RAJASTHAN HIGH COURT

R.T. Udyog Pvt. Ltd.

Vs.

State of Rajasthan

C. W.P. No. 5629 of 1994
(Arun Madan - J.)

26. 02.2002

ORDER

Arun Madan, J.

1. By this petition a writ of mandamus is sought for directing the respondents :-

(a) not to modify sale agreement's term dated 19-4-1993 with Gouri Cements (P) Ltd. as unit sold in public auction held on 26-3-1993;
(b) not to allow the purchaser Gouri Cement (P) Ltd. in possession of the petitioner's unit in the event of breach of agreement term dated 19-4-1993;
(c) to sell petitioner's unit by public auction in case of breach of sale agreement dated 19-4-1993 so also by affording opportunity to the petitioner to offer highest bid so as to receive back the unit;
(d) to pay to the petitioner No. 1 balance of sale proceeds of the unit after adjusting his dues, along with interest @ 22% p.a. from 26-3-1993 (auction date) till its payment or alternatively to give unconditional guarantee for such balance amount along with interest;
(e) to submit monthly account to the petitioner No. 1 until payment of balance amount with interest;
(f) to issue discharge certificate letter to the Registrar of Companies Kolkata releasing personal guarnatee and securities furnished by the promoters against the term loan.

2. Alok Tibrewal (petitioner No. 3) is the shareholder and Director of R.T. Udyog (P) Ltd. and Swastik Polymar (P) Ltd. (petitioner Nos. 1 and 2) having their registered office in *Kolkata. RT Udyog* (petitioner No. 1) (for short RT Udyog") claiming its object to carry on business as manufacturer and dealer in Cement and allied products

admittedly had applied for a term loan and therefore on its request, respondent No. 3 Rajasthan State Industrial Development and Investment Corporation Limited (for breavity 'RIICO") accorded its sanction granting term loan for a sum of Rs. ninety lacs in favor of RT Udyog by letter of intent dated dated 20-11-1990 for setting up a mini plant of cement at Behror on certain terms duly incorporated in term loan agreement dated 25-2-1991 and out of which Rs. Seventy four lacs were admittedly disbursed to RT Udyog, and whereupon the project stood mechanically complete by October 1992 but, as admitted in para 5 of the petition, some disputes had crept in out of differences in between two promter group s (viz. Tibrewals and Rawat) of RT Udyog. Therefore, such differences resulted in compelling the RIICO to issue legal notice dated 1-2-1993 (Ann.1) under Section 30 of the State Financial Corporation Act, 1951 (for short Act") making allegations against RT Udyog for gross mismanagement in its business affairs and so, recalled entire term loan besides other dues to pay R. 74 lacs towards principal and 7.92 lacs interest (calculated up to 15-1-1993 @ 19.25% p.a.) otherwise the RIICO shall take over management or possession or both of Industrial unit so as to realize its dues by sale/lease of the mortgaged assets hypothecated to it (RIICO) in security of the term loan, to which objection-cum-reply was sent by letter dated 13-2-1993 (Ann. 2) on behalf of RT Udyog.

Undisputably, notwithstanding protest by letter (Ann. 2) by RT Udyog, its assets and possession were taken over by RIICO on 26-2-1993 at A-19, RIICO Industrial Area Behror (for short cement unit") but it preceded with another notice dated 23-2-1993. Similarly, for sale of RT Udoyg's cement Unit, an advertisement (Ann. 3) was published in newspaper Economic Times" on 18-3- 1993.

3. It is the case of petitioner that Swastik Polymers (P) Ltd. (petitioner No. 2) claiming largest single shareholding of RT Udyog, pursuant to advertisement (Ann.3) for sale of cement unit had offered through advocate's letter dated 18-3-1993 (Ann. 4) willingness to purchase the unit in dispute. But, the proceedings for sale of cement unit assets were started on 26-3-1993 and completed on 29-3-1993 in favor of L.N. Rawat who formed a company in the name and style of Gouri Cement (P) Ltd. which has not been arrayed as respondent but allowed to be impleaded as party respondent No. 4 vide order dated 16-7-1997. According to the petitioners, despite their requests by letters (Anns. 5 and 6) they were not furnished with details of auction sale of their cement unit in dispute but ultimately RIICO refused by letter dated 7-6-1993 (Ann. 7) to provide any specific details as to the auction sale in dispute.

4. However, even in letter dated 13-5-1993 (Ann. 5) the petitioner No. 3 admitted to

have understood that RIICO sold assets of the cement unit on 26-3-1993 for Rs. 152 lacs on 6 years payment basis with 22% normal and 27% penal interest and similarly stated in para 18 of the petition, that auction sale was at Rs. 152 lacs on deferred payment term ranging over six years with interest @22% with additional interest @5.25% by way of liquidated damages in case of default in paying either interest or the principal as per sale agreement dated 19-4-1993 said to have been executed with Gauri Cement (R) Ltd. (respondent No. 4). It has also been the case of the petitioners that Rs. sixty nine lacs would be surplus belance payable of RT Udyog with further interest and liquidated damages as stipulated in subsequent sale agreement dated 19-4-1993. Before approaching this Court, two notices (Anns. 8 and 9) are also said to have been served through their advocates by the petitioners on 31-1-1994 and 22-3-1994 claiming balance amount lying as surplus with RIICO by virtue of the impugned sale agreement dated 19-4-1993. Hence, this writ petition has been field on 23-9-1994 after a lapse of one and half years of the impugned auction sale in favor of LN Rawat (being the highest bidder out of 13 bids, to Rs. 152 lacs on deferred payment basis) who was also not initially arrayed as party, but was impleaded as respondent No. 4 on his application vide order dated 16-7-1997. L.N. Rawat had formed a company in the name and style of M/s. Gauri Cement (P) Ltd.

