

Eastern India Breweries (P) Ltd. and Others Vs The Bihar State Financial Corporation and Others

Court: Patna High Court

Date of Decision: Dec. 19, 2002

Acts Referred: Bihar State Financial Corporations Act, 1951 " Section 29, 30

Citation: (2003) 1 PLJR 314

Hon'ble Judges: P.K. Deb, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

P.K. Deb, J.

The writ Petitioners have come up seeking direction/appropriate writ on the Respondent B.S.F.C. Corporation for granting

permission to sell the business unit of the Petitioners namely, M/s Eastern India Breweries (P) Ltd. as the Petitioners were not in a position to pay

up the outstanding dues of the B.S.F.C. and not in a position to run the business because of the loss incurred by the Petitioners for the wrong

committed by the B.S.F.C. in purchasing of another Brewery Unit in the State of Bihar.

2. The admitted position remains that the Petitioner established the Brewery by taking term loan from the Respondent/Corporation. The term loan

was to the tune of Rs. 18.08 lakhs although according to the Petitioners payments were made only to the tune of Rs. 11.50 lakhs. While the

Petitioner was running the business then mortgaged assets of a similar business of one M/s Orient Beverages had been auctioned by the

Respondent/Corporation u/s 29 of the B.S.F.C. Act. The Petitioners filed tender and as the tender of the Petitioners were found to be reasonable,

the same was accepted but the documentation was not complete and, as such, the Petitioners had moved this Court. The original Petitioner of M/s

Orient Beverages Ltd. had moved Calcutta High Court and there were various litigations in the matter which were not necessary to be reiterated

for disposal of this present writ petition. This much can be said that the dispute went up to the Apex Court and it remains a fact that although

tender of the Petitioner was accepted but the assets of M/s Orient Beverages Ltd. could not be sold to the Petitioner and the amount which the

Petitioner had. already deposited with the B.S.F.C. for purchase of that unit had also not been returned and in that way a writ petition was decided

by a single Judge of this Court for which L.P.A. has been filed and the said L.P.A. being L.P.A. No. 1581 of 1995 is now pending before this

Court. Accounting shall be made as per decision in that L.P.A. and the outstanding dues should also be decided only on a decision being arrived at

in the L.P.A. but the fact remains that the B.S.F.C. has got outstanding dues against the Petitioner and to overcome that the Petitioner wants to sell

out the unit, namely, Eastern India Breweries (P) Ltd. to an intending purchaser and ha could get a purchaser, namely, Shailendra Kumar who had

given an offer of Rs. 25.00 lakhs for purchasing the unit. To get an idea as to how much worth the unit is at present the B.S.F.C. was asked to

make a valuation in presence of the Petitioner but it appears that due to water logging such valuation could not be made but on assessment

according to the B.S.F.C. it was found to be worth rupees more than 60 lakhs. On the other hand another valuation report which was made by the

B.S.F.C. itself through its official showed valuation to be about Rs. 18 lakhs and odd. Be it what it may as the Petitioner does not want to proceed

further with the business and wants to get rid of it and also the burden of loan and when the money of the B.S.F.C. is an exchequer money I do not

find why a permission should not be granted to sell the mortgaged unit to intending purchaser and the consideration thereof should be immediately

deposited with the B.S.F.C. The only contention of Mr. Shrawan Kumar, learned senior counsel appearing for and on behalf of the B.S.F.C. is

that when the valuation is on the higher side then it ought, not to have sold to the private party rather a direction should be given to the B.S.F.C. to

sell it under Sections 29/30 of the B.S.F.C. Act. I could not find much force in such submission because the mortgage property is being sold to the

private party i.e. Shailendra Kumar who has also submitted an affidavit as an intervenor showing his intention to purchase the same and also

according to him the valuation cannot be more than 25 lakhs because of water logging in the area and also the unit being situated in the residential

area and when the Petitioner had given an undertaking to the effect that the balance dues shall be paid by him as and when calculation became

final. Moreover if the balance amount of calculation is found to be in favour of the B.S.F.C. and such amount is not paid by the Petitioner then also

the B.S.F.C. shall be at liberty to proceed with the provisions of Sections 29/30 of the Act in respect of the unit itself.

3. In that way this writ petition is hereby allowed directing the B.S.F.C. not to raise objection in selling of the unit of the Petitioner to Mr.

Shailendra Kumar Intervenor on a consideration of Rs. 25 lakhs and such consideration amount shall be directly paid to the B.S.F.C. itself by a

bank draft and the Petitioner while executing that document shall also execute a bond in the form of undertaking in favour of the B.S.F.C. to pay

the balance dues as and when calculation becomes finalised in respect of the unit itself to the B.S.F.C. The sale procedure should be completed

within one month next and after draft of the sale deed is being prepared that should be vetted by the B.S.F.C. regarding the proper mentioning of

the mortgaged and charged assets of the unit itself in the documentation.

4. The writ petition is disposed of accordingly.