

(2002) 07 JH CK 0019

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1777 of 2002

Anupam Food Private Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 45, 46, 65
Constitution of India, 1950 — Article 12, 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16
State Financial Corporations Act, 1951 — Section 29, 30, 46, 46(1)

Citation : (2002) 07 JH CK 0019

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Biren Poddar, Ajay Poddar and Darshna Poddar Mishra, for the Appellant; Pradip Modi, G.P.-1 and Azeemuddin, J.C. to G.P.-1 for the respondent Nos. 2 and 3, Jitendra Kumar and S.K. Ughal for the respondent Nos. 4 to 7, Rajiv Kumar Sinha, for the respondent No. 8 and A. Allam, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—The petitioners, M/s. Anupam Food Private Limited are aggrieved by the sale notice (Annexure 5) In so far as it concerns the petitioner and issued by the Bihar State Credit and Investment Corporation Limited (hereinafter referred to for the sake of brevity as BICICO) u/s 29 of the State Financial Corporation Act, 1951 whereby and whereunder tenders and offers for sale of whole or part of the assets of the petitioner company have been invited. The petitioners have also challenged the Notice dated 4.2.2002 (Annexure 4) issued under Sections 29 and 30 of the State Financial Corporation Act, 1951 by BICICO calling upon the petitioner to pay within seven (7) days the dues of Rs. 115.20 lacs said to be outstanding as on 13.9.2001 out of which the principal has been computed as Rs. 20.64 lacs and the interest at Rs. 94.56 lacs. The major thrust of the argument of the petitioner is that neither the BICICO which is a State of Bihar owned Corporation nor the State of Bihar can make any recovery In

respect of loans or advances made prior to 15.11.2000 i.e. the appointed day on which the State of Jharkhand came into existence. Their further argument is that on and from the appointed day it is only the State of Jharkhand and/or its Corporation which can make any recovery but the State of Bihar cannot do so. These petitioners have further prayed for a declaration, declaring that so long as the assets and liabilities are not apportioned between the two successor States, i.e. the State of Bihar and Jharkhand under the provisions of Bihar Reorganisation Act, 2000, BICICO cannot initiate any action to realise the loans from the petitioner and consequently the impugned notices are premature, arbitrary and in any event totally illegal.

2. The petitioners have also prayed that BICICO should be restrained from finalising the sale of assets of the units of the petitioner with any person pursuant to the tenders opened on 1.3.2002 in response to the impugned sale notice as contained at Annexure-5." They have also prayed that BICICO should be directed to disburse term loan/rehabilitation package of Rs. 41 lacs sanctioned by the Board of BICICO in its meeting held on 16.3.1998 and communicated to them vide letter dated 7.4.1998 by the Managing Director of BICICO. According to them, although the aforementioned sum of Rs. 41 lacs was sanctioned by BICICO, yet no part thereof has yet been disbursed to the petitioner.

3. The petitioner is a Private Limited Company having been incorporated under the provisions of Indian Companies Act on 21.1.1983. It set up a Roller Flour Mill at Deoghar for production of Maida, Suji, Atta, Bran etc. On 30.11.1986, it applied for financial assistance to the Bihar State Financial Corporation (hereinafter referred to for the sake of brevity as BSFC) for Rs. 60 lacs. By communication dated 12.1.1987, BSFC sanctioned a term loan of Rs. 53.40 lacs.

4. The petitioner also applied for financial assistance before BICICO which sanctioned Rs. 20.64 lacs on 10.10.1998 but disbursed the same in two installments of Rs. 16.51 lacs and Rs. 4.13 lacs after eight (8) months from the date of the sanction. According to the petitioners, as a result of the delay in making the disbursement, they suffered heavy losses and that its losses are directly attributable to BICICO for which it became sick and applied to the Directorate of Industries, Government of Bihar for a declaration that it was a sick unit. Consequently, the petitioner was declared sick vide letter dated 7.6.1999 issued by the Director of Industries, Government of Bihar.

5. Subsequently, the petitioner submitted a scheme for rehabilitation and the Board of BICICO in its meeting held on 16.3.1998 approved the proposal of the petitioner and resolved the approval of the rehabilitation package and also resolved that a rehabilitation term loan of Rs. 41.00 lacs be sanctioned. The resolution was communicated to the petitioner by letter of the Managing Director, BICICO, by letter dated 7.4.1998 issued by the Managing Director, BICICO. The petitioner stated that in spite thereof, the resolution was never given effect to and the loan of Rs. 41 lacs was not disbursed to the petitioner and as such the petitioner could not be rehabilitated and it was absolutely incapacitated to earn

revenue and this further aggravated the sickness of the unit as a result whereof it could not repay its loans.

