of the writ petition, the petitioner had submitted a representation to the Corporation to exercise their discretionary power and grant him extension of time to repay the amount stipulated under the OTS. The said letter is produced as Annexure - D and is dated 10.03.2008. This representation was not even considered.

16. On receipt of the representation dated 11.10.2010 and pursuant to the direction in the first Writ Petition dated 01.10.2010 the Managing Director of the Corporation took it up for consideration and disposal, but no personal hearing, though requested by the petitioner, was not granted. The Managing Director after considering the representation was pleased to reject the request for extension of time for compliance of OTS terms on the premise:

- (a) that a long time has lapsed since OTS was sanctioned in June 2006;
- (b) that the promoter (petitioner) has not made efforts even to make part payments at his own behest;
- (c) that he has made payments only pursuant to the orders of the Court. Hence, the case of the petitioner is not comparable to the other instances where the Corporation has granted extension of time;
- (d) revival of the hospital activities would involve substantial amount of investment;
- (e) the petitioner failed to convince the Corporation about his ability to mobilise the required funds for payment of OTS dues and revival of Hospital.
- (f) Despite repeated discussions petitioner could not provide any documentary evidence/commitment from prospective investors;
- (g) that the petitioner paid only 5.8% of the OTS amount;
- (h) that the petitioner is a chronic defaulter and the repayment track record is very poor;
- (i) lastly it was concluded that the petitioners are not capable of mobilising the required funds to settle the dues of the Corporation and hence, it was concluded that the matter be settled once for all as per law and not to enter into another round of fruitless expectations for which there is no basis.

17. On the above conclusions, the Managing Director deemed it fit to reject the request of the petitioner for extension of time to comply with the terms and conditions of the OTS scheme. The Managing Director has recorded that the petitioners have deposited only Rs. 57,00,000/- out of the total OTS amount of Rs. 1,20,79,000/-. Prima facie the said fact appears to be erroneous. In the modified synopsis filed into Court on 06.04.2016, the petitioner has detailed the various dates on which the amounts were released and the various dates on which the amounts were paid. As per the said details, the petitioner had totally remitted a sum of Rs. 62,00,000/- between 22.03.2002 to 18.08.2007 on account of OTS scheme only.

18. A prima facie reading of the impugned order dated 30.11.2010 would show that the same is contrary to the letter and spirit of the directions issued by this Court in the first Writ Petition. The Corporation accepted the orders and directions issued by this Court in the first Writ Petition. It did not deem it fit or

necessary to prefer an appeal. It did not feel aggrieved by the directions issued by this Court and on the contrary, it accepted and has acted in compliance of the directions issued from this Court. But the order passed is virtually in contravention of the direction "b)" of the order which is reproduced again for the sake of convenience.

"b). On such a representation being filed, the competent authority shall examine the same and take a decision in the light of the facts and circumstances of this case keeping in mind the observation made herein above within a period of two months from today in the matter of extending the benefit of settlement of the dues by extending the legally permissible concessions keeping in mind the benefits given to other similarly placed persons."

(Underlining supplied)

19. It is also relevant to point out that on the contrary, being dissatisfied the petitioner had preferred a Writ Appeal immediately after disposal of the Writ Petition, but later came to be withdrawn after passing of the order dated 30.11.2010. The Order passed by the Managing Director of the Corporation came to be impugned in the second Writ Petition i.e., W.P. No.41433/2010. The learned single Judge of this Court was pleased to allow the Writ Petition and was further pleased to quash the order impugned therein (i.e., the order dated 30.11.2010 passed by the Managing Director). The Petitioner was granted three months" time to pay the balance amount due under the OTS scheme and on such payment being made, the respondents were directed to deliver the possession of the seized assets. It was further held that in the event of the failure of the petitioner to pay the balance sum within the stipulated time, liberty was granted to the Corporation to proceed with the sale of the property after following the due procedure and in accordance with law. Liberty was also granted to the 3rd respondent herein i.e., the auction purchaser to participate in the auction sale. The Writ Petition came to be disposed of by order dated 22.04.2014. Aggrieved by the same, the appellants are before this Court.

20. Heard the learned .Senior Counsel appearing on behalf of the auction purchaser, the petitioner and the learned counsel for the Corporation.

21. It was contended by the learned Senior Counsel on behalf of the auction purchaser that the OTS proposal on behalf of the petitioner dated 29.09.2004 was accepted by the Corporation on 09.06.2004, on the condition that the petitioner ought to pay the stipulated sum within the stipulated time. On his failure despite of extension of time, the sale notice dated 25.05.2007 came to be issued and the bids were opened on 26.06.2007 and in the interregnum, the petitioner preferred the first Writ Petition and an interim order came to be granted on 19.06.2007 which later came to be modified on 31.07.2007. He would draw the attention of the Court to the relief sought in the first Writ Petition and the relief sought in the second Writ Petition. He would submit that the relief sought in the second Writ Petition is the same relief which had been sought

under the first Writ Petition and hence, he would submit that the same is hit by the principles of res judicata. He would also draw the attention of this Court to the provisions of Order 2, Rules 2 and 3 of CPC. He would admit that the order in W.P. No.8601/2007 had not been challenged either by the auction purchaser of the Corporation and that they had accepted the said order. He would submit that the present writ petition is squarely hit by the principles of res judicata, as the validity of sale notice was gone into and adjudicated and hence, the same issue cannot be gone into and argued once again in the second writ petition. In this regard, he would rely upon the judgment of the Hon''ble Apex Court in the case of State of Karnataka and another v. All India Manufacturers Organisation and others reported in 2006 (4) SCC 683 : (AIR 2006 SC 1846). He would argue that the doctrine of res judicata is based on the larger public interest and is founded on two grounds: one being the maxim *nemo debet bis vexari pro una et eadem causa* (no one ought to be twice vexed for one and the same cause) and second, the public policy, that there ought to be an end to the litigation.

22. The facts and circumstances of the case in which the Hon''ble Apex Court has rendered the above decisions is wholly incomparable to the facts and circumstances of the case at hand. The Hon ''ble Apex Court concluded that there cannot be a second round of litigation even if it be a public interest litigation on the same cause of action. The learned Senior Counsel would draw the attention of this Court to paragraph 32 of the said judgment in order to demonstrate that the principles of res judicata is also applicable to the proceedings under Article 226 of the Constitution of India. The Hon''ble Apex Court has held that the main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to reagitate the matter again and again and that Section 11 of CPC recognises this principle and forbids a court from trying any suit or issue, which is res judicata, recognising both "cause of action estoppel" and "issue estoppel".

23. The Hon''ble Apex Court also examined the relief sought in the previous public interest litigation initiated by one Somashekar Reddy and also the relief sought in the second Writ Petition and concluded that the relief sought in the both the Writ Petitions were substantially the same. The Hon''ble Apex Court further concluded that, the cause of action in both the cases is the same i.e., the frame work agreement, and the challenge to the frame work agreement was negated in the earlier round of litigation and in the second round of litigation also the same was sought to be canvassed. The Hon''ble Apex Court concluded that, the findings in the first round of litigation having reached, finality cannot be reopened in the second round of litigation and held that it was an abuse of the process of Court. If the Court was required to re-examine the issues that had been raised or ought to have been raised, it would be an abuse of the process and the same cannot be allowed. There can be no quarrel with the ratio of law laid down by the Apex Court. The cause of action for the two writ petitions preferred by the petitioner herein, are wholly different.