5. This writ petition came up for admission on 14-11-1994 and this Court after taking into consideration following contention raised on behalf of the petitioner, had issued show cause notice to the respondents (State Govt. through Finance and Industries Departments and RIICO).

Learned counsel for the petitioner has contended that due to non payment of loan taken from the RIICO, the industry of the petitioners was auctioned. The auction amount was more than the dues payable by the petitioners but the excess amount has not been returned to him. By Annexure 7 it appears that the RIICO is not paying the excess amount because the auction purchaser is making the payment in installments and the whole amount has not been recovered so far. The matter requires to be examined as to on what conditions RIICO could have auctioned the industry.

6. Though reply to the writ petition and rejoinder thereto have also been filed but this petition could not have been admitted for hearing. Hence, the matter was heard finally and is being decided by this order.

7. I have heard the learned counsel for both the parties and considered their rival contentions so also the material on record either in the writ petition or reply thereto as

well as its rejoinder. On a careful consideration of the entire matter I find from relief clauses (quoted above) to the writ petition that no relief is claimed for quashing the legal notice (Ann. 1) issued under Section 30 of the Act for recalling entire term loan disbursed to the petitioner or for quashing public auction of the cement unit in dispute held on 26-3-1993 resulting in acceptance of highest bid out of 13 bids in favor of Gouri Cements. The only emphasis laid in claiming reliefs was : (1) not to modify terms of sale agreement dated 19-4-1993 with purchaser Gouri Cements as unit sold in public auction of 26-3-1993 and (2) not to allow Gouri Cements in possession of the cement until in dispute in the event of breach of sale agreement dated 19-4-1993 and (3) further to pay balance of sale proceeds of the unit in dispute after adjusting his dues along with interest @ 22% p.a. from the auction sale of 26-3-1993 till its payment.

8. However, during the course of arguments Sri S.P. Mittal learned Sr. Advocate appearing for the petitioners strenuously raised various contentions against the action on the part of the RIICO for having invoked its powers vested either in Section 30 of 29 of the Act for recalling entire term loan disbursed and for taking over management and possession both the cement unit in dispute and then putting it to public auction on 26-3-1993 resulting in sale agreement dated 19-4-1993 with Gouri Cements. Before examining the controversy, it is appropriate to have a look at and brief resum of the decisions herein below cited by Shri S.P. Mittal.

9. In *Maganlal v. M/s. Jaiswal Industries* [1] while dealing with question as to whether the provisions contained in Order 34, Rule 5, Civil Procedure Code are attracted during the course of execution of an order of sale of mortgaged property passed under Section 32 of the State Financial Corporation Act, 1951, the Apex Court held as under at page 2122 :

> "29. As is apparent from the plain language of Section 32(8) of the Act the legal fiction was created for the purpose of executing an order under Section 32 of the Act for sale of attached property as if such order was a decree in a suit for sale and the Financial Corporation was the decree holder whereas the debtor was the judgment debtor. Consequently the provisions of the Civil Procedure Code with regard to excution of a decree for sale of mortgaged property contained in Order 21 of the Code including the right to file an appeal against such orders passed during the course of execution which are appealable, shall apply mutatis mutandis to excecution of an order under Section 32 of the Act unless some provision is not practicable to be applied."

30. That the provisions of the Code with regard to execution of a decree for sale of mortgaged property would apply to execution of an order under Section 32 of the Act is clear from Section 32(8) of the Act and the reasons stated above. It would also be so inasmuch as even otherwise one the order under Section 32 for sale is made executable by a District Judge in his capacity as District Judge and not persona designata the provisions of the Code which are exerciable by the District Judge in execution of a decree for sale of mortgaged property would get attracted."

10. It was a case of invoking Section 32 of the Act whereas herein the controversy raised pertaions to interpretation of Sections 29 and 30 of the Act, the decision in *Mangalal v. Jaiswal Industries* (supra) is of no help to the petitioners.

11. In *Mahesh Chandra v. U.P. Financial Corporation ,* [2] the Apex Court formulated following guidelines for being observed by the Corporation while exercising power under Section 29 :-

"Every endeavour should be made to make the unit viable and be put on working condition. If it becomes unworkable.

(1) Sale of a unit should always be made by public auction.

(2) Valuation of a unit for purpose of determining adequacy of offer or for determining if bid offered was adequacy, should always be intimated to the unit holder to enable him to file objection if any as he is vitially interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be reschduled to be recovered in installments with interest after the payment of last installment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magzines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account."

12. Sri S.P. Mittal on behalf of the petitioners placed reliance upon following observations made by Division Bench of the Gujarat High Court (M.P. Thakker C.J. and A. M. Ahmadi, J. as they then were) in *Gujarat State Financial Corporation v. M/s. Lotus hotels (P) Ltd. ,*[3] :-

"A Corporation which is a State or other authority under Article 12 and which is clothed with certain statutory powers can never be permitted to unilaterally and in an arbitrary and unfair manner refuse to carry out its obligations and thereby reduce the company to a wreck."

