

(2011) 09 JH CK 0073
In the Jharkhand High Court
Case No : W.P (C) No. 5221 of 2010

Lances Pharmaceuticals Pvt. Ltd.

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 17-09-2011

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 30

Citation : (2013) 1 BC 300

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; M.S. Mittal, A.K. Mehta and Mr. A.K. Yadav, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—The petitioner, a company registered under the Companies Act was sanctioned a term loan of Rs. 5.80 lakh by the Corporation, out of which the petitioner availed loan amount of Rs. 5.37 lakh on execution of certain documents but the petitioner failed to deposit dues in instalment in terms of the agreement. On account of default being made to the Corporation, a legal notice in terms of Sections 30 and 29 of the State Financial Corporation Act was issued on 23.1.1999. In spite of that, petitioner failed to repay the dues to the Corporation. Thereupon, a notice was issued in daily newspaper on 28.4.1995 and 3.5.1995 for putting the unit for auction sale. The Corporation received three offers and upon price negotiation, highest offer was made by M/s. Baba Food Products, respondent No. 5. In order to have better offer, again a notice was advertised on 28.1.2010 for sale of the unit. On receiving offer from the said respondent No. 5, M/s. Baba Food Products, sale of the unit/hypothecated assets was decided in favour of M/s. Baba Food Products being highest tenderer after observing certain formalities. Accordingly, a sale order was issued on 20.8.2010, copy of which was sent to the original promoter to retain the unit on matching terms and conditions of the sale order whereby the amount for sale had been

fixed at Rs. 28 lakh excluding the dues of the RIADA. In the said sale order, stipulation was made that the purchaser shall make initial payment of cash Rs. 8 lakh within 21 days of the issuance of the sale deed. The rest of the amount shall be paid in four years in 16 instalments. But before 20.8.2010 when the sale order was issued, the Board of Directors in its meeting dated 11.9.2009/23.6.2010 had decided to implement "BSFC One Time Settlement Scheme, 2009". The said decision was communicated vide Circular No. 02/10-11 under Memo No. 874 dated 17.8.2010 which has been annexed as Annexure 1. According to Clause 5.2 of the said scheme settlement amount would be 100% of the principal outstanding amount. Modalities of the payment were prescribed under Clause 5.3 whereby entire settlement amount was supposed to be paid with the application form or 25% of the amount along with application form and rest of 75% within one month from the date of filing of such application. As per the case of the petitioner, the petitioner within the time prescribed submitted its application on 1.9.2010 along with draft of Rs. 3 lakh being more than 25% of the settlement amount. The said application along with draft was accepted by the Bihar State Financial Corporation, respondent No. 1 on 1.9.2010. Thereupon the balance amount of Rs. 2,90,700/- was deposited by the petitioner on 9.9.2010. In that manner, the petitioner did deposit a sum of Rs. 5,90,700/- which is equivalent to 100% of the settlement amount, i.e. principal outstanding amount with 10% extra as prescribed under Clause 5.2 of the Circular.

2. Under the circumstances, the sale order issued on 20.8.2010 as contained in Annexure 2 has been sought to be quashed.

3. Learned Counsel appearing for the petitioner submits that before a sale order dated 20.8.2010 was issued in favour of the respondent No. 5, M/s. Baba Food Products, petitioner in terms of "BSFC One Time Settlement Scheme, 2009" issued under memo No. 874 dated 17.8.2010, had made application for settlement and even as per one of the clauses deposited 25% of the total outstanding amount on 1.9.2010 and subsequently on 8.9.2010, rest of the balance amount was paid and thereby it was wholly illegal on the part of the respondent to pass sale order dated 20.8.2010 (Annexure 2) in favour of respondent No. 5 and, as such, sale order is quite illegal and is fit to be quashed.

4. Learned Counsel further submits that on one hand, stand of the respondent is that sale has been effected in favour of respondent No. 5 whereas under the said sale order offer is being made to the petitioner to retain the unit on matching terms and conditions of the sale order and, as such, sale can never be said to have been completed and thereby respondent No. 5, M/s. Baba Food Products cannot be said to have acquired any right, title or interest over the property in question.

5. In similar situation, the aforesaid proposition has been laid down by the Patna High Court in a case of M/s Dayal Fuel Industry Vs. Bihar State Financial Corpn. and Others, , and also in subsequent decision rendered by the Patna High Court in a case of Smt. Kanti Devi and Others v. State of Bihar and Others, C.W.J.C.

No. 103 of 2010.

6. A counter affidavit has been filed on behalf of respondent-Bihar State Financial Corporation wherein stand which has been taken by the Board is there in paragraphs 11 and 12 which reads as follows:

11. That it is stated that instead of complying with the terms of the sale order for retaining the unit the petitioner deposited demand draft of Rs. 3 lakh only at the Head Office of the Corporation at Patna on 1.9.2010 under OTS Scheme, 2009.

12. That it is stated and submitted that the petitioner could have approached for availing the benefit given to the entrepreneurs under OTS Scheme, 2009 only after retaining the unit in terms of the sale order by making payment of Rs. 8 lakh which is initial amount for retaining the unit before making payment to the Corporation under OTS Scheme, 2009.

7. Thus a question does arise as to whether the petitioner is entitled to benefit of OTS Scheme, 2009 and that sale order dated 20.8.2010 is valid under the teeth of aforesaid OTS Scheme, 2009?