6. That the petitioner has also stated that in the joint meeting of the BSFC, BICICO and State Bank of India, Bhagalpur, held on 4.11.1996 it had been decided to let the petitioner avail financial assistance along with relief and concession from BICICO as also from the State Bank of India for revival of the Unit under the rehabilitation-cum- expansion scheme. On the decision of this decision, BICICO was requested to provide financial assistance to the tune of Rs. 41.00 lacs and the State Bank of India agreed to provide the total working capital required by the Unit. The petitioner has stated that however neither Rs. 41.00 lacs was disbursed by the BICICO nor did the State Bank of India provide any working capital to them. They have submitted that is for these reasons that the petitioner could not liquidate their dues and therefore, BICICO was not justified for taking coercive steps nor was it justified to sell the Unit. The petitioners have further made a grievance that out of Rs. 25.00 lacs sanctioned by the State Bank of India Deoghar, Rs. 19.00 lacs was sanctioned towards bill limit. But in 1994 the Bank transferred Rs. 06.00 (six) lacs towards cash credit limit thereby making the total sanction of Rs. 25.00 lacs as working capital loan.

7. The petitioner has stated that BICICO served a notice dated 27.7.2000 as contained at Annexure-3 under Sections 29 and 30 of the State Financial Act, 1951 calling upon it to pay Rs. 88.26 lacs comprising of Rs. 20.64 lacs towards principal and Rs. 67.62 lacs towards interest as on 31.3.2000 within 21 days failing which it was threatened that BICICO would have the liberty to advertise the mortgaged assets of the petitioner and also to take steps for sale thereof under the provisions of the S.F.C. Act, 1951. Thereafter, the Manager (Recovery) of BICICO served a notice dated 4.2.2002 upon the petitioner and its Directors calling upon them to pay the sum of Rs. 115.20 lacs within seven days failing which it was threatened that a certificate will be made against the petitioner and the cost of executing the same would be levied upon them. A photocopy of the aforementioned notice dated 4.2.2002 is Annexure 4 to the writ application. At paragraph 17, the petitioners have stated that they were not told of the calculation of interest of Rs. 94.56 lacs as a result whereof the petitioner could not ascertain its liability and therefore, the notice to that extent was not acceptable to them. However, they have also stated that they accept their liability to the extent of Rs. 20.64 lacs towards principal but at the same time they have argued that BICICO cannot initiate recovery proceedings during the period of rehabilitation since the petitioner has been declared sick. According to them, the petitioner has made payment from time to time and a total sum of Rs. 7,02,092/- has been paid on different dates. The petitioners have further stated that the Unit of the petitioner had been declared sick by the Apex Committee, Bihar, on 16.4.1999 for a period of five (5) years vide letter dated 7.6.1999 and now that the State of Jharkhand has come into existence from 15.11.2000, the Apex Committee of Bihar would not ensure rehabilitation. Consequently, the petitioner took up the matter of rehabilitation with the State of Jharkhand and by

its letter dated 8.2.2002 and on inquiry, the petitioner has been given to understand that the rehabilitation scheme submitted by the petitioner will be considered and therefore, BICICO should await and should not take coercive steps.

8. However, on 4.3.2002 the official of BICICO took over the assets of the petitioner and the petitioner issued a notice to that effect. They put their lock over the premises of the factory and pasted a notice. According to the petitioner such act is illegal and should not have been resorted to.

9. The petitioner has also relied upon the industrial policy framed by the Government of Jharkhand being Jharkhand Industrial Policy, 2001, the relevant Clause whereof is Clause 23.3 and it inter alia provides that sick Small Scale Industrial Units would be identified by the Apex Body with effect from such date as per guidelines issued by the Reserve Bank of India. They would get appropriate packages of relief and concessions and would be eligible for financial assistance from Banks and other financial institutions.