13. In *Shreeshyla Crowns and Screws (P) Ltd. v. Unon of India,* [4] the Karnataka High Court observed that Section 30 of the Act passes two fold test of valid classification under Article 14 of the Constitution. Section 30 has not also conferred arbitrary, unguided, uncontrolled and unanalyzed power on a financial Corporation. It has also been observed as under at page 139 :-

"A corporation can recall the loan or advance only in the six specified circumstances and not in all the circumstances. The six circumstances or guidelines are intended to safeguard a Corporation and public moneys lent to an industrial concern. Under Section 30, a Corporation is not empowered to call the entire loan or advance at its whim and fancy."

A Corporation is required to conduct its affairs on business principles with due regard to the interests of the industry and the public . Every one of the in built safeguards in the Act, are provided by the Legislature in the Act, are provided by the Legislature for a smooth and efficient functioning of a Corporation in the public interest. Irresponsibility or whimsical exercise of power by a financial corporation cannot be presumed by a Court. A State owned financial Corporation is presumed to exercise its power and discharge its functions honestly and for purposes of the Act. The possibility of misuse of power in a given case is not a ground for striking down an Act or provision in an Act. Any such misuse of power by a Corporation in a given case can be remedied by the District Judge or the High Court in an appeal and in any event by a High Court in a proceeding under Article 226 of the Constitution and in the ultimate by the Supreme Court."

Section 30 of the Act passes the two fold test of a valid classification under

> Article 14 of the Constitution. Section 30 has not also conferred abritrary, unguided, uncontrolled and unanalyzed power on a Financial Corporation. Last but not the least the satisfaction of the Corporation is not made final but is subject to judicial scrutiny."

14. Even in the recovery of the loan amount or the installment, as the case may be, it is entitled to invoke its rights under Sections 29 and 31 of the Act. Bearing in mind the scheme of the Act, the nature of the duties and obligations imposed on the Corporation and the rights and privileges conferred on it in the matter of recovery or repayment of the loan amount/installments, its statutory role and responsibility can in no uncertain terms be under estimated.

15. In *Simens Engg. and Mfg. Co. of India Ltd. v. Union of India,* [5] the Apex Court held that where an authority makes an order in exercise of a quasi judicial function, it must record its reasons in support of the order it makes and every judicial order must be supported by reasons.The Apex Court further observed that rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

16. In *L. Hirday Narin v. Income-tax Officer* [6] the Apex Court held that if a statute invests a public officer with authority to do an act in a specified circumstances, it is imperative upon him to exercise his authority in manner appropriate to the case when a party interested and having a right to apply moves in that behalf of and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are *prima facie* enabling, the Courts will readily infer a duty to exercise power which invested in aid of enforcement of a right, public or private, of a citizen.

17. The Division Bench of this Court in *Umaid Textiles Mills v. Rajasthan Financial Corporation* [7] observed as under:-

> "32. The defendant respondents cannot use Section 29 of the Act as a measure of repression for the purpose of realizing its due from a debtor company. The authority given by Section 29 of the Act to take over the management or possession or both of the industry is to be read with Section 24 of the Act. Under Section 29 of the Act, the Corporation had to proceed in such a manner as to enable the industry to flourish and Corporation be able to realize its dues. The sequence of words shall have right to take over management or possession

or both the industrial concern clearly means that in the first instance, the Financial Corporation should insist on taking over the management. The taking over of management and possession both should arise only when if the Company is not able to repay its dues by proper management of the industry by it."

18. In *Subhari Papers (P) Ltd. v. Haryana Financial Corporation* the Punjab and Haryana High Court observed as under :-

"As employees of the public authority, the officers of the Corporation were expected to act in impartial and fair manner without taking sides of the directors/erstwhile Directors. Where the Officers of the Corporation have acted in a manner which is clearly suggestive of the undue interest taken by them to support a particular group of Directors and in their enthusiasm to support a particular group, the concerned officers completely ignored the basics of natural justice which forms an integral part of Section 29 of the State Financial Corporation Act, 1951, such action cannot but be castigated as void ab initio."

19. Per contra Sarva Shri R.P. Singh for respondent No. 4 and Alok Sharma for respondent No. 3 relied upon following decisions :-

"The Division Bench of the Andhra Pradesh High Court in *M/s. Srinivasa Kandasari Sugars v. State,* [9] observed as under (Para 15) :-

The two procedures mentioned in Sections 29 and 31 are different and there are no provisions by way of guidelines in these two sections as to when a particular procedure can be resorted to. The choice is left to the Corporation. From a combined reading of the Objections and Reasons and Sections 8, 9, 10, 24, 25 and 27 the requisite guidance can be inferred and a very responsible authority is vested with the power of selecting either of the procedures under Sections 29 and 31 respectively. So the statute itself discloses a definite policy and objective and it confers authority on the Corporation to make selection of the procedure. When that is so, a responsible body like the Financial Corporation will act in a realistic manner keeping in view the interests of the Corporation, industry, commerce and the general public. There is a guiding policy and principle available from the statute for the Corporation to act in this regard and accordingly Section 29 is not violative of Article 14 of the Constitution."

