



# Bihar Industrial Area Development Authority

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## ORDER

Order of cancellation of allotment to M/s. Aishwarya Foundation, Industrial Area, Patliputra bearing Plot No. Plot No. E-2 & E-3 measuring 72,527 Sq. Ft. of land.

M/s. Aishwarya Foundation, Industrial Area, Patliputra has intimated on 27.05.2009 that they have purchased the leasehold rights Plot No. E-2 & E-3 pertaining to ARCIL (Assets Reconstruction Company India Ltd., Bombay).

Subsequent thereto, the Authority has found that it was a clear case of the change of constitution of firm so a direction regarding payment of transfer charges @ 15% along with maintenance charge @ 5% is to be given in terms of Letter No. 3357/D dated 04.08.2009.

After a lapse of almost 3 years the unit has neither submitted any document nor has corresponded with the Authority on the transfer. Subsequently on 20.06.2011 the unit has intimated that the Plot No. E-2 and E-3 has been purchased from ARCIL and a fresh intimation regarding requisite transfer may be given.

In response thereto, a letter No. 4286 dated 04.08.2011 was given to the unit for the submission of transfer fee. It is relevant to mention here that the transfer fee for any change of constitution is governed by the directions laid down in letter No. 1547 dated 30.05.2007, letter No. 2516 dated 16.07.2007 and letter no. 2823 dated 28.07.2007.

Furthermore, Letter No. 4286 dated 04.08.2011 was given to the unit for the submission of transfer fee to the tune of approximately 1.5 Crores. Thereafter, BIADA Board of Directors in its 41st meeting and on the pursuance of the unit vide letter dated 07.05.2012 the unit was directed to deposit the transfer fee to the tune of Rs.1,45,62,311/- in five equal installments.

In the meanwhile, the chargeability of transfer fee was challenged by the auction purchaser (M/s. Aishwarya Foundation) before Hon'ble High Court in C.W.J.C. No. 7326/2012, Aishwarya Foundation vs. The State of Bihar and Ors. on 06.04.2012.

However, on the same time the first installment amounting to Rs. 38,16,838/- was paid by the unit on 28.01.2013. At the same time M/s Aishwarya Foundation has requested to transfer in favour of M/s Bihar Trade Tower in the name and style of a joint venture between M/s Aishwarya Foundation Trust and M/s M.V. Hotel and Projects Pvt. Ltd. the partner in between M/s. Aishwarya Foundation and M/s M.V. Hotel and Projects Pvt. Ltd. was proposed to be 20:80. The proposed M/s Aishwarya Foundation Trust comprises of

- (a) Mrs. Ranjana Tiwary W/o Mr. Rakesh Tiwary,
- (b) Mr. Rakesh Tiwary S/o Mr. Suresh Tiwary &
- (c) Mr. Suresh Tiwary.

In M.V. Hotel & Projects Pvt. Ltd. there are two directors namely Mr. Rakesh Tiwary and his wife Mrs. Ranjana Tiwary having the shares in the ratio of 50:50.

Furthermore, on 20.08.2013, the transfer of the unit in favour of Aishwarya foundation was conditionally approved by the Authority vide letter no. 5926/D dated 20.08.2013. The condition was payment of the requisite transfer fee in 5 equal installments along with 10% interest.

Subsequently, Letter No. 2237 dated 22.04.2014, Letter No. 4008 dated 27.08.2015 was given to the unit wherein the installment amount was solicited. However, no payment was made to the Authority.

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Thereafter, on 19.02.2016 the unit has requested vide letter dated 19.02.2016 to change the name from M/s Bihar Trade Tower to M/s Bihar Trade Tower Pvt. Ltd. (Private Limited Company).

In the meantime, on 14.09.2016 Memorandum of Association received from the unit was received wherein it transpires that the share holding pattern between M/s M.V. Hotel & Projects Pvt. Ltd. and M/s Aishwarya Foundation is 80:20 which is also illegal as for any such transfer prior permission along with the payment of transfer fee and outstanding dues is pertinent, which was also not done.