24. The learned Senior Counsel would contend that the petitioner had not raised the contention regarding valuation of the seized assets or fixation of reserve price. The learned Senior Counsel appearing on behalf of the petitioner interjecting at this stage would state that it has been specifically pleaded in the Writ Petition and also that no reserve price has been fixed.

25. The learned Senior Counsel appearing on behalf of the auction purchaser would contend that the auction purchaser has invested a huge sum of 6.5 crores pursuant to the sale confirmation letter dated 14.03.2011. By the said sale confirmation, the third party purchaser was directed to deposit 25% of the sale amount within 15 days from the date of communication of the letter and the balance 75% of the sale amount to be paid within next 30 days. He would submit that pursuant to the sale confirmation, the first sum of 25% of the sale consideration was deposited on 08.04.2011 and a further sum was deposited on 27.04.2011 and the balance sum was paid on 20.06.2011. Ultimately it is seen that the only sum deposited by the Auction Purchaser was the EMD amount of Rs. 5.00 lakhs.

26. The learned Senior Counsel would admit that the above amounts have been paid by the nominee of the auction purchaser and that the sale has to be formalized and the sale deed be executed in favour of a third party who has deposited the amounts into the account of the Corporation. The learned Senior Counsel does not dispute that the amounts are deposited in 2011 in pursuance of the auction sale conducted on 31.07.2007.

27. The learned counsel for the Corporation would submit that the pride and fair name of the Corporation itself is at stake. He would contend that if the sale is not allowed to be concluded, it would tarnish the reputation of the Corporation, as prospective purchasers may loose confidence in the ability of the Corporation to convey and deliver auctioned properties. He would contend that the petitioner is a chronic defaulter and that he has not approached this Court with clean hands and is also guilty of misrepresentation of the facts to the Court. He would contend that the petitioner is not entitled to any equitable relief at the hands of this Court and hence, he would submit that the impugned order is bad and unsustainable in law and is liable to be set aside.

28. The learned counsel for the Corporation would canvass the proposition that the second Writ Petition is an abuse of the process of Court that the creditor (petitioner) has no vested right to seek a mandamus for revival/revalidation of the OTS or demand the extension of a fresh OTS scheme and questions whether this Court was justified in exercising its jurisdiction under Article 226 at the instance of a person who has disobeyed the orders of this Court and that too when third party rights are created.

Lastly he would contend that whether this Court is justified in exercising its powers to act as a Court of appeal over the administrative actions of the Corporation?

29. He would also draw the attention of this Court to the relief sought for, at prayer (a) in the first writ petition and prayer (2) in the second writ petition. He would submit that though they are differently worded, the reliefs are one and the same. He would assert that there is no law which permits revival of lapsed OTS scheme. He would state that this Court by means of a mandamus cannot compel the Corporation to revive a lapsed scheme.

30. As regards the next proposition he would submit that the request of the petitioner under the representation dated 11.10.2010 has been rejected as he is a chronic defaulter not only in repayment of dues, but also in complying with the directions of this Court. On clarification sought, he would elaborate that the disobedience of the directions of this Court is nothing but non-payment of the specified amounts within the time stipulated by this Court by its interim order. He would submit that the petitioner was directed to deposit a sum of Rs. 25,00,000/- on or before 25.06.2007, but the sum was paid belatedly only on 31.07.2007. But he would admit that the second amount of Rs. 25,00,000/- paid on the stipulated date on 18.05.2007. He would submit that the second Writ Petition is hit by the provisions of Order 23, Rule 1 of CPC, as the withdrawal of the Writ Appeal, without reserving liberty amounts to abandonment of their rights.

31. He would also join issue on the aspect of independent valuation of the seized assets and the procedure employed to conduct the sale or the sale price concluded. He would further contend that no relief and equity could be extended to the petitioner because the petitioner has misrepresented to this Court. He would draw the attention of this Court to the Writ Proceedings Rules, 1977, more particularly Rule 2(3a) and also the statement made in the second Writ Petition, wherein the petitioner has asserted that he has not filed any other Writ Petition on the same cause of action. He would submit that the same is false and both the writ petitions arise from the same cause of action. He would further contend that the petitioner ought to have raised all contentions in the first Writ Petition itself and having failed to do so and having withdrawn the Writ Appeal, the same amounts to abandonment of his right and having abandoned his right, the second Writ Petition is not sustainable. He would submit that he desires to distinguish between abandonment of right and constructive res judicata, as argued by the learned Senior Counsel on behalf of the auction purchaser. He would contend that none of the issues raised have been conclusively dealt with and have not attained finality. On the plea of abandonment, he would rely on the judgment of the Hon''ble Apex Court rendered in AER 1987 SC 88 and two other pronouncements by the Hon''ble High Court of Rajasthan and Hon''ble High Court of Allahabad reported in AIR 1977 Raj 131 and AIR 1995 All 338.

32. The learned counsel for the Corporation vehemently contended that the argument of the petitioner, on the issue of reserve price and valuation of the seized assets prior to sale cannot be countenanced for the fact that there are no Rules which stipulate that a sale notification of any seized asset has to be

preceded by a valuation by an independent valuer and thereafter a fixation of the reserve price. He would submit that what is not prohibited under law is permitted. He would contend that the learned single Judge erred in holding that failure to value the property and fix the reserve price prior to issuance of sale notification and hence, the impugned order warrants interference at the hands of this Court. He would submit that hectic efforts were made by the Corporation in the form of 4 sale notifications published on 09.01.2003, 05.05. 2003, 25.05.2007 and 05.07.2007. He would submit that the petitioner is an influential person who has successfully thwarted the attempt of the Corporation to sell the assets and realise their dues, but no material is placed to demonstrate the same. He would further contend that the unconditional withdrawal of the Writ Appeal amounts to withdrawal of the Writ Petition itself. He would draw the attention of this Court to the order passed in the Writ Appeal, wherein it is recorded that the appellant/petitioner had filed a memo stating that the appeal has been rendered infructuous, in view of the order (30.11.2010) and immediately thereafter has preferred the second Writ Petition impugning the order (30.11.2010) rejecting the petitioners' request (11.10.2010) praying for extension of time to comply with the terms of the OTS scheme sanctioned by proceeding dated 09.06.2010 i.e., to permit the petitioner to deposit the balance amount payable.