When the Corporation has the choice, which is not unguided, to resort to either of the procedure, and if the Corporation in a given case, having withdrawn its application under Section 31, proceeds under Section 29, it cannot be said that

such an action is illegal. As long as Section 29 is a valid piece of legislation, the Corporation has every right to proceed under Section 29, unless it is shown that it has acted arbitrarily or maliciously."

20. In *Hotel Babadham v. Bihar State Financial Corporation* [10] Division Bench of Patna High Court observed that the ruling of the Supreme Court in *Mahesh Chandra v. UP Financial Corporation,* [11] that if the borrower is willing to offer the sale price he should be offered the same facility and the unit should be transferred to him, should not be applied in a case where the borrower fails to avail of the offer made to him. It was a case where the petitioner's offer in March, 1992, to deposit the sale price offered by the renderer had been accepted by the Corporation, but the cheques issued by the petitioners were dishonored, again, in Oct. 1992, the petitioners were given an opportunity by the Court in a writ petition to pay off their dues, but instead of accepting the fair offer of the Corporation, they chose to file a suit and the writ petition had been filed only after the interim injunction obtained by the petitioners in an earlier suit was vacated and in the second suit, no interim injunction was granted, the unit was auctioned and the intending purchaser deposited Rs. 10 lacs by selling his lands. On the facts, the Patna High Court held that this was not a case wher the sale of property was found to be vitiated by unjust and unreasonable acts on the part of the Corporation or its officers or its employees and the petitioners were not entitled to equitable relief, in view of their own conduct.

21. In *U.P. Financial Corporation v. Gem Cap (India) (P) Ltd.* [12] the Apex Court while distinguishing its earlier decision in *Mahesh Chandra v. U.P. Financial Corporation (1993 (2) SCC 279* (supra) observed as under :-

> "In a matter between the corporation and its debtor, a writ Court has no say except in two situations : (1) there is a statutory violation on the part of the Corporation or (2) where the Corporation acts unfairly i.e. unreasonable. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi judicial authorities are bound to observe . Though the distinction between a quasi judicial and the administrative action has become thin, but even so the extent of judicial scrutiny judicial review in the case of administrative action cannot be larger than in the case of quasi judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In

the matter of administrtive action more than one choice is available to the administrative authorities, they have a certain amount of discretion available to them. They have a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred'. The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. Doctrine of fairness, evolved in administrative law is not supposed to convert the writ Courts into appellate authorities over administrative authorities. The constraints - self imposed undoubtedly - of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless."

22. While relying on the decision in *UP Financial Corporation v. Gem Cap (India) (P) Ltd.* (supra) the Apex Court in *KSFC v. Micro Cast Rubber* [13] observed as under :-

> "In the matter of a sale by the State Financial Corporation in exercise of the power conferred on it under Section 29 of the Act the scope of judicial review is confined to two situations, (1) where there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation, acts unfairly, i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution, the High Court does not site as an appellate authority over the acts and deeds of the State Financial Corporation."

The directions contained in para 22 of the judgment in *Mahesh Chandra v. Regional Manager,* UP Financial Corpn.are in the nature of guidelines for the exercise of the power under Section 29 of the Act. The action of the State Financial Corporation is not liable to be interfered with if it has acted broadly in consonance with these guidelines. In the facts of the present case directions 2, 3 and 4 had been substantially complied with by the appellant . It has not been pointed out that there is any statutory violation on the part of the appellant in accepting the offers of P and S and in rejecting the offer of respondent 2 and accepting the offers of P and S was unfair or unreasonable. The High Court was, therefore, not justified in interfering with the action of the appellant in accepting the offers of P and S for the sale of the unit of respondent 1. The writ petition field by respondents 1 and 2 is, therefore, liable to be dismissed."

23. In *Peerless Gen. Fin. and Inv. Co. Ltd. v. Majestic Apparels, Pvt. Ltd.,* [14] the Delhi

High Court observed as under at page 377 :-

> "In Section 29, the State Financial Corporation has been given certain additional powers as a secured creditor to seize/take possession of and transfer the property, which form its security and for that limited purpose, that State Financial Corporation is vested with the powers to pass on good title to the purchaser as if they were the owners of the property or they could be sued or sue as if they were the owners thereof. Apart from this limited additional right, they have no statutes other than that of a secured creditor which becomes clear on plain reading of the section, particularly sub-section (4), which provides for the payment of the residue amount recovered in excess of the Financial Corporations dues to be paid to the person entitled thereto, which means in the present context, the company in liquidation. Right of the Financial Corporation is only confined to recovery of its dues, costs, charges and expenses and nothing more."
>
> There is no conflict between two Acts, namely State Financial Corporation Act and Companies Act, in reading the provisions of Financial Corporation Act in addition to and not in derogation of the provisions of Companies Act. The only way to harmoniously construe the provisions of the two Acts would be that the provisions of Section 537(1)(b) are applicable to all sales and for the Court to grant leave/permission to sell to the secured creditors, their security by associating Official Liquidator with such sales."
>
> Further Section 29 does not take into account a situation where there is a statutory pari passu charge holder in existence which situation has come to exist after 1985 amendment. By introducing Section 529-A, the Legislature has created a category of creditors and it is for that reason also that the provisions of Section 29 alone will not be of much help to the petitioner Corporation in claiming exclusive right to realise security. ...."