8. Admittedly, Board of Directors of the Corporation in its meeting dated 11.9.1999/23.6.2010 decided to implement "BSFC One Time Settlement Scheme, 2009" which was circulated under Circular No. 2-10-11 issued vide memo No. 874 dated 17.8.2010. The said benefit was to be extended to the loanees/purchasers/ promoters/guarantors falling within the original category as mentioned in Clause 5.1. One of such eligibility is there in Clause 5.1.a which reads as under:

All original promoters/guarantors of the NPA units categorized in the doubtful or loss categories, as per records of BSFC as on 31.3.2010, whose unit has not been sold.

9. Thus, the petitioner seems to have been falling within this category. Accordingly, as per the case of the petitioner, the petitioner in terms and conditions of OTS Scheme did deposit application along with 25% of the amount outstanding on 1.9.2010 well within the time stipulated under the scheme.

10. Further, as per the stipulation under the scheme, rest of the amount was paid on 9.9.2010 but the stand which has been taken by the BSFC is that any deposit made by the petitioner cannot be accepted towards "One Time Settlement Scheme, 2009" as the petitioner has made payment but without retaining the unit on matching terms and conditions. In other words, it is the stand of the Corporation that the petitioner by accepting the offer which had been made by the respondent No. 5, M/s. Baba Food Products should have made payment of Rs. 8 lakh at the first instance and, subsequently, rest of the amount of the sale order in instalments. The stand taken has neither got sanction of any law nor it is in consonance with the OTS Scheme.

11. As I have indicated earlier that Clause 5.1.a does stipulate that all original

promoters/guarantors of NPA unit would be extended to benefit of one time settlement whose unit has not been sold. The said one time settlement was circulated under memo No. 874 dated 17.8.2010 and, as such, the petitioner's unit should not have been put on sale, once the Board took a decision to implement "BSFC One Time Settlement Scheme, 2009" and therefore, sale effected on 20.8.2010 is against the terms of one time settlement.

12. Moreover, the order dated 20.8.2010 cannot be instrument of sale as offer has been made to this petitioner to retain the unit on matching terms and conditions.

13. Similar question fell for consideration in Patna High Court in a case of Dayal Fuel Industries v. Bihar State Financial Corporation and Others (supra) which observed as follows:

Petitioner's prayer in the writ petition was that the Corporation came out with BSFC OTS Scheme, 2006. Petitioner, with due application money, made an application for settlement of all outstanding dues under the said One Time Settlement Scheme. It had offered to take the settlement under Scheme 1A but the Corporation treating it to be a case under Scheme FA, ordered that the entire outstanding could be settled but petitioner would not be entitled to get back the unit, as the unit had been sold. In other words, the Corporation's stand is that petitioner may pay the outstanding under settlement and forgo the unit as well. Thus, in other words, the mortgage is foreclosed with liability to liquidate the due outstanding, which on the face of it appears to be peculiar. Thus, in my view, the question is whether the unit was sold or not?

Provision of Sub-section (2) of Section 29 in no way retracts from the provision of Transfer of Property Act. For a sale, the transfer of property has to be absolute in terms of Transfer of Property Act and that is to be achieved only by a document in writing duly registered. Section 29 of the State Financial Act authorizes the Corporation to execute such a document but even then such a sale takes place only when a transfer document is executed and duly registered as contemplated under the Transfer of Property Act, which has not been done in the present case.

I fail to understand on what basis Corporation took the stand that the property was sold by virtue of the sale letter. If the property was sold by virtue of sale letter then this Court fails to appreciate why in the very sale letter is stated that the petitioner had a right to retain the property on matching term. If the sale was already made and the property sold to respondent No. 6 by the sale letter how could the property be retained by the petitioner after the sale had been made. Then again where is the consideration for sale. It was said that it was sold for a consideration of Rs. 3.41 lakh but what happened to that money. The Corporation admits that after payment of initial amount of Rs. 78,000/- no further amount was deposited by respondent No. 6, who had abandoned the transaction without completing the legal formality. There was no documentation

for sale nor registration thereof.

If on Corporation's own showing legal formalities for sale were not completed, i.e., as neither was consideration received nor any document transferring the property executed nor any such document having been registered in terms of Transfer of Property Act, 1 fail to understand that on what basis Corporation takes the stand that the property was sold. The stand is misconceived in fact and in law and has no legs to stand. It is only a pretence for denying honourable exit to the petitioner from the debt trap laid out by the Corporation, where for a disbursement of Rs. 82,000/- the petitioner had a liability to discharge now of over Rs. 25 lakh. This Court can say no more. The stand of the Corporation being misconceived in fact and in law that the property was sold, the stand of the Corporation for settling the due under Clause FA cannot be sustained either on fact or in law. The application of the petitioner for settlement otherwise was proper and had to be acted upon. Failure on the part of the Corporation to permit the petitioner to settle the due under the said scheme as per petitioner's option was thus wrongly denied to the petitioner. The Corporation is thus be liable to grant the facility to the petitioner to compound his liability in terms of BSFC OTS, 2006 as per his application or as per his desire under any of the schemes because choice is that of the defaulter under the scheme.

14. Thus, it has been clearly held by the Patna High Court that unless the formalities of sale are completed by the receipt of consideration, execution of document, transferring the property and the documents having been registered in terms of the Transfer or Property Act, it is not open to the Corporation to take the stand that the property has been sold.

15. The facts are similar in nature and, hence, it is held that the petitioner is entitled to have the benefit of the OTS Scheme, 2009 in terms of Clause 5.1 scheme as original promoters/guarantors of the unit in question. Consequently, the sale order dated 20.8.2010 is thus liable to be quashed and is accordingly quashed. The writ petition is allowed.