33. The learned senior counsel appearing on behalf of the petitioner, would contend that the action of the Corporation is tainted by unfairness and the sale in favour of a third party (who has not even come before the Court) is shrouded in secrecy and is a result of a collusion between the corporation, third party and the auction purchaser and hence the sale is vitiated by fraud played upon the petitioner. He would further contend that the entire exercise of transferring of the seized assets to a third party who is not even a bidder or participant in the negotiations is a fraudulent act and hence the sale of the property to the third party is contrary to the procedures adopted by the Corporation and is also opposed to the doctrine of fairness and reasonableness. He would draw the attention of the court to the representation dated 10.3.2008, made by the petitioner during the pendency of the first writ petition praying for extension of time to deposit the amounts due under the loan amount. He would also draw the attention of the court to the fact that though the same was not considered, the Corporation deemed it fit to sell the property by receiving the sale consideration after a lapse of nearly 4 years in 2011. He would also state that the auction purchaser has not demonstrated his capacity to pay up the bid amount of 6.5 crores. He would submit that not a scrap of evidence has been placed before the court by the auction purchaser to demonstrate his financial capacity on the date of making the bid or negotiations or even in 2011. He would suggest that the entire exercise of facilitating the entry of the third party and the transfer of the assets in favour of the third party is covered by a veil of secrecy and that the corporation has suppressed the entire exercise from the scrutiny of the court.

34. He would draw the attention of the court to the sale negotiations by the Assets Sale Committee with the buyers and its terms and conditions of the sale

as stipulated and concluded on 31.7.2007. He would draw the attention of the court to Clause 2 regarding terms of payment wherein in Clause(a) wherein it has been stipulated that 25% of the sale amount (less EMD paid) ought to be paid within 15 days and the balance 75% within the next 30 days. He would further take the Court through the other terms and conditions to demonstrate that no condition or concession is made, which would entitle the successful bidder to request the corporation to transfer the auctioned property in favour of a third party, and who is in no way connected with the successful bidder or the bidding process. He would submit that not even a single piece of paper regarding the transaction of transfer to the third party has been placed before the Court much less intimated to the petitioner. He would submit that the procedure adopted by the corporation in respect of disposal of seized assets is generally by public auction after wide publicity. In the year 2011 no publicity much-less any wide publicity, has been made nor was the petitioner intimated about the sale of assets.

35. Nextly he would draw the attention of the Court to the OTS scheme dated 10.8.2004 which came to be extended from time to time till 2006 and he would draw the attention of the court particularly to clause (1) of the preamble and 1.1 and clause 3(2)(e) which clearly acknowledges the susceptibility of first generation entrepreneurs and promoters and a need for a considerate approach with regard to such class of persons. He would further draw the attention of the court to Clause (2) under the heading "coverage (eligibility criteria) and clause (2)(b) which details the ineligible cases. Cl (2)(3) reads as follows:

2.3 Ineligible cases: The cases of wilful defaults, fraud and malfeasance (evil doing) are not eligible.

36. He would argue that defaulters who are accused of wilful default, fraud and malfeasance are alone ineligible for the benefit of the OTS scheme. He would further take the court through clause (3) of the scheme dealing with the "settlement formula" in particular to 3.1 (iii)(iv)(v) and (vi) wherein it has been stipulated that the valuation of the land ought to be as per the latest valuation of the sub registrar and that the asset valuation should be done by TECSOK, a State Government Enterprise. He would submit that none of these stipulations have been complied with while effecting the sale to the third party vide proceedings dated 14.3.2011. He would also draw the attention of the court to Clause 5.4 and submit that the competent authority to consider the case of the petitioner was the Sub Committee or the Board and not the Managing Director. He would also take this court through C1.6 which provides for condonation of delay and more particularly Clause 6.2 which stipulates that interest should be paid at 14% p.a. for the delayed period of 6 months, calculated on a simple interest basis, and thereafter on compound interest basis for the further delayed period. He would further take the court through Clause 7 relating to "general guidelines" and draw the attention of this court to Clause 7.3. He would contend that a reading of the general guidelines in particular and the Scheme as a whole

would demonstrate that there is no authority vested in the managing director to withdraw the OTS scheme once it is sanctioned by the Board. He would further refer to Clause 7.6 which deals with revision of OTS scheme which is already approved by the Board and which states that the sale ought to be placed before the In-House Committee or Boards Sub Committee with the prior permission of the Managing Director. He would also draw the specific attention of the court to Clause 7.1 which deals with the valuation of the fixed assets and fixation of minimum value as per the guidelines issued by the authority. C1.7.10 reads as follows:

"7.10 The valuation report in respect of fixed assets shall be prepared as per the guidelines and format in vogue. The valuation report shall invariably be enclosed with a copy of the minimum value fixed for registration of the properties in the locality by the district authorities as indicated in the guidelines issued."

37. He would further draw the attention of the court to Clause 7.13 which defines wilful default and he would point out that it is not ever the case of the Corporation that the petitioner is a wilful defaulter. He would then take this court to the provisions of Clause 8.1 which would deal with withdrawal of OTS scheme which stipulates that in the event of promoter failing to pay the minimum 25% of approved OTS amount within a period of 30 days or fails to accept OTS within the stipulated time, then a notice proposing withdrawing the OTS facility should be issued to the promoter and in there is no proper response for this from the party within a period of one month the OTS scheme shall be withdrawn. He would contend that, from a reading of the provision of C1.8.1 it can be deduced that no power of withdrawal of the OTS scheme is delegated to any of the subordinate authorities more specifically the managing director who has rejected the petitioner's request for extension of time. He would further submit that the only power delegated is the power to issue the notice proposing withdrawal of the OTS facility and in the light of the above, he would contend the competent authority to withdraw the OTS Scheme is only the authority which sanctioned the scheme, and in the instant case the OTS scheme has been recommended by the sub committee of the board and sanctioned by the board. He would further state that in the case on hand, no proceedings or order has been passed, till date, withdrawing the OTS scheme sanctioned in favour of the petitioner vide recommendations of the sub committee held in its 38th meeting on 22.5.2006 and approved by the Board vide its proceeding 461st board meeting on 3.6.2006 and communicated to the petitioner vide letter dated 9.6.2006. He would submit that the very fact that the Board has approved and recommended grant of OTS scheme to the petitioner is prima facie proof of the fact that the petitioner is not a wilful defaulter.

38. He would submit that the promoters, have completed the project as per the project report and proposal submitted to the corporation authorities, and he would submit that the very mahazars, drawn by the corporation authorities, while taking possession of the assets is proof of the same. He would submit that

the possession of the secured assets was taken as way back as in 2001 itself and a perusal of the mahazar would demonstrate that the promoters had executed and implemented the project in letter and spirit. He would further contend that the promoters are not fly-by-night-operators and neither it is alleged that they have siphoned off or diverted or misutilized the funds released by the corporation. He would draw the attention of this court to the conduct of the promoters whereby they have raised additional loans from the co-operative bank after due intimation and consent of the corporation. He would contend that the only ground upon which the request for extension of time has been rejected is that the company is a chronic defaulter. He would state that the petitioner opted for the OTS scheme only because of their default and the corporation recognising this fact extended the benefit of OTS scheme to the petitioner. He would submit that the word chronic defaulter is not defined under the scheme or the policy guidelines and hence the denial of the benefit of extension of time on the said ground is unsustainable. He would submit that the project was implemented in its entirety and a growing venture was nipped in the bud on account of the intermittent take overs and lock down of the running business. He would submit that though the take over was justified on account of the failure to regularly pay the dues, the lock down of the institution is unjustified and in fact has resulted in erosion of the value of the plant and machinery and the civil structure which have suffered due to lack of maintenance and did not allow the business to blossom and boom. He would also submit that during one such takeover, there was a theft of plant and machinery of the value of Rs. 27 lakhs.