24. With due respect to the Apex Court and without disputing the dictum of law laid down in the decisions cited by Sri S.P. Mittal for the petitioners (supra), let me advert to the present controversy having peculiar and significant circumstances which are also worthy of consideration and therefore, cannot be lost sight of while invoking extra ordinary jurisdiction of this Court under Article 226 of the Constitution in a petition seeking a writ of mandamus.

25. Admittedly as is evident from the reliefs clause in writ petition itself so also the grounds urged therein, gravaman of the assertion as herein is against Gouri Cements

(P) Ltd. because moneys as per petitioners claim are needed to be recovered from Gouri Cements (P) Ltd. but curiously enough right from the inception such a company (Gouri Cements) has not at all been impleaded as a party. Similarly once the petitioners have not at all claimed relief nor prayed for cancellation of the public auction held on 26-3-1993 resulting in transfer of the cement unit in dispute in favor of Gouri Cements (P) Ltd., can it not be inferred or held that the petitioners have waived objection to the public auction to Gouri Cements (P) Ltd. especially when such a transferee company (ibid) having not been impleaded as a party to this writ petition seeking relief against it in the event of breach of sale agreement dated 19-4-1993 arising out of public auction held on 26-3-1993 as stated in prayer clauses (i) to (iv) to the petition and further especially when undisputably L.S. Mundra one of Director of RT Udyog belonging to Tibrewala Group was present at the meeting of disposal Committee of RIICO where Gouri Cements (P) Ltd. was chosen out of total 13 bids, being highest bid of Rs. 152 lacs made by it.

26. In the instant case, albeit the RIICO has exercised its powers and rights under Section 29 of the Act to take over the management or possession of both of the industrial unit in dispute and as well, then also exercise powers and right to transfer by way of sale in public auction but such a situation had crept in only upon a legal notice (Ann. 1) having been issued by RIICO in exercise of powers under Section 30 of the Act when the petitioners failed to comply with or controvert the dispute alleged rather admitted therein. The impugned legal notice (Ann. 1) dated 1-2-1993 was issued under Section 30 of the Act *inter alia* stating as under:-

> "Whereas the Corporation has sanctioned a term loan of Rs. 90.00 lacs (Rupees Ninety lacs only) to your company for setting up a mini cement plant at Behror on the terms and conditions set out in the Term Loan Agreement executed by you with the corporation.
>
> Out of the sanctioned amount, a sum of Rs. 74.00 lacs has already been disbursed to your company by the Corporation.
>
> Whereas serious disputes and differences have arisen amongst the main promoters and directors of your company as has been brought to the notice of the Corporation.
>
> Sufficient opportunities were given to the Promoters and Directors of your company to resolve the disputes and differences but no positive result has come out so far.
>
> That the affairs of the company are being grossly mismanaged and the conduct

of the company's business is being adversely affected. In this situation , it is improbable for your company to perform its obligations under the term loan Agreement executed with the Corporation.

Under these circumstances, it has become necessary to protect the interest of the Corporation.

We, therefore, recall our entire term loan and other dues and request you to pay the same as per details given below along with interest @ 19.25% p.a. upto the date of payment, within 15 (fifteen) days from the date of this notice, failing which we shall take over the management or possession or both of your industrial unit and realise our dues by sale /lease of the assets mortgaged./hypothecated to the Corporation in security of the term loan :

Details of dues

Principal Rs. 74.00 lacs.

Interest (upto 15-1-1993) Rs. 7.92 lacs (Approx.)"

The petitioners in their reply (Ann. 2) to the legal notice, *inter alia* stated as under:-

It may not be out of place to mention that promoters have already invested Rs. 74.00 lacs against the envisaged amount of Rs. 32.70 lacs, thus covering the entire additional cost and over run being detailed as under :-

	Investment Upto 30-9-92 (Rs. in lacs)	Investment from 1-10-92 till date (Rs. in lace)	Total (Rs. in lacs)
Tibrewala Group	32.50	12.00	44.50
Rawat Group	29.50	NIL	29.50
	62.00	12.00	74.00

You are aware that unit would have started commercial operation in Dec. 1992 but for the criminal and anit social acitivities of Mr. L.N. Rawat and Associates. The fact was brought to your notice vide our letters dated 17-12- 1992 and 8-1-1993 as also during the course of discussion held on 4-1-1993 in the promoters meeting called by you.

We would also like to place on record that the promoter Mrs. Gita Tibrewala backed by majority shareholders had already offered to you her willingness to invest further and run the unit with active particiation of RIICO in the financial

management of the company. ...."

A this stage, instead of providing the company with necessary funds on assistance in terms of the Agreement, you thought it fit to invoke Section 30 of the State Financial Corporation Act, 1951 on the filmsy ground of internal disputes and gross mismanagement just to pressurise the majority groups to yield to the *mala fide* motive of the minority dissident group....."

In the circumstances we would request you to forthwith withdraw your alleged notice under reference and allow the company to start production and provide it with balance eligible funds in terms of the Agreement for loan.

In spite of what have been stated above, you chose to exercise your power under Section 30 of the State Financial Corporation Act, 1951, you will do so entirely at your risk and peril."