In this backdrop, a show cause vide letter no. 2692/D dated 03.06.2017 was served to the unit for non-initiation of the production and non-establishment of the unit in the demised premises.

Once again, on 04.01.2018 M/s. Bihar Trade Tower Pvt. Ltd. has intimated that it would partner with M/s. Annu Anand Construction Pvt. Ltd. wherein the partnership would be in the ratio of 60:40 [Here Bihar trade Tower with M.D. Shri Rakesh Tiwari was said to having 60% shares and Annu Anand Construction to the tune of 40%].

Subsequently, C.W.J.C. No. 7236/2012, M/s. Aishwarya Foundation Trust vs. The State of Bihar and Ors. filed for challenging the levy of transfer fee was dismissed vide order dated 28.01.2019 by the Hon'ble High Court has held that **"The petitioner will be obliged to abide by the judgment of the Hon'ble Apex Court in pending C.C. No. (s) 19367 of 2015. The Writ Application stands dismissed accordingly."**

Thereafter, in the aforesaid SLP the Hon'ble Supreme Court of India has upheld the chargeability of transfer fee @ 15% of the Circle Rate and the Maintenance fee @ 5% of the Circle rate vide order dated 22.10.2019 in SLP No. 35887/2015 (C.C. No. (s) 19367 of 2015), BIADA vs. Amit Kumar and other analogous cases. Accordingly, the auction purchaser has got no other option but to abide by the order of Hon'ble High Court and Hon'ble Supreme Court of India.

In this backdrop, a Last Show Cause Notice vide Letter No. 5138/D Dated 21.08.2019 has been given to the unit for non-payment of outstanding dues around approximately Rupees 1.5 Crores and illegal construction of Mall multiplex.

However, in reply to the show cause notice it has kept tight lipped on the illegal construction of Mall multiplex and has tried to evade the payment of huge outstanding dues of 1.5 Crores approximately even after the aforementioned decision of Hon'ble High Court and Hon'ble Supreme Court of India.

It is manifest from the perusal of the photographs, Report of the Area Incharge that the Unit has even not paid the transfer fee on one pretext or the other and is illegally continuing the construction for the establishment of Mall on its whim and fancies which is in contravention to the norms, Rules etc of the Authority.

Therefore, it is manifest that there is serious breach to the norms of the Authority and the act of the unit is in complete contravention to norms of the Authority, provisions of BIADA Act, 1974, Rules and Regulations etc. The auction purchaser has sat tight on the plot for the last several years without any industrial activity over large tract of precious land and has not paid the dues amount and is illegally carrying out the construction of Mall and Multiplex. In this regard a last show cause notice has already been issued in terms of statutory provisions of Section 6 2(a) of the BIADA Act, 1974 and allied amendments and response of which was simply not acceptable and satisfactory.

Therefore, the allotment and the consequent lease in favour of M/s. Aishwarya Foundation, Plot No. E-2 and E-3 Area 72,527 Sq. Ft., Industrial Area, Patliputra stands cancelled and the amounts paid for the allotment and lease deeds are forfeited for the

reasons stated herein above in terms of the statutory powers vested in BIADA Act, 1974, its allied Amendments, BIADA Rules, 1981 and other allied provisions.

The concerned is directed to take instantaneous action for repossession of the cancelled properties and other action shall follow forthwith in accordance with law.

Order of M. D. Dated 15.01.2020

Sd/-

Executive Director

Memo No. \_\_\_\_\_

Dated \_\_\_\_\_

Copy to:- M/s. Aishwarya Foundation, Plot No. E-2 and E-3, Industrial Area, Patliputra for information.

Sd/-

Executive Director

Memo No. 195/D

Dated 16/01/2020

Copy to:- Development Officer, BIADA, Patna/Area Incharge, Patliputra/Sr. Accounts Officer, BIADA, Patna/Law Officer, BIADA/I.T Officer Patna for information and necessary action.

  
Executive Director