39. On the point of res judicata and abandonment, he would submit that both the contentions require to be rejected at the threshold, in the facts and circumstances of the case. He would draw the attention of the court to the reliefs prayed for in both the writ petitions. He would submit that the first writ petition was filed challenging the sale notice dated 25.5.2007 and later it was amended to challenge the sale notice dated 5.7.2007 pursuant to which sale negotiations were held on 31.7. 2007, while the second writ petition was preferred impugning the order by the managing director of the corporation who rejected the representation requesting for extension of time by order dated 30.11.2010. He would also draw the attention of the court to the other reliefs sought i.e. for a declaration regarding the sale carried out 5 years after 31.7.2007, in effect the challenge is to the sale in favour of the third party vide proceedings dated 14.3.2011. He would submit that the sale impugned under the first writ petition was the sale in favour of the auction purchaser and the sale impugned in the second writ petition is in favour of a third party who has not even deemed it fit and necessary to come before this Court and which transaction has been actively screened by the corporation and he would submit that the sale on 31.07.2007 and 14.03.2011 being in respect of two different entities, gives rise to two different cause of action and hence, the question of res judicata does not even arise. Even otherwise he would submit that the auction purchaser can have no grievance as he has presumably and admittedly assigned and transferred his

rights in favour of a third party, who though being well aware of the Court proceedings challenging the sale, has not thought it fit to come before this Court to agitate its rights. He would submit that the auction purchaser is merely a name lender and is fighting a proxy litigation on behalf of the third party who has admittedly paid all the amounts and in whose favour it is demanded that the sale deed be executed by the corporation. He would submit that the contention of abandonment of rights by the petitioner, on account of withdrawal of the writ appeal, is without any substance. He would submit that shortly after filing of the writ appeal, the impugned order (Annexure G) dated 30.11.2010 came to be passed by the respondent corporation virtually rendering the appeal infructuous as the impugned order was a new cause of action which cause of action did not exist either on the date of filing of the first writ petition or on the date of filing of the writ appeal. He would state that as on the date of the impugned order (Annexure-G) the petitioner had paid more than 70 lakh into the loan account and despite the same, the corporation deemed it necessary to brand the petitioner as a chronic defaulter. He would submit that even assuming that the petitioner is a chronic defaulter that by itself would not disentitle the petitioner from availing the benefits under the OTS scheme. He would submit that only "a wilful defaulter" as defined under the OTS policy is dis-entitled from availing the benefits under the OTS Scheme. He would further draw the attention of the court to Clause 11.1 of the OTS policy guidelines produced along with the compilation dated 6.4.2016 which reads as follows :

"11.1. OTS proposals approved and cancelled/withdrawn under any of the previous OTS policy/s of KSIIDC may be considered for revalidation by the OTS sub-committee provided thereon genuine and justifiable reasons for resolving the same by such consideration as would be available under the respective OTS policies as applicable. Such revalidation shall however be restored on such terms and conditions as would be laid down by the OTS sub committee and Board of KSIIDC which shall be binding."

(Underlining by us)

40. He would submit that during the pendency of the litigation the corporation has, as a policy, considered re validation of proposals which were approved earlier and later cancelled or withdrawn, and in the light of the new policy evolved by the corporation during the subsequent years, the argument on behalf of the appellant corporation that revival or revalidation is not provided under the OTS policy is incorrect. He would submit that even though the power to revive or re validate the cancelled and withdrawn OTS proposals was available with the respondents, they have proceeded to reject even the request for extension of time and which request, even to the knowledge of the corporation was genuine and not on any flimsy grounds or on account of any evil designs of the petitioner. He would further draw the attention of this Court to the findings of the learned single Judge with regard to the contentions pertaining to estoppel and res judicata. He would submit that no ground is made out in the appeals to

demonstrate that the finding of the learned single Judge is erroneous or contrary to law. He would submit that the learned single Judge has exercised his powers invoking equitable jurisdiction of this court keeping in consideration, equities of the case and inequitable action of the appellants. He would draw support from the OTS Scheme and policy to sustain the finding of the learned single Judge on the issue of prior valuation by a independent valuer and fixation minimum price or reserve price. In this regard he would once again draw the attention of this court to Clause 2.3 and Clause 3.1 and Clause (iii) of the note to Clause 3 and to clauses (iv) (v) and (vi), all of which speak of the valuation of the assets more specifically clause (iv) which speaks of valuation of assets by a Government agency. He would submit that delay in payments have been occasioned on account of financial stringency only and the default is neither deliberate or wilful. He would further submit that there is not even an allegation much less an iota of proof to demonstrate that the petitioners defaulted in payment despite having resources or the capacity to repay the amounts.

41. This Court has heard the learned counsels and has given its anxious consideration to the various contentions raised on behalf of the parties. In view of the rival contentions regarding the bona fides of the petitioners and the counter allegations against the corporation and auction purchaser, the Corporation was directed to submit the original file maintained by the Corporation regarding the loan account and more particularly to the sanction of the OTS scheme and the sale of the secure assets.

42. A perusal of the file prima facie would show certain material documents like the proceeding of the sub committee and the recommendation of the Board sanctioning the OTS scheme, the communications after 14.03.2011 by which the assets were sought to be transferred in favour of the third party have not been placed before the Court for scrutiny. In the considered opinion of this Court, the said documents go a long way in unravelling the complexities in the case.

43. This Court perused the proceedings of the Sale Negotiation dated 05.02.2003 which has been conducted by the "Asset Sale Committee". The said negotiation was with buyers who were brought in by the petitioner. But for various reasons, the same did not fructify. This Court also perused the proceedings of the Sale Negotiation dated 12.03.2003, were yet again the negotiation has been conducted by the Asset Sale Committee. Thereafter, the Court perused the proceedings of the Sub Committee of the Board dated 22.05.2006 whereby the proposal for extending the benefit of OTS scheme to the petitioner was examined and the justification for extending the OTS scheme to the petitioner were recorded. Interestingly one of the justifications or criteria for extending the OTS scheme to the petitioner was "the company is not a wilful defaulter". After deliberations, the Sub Committee made its recommendation to the Board. Pursuant to the same, the recommendations of the Sub Committee were accepted and acceptance of the OTS proposal was communicated to the petitioner. The Board while accepting the recommendation, in a sense accepted