10. Mr. B. Poddar, learned counsel for the petitioner initiated his argument by firstly pressing the amendment application dated 4.4.2002 in which he, inter alia, made a prayer that one M/s. Bagaria Enterprises. T. Bilasi, Deoghar be added as respondent No. 8 and that the valuation report made by BICICO valuing the assets at Rs. 84.16 lacs and by the Income Tax valuer at Rs. 90.69 lacs be quashed as according to him, the present value of their assets would not be less than Rs. 3,00,00,000/- (three crores) and, without giving any opportunity to them the sale notice u/s 29 of the S.F.C. Act, 1951 vide Annexure 5 is wholly illegal and arbitrary. In the amendment application they also made a prayer for setting aside the alleged sale of the assets/unit of the petitioner to M/s. Bagaria Enterprises, Deoghar for a sum of Rs. 1,21,00,101/-and also challenged the symbolical handing over of the assets on paper to the said M/s. Bagaria Enterprises. The amendment application was allowed and Mr. Rajiv Ranjan, Advocate appeared on behalf of M/s. Bagaria Enterprises but he stated that he does not wish to file any counter affidavit.

The aforesaid contention relating to valuation of the unit, in the opinion of this Court, cannot be interfered with at this stage considering the failure of the petitioner to come up or bring an offer of an amount greater than the amount offered by M/s. Bagaria Enterprises even at the time of hearing of this case. "Ere at this juncture, it would be equally important to mention that by reason of Annexure-15, which is a Notice dated 5.3.2002, the Corporation had given notice to the petitioner intimating that they had received offers to the extent of Rs. 1,21,00,101.00. The respondent BICICO gave opportunity to the petitioner to come up with matching offers within ten (10) days and the said period expired on 14.3.2002, i.e. the date on which the defects in this case were removed, but even till the date of conclusion of arguments of this case, the petitioners did not give any matching offer countering the respondent No. 8 which had deposited Rs. 60 lakhs and odd.

In that view of the matter, this Court has no hesitation in rejecting the aforesaid contention/objection of the petitioner relating to valuation of the Unit.

11. The petitioners filed a second amendment application also in which they made prayers, inter alia, that in the cause title of the writ application the Union of India, Ministry of Finance, Department of Economic Affairs (Banking Division) be also impleaded as respondent No. 9 and also made a prayer for quashing Notification dated 29.2.1988 issued by the Under Secretary to the Government of India whereby and where-under in exercise of powers conferred by Sub-section (1) of Section 46 of the S.F.C. Act, 1951, the Central Government directed that the provisions of Sections 29, 30, 31, 32, 32(A), 32(B), 32(C) and 32(D) of the said State Financial Corporation Act shall be conferred upon BICICO.

12. The aforementioned prayer made in the second amendment application is however rejected on the ground that the Government of India has the jurisdiction to confer powers upon a financial institution such as the BICICO and such powers having been conferred upon the Central Government by reason of Section 46 cannot be said to be bad in law and consequently the Notification conferring such powers upon BICICO cannot be allowed to be quashed at the instance of the petitioner In this case.

13. Mr. B. Poddar, learned counsel for the petitioner has elaborately argued upon various aspects which are necessary to be taken note of in this case. To begin with, he drew the attention of this Court firstly to Section 45 of the Bihar Reorganization Act, 2000 and submitted that as per Section 45, the State of Bihar had no jurisdiction to take any steps for the recovery of loans and advances made before the appointed day to any local body, society, agriculturist or other persons as the right to do so lay exclusively with the State of Jharkhand. According to him, the Unit of the petitioner is situated in Deoghar which now falls within the territorial jurisdiction of the State of Jharkhand and therefore it is that State which can only initiate recovery proceedings.

Section 45 of the Reorganisation Act, 2000 read as follows :--

"Right to recover loans and advances.--(1) The right of the existing State of Bihar to recover any loans or advances made before the appointed day to any local body, society, agriculturist or other person in ah area within that State shall belong to the successor State in which that area is included on that day.

(2) The right of the existing State of Bihar to recover any loans or advances made before the appointed day to any person or institution outside that State shall belong to the State of Bihar :

Provided that any sum recovered in respect of any such loan or advance shall be divided between the State of Bihar and Jharkhand according to the population ratio.

14. Mr. B. Poddar, while relying on Section 45 submits that since Deoghar is within the State of Jharkhand, therefore, the right of the existing State of Bihar

to recover loans made to the petitioner before 15.11.2000 shall belong to the successor State i.e. the State of Jharkhand in which that area is included on the appointed day. Briefly put therefore, what Mr. B. Poddar contends is that Jharkhand being the successor State, loans and advances made prior to the appointed day to persons falling within the territorial jurisdiction of that State can be recovered only by the Jharkhand State or its financial institutions as and when they are constituted. According to him, the Notification dated 29.2.1988 by which the Government of India had conferred certain powers of the State Financial Act upon BICICO was issued as per application/request of the State Government of Bihar and this by itself is proof establishing beyond doubt that BICICO has to be equated with the words "State of Bihar" appearing in Section 45. Furthermore, the Memorandum of Association of BICICO also shows that the registered office of the company is situated in the State of Bihar. Attempting to strengthen his submissions to the effect that BICICO and the State of Bihar are one and the same, Mr. Poddar drew the attention of this Court to Section 46 of the State Financial Corporation Act, 1951 and submitted that in exercise of powers conferred under this section and upon the request of the State of Bihar, the Notification dated 29.2.1988 (which is Annexure-R/4-A to the counter-affidavit of the respondent Nos. 4 to 7) was issued.