Here let me advert to quote Section 29 and 30 of the Act as follows :

"29. Rights of Financial Corporation in case of default.-

(1) Where any industrial concern, which is under liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any installment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation , the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of sub-section (1), all costs charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly,in payment of such costs,

charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern.

30.Power to call for repayment before agreed period -

Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writting , require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation.

(a) if it appears to be the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or

(b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance, or

(c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or

(d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or

(e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced, or

(f) if for any reason it is necessary to protect the interests of the Financial Corporation."

27. A careful reading of Section 30 of the Act which vests power upon the RIICO to call for repayment before agreed period, makes it crystal clear that notwithstanding anything in any agreement to the contrary the Financial Corporation (RIICO) may require any industrial concern (borrower) but by notice in writing to discharge forthwith in full its liabilities to it in six alternative circumstances specified in clause

(a) to (f) to Section 30. Clause (c) and (f) to Section 30 are relevant for the present controversy because from the pleadings other clauses (a), (b), (d) and (e) are not attracted nor put at issue herein. As per clause (c) to Section 30, there must be reasonable apprehension that the industrial concern (borrower) is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof. Clause (f) to Section 30 envisages that for any reason, it is necessary to protect the interests of the Financial Corporation.

28. Admiittedly invocation of powers under Section 30 of the Act to call for repayment before agreed period, on the part of the Financial Corporation (RIIP herein) is an administrative action and similarly more than one choice is provided in the Act, and made available to the administrative authority (like RIICO), viz. either to invoke powers vested under Section 30 or 31, then the RIICO has a right to choose between more than one possible course of action to be preferred, for which the Court cannot substitute its opinion or preference chosen. Moreover, in a matter of sale, for exercise of the power of the Financial Corporation (RIICO) under Section 29 or 30 of the Act, the scope of judicial review is restricted to two situations of (i) statutory violation or (ii) unfair and unreasonable action on the part of the Corporation. Be that as it may, this Court cannot sit over an excercise of statutory powers of the Corporation, while exercising its writ jurisdiction. I have lent support from the dictum of law laid down in the decision of the Apex Court in *UPFC v. Gem Cap India (P) Ltd.* (supra) followed in *KSFC v. Micro Cast Rubber* (supra). Thus viewed, I must refrain from adjudging the case put up as if before appellate forum with a view to settle the disputes among the co-promoters or two rival groups of the Directors of the borrower industrial concern (RT Udyog) for one pretext or the other either on a failure of duties or obligations on their parts to provide financial aid as co-promoters to the petitioner company or for any other reasons.

29. In the instant case, the reasons assigned in legal notice (Ann. 1) for invoking Section 30 of the Act are that serious disputes and differences have arisen among main promoters and directors of debtor company as had been brought to the notice of the Corporation (RIICO), that sufficient opportunity were given to the promoters and directors of the debtor company (RT Udyog) to resolve such disputes and differences but no positive result had come out so far; and that the affairs of the debtor company were being grossly mismanaged and the conduct of the company's business was being adversely affected so it had been improbable for the debtor company to perform its obligations under the term loan agreement executed with RIICO.

30. Upon having disclosed these incriminating circumstances, the RIICO thinking it necessary to protect its interest had issued notice (Ann. 1) dated 1-2-1993 to RT Udyog and thus recalled the entire term loan and other dues. Undisputedly at the very threshold of setting up the cement unit in dispute, L.N. Rawat and Geeta Tibrewala from West Bengal had joined their hands upon the offer by the RIICO as to various incentives and facilities viz. allotment of land, sanction of term loan repayable in easy installments, water and power facilities, so also tax holidays to out of State's entrepreneurs for establishing industry in the Rajasthan State and that being so, the RIICO granted a long term loan worth Rs. 90 lacs on the approved project worth Rs. 140.90 lacs which resulted in execution of agreement on 25-2-1991 so also in disbursement of loan amount in three installments of Rs. 18 lacs firstly on 21-5-1919., secondly, Rs. 36 lacs on 10-1-1992, and thirdly Rs. 20 lacs on 22-5-1992. However, out of total grant of term loan of Rs. 90 lacs, only Rs. 74 lacs could have been disbursed till release of last but one installment on 22-5-1992 and last installment worth Rs. 16 lacs was withheld . The Test load was made in Sept. 1992, and the trial run was completed in Nov. 1992 for putting the Unit into commercial production immediately.

31. It is an admitted position from reply (Ann. 2) to the legal notice (Ann. 1) that till 30-9-1992 Tibrewala group had invested Rs. 32.50 lacs while Rawat Group Rs. 29.50 lacs and the unit would have started commercial production in Dec. 92 but it could not do so because of criminal and social activities of another group as was disclosed in its letters dated 17-12-1992, 8-1-1993 and even during discussion held on 4-1-1992 in the promoters meeting. Thus, the factum of having disputes and differences among two groups of promoters of RT Udyog is crystally not denied rather admitted by the petitioners.

32. From a perusal of the reply filed by the respondent No. 4 (LN Rawat) to the writ petition, it is crystal clear that RT Udyog was founded in 1990 by L.N.Tibrewala and L.N. Rawat on the basis of 50% partnership but subsequently L.S. Mundara being the Director had indulged in siphoning of substantial funds which resulted in huge financial losses besides causing delay in finalization of the project. The case as set up by L.N. Rawat in his reply to the writ petition relating to differences amongst the promoters was that one Ram Mohata was inducted as Directors with 30% financial state while rest of 70% share being equally divided between Rawat and Tibrewala groups with 35% each, inasmuch as on 15-8-92 Alok Tibrewala was joined as Additional Director in the Board of Directors. It is the allegation of the respondent No.