the fact that the company, that is the petitioner, is not a wilful defaulter. As there was a delay in making payments as per the schedule of the OTS scheme, the assets were once again notified for sale and this Court has perused the record of proceedings dated 26.06.2007 pertaining to the negotiation and sale of the assets pursuant to the sale notification dated 25.05.2007. Yet again, the negotiations have been carried out by the "Assets Sale Committee". As only one offer was received and the bidder was not willing to wait for one month, the Assets Sale Committee recommended for return of the sealed offer by the loan bidder and to release one more advertisement calling for bids for the sale of the assets. In consonance with the recommendation of the Assets Sale Committee dated 26.06.2007, one more sale notice came to be published on 05.07.2007, in the newspapers, that is, namely Samyukta Karnataka, Hubli edition, Andhra Jyothi, Hyderabad edition and Economic Times of Delhi edition, but none in an all India edition. By the sale notice, the public were invited to submit their bids by 30.07.2007 and were informed that the sealed offers would be opened on 31.07.2007 at 11:30 a.m. and thereafter further negotiations would be held calling for bids. It was stipulated in the sale notice that the offeror should indicate total sale consideration, up-front payment, mode of balance payment, background of the offerer (underlining by us), etc.,. The sealed bids were opened and the bids quoted by the 14 bidders were recorded. After comparative assessment and during inter-se bidding out of the 14 bidders, 13 of them increased their offers by several times over the bid amount and only one of the bidders, namely M/s. Indoria Industries, Chennai refused to increase on its original offer of 55 lakhs. The highest bid was by the auction purchaser who increased his original bid by manifolds i.e., from 110 lakhs to 650 lakhs. It is interesting to note that the original bids were made after inspection of the property and "the increases were after negotiation by the Assets Sale Committee". After deliberation, the Assets Sale Committee decided to retain the EMDS of the first three highest bidders namely M/s. Indoria Steel Corporation, Sri. Jyotin C. Gandhi and R.N.Nayak and Associates, till order is received from the Hon"ble High Court in the pending Writ Petition i.e., the first Writ Petition No.8601/2007. Some of the terms and conditions relevant for adjudication are the terms and conditions at 2a, 2c, 3, 4 and 8. After the completion of negotiations, the Assets Sale Committee resolved as follows:

"Further, the Committee decided that after the disposal of the case by the Hon"ble High Court, the sale could be recommended to the competent authority for conclusion in favour of the highest bidder. In the event of the first highest bidder failing to comply with the specified terms and conditions for any reason, the sale could be recommended for conclusion in favour of second highest bidder. Further, the Committee also decided to return the D.D's of the balance eleven unsuccessful bidders paid towards EMD."

44. From the above discussion, the common feature noticed is that the sale of assets has been monitored and conducted by a Committee called the "Assets Sale Committee".

45. That apart, this Court has perused the copies of the bids available in the office file of the Corporation. On a perusal it is found that only the copy of the bids by the following were available in the records i.e., one Shri. Laxmi Balaji Industries, Shri. Raghavendra Agro Agencies, Shri. K.B. Veeranna. Shri. Raghavendra Traders, Hamsa Plastic Industries, Shri. S.N. Ghatge, Midmac Developers Pvt. Ltd., Bherualal Madanchand Jain, Manoj Bafna and Sagar Appolo Hospital. The offers by Jyotin C. Gandhi, Indoria Steel Corporation, Bangalore, Indoria Industries, Chennai and R.N. Nayak and Associates, are not to be found in the original office file of the Corporation placed before this Court. Even in the Memorandum of Appeals filed before this Court, the offer letters of the highest bidder namely M/s. Indoria Steel Corporation, Bangalore, are not to be found, but the offer letter of Indoria Industries, Chennai for Rs. 55 lakhs is produced by the petitioner along with memo dated 23.04.2016. As stated above, the terms and conditions of the sale settled on 31.07.2007 does not authorise or permit the sale in favour of a nominee.

46. The petitioner has also produced the copy of the additional grounds raised in the petition along with a memo dated 05.04.2013 and before the learned single Judge, they have specifically contended that about the legality of the procedure and methodology adopted by the Corporation. It is alleged that the negotiation which followed is neither transparent nor are the details of the negotiation forthcoming. It is contended that the revised price is far below the market value of the property. It has also been contended that the bidder has not fulfilled the terms of the sale, as he has not deposited 25% of the bid amount or the balance amount within the time stipulated during the proceedings developed on 31.07.2007. It is also contended that the third party has deposited the sum only in April 2011 and it is further contended that the third party not being a participant or bidder in the auction dated 31.07.2007 has no locus standi. That the sale made for the sum fixed several years ago is bad, as the value of the property has appreciated enormously. That the sale confirmation after the lapse of a long time seriously prejudices the petitioner of his rights to property guaranteed under Article 300A of the Constitution of India. That the conduct of the Corporation is vitiated by arbitrariness that the auction purchaser is merely a speculator and his offer is not fair and he has not deposited the offer amount within the stipulated time. That apart, the Respondent has also placed on record along with a memo dated 30.03.2015, the proceedings of the Board in similar circumstances where OTS was sanctioned on 27.12.2007. but the defaulter paid the OTS amounts in instalments and the last instalment was paid on 06.01.2009 in view of the delay in payment, the said defaulter also requested for condonation of delay and for the waiver of the interest on the delayed period. The Board in its meeting held on 19.05.2009 condoned the delay and the payment of the OTS amount and also 50% of the interest on the delayed period, the remaining amount was to be paid by 24.09.2009, but the company paid the final instalment only by 19.07.2010. The proceedings of the Board meeting dated 25.08.2010 are also placed on record. After a perusal of the same, it is a moot

point as to whether the Managing Director had the jurisdiction to consider and pass orders on the representation (Annexure - G, impugned in the Writ Petition).

47. The file placed before this Court does not even indicate what is the actual sum that is due from the petitioner. The file was perused by this court on the aspect of dues, as the Corporation in its affidavit dated 26.04.2016, has stated in paragraph 17 that the total amount due from the petitioner is about Rs. 21 crores. But no calculation or ledger extracts are placed before this Court to authenticate the said claim. To say the least, the figure appears to be fantastic and highly inflated one. If the same is taken to be true, the said factor alone is suffice to set at naught the sale in favour of the third party for a paltry sum of Rs. 6.5 crores, that too at a price settled in the year 2007. There is no dispute that the property as on today and even on the date of filing of the second Writ Petition had already appreciated in value by manifold. If Rs. 21 crores are due to the Corporation, as on today this Court does not see any justification in the insistence of the Corporation to have the property sale confirmed and conveyed for such a meagre sum. On a clarification sought by the Court, the counsel for the petitioner would submit that, the value of the land alone, which measures 2 acres and being situated on the Airport road would fetch a price in excess of Rs. 40 crores. If that being the fact situation, it is mind boggling and beyond the comprehension of the Court as to why the Corporation is hell-bent upon gifting away the property at a throwaway price and that too after the passage of so many years and in favour of a person who was not even a participant in the auction process.

