(2006) 08 PAT CK 0087

In the Patna High Court

Case No : CWJC No. 2915 of 2006

M/s Prakash Roller Flour Mills Pvt. Ltd. — APPELLANT

Vs

The Bihar State Credit and Investment Corporation Limited and Others — RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Citation : (2006) 3 PLJR 581

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard the parties. BICICO represented and has filed a counter affidavit.

2. Mr. Y.V. Giri, learned senior counsel appears in support of this writ application. The primary grievance of the petitioner is that it had taken loan from Bihar State Credit & Investment Corporation Limited. It had taken major steps towards establishment of industry but could not go into production. In the meantime BICICO came up with what is now known as One Time Settlement Policy, 2004. The petitioner in terms of the said policy expressed his willingness to settle the dues and get out of the debt trap. It approached BICICO stating that it was a non-commissioned unit and requested that it was depositing two cheques worth Rs. 2,00,000/- (two lakhs) and Rs. 2,50,000/- (two lakhs and fifty thousand) and sought permission to dispose of the assets and pay for the OTS amount from the sale proceeds. This was done by letter dated 25.11.2004. On 27.11.2004 (Annexure 3) BICICO reverted giving its calculation showing OTS amount at Rs. 90 lakhs. OT interest, at the rate of 10%, nine lakhs and then various other calculations. To this the petitioner reverted by its letter dated 30.11.2004 stating and pointing out calculation appears to be incorrect. It pointed out that the amount received was Rs. 81.35 lakh and as such inclusive or 10%, the OTS settlement amount would be Rs. 83 lakhs. They then pointed out that the net

amount payable would be Rs. 90.03 lakhs. For the entire amount of Rs. 90.03 lakhs post dated cheques were given as mentioned in the said letter. In para 28 of the writ petition it was specifically stated that earlier they had given two cheques of Rs. 2,00,000/-and Rs. 2,50,000/-. The cheques for Rs. 2,00,000/- was adjusted in the payment, as evident from the letter itself and the cheque for Rs. 2,50,000/- was now returned by BICICO. With reference to the aforesaid facts it was submitted that whatever be the situation the petitioner had made a counter offer and tendered payments accordingly. The payments were not only accepted but all cheques were encashed. Not just that subsequently by letter dated 6.7.2005 (Annexure 6 to the writ petition) BICICO demanded interest for deferments of payments. This was more than six months after the original payments and the letter was tendered. Here again they did not raise any dispute with regard to any principal amount stilt remaining due. This amount of interest which was asked was paid to and encashed by BICICO. Now, when the petitioner goes to BICICO with all cheques having been encashed including those for deferment of payment of instalments and requested for grant of No Dues Certificate BICICO having realised its pound of flesh wanted more and reverted by the impugned letter dated 23.8.2005. (Annexure 8) saying that a balance sum of Rs. 10.99 lakh still remains payable. One unfortunate and regretable act of BICICO is that having sent the earliest communication which was countered by the petitioner they never whispered that they were not accepting the calculation of the petitioner. They led the petitioner to think that the calculation of the petitioner had been accepted. They thus persuaded the petitioner to pay over Rs. 90 lakhs. Having encashed the cheques and after long lapse of time they have now turned turtle and disclosed their true colours. This what has challenged by the petitioner.

3. It is submitted that first a reference to the OTS policy would show that calculation worked out were based on cash disbursed against cash repaid. There is no dispute that what was actually disbursed was only about Rs. 81 lakhs and not Rs. 90 lakhs. BICICO sought to explain by stating that what was actually disbursed was Rs. 90 lakh. Out of which about Rs. 9 lakh was adjusted towards interest and as such the net cash disbursed was undisputedly about Rs. 81 lakh. Petitioner has based calculation on the actual encash disbursement which calculation it had clearly disclosed to BICICO while making payment. If the BICICO had any reservation about the same it should have returned all the cheques immediately, but it did not and as such it was a fit case where the principle of "estoppel by conduct" would apply.

4. Having heard the parties two facts are clear. BICICO had its stands. It took its stand. It communicated its calculation as per understanding. The petitioner as per his understanding gave out his calculation and made payment as per his calculation. It is not disputed that the calculation as tendered by the petitioner was ever stated to be a wrong calculation by BICICO. In fact Mr. Giri is correct in submitting that there was a tacit acceptance of the calculation as made by the petitioner when BICICO returned the cheques of Rs. 2,50,000/- as tendered by

the petitioner earlier and thus accepted petitioner''s calculation. If it is to be believed that Rs. 10.99 lakhs were short and the petitioner was liable to pay, BICICO is unable to explain why cheque for Rs. 2,50,000/- was returned. Mr. Giri is also correct in submitting that they were fully satisfied with the calculation of the petitioner and as such returned the cheque of Rs. 2,50,000/- and accepted the balance cheque for Rs. 2,00,000/- alongwith other post dated cheques. This amounted to a concluded contract and once that is so, the parties are stopped from resiling from it. Petitioner having made payment in accordance therewith and further having made payment of further interest as demanded by BICICO amounting to Rs. 87,536/- which was paid by the petitioner without demur. BICICO in law and in fact cannot be permitted to change its stand.

5. I accordingly find that the petitioner has fully liquidated the dues of BICICO. The demand of BICICO of additional Rs. 10.99 lakh is totally unjustified and mala fide. The said demand is quashed and BICICO is directed to issue No Dues Certificate to the petitioner immediately preferably within fifteen days from the date of receipt of a copy of this order and BICICO would be obliged to release all mortgaged assets of the petitioner and unit forthwith. This writ petition is accordingly allowed.