4 which could not have been controverted in rebuttal that L.S. Mundra, continued with defalcation of funds of the project which resulted in the differences having sharepened further among the promoters inasmuch as extraordinary general meetings are said to have been called without notice with a view to change share holding pattern by tampering with allotments of shares and further more ultimately even co-promoter L.N. Rawat (respondent No. 1) was removed from Board of Directors under Section 283 (1)(g) of the Companies Act on 1-1-1993, for which company petition under Section 397 and 398 of the Companies Act is admittedly pending adjudication as to the legality or otherwise of the changed share holding pattern of Tibrewala Group. Thus viewed, existence of several disputes and differences among the promoters of the industrial concern (RT Udyog) is an admitted fact inasmuch as it has emanated and crept in legal feud among them by filing successive petitions either before Company Law Board or Court of law under the Companies Act or the Civil Procedure Code or Constitution of India. Even as a result of such differences, the promoters of RT Udyog (petitioners and respondent No. 4) both have made counter allegations against each other. Obviously such differences and disputes among the promoters of RT Udyog had crept on the indication of Alok Tibrewala when Ram Mohata had also resigned on or about 17-10-1992 and at the time when the unit had to put into commercial production on or about Sept./Dec. 1992 but it could not start till Feb. 1993 inasmuch as admittedly the RIICO had called successive meetings of co promoters of RT Udyog and had made sincere efforts to get inter party disputes resolved among them as has been admitted by them in their correspondence produced on record but curiously enough, they noticed serious consequences out of their severe differences which resulted in causing dealy in production activity inasmuch as RT Udyog was found with gross mismanagement affecting its business badly. All these circumstances fortified that it was unlikely for the borrower RT Udyog to perform its liability and obligations under its term loan agreement because the malfunctioning of RT Udyog's affairs crept in out of differences between the promoters besides gross mismanagement resulting in delay with production activity, had influenced RIICO to have reasonable apprehension rather indicated improbability of the lending money retrieved, except by having a resort to immediately invoke Section 30 of the Act. Thus, in my considered view, the RIICO has rightly invoked its powers to call for repayment of term loan before agreed period of as it had a reasonable apprehension that RT Udyog was unable to pay its debts or successfully discharge of its financial obligation inasmuch as proceedings for liquidation may commence in respect thereof as a result of differences among the promoters of the company and mismanagement

having crept in out of changing shareholding pattern, for which it was necessary for the RIICO to protect and safeguard its interest. Once and legal notice was issued by the invoking Section 30 of the Act for recalling repayments before agreed period, against the industrial concern (RT Udyog). As the industrial concern had failed to honour its commitment by repaying money lent by RIICO in its entirety in performance of its obligation by virtue of legal notice by resorting to the remedy available to it under Section 30 of the Act in terms of loan agreement, then certainly the RIICO was left with no option except to invoke Section 29 of the Act for taking over the management and possession of the RT Udyog, as well as the right to transfer by way of sale through public auction, wherein even one of the directors of RT Udyog (L.S. Mundra) actively participated and who was present at the time of confirmation of highest bid of Rs. 152 lacs out of total 13 bids in public auction in favor of L.N. Rawat at the meeting of disposal committee of RIICO, during which no objection was put inasmuch as in this writ petition filed in Sept. 1994 after about one and half years of public auction that too without impleading either L.N. Rawat or Gouri Cements (P) Ltd. Though L.N. Rawat has appeared after three years of the auction for impleading him as party and was allowed to be arrayed as respondent No. 4 but curiously enough despite having knowledge rather relief having claimed against Gouri Cements (P) Ltd. in the prayer clause to this petition, the petitioners failed to implead Gouri Cements (P) Ltd. as a party respondent whereas after having transferred by way of sale on public auction in favor of Gouri Cements (P) Ltd. by the RIICO and Gouri Cements (P) Ltd. in possession of the cement unit in dispute or industrial concern at Behror, Gouri Cements (P) Ltd. was also necessary party for seeking relief in view of gravamen of the petitioner's assertions directed against it, as the moneys according to its claim are needed to be recovered from Gouri Cements (P) Ltd. and moreover the petitioners had waived objection to the auction of its plant to Gouri Cements (P) Ltd. against which no relief has been sought for cancellation of the public auction wherein interest of the borrower company (RT Udyog) were fully safeguarded.

33. No doubt on 4-1-1993, L.N. Rawat, offered to pay total investment including shares of Tibrewala group at par (which as per reply (Ann. 2) was Rs. 74 lacs loan disbursed by RIICO plus Rs. 44.50 lacs invested by Tibrewala group while Rs. 29.50 lacs were invested by Rawat group) and such investment including both groups was to the extent of Rs. 148 lacs and if investment of Rawat group is excluded it comes to Rs. 118.50 lacs, as against which in public auction highest bid offered and accepted was of Rs. 152 lacs, which cannot be held to be unfair or unreasonable and therefore, cannot be interfered with in exercise of writ jurisdiction in peculiar circumstances

referred to above, viz. (a) non impleadment of Gouri Cements (P) Ltd. (b) having claimed no relief for cancellation of sale at public auction of the cement unit in dispute and (c) transfer thereof in favor of Gouri Cements (P) Ltd. (d) besides having belatedly approached this Court.

