

# ALLAHABAD HIGH COURT

Industrial Finance Corporation of India

Vs.

Maharashtra Steel Ltd.

Company Petn. No. 17 of 1987

(A.P. Mishra, J.)

18.11.1987

## ORDER

**A. P. Mishra, J.**

1. Heard the learned counsel for the parties.
2. The present application has been moved by the Industrial Finance Corporation of India, a body corporate established under the Industrial Finance Corporation Act, 1948 (Act No. XV of 1948) (hereinafter referred to as the Act) under Section 30 of the Act for the sale of the mortgaged property under Section 30(1)(b)(c) of the Act and for the appointment of the Receiver over the same.
3. According to the petitioner No. 1, the respondent No. 1 as an incorporated company, on 7-11-1972 took a loan of Rs. 52 lacs for its project for manufacture of mild steel ingots in the State of U.P. The said loan was taken on the terms and conditions contained in the Loan Agreement dt. 5-7-1973. It was entered into between the petitioner No. 1 and respondent No. 1. A security for the said loan together with interest etc. was agreed to and a Deed of Hypothecation was also made in favour of petitioner No. 1 by the respondent No. 1. Similarly a further security for the said loan in favor of petitioner No. 1 was made by deposit of title deeds of the immovable properties on 5-11- 1974. On 7-7-1978 the petitioner No. 1 further advanced a loan of Rs. 15 lacs for the project of the respondent No. 1 and it was advanced on the terms and conditions contained in the Loan Agreement dt. 12-4-1979. Similarly security for this loan was also taken by the petitioner No. 1 according to its satisfaction. On account of breach of the terms and conditions of the Loan Agreement as aforesaid committed by the respondent No. 1, the details of which have been mentioned in paragraph

No. 19 of the application, is the cause for making the present application. On account of the said breach, the petitioner No. 1 exercised its powers under the said Agreements by means of letter dt. 2-9-87 by which it recalled the entire amount due for principal, interest and other monies in respect of the said loans and called upon the respondent No. 1 to pay forthwith an aggregate amount of Rs. 92,09,563/-. It is further urged that the respondent No. 1 has suspended its production since Feb., 1987 and the factory has been lying closed since then. The plant and machinery have been lying idle and are rapidly deteriorating in value for want of maintenance and proper care to the detriment of petitioner No. 1 and is also in danger of being damaged, destroyed, pilfered and removed, since there is no proper security arrangement in respect of the said properties. It is also averred that the properties which have been mortgaged and charged, the value of which would not be sufficient for realization of the amount which the petitioner No. 1 is entitled even if the entire property is sold (this part of the averment has been resiled by the other side). It is in the light of the present petition, a prayer for ad interim order was made for passing the order under Section 30(3) of the Act.

4. After hearing the learned counsel for the petitioners this Court on 5-10- 1987 passed the necessary orders in terms of prayer (d) of the petition and further called upon the respondent No. 1 to show cause why an order be not granted as sought in terms of prayers (b) and (c). It is after notice given to the other side and after their appearance and after the counter-affidavit being filed, the present application has come up before me for the grant of reliefs (b) and (c) as prayed in the said application. The prayer (b) is for the appointment of the Receiver in respect of the said properties and prayer (c) is for the attachment of the said properties mentioned in prayer (a).

5. In the counter-affidavit filed it is stated respondent No. 1 was incorporated in the State of Maharashtra and financial assistance thereof had been sanctioned by the State Industrial and Investment Corporation of Maharashtra Limited and about 40 acres of land had been allotted and handed over to the company by Maharashtra Industrial Development Corporation Limited in its industrial area at Nagpur. However, after the said sanctions, U.P. State authorities prevailed upon the Company to change its plant site to set up its industrial unit in the State of Uttar Pradesh for the industrialization of a notified backward area of the

western U.P. It is averred that after the said loan was sanctioned an immediate sanction of power load on 31-3-1973 was made but the powers were made available to the Company only in the last week of Dec., 1979 and thus the said unit has to lie idle for several years. It is further averred that non-payment of amount was not on account of any laches on behalf of the respondent No. 1 but on the aforesaid factor. It is also averred that all the Government financial institutions have their representatives on the Board of Directors of the Company. The State Corporation represented sometimes even by person of I.A.S. Officer concerned of the rank of Resident Commissioner in New Delhi or a person of a senior technical manager. The petitioner No. 1 has also been nominating one of officers to represent the Board of Directors of the Company and is presently represented by its Assistant General Manager.

6. There is no dispute in support of the loan being advanced or breach having been committed in terms of the loan agreements. The main contention raised on behalf of the petitioners is that in terms of Section 30(3) of the Act the interim order as contemplated therein if conditions as stipulated are satisfied, should be passed.