48. It is seen in that one of the tender conditions notified in the sale notice reads as follows:

"The offers should indicate the total consideration, up front payment, mode of balance payment, background of the offerer, etc.,"

49. Though such a condition calling for the fiscal profile of the offerer is mandated. None of the bidders have even made a whisper about the same. In the process of perusing the file, the Court has come across copies of certain communications, subsequent to 14.03.2011. The communications of particular interest, are those dated 01.04.2011, 05.04.2011, 06.04. 2011, by the auction purchaser and the communication dated 06.04.2011 by the third party, wherein the third party has given an undertaking in the following terms:

"We are aware of the terms and conditions of the sale mentioned in your letter dated 14.03.2011 subject to the final result of order of the Hon''ble High Court of Karnataka, Circuit Bench, Dharwad in W.R No.41433/2010. We are agreeable to furnish an undertaking and agreeing to take the property subject to the outcome of the final decision of the Hon''ble High Court of Karnataka, Circuit Bench, Dharwad.

Kindly issue us the letter of confirming the nominee, then immediately we will be able to deposit the 25% of the sale consideration (less EMD of Rs. 5 lacs) of the

subject land on hearing from your goodselves."

50. From a reading of the above, it is clear that the third party was aware of the pendency of the Writ Petition and has accepted and bound himself to take over the property subject to the order of the Hon"ble High Court in W.P. No.41433/2010. It is interesting to note that the third party, who has paid the sale consideration, has not deemed it fit to agitate the order of the learned single Judge by which the sale is set aside. He has also demanded a letter confirming him as a nominee, but no such letter is to be found in the records or the file. The payment of 25% is made on 08.04.2011 by the third party and the receipt is also issued in his favour. Thereafter, the third party has made another payment on 29.04.2011 and the last payment on 18.06.2011 i.e., almost four years after the finalisation of the sale price on 31.07.2007.

51. A combined reading of the letter dated 05.04.2011 and 06.04.2011 addressed by the auction purchaser to the Corporation makes one fact clear, that the auction purchaser has transferred his interest in the auction property in favour of the third party and such transfer by way of nomination is on the strength of clause No.4 of the sale communication letter dated 14.03.2011. That is the nomination is made after the Corporation made the concession by its sale offer letter dated 14.03.2011. There is no other material available in the file which discloses any request or agreement to transfer it to a third party. In the opinion of this Court, the letter dated 14.03.2011 was designed to facilitate the entry of the third party. The relevant portion of the letter dated 05.04.2011 is extracted for the sake of convenience.

"With reference to the above, we are pleased to inform you that our Corporation is offering our Irrevocable and Perpetual Consent and as per your sale communication letter clause No.4 nominating in favour of M/s. Bharat Timber and Construction Co, (Regd. Partnership Firm) near Bye Pass Cross Road, Hubli 580024....."

52. In its letter dated 06.04.2011 the auction purchaser states as follows:

"With reference to the above, we wish to inform you that, in response to your letter dated 14.03.2011, our nominee that is M/s. Bharat Timber and Construction Company, Hubli is paying kindly accepts the above payment and issue the receipt in favour of M/s. Bharat Timber and Construction Company, Hubli. Balance payment will follow."

53. Thereafter, the third party by the communications dated 01.06.2011, 18.06.2011, 19.08.2011, 17.01.2012 and 03.02.2012 has been calling upon the Corporation to handover possession of the seized assets. But for reasons best known to the third party, it did not warrant it necessary to approach the Court either in the pending Writ Petition or in the present appeal. It is further relevant to note the contents of the letter dated 03.02.2012 by the third party.

"We draw your good selves attention to the fact that, we have tendered and paid

the full bid amount of Rs. 1,57,50,000/- being 25% of the sale amount was paid to you vide; Cheque No.282485 of State Bank of India, Hubli dated 06.04.2011 and the balance 75% of bid amount was also paid to you vide; Cheque No.327570 of State Bank of India, Hubli dated 29.04.2011 for Rs. 4,87,50,000/-. Both are in our individual independent rights as the exclusive purchaser of the primary assets auctioned under subject."

54. The reading of the above communications, exchanged between the Corporation, auction purchaser and the third party makes it clear that the word nominee came to be introduced into the transactions only by the letter dated 14.03.2011 and it was not a part of the terms and conditions originally agreed upon and settled way back on 31.07.2007. This is further compounded by a statement (in a tabulation form) furnished by the Corporation counsel, wherein it has detailed the amounts paid by the third party and also furnishes information that they are kept in separate fixed deposit including the interests accrued periodically. The tabulation chart would show the date of deposit, rate of interest and the period of deposit and the sum accrued as interest during the period. Further, in the affidavit dated 26.04.2016 the Corporation at paragraph 15 has stated as follows:

"15. I state that because of the pendency of the proceedings before this Hon"ble Court, the sale proceeds excluding EMD amount deposited by the Respondent No.2 and its nominee have been deposited in fixed deposits from time to time and as on date, an interest of about Rs. 3,52,00,000/- has accrued on the sale consideration."

55. At paragraph 11 of the affidavit, the details of the payment receipt is set out in a tabular form and the same is extracted herein below:

Date

Amount

Paid by

01/08/07

5,00,000/-

EMD Account

Indoria Steel Corporation

08/04/11

157,50,000/-

Bharat Timber and Construction Company

29.04.2011

487,50,000/-

Bharat Timber and Construction Company

20.06.2011

60,576/-

Interest on delayed payment

Bharat Timber and Construction Company

Total

650,50,576/-

56. It can be seen that part of the consideration i.e., a sum of Rs. 5 lakhs is paid on 31.07.2007 by the auction purchaser. The balance sum of Rs. 6 crores 45 lakhs is paid by third party on various dates in the year 2011, i.e., after a lapse of nearly 4 years and prima facie it appears to be violative of the terms and conditions as settled by the Assets Sale Committee on 31.07.2007 itself. But in paragraph 17, it is contended that the amount due under the loan account is Rs. 21 crores (i.e., in respect of a loan of Rs. 70 lakhs). This statement that there is a due of Rs. 21 crores prima facie appears to be incorrect in the light of the memo of computation filed by the Corporation on 17.09.2015, pursuant to a direction of this Court in this appeal itself, wherein it has been stated that the grand total after computation of the interest for the delayed period is shown as Rs. 1,71,78,948/- (Rupees One Crore Seventy One Lakhs Seventy Eight Thousand and Nine Hundred Forty Eight only). Along with the memo of computation, a copy of the loan ledger extract for the period commencing from 01.04.1988 to 19.09.2014 is produced, wherein as per the OTS scheme, it is shown that out of the principal sum due of Rs. 1,20,79,000/- a sum of Rs. 1,15,79,000/- has been received and the overdue principal amount is only Rs. 5,00,000/-. The overdue interest is shown as Rs. 1,44,51,093/- only. In the light of these documents which have been placed before the Court, the subsequent assertion in paragraph 17 of the affidavit dated 26.04.2016 appears to be unfounded and without basis, as no calculations nor ledger extracts are forthcoming. The memo of computation submitted by the Corporation and the memo of calculation filed by the petitioner are in consequence of the interim directions by this Court in the Writ Appeal No. 100780/2014 dated 27.08.2014, wherein this Court had directed to exchange memo of calculations of interest payable from 2001 up to the date of payment of OTS amount and cost incurred. In fact, the petitioner has also filed an application submitting a proposal for revival of the unit by inducting an investor. It is pertinent to note that the interim directions have also not been opposed by the auction purchaser or the third party.