34. As regards payment of alleged balance amount of sale proceeds of the unit after adjusting dues in terms of loan agreement dated 25-2-1991 in favor of the RT Udyog, albeit not only in reply to the petition but also in letter dated 7-6-1993 the RIICO has admitted that fixed assets of RT Udyog cement unit in dispute at Behror were sold to Gouri Cements (P) Ltd. for Rs. 152 lacs on deferred payments basis and the amount in excess of outstanding liabilities against the company will be remitted after realization and satisfaction of RIICO's complete outstanding. Even as per sub-section (4) of Section 29 of the Act the residue of the money so received is made payable to the person entitled thereto only after payment of costs, charges and expenses (incurred in the action taken under sub-section (1) of Section 29 for taking over the possession of the industrial unit) and secondly for discharge of the debt due to the RIICO, and not before it. Admittedly, in the instant case, the debt due to the RIICO out of loan agreement dated 25-2-1991 so also by virtue of invoking Section 30 of the Act, has not been discharged even by invoking Section 29 of the Act because Gouri Cements (P) Ltd. has yet to make repayment under sale agreement dated 19-4-1993 on deferred payment basis for six years which ended on or about 19-4-1999.

As per affidavit dated 28-4-1997 filed on behalf of RIICO, after having made payments of Rs. 84.41 lacs with adjustment of Rs. 16.50 lacs towards subsidy granted yet undisbursed, the dues of Gouri Cements (P) Ltd. to RIICO had more or less been paid up. Further as is evident from the litigation having been admittedly pending between the promoters of RT Udyog before the company law board as to the alteration of shareholding pattern at the behest of Tibrewala group (petitioners), the question of payment of surplus amount residue in view of Section 29(4) of the Act to the RT Udyog even at future point of time or by way of direction of this Court to the RIICO, does not arise.

35. Another affidavit has been filed on 7-10-2001 on behalf of the RIICO specifically stating therein that after adjusting principal, interest dues and other expenses worth Rs. 83,47360/- outstanding against RT Udyog balance of Rs. 68,52,640/- out of Rs. 152 lacs (sale proceeds) of RT Udyog made in favor of Gouri Cements (P) Ltd. has been credited by the RIICO in excess claim refundable/adjustable account". It has been also stated in that affidavit that upon having found default committed in payment

of dues by Gouri Cements (P) Ltd. the RIICO had issued legal notice dated 3-6-1999 under Sections 29 and 30 of the Act for taking over its fixed assets for realizing its dues but upon civil suit No. 45/99 having filed by L.N. Rawat before the second Sub Judge (SD) Alipore (Kolkata), a stay order was granted on 18-6-1999 which has still been in force and whereby the RIICO has been restrained from taking action against Gouri Cement (P) Ltd. for realizing its dues, which according to the RIICO worked out as on 15-7-2001 as Rs. 5,29,58,732/-.

36. Be that as it may, the decks are clear. Till the petitioners approached by way of this writ petition, there was no default on the part of Gouri Cements (P) Ltd. against which no relief has been claimed in the event of breach of sale agreement dated 19-4-1993 for resale of unit in dispute at Behror with further opportunity to the petitioner to offer highest bid, inasmuch as according to affidavit of RIICO's officer dated 28-4-1997 there was nothing more or less paid up by Gouri Cements (P) Ltd. to RIICO. Even when legal notice was issued on 3-6-1999 in the event of breach of sale agreement, by invoking powers under Sections 29 and 30 of the Act by the RIICO, the respondent No. 4 (L.N. Rawat) had obtained an injunction order from the Civil Court restraining the RIICO from realizing any due pursuant to the impugned legal notice of 3-6-1999. Thus viewed apart from merits of the case, no relief as claimed by the petitioners in this writ petition can be granted after about eight years of sale of petitioner's unit in dispute at this belated stage.

37. As regards prayer clause (f), it is the case of RIICO in their reply that it had already issued a letter on Nov. 10, 1994 realizing personal guarantees of Mr. Mundra, L.N. Rawat and Geeta Tibrewal Directors of RT Udyog. Hence nothing remains due as against discharge certificate.

38. Hence I do not find any merit in any of the contentions raised on behalf of the petitioners claiming any relief under prayer clauses of this writ petition. Resultantly this writ petition being devoid of any merit and substance is hereby dismissed with no order as to costs.

Petition dismissed.

Cases Referred.

1. (AIR 1989 SC 2113)
2. AIR 1993 SC 935

3. AIR 1982 Guj 198
4. AIR 1983 Kar130
5. AIR 1976 SC 1785
6. AIR 1971 SC 33
7. 1994 (2) WLC Raj 78
8. (1998 (1) PLR 77)
9. AIR 1976 AP 93
10. 1995 (84) Comp Cases 774
11. AIR 1993 SC 935: 1993 (78) Comp Cases 1
12. (1993 (2) SCC 299: AIR 1993 SC 1435
13. (1996 (5) SCC 65
14. AIR 1995 Delhi 373