7. It has been urged that Section 30 speaks about where an industrial concern is in breach of any agreement, makes any default in repayment of any loan or advance or any installment thereof or otherwise fails to comply with the terms of its agreement. Then any officer of the Corporation generally or specially authorized by the Board may apply to the Court for the relief mentioned therein. It is thus urged that since in the present case all the conditions mentioned therein, namely, the breach of the agreements and the non-payment of the loan, therefore, the order as contemplated under Sub-Sec. (3) of Section 3 of the Act is mandatory and the court should pass such an order. It is in view of the arguments made the reliefs both as prayed under prayers (b) and (c) should be granted.

8. The learned counsel for the respondent No. 1, in the present case, has made a preliminary objection to the maintainability of the present proceedings in view of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (Act No. 1 of 1986). The argument is that in view of this Section no further proceedings could be gone into in the present case as there is bar under this

Section. It has been averred in para No. 10 of the counter-affidavit that the company has made reference to the said Board under Section 14(1) of the said Act and the same has been duly registered for the enquiry as Case No. 209 of 1987 is annexed, a Photostat copy of the letter received from the Registrar of the Board for its registration. Further in the same paragraph it has been stated that on personal enquiry from the office of the Board of Industrial and Financial Reconstruction, New Delhi, that the proceedings for the enquiry had started by assigning our reference to one of the Benches. It is on this basis an argument is raised that actually since enquiry is pending under Section 16, no further proceedings be gone into.

9. Learned counsel for the petitioners vehemently urged that mere registration of an application by the Registrar on a reference made under Section 15 of the said Act would not constitute an enquiry being pending and, therefore, this court, is precluded from passing the necessary orders in terms of Section 30(3) of the aforesaid Industrial Finance Corporation Act. In the rejoinder-affidavit, the averment made in paragraph No. 10 of the counter-affidavit about the enquiry has been denied. It is averred that whenever the meeting of the Board of Directors is called the petitioner's nominee director has also been intimated regarding the meeting of the Board of Directors and since the Board was not intimated about the said meeting there could not be any enquiry before the said Board. In fact before the enquiry could be initiated, a notice should be issued by the said Board for holding the said enquiry.

10. Learned counsel for the petitioners could not show any such rules that before initiating the enquiry a notice must be issued as stated by him. Neither any Act nor Rule has been shown nor any practice of the Board has been intimated by means of an affidavit. In view of these the contention cannot be accepted that enquiry only can be initiated after issuing the notice as averred in the rejoinder-affidavit.

11. It is next urged that under Section 16 of Act No. 1 of 1986 the language used is :-

"The Board may make such inquiry as it may deem fit."

The argument is that the word 'may' used here itself indicates that it is directory in the nature and not mandatory. The argument to my mind is not sustainable. Looking to the scheme of the Act after a reference under Section 15 of the Act has been made and the same having been registered the Board cannot decline to enquire into the matter. It may on enquiry come to the conclusion that the application that for treating the company concerned as sick unit is not acceptable and thus reject the application but it cannot be said that Board has discretion not even to enquire specially after reference being registered and after nominating a Bench of the Board. The word 'may' only qualifies the word 'make' such inquiry is mandatory. In fact Sub-Sec. (2) of Section 16 of the Act lays down that the enquiry may be made either by Board or its agency or it may require any operating agency to enquire into and make a report.

12. Even if in law if it could be argued that there is some gap between the actual holding of the enquiry and registration, it would not be proper for this Court on the facts and circumstances of this case to exercise its powers specially keeping in view of the object for which the aforesaid Sick Industrial Companies (Special Provisions) Act has been enacted. The main object is to salvage a viable Company by making available funds by other assistance or by making alterations etc. as contemplated under the said Act.

13. It is significant under Section 22 of the Act. It further provides that :-

"no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board."

Thus it is open to the petitioners to apply to the Board and obtain its consent on the facts of this case in its own and in the interest of the properties as stated, in the present petition for permitting the Receiver to be appointed. Without such consent as stated in this Section, it would not be proper to further continue the present proceedings in view of Section

22. On the facts of this case and on the basis of affidavits filed by the parties, I am of the opinion that the circumstances are such which lead to irresistible

inference that enquiry is pending under Section 16 of the Act.

14. In view of the aforesaid position, it is not possible to this Court to grant any relief, or reliefs (b) and (c), at this stage.

15. With these observations, the present application is disposed of.

16. A copy of this order may be given to the learned counsel for the parties on payment of usual charges within three days.

Application dismissed.