57. In the background of the above discussion, the anxiety of the Corporation to sell the assets in 2011 for the price agreed upon in 2007 defies logic and is neither fair nor reasonable, as it not only prejudices the interest of the petitioner, but also that of the Corporation itself, as it is claiming a huge amount of Rs. 21 crores as due.

58. Further, a perusal of the proceedings dated 14.03.2011, would show that the same has emanated from the Office of the Deputy General Manager. It does not disclose that if the same has been approved, either by the Board or the Sub-Committee or the Assets Sale Committee. As noted supra, all sale negotiations and fixation of price has been done by the Assets Sale Committee. If that be the convention and practise adopted by the Corporation, no reasons are forthcoming for the departure from the established practise and conventions adopted by the Corporation. It is also not demonstrated as to whether the author of the sale letter is vested with the powers to transact the said sale. There is no material forthcoming in the said proceedings, as to how or who has authorised the tweaking of the terms and conditions to enable the transfer of the property to a third party who is not a bidder under the sale notice dated 05.07.2007 and it is not in dispute that the said third party has not even participated in the negotiations on 31.07.2007.

59. The alibi putforth by the Corporation is that the price settled in 2007 had been frozen on account of the Court proceedings and the interim order in the Writ Petition. There would have been a semblance of authority and righteousness to the statement had the Auction Purchaser paid up the entire amount in 2007 itself, but the fact remains that the present sale is in favour of a third party and the amounts are paid only in 2011 and the entire exercise appears to be shrouded in secrecy and contrary to the procedures and conventions being followed by the Corporation itself. The submission is per se incorrect as the learned single Judge has categorically ordered that the confirmation of the auction would be subject to the result of the Writ Petition. Even in the earlier petition, there was no embargo or restraint to pay or receive the sale consideration and in fact, even as per the final disposal of the first Writ Petition, the authorities were only directed not to proceed further with the finalisation of the sale till the consideration of the representation by the Corporation. This being the factual matrix of the case, neither the Corporation, or the auction purchaser or the third part, [who was aware of the pending litigation] can be permitted to take advantage of the Court proceedings to plead that the sale consideration was not paid for a period of four years on account of the pendency of the proceedings.

60. It is seen that even after four years and till date, though an attempt is being made to demonstrate that a huge sum of Rs. 6.5 crores is paid and a sale is being made, the very affidavit and statement of the Corporation falsifies the same. It is an undisputed fact that the amount has been received and kept in a separate account in the form of fixed deposits and the interest accrued thereon has also remained in deposit. If the said amount represented the sale price in respect of the property, then the normal conduct of any seller would have been to appropriate the same towards the loan account and liquidate the debts. On the one hand, the Corporation asserts that it has sold the property and the sale has been completed, but the sale consideration is kept in fixed deposits and even the accrued interest has not been appropriated by the Corporation. No explanation is forthcoming for this departure from normal conduct. This

information of non-appropriation of the sale consideration came to light only at the fag end of the hearing. There is no explanation why this information was screened from the Court.

61. As regard, the sale letter dated 14.03. 2011, there is no material to demonstrate that the same has the approval of either the Board or the Sub Committee of the Board or the Assets Sale Committee, as has been the established practise and as demonstrated by the various documents on record and from the file. Nothing is placed on record to demonstrate that the Board has condoned the delay in payment of the sale consideration by the third party. Even otherwise, the delayed receipt of the sale consideration, assuming for argument sake, that the same was authorized, in the considered opinion of this Court is opposed to the concept of fairness.

62. The entire exercise of the sale letter dated 14.03.2011, alleged assignment and transfer of the interest of the auction purchaser and receipt of payment of the sale consideration from third party, all appear to be shrouded in secrecy and apparently as a result of a collusion between the author of the alleged sale letter dated 14.03.2011, the auction purchaser and the third party.

63. The learned counsel for the Corporation has relied on several citations. Reliance placed on the judgment rendered by the Allahabad High Court in W.P. No.17158/2003 and attention of the Court is drawn to paragraph 6, wherein it is held that no party has a legal right to get one time settlement and hence, the prayer for revival is not maintainable. The interpretation placed by the learned counsel is incorrect. The Court has categorically held that as per the RBI guidelines, not every borrower and those who are wilful defaulters or those who have diverted funds in violation of the contractual liabilities are not entitled to claim the benefit of OTS scheme as a matter right, but the Court has recognised the application of the scheme to chronic non-performing assets and in the reasoning of the Corporation, the petitioner has been classified as a chronic non-performing asset. Hence. the said judgment is inapplicable. The learned counsel has also relied upon another judgment of the Apex Court rendered in Civil Appeal Nos.2062 and 2063 of 2002 dated 30.03.2005, (2005 (3) Scale 414). The Hon"ble Apex Court has held in the facts and circumstances obtaining therein, that effective steps had been taken to realise the maximum amount and the High Court ought not to have gone into the correctness of sale on the sole issue of inadequacy of price. As narrated above, the issues involved are not mere inadequacy of price, but also the fairness and correctness and the methodology adopted by the Corporation to transfer the property even contrary to its own established practice and procedures. That was a case where third party interests were created, but in the instance case, as discussed above, no third party interests has been created. At the cost of being repetitive, the alleged sale consideration has not been appropriated nor the possession of the property handed over to the alleged purchaser. That was a case where the purchaser had made substantial investments after the purchase of the unit and employment

was given to hundreds of workers in the said unit which is not so with the case on hand. The facts and circumstances in the said case and the facts and circumstances obtaining in the case on hand are of a totally different colour and incomparable.

64. The learned counsel has also relied upon a judgment of the Apex Court rendered in S.L.P. Civil No.5665/1986 with regard to the provisions of Order 23, Rule 1 of CPC. In the considered opinion of this Court, the said judgment has no application to the facts and circumstances of the case. The question of abandonment of a right does not arise. The withdrawal of the Writ Appeal was in the light of the new cause of action that had arisen as a result of the impugned order passed by the Managing Director of the Corporation on 30.11.2010. That apart, in the second Writ Petition relief is sought as against the surreptitious sale in favour of the third party by flouting all rules and practices and procedures. In the first Writ Petition, the relief sought was against the sale notification dated 25.05.2007 and the sale negotiation dated 31.07.2007. The relief sought against the sale notice dated 25.07.2007 was rendered redundant of infructuous on account of the subsequent sale notice dated 05.07.2007 (sic) and hence, this Court is of the considered opinion that the plea of abandonment and *res judicata* are without basis and accordingly rejected. This Court is in respectful agreement with the finding rendered by the learned single Judge and no good ground is demonstrated before this Court to consider otherwise. Hence, the said contentions stand rejected.