Section 46 of the aforesaid Act reads as follows :

46. Power to apply Act to certain institutions in existence at commencement of Act--(1) The Central Government may by notification in the official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to [any institution established by a State Government] which has for its object the financing of industrial concerns, and on the issue of such notification, the institution, the institution shall be deemed to be a Financial Corporation established by the State Government for the State within the meaning of this Act, and the provisions of this Act shall become applicable thereto according to the tenor of the notification ;

Provided that no notification shall be issued under this sub-section in respect of any institution unless a request is made in that behalf by the State Government concerned.

(2) Any notification issued under Sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification.

15. According to Mr. B. Poddar, therefore, in view of Section 46 read with Annexure-R/4-A referred to above (i.e. the notification dated 29.2.1988), it was the State Government of Bihar's request made to the Central Government pursuant whereof the Central Government allowed BICICO to function as a financial institution and to exercise powers under the various provisions of the State Financial Corporation Act and, therefore, BICICO must be deemed to be acting at the behest of the State of Bihar and consequently, the word "State of

Bihar" used in Section 45(1) must be interpreted to mean and include BICICO. He submits that therefore, whatever loans that were advanced to the petitioners were really loans given by the State of Bihar, albeit through BICICO. He further contends that if it is the stand of BICICO that it has got nothing to do with the State of Bihar, then the notification as contained at Annexure-4/A referred to above becomes a nullity and BICICO stands stripped of its characteristic as a financial institution. Consequently, it has no right to exercise any powers under the State Financial Corporation Act, 1951. Continuing further on his arguments, Mr. B. Poddar contended that the Memorandum of Association of BICICO (which is on record as Annexure-20 to the reply/rejoinder filed by the petitioner to the counter affidavit of the respondent Nos. 4 to 7), and with special reference to Clause 8 thereof, he submits that it will be evident that BICICO has been authorised to act as an agent of the Government of Bihar which is its principal and therefore, he contends that BICICO cannot say that its actions are independent acts or that it can proceed in whatever manner it chooses without the permission of the State of Bihar.

16. Mr. B. Poddar then drew the attention of the Court also to Schedule 9 appended to the Reorganization Act and stated that BICICO has been inserted at Entry No. 45 therein showing it to be a State owned corporation/company meaning thereby a Government of Bihar owned corporation.

17. Thus what Mr. B. Poddar contends is that Section 45 has got to be read to mean that BICICO must be deemed to be the State of Bihar.

18. The moot question that therefore falls for consideration in this case and as has been argued by Mr. B. Poddar is as to whether BICICO which is a State of Bihar owned Corporation should be deemed to be also the State of Bihar within the meaning/interpretation of Section 45 of the Bihar Reorganisation Act, 2000?

In order to answer this question it will be relevant to first refer to the Articles of Association of BICICO. It is undoubtedly a government company sponsored by the Government of Bihar within the meaning of Article 617 of Companies Act, 1956 and the Government of Bihar holds not less than 51% of the total share holdings of the company. It is therefore apparent that this company is a mere business venture of the State of Bihar and its activities cannot be equated with the conduct of business of the Government of a State as enshrined under Article 166 of the Constitution of India. The word Government and/or the word State implies the existence of a community to group of people occupying a geographical area or territory in which they permanently reside possessing sovereignty and independence of foreign control and a political organization or agency through which the collective will of the people is expressed and enforced. This last element i.e. the expression of the will of the people being enforced is generally called a Government Reference in this case may be made to the case of Pashupati Nath Sukul and Others Vs. Nem Chandra Jain and Others, . Article 166 of the Constitution of India relates to the conduct of business of a Government of State and it inter alia lays down that all executive action of the Government of a

State shall be expressed to be taken in the name of the Governor. This power under Article 166 has to be read with Article 162 of the Constitution which also lays down that subject to the provisions of the Constitution, the executive powers of the State shall extend to matters with respect to which the Legislature of the State has power to make laws. In other words, the concept of State is something totally different from the concept of a Government. Company which may be an instrumentality of the State making it "State" for the limited purpose of Article 12 of the Constitution of India. It can never be said that an instrumentality or a business venture of a State can be equated with the governmental/sovereign functions of a State.