65. The delay in payment of the sale price is inexcusable. No ground is made out to condone the delay of four years in payment of the sale consideration. This Court is of the considered opinion that, the subsequent sale letter dated 14.03.2011, the receipt of the alleged sale consideration and parking of the said sale consideration in a fixed deposit account and non-appropriation of the sale consideration or the accrued interest and the non-defraying of the loan account and non-liquidation of the debts even after receipt of the sale consideration speaks of a collusion between the concerned parties. The action of trying to sell the property even without ascertaining the current market price and fixing the minimum reserve price, in the opinion of this Court, smacks of arbitrariness and hence, the alleged sale to the third party stands vitiated. The dominant intention of the Corporation while initiating measures to recover dues ought to be to secure the best possible price. In the instant case, fairness or the intention to realise best possible price are conspicuous by their absence. The Hon'ble Apex Court in the case reported in (2002) 3 SCC 496: (AIR 2002 SC 834) has been pleased to hold as follows:

"14. As was observed in *Chairman and Managing Director, SIPCOT v. Contromix Pvt Ltd.* in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures

participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at public auction. In that event, any other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price. These are aspects which the Corporations have to keep in view while dealing with disposal of seized units."

66. The conduct of the Corporation has been otherwise. There is no justification for the plea of the Corporation seeking to transfer and giveaway the property, for a sale consideration it has not received even after nearly 8 to 9 years after the property was put up for sale. The photos produced along with the Writ Appeals clearly demonstrate that the property abuts a highway and is in populated area and would certainly fetch a price manifolds higher than the paltry sum of Rs. 6.5 crores. It is relevant to note that even way back during 2001, the road on which the asset was situated is referred to as Airport road. Hence, it would be a travesty of justice and contravention of the law laid down by the Apex Court, if the plea of the Corporation is accepted and they are permitted to legalise a vitiated sale.

67. This Court is of the considered opinion that the offer to sell or sale dated 14.03.2011 does not inspire the confidence of this Court and is not above suspicion. The surrounding circumstances and in the absence of any reiteration of the fact of sale by any other competent or superior authority like the Board of Directors or the Sub Committee of the Board or the Assets Sale Committee would be an indicator that all is not above board. That apart no other good ground is made out by the Corporation which would warrant interference with the order appealed against at the hands of this Court.

68. The learned counsel for the auction purchaser, would rely upon a catena of citations. This Court is unimpressed. The auction purchaser has not approached this Court with clean hands. He has neither stated nor placed on record the reason why he has transferred his interest in the property he bid on 31.07.2007 and he has not come clean regarding the dealings or understandings between him and the third party. No reason is assigned as to why he has gifted away the EMD amount of Rs. 5 lakhs in favour of the third party. In the circumstances, we consider the appellant in Writ Appeal No. 100802/2014 is a mere interloper and realty speculator. Merely because he was added as a party in the writ petition would not give him a right to maintain the present appeal on account of his subsequent conduct. In his communications dated 01.04.2011, 05.04.2011 etc., he has stated in unequivocal terms that he has relinquished and assigned all his interest and right in favour of the third party. It is not the case of the auction purchaser that he is the power of attorney holder of the third party. The third

party has also, in unequivocal terms asserted in its communications with the Corporation that it is seeking possession and completion and formalization of the sale in its own independent right. The moot point is whether the appeal by the auction purchaser has legs to stand and the appellant has no locus standi to maintain and prosecute the Writ Appeal. Though he has divested himself of all interest in the secured asset even during the pendency of the Writ Petition, he has not played fair with the Court and has suppressed it. In the light of the view taken by this Court above with respect to the conduct of the Corporation and additionally taking into account the fact that the alleged auction purchaser has voluntarily relinquished his rights, this Court is of the considered opinion that the Writ Appeal does not merit consideration and even otherwise this Court for reasons stated supra has held that the alleged sale in favour of the third party is vitiated and the appeal of the auction purchaser is vitiated on the singular ground of non-payment of the agreed sale consideration.

69. The Hon"ble Apex Court in the case of Meghmala and others v. G. Narasimha Reddy and others, reported in (2010) 8 Supreme Court Cases 383 : (2010 AIR SCW 5281), wherein the Hon"ble Apex Court quoting its own judgment in the case of Shrisht Dhawan v. Shaw Bros; reported in (1992) 1 SCC 534 : (AIR 1992 SC 1555), wherein it was held as follows:

"Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

70. The Hon"ble Apex Court further quoting its judgment in the case of United India Insurance Co. Ltd. v. Rajendra Singh reported i.- (2000) 3 SCC 581 : (AIR 2000 SC 1165), has held that,

"the ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud."

"30. In Shrisht Dhawan v. Shaw Bros, it has been held as under. (SCC p.553, para 20)

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

"In United India Insurance Co. Ltd. v. Rajendra Singh, this Court observed that "Fraud and justice never dwell together" (fraus et jusnunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is

proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Changalvaraya Naidu, Gowrishankar v. Joshi Amba Shankar Family Trust, Ram Chandra Singh v. Savitri Devi, Roshan Deen v. Preeti Lal, Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education and Ashok Leyland Ltd. v. State of T.N.)

From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non-est."

71. The Hon''ble Apex Court in the case of Rani Aloka Dudhoria and others v. Goutam Dudhoria and others, reported in (2009) 13 Supreme Court Cases 569 : (AIR 2010 SC 53) has held as follows:

"Fraud as is well known vitiates all solemn acts. Suppression of a document, it is also trite, may amount to fraud on the court. The effect of commission of fraud must be taken note of."

72. The Apex Court has further held that, even not producing the document is tantamount to fraud. In the facts and circumstances of the case, this Court is of the considered opinion that, non-production/screening of the material from the scrutiny by the Court, is an act of suppression of material evidence from the Court.

73. In view of the above, the appeal of the auction purchaser is devoid of merits. The following citations relied upon by the alleged auction purchaser are of no avail to him, in view of the reasoning rendered above:

"1. 2002 (3) SCC 496.

2. 1995 (1) SCC 161.

3. 2006 (4) SCC 683.

4. 2012 (10) SCC 290.

5. 2005 (4) SCC 456

6. 2014 (6) SCC 424"

74. In view of the above, the Appeals are disposed off in terms of the following:

ORDER

(i) The order of the learned single Judge that the auction sale shall not be

confirmed is affirmed.

(ii) KSIIDC shall return the amount received towards auction sale of the property to the party entitled to receive it along with interest thereon at 9% p.a. from the date of receipt till payment.

(iii) KSIIDC is at liberty to take all steps in accordance with law for recovery of the loan amount due from the writ petitioner namely, Rayaji Hospitals & Research Institute Pvt. Ltd.

(iv) The writ petitioner namely, Rayaji Hospitals & Research Institute Pvt. Ltd. is at liberty to approach KSIIDC for settlement of the loan amount due in accordance with law.

(v) The writ appeals stand disposed of in the above terms in modification of the order of the learned single Judge dated 22.04.2014 impugned in these appeals. In view of disposal of the appeals, I.A.No.4/2014 filed for vacating of interim stay in W.A.No.100780/2014 does not survive for consideration; it stands disposed of accordingly.

75. Appeals disposed of.