In fact the conduct of business of the Government of a State as provided under Article 166 of the Constitution relates to discharging the functions as a "sovereign" and not in the nature of "commercial" ventures. The position of a Government Undertaking or a Government Corporation has been taken note of by the Hon"ble Supreme Court in the case of Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , wherein the apex Court at paragraph 4 has held as follows :--

".....The words "under the authority of mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master. Can the respondent-company, therefore, be said to be carrying on its business pursuant to the authority of the Central Government? That obviously cannot be said of a company incorporated under the Companies Act, whose constitution, powers and functions are provided for and regulated by its memorandum of association and the articles of association. An incorporated company, as is well, known, has a separate existence and the law recognises it as a juristic person separate and distinct from its members. This new personality emerges from the moment of its incorporation and from that date the person subscribing to its memorandum of association and others joining it as members are regarded as a body incorporate or a corporation aggregate and the new person begins to function as an entity. (Cf. Saloznan v. Saloman & Co. 1897 ACJ 22). Its rights and obligations are different from those of its share holders. Action taken against it does not directly affect its share holders. The company in holding its property and carrying on its business is not the agent of its share holders. An infringement of its rights does not give a cause of action to its share holders. Consequently, it has been said that if a man trusts a corporation he trusts that legal persona and must look to its assets for payment; he can call upon the individual share holders to contribute only if the Act or charter creating the corporation so provides. The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the "corporation and that the other members have become members merely for the purpose of enabling the corporation of become incorporated and possess only a nominal interest in its property or hold it in trust for him. [Cf. Halsubry's Laws of England, 3rd Ed. Vol. 9, p. 9], such a company even possess the nationality of the country under the laws of which it is incorporated, irrespective of the

nationality of its members and does not cease to have that nationality even if in times of war it falls under enemy control. [Cf. *Janson v. Driefontain Consolidated Mines*, 1902 ACJ 484 and *Kuenig v. Donnersmarck*, 1955 I QB 515. The company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its articles of association. Therefore, the mere fact that the entire share capital of the respondent company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The company and the share holders being, as aforesaid, distinct entities the fact that the President of India and certain officers hold all its shares does not make the company an agent either of the President or the Central Government. A notice to the President of India and the said officers of the Central Government, who hold between them all the shares of the company would not be a notice to the company; nor can a suit maintainable by and in the name of the company be sustained by or in the name of the President and the said officers.

It is true that besides the Central Government having contributed the entire share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers are derived from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides such a corporation can easily be identified as the agent of the State as in *Graham v. Public Works Commissioners* 1901 (2) KB 781, where Phillimore, J. said that the Crown does in certain cases establish with the consent of the Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principals. In the absence of a statutory provision, however, a commercial corporation acting on its own behalf Government department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. [See *The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others*, per Shah J. and *Tamlin v. Hannaford* 1950 (1) KB 18. Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions. [Cf : *London County Territorial and Auxiliary Force Association v. Nichols* 1948 (2) All ER 432.

(Italics made is of this Court.

19. In view of what has been stated above, this Court has therefore, no

hesitation in rejecting the argument/submission of the learned counsel for the petitioner to the effect that BICICO must be deemed to mean the State of Bihar or that the word "State" as appearing in Section 45 of the Reorganisation Act would also mean BICICO for all practical purposes.

20. Additionally, it is necessary to mention that Section 45 of the aforementioned Reorganisation Act refers to "loans and advances" given by the State Government of Bihar by itself. It cannot be interpreted to mean loans and advances given and said to be recoverable by Government Companies like BICICO. A registered Company incorporated under the Indian Companies Act, cannot be said to be "the State Government" because no "sovereign powers" are vested upon it.

All that it does and all that it is concerned with is earning of profit through loans and advances and by charging Interest thereon.

21. Similar view has been taken by the Hon'ble Supreme Court of India in the case of Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, , as also in the case of Rustom Cavasjee Cooper Vs. Union of India (UOI), .

The position which needs to be clarified is that BICICO being a Government owned Company is a "State" only for the limited purposes of Part-III and Article 12 of the Constitution of India and is an "other authority" for, that purpose. The object being that an instrumentality or an agency of the State does not scuttle important provisions and rights conferred under Part-III of the Constitution of India. By no stretch of imagination can it be inserted with the precincts of Part VI thereof.

In yet another case of Mohd. Hadi Raja Vs. State of Bihar and Another, , it has been held that an instrumentality or agency of the State, even though performing some of the functions of the State, even though performing some of the functions of the State, have their own separate entity but they cannot be equated with departments run by the government. Therefore, action taken by them, however important the same may be in the interest of the State, cannot be held to be an action taken by or on behalf of the Government within the meaning of Section 197 of Code of Criminal Procedure.

Additionally by interpreting Sections 45 and 65 in accordance with fundamental principle of interpretation of statute i.e. by reading the statute in issue in whole and assigning ordinary grammatical meaning to the clear words used in Sections 45 and 65 of the Act, it is clear that loans or advances referred to in Section 45 of the Reorganisation Act, 2000 are those that are given by State and the Government simpliciter within itself meaning thereby and for example the loans and grants given to municipal Corporation, Panchayats, societies working for public causes or to agriculturist in form of loans for seeds etc. and to unemployed youths under various policies and schemes of Government executed departmentally. These alone are covered by the provisions of Section 45 of the

Reorganization Act, Section 45, however, in no manner impedes the mandate of Section 65 of the Act whereby the likes of respondent Corporation, has the legislative sanction and mandate under the said Section 65 to function even in territories now in State of Jharkhand.

22. Even if for sake of argument, assuming that there is a conflict between the provisions of Sections 45 and 47 on one hand and Section 65 of the Act on the other, even then by applying the doctrine of harmonious construction the result is what has been set out above. It is well settled that conflict has to be harmonized without rendering any of the conflicting provisions otiose. The Courts have to proceed, specially where the language is clear, on the assumption that the legislature did not make a mistake and that it intended to say what has been expressly stated, the presumption always being that the legislature inserted every part of the enactment for a purpose and the legislative intention is that every part and provision of a statute, should have effect. It is the Court's duty to harmonize and not to destroy the legislative intent. Applying the above judicially well accepted canons of interpretation, if the loans of the respondent Corporation are held to be loans recoverable by State of Bihar within the meaning of Section 45, then not only the provisions of Section 65 will be held nugatory but would amount to legislation in the garb of judicial review by adding words to the enactment which the legislature had never intended or enacted. The above analogy is based on the judgment of the Apex Court in the case of Sultana Begum Vs. Prem Chand Jain, .

23. Mr. Poddar's further contention that it cannot be contended that BICICO can be allowed to function in the State of Jharkhand without seeking the leave and obtaining the permission of the Government of Jharkhand. According to him, as per the provisions of Section 65 of the Reorganization Act, BICICO will continue to function only in the areas in which it was functioning immediately before the appointed day i.e. both in the State of Bihar as also in the State of Jharkhand. But, in view of Section 45, such operation by the State of Bihar/BICICO cannot be allowed within the territories falling within the State of Jharkhand. According to him, Section 65 cannot be read in isolation of Section 45 because Section 65 is contained in Part 7 whereas Section 45 is contained in Part 6 and therefore, it will have to be deemed on reading Sections 45 and 65 that even if BICICO has been allowed to function in the State of Jharkhand by reason of Section 65, it must take the approval of both the Governments i.e. the State of Bihar as also the State of Jharkhand prior to initiating any action. He further argues that as per the Memorandum of Association, BICICO has to act as an agent of the State Government of Bihar as per Clause 8 of the said Memorandum and the word "State Government" has to be read in terms of Sections 2(E) and 2(J) of the Reorganization Act. As per provisions of Section 2(E) of the Reorganization Act. As per provisions of Section 2(E) and 2(J), both the States of Bihar and Jharkhand become successor States in their own territories and therefore, reading these two sections with Clause 8 of Memorandum of Association it must be deemed that BICICO is obliged to take the approval of both the Governments.

24. Mr. Poddar has stated that it was because of the aforementioned reasonings that the State of Jharkhand issued the press communique as contained at Annexure 23 appended to the second supplementary affidavit filed by the petitioners dated 19.4.2002. By reason of the said notification, the Government of Jharkhand, while referring to the action of BICICO in putting to auction various Units situated in the territory of Jharkhand, notified that as per the provisions of Bihar Reorganization Act, permission/approval of the State of Jharkhand would be essential before BICICO could initiate any action. Mr. B. Poddar states that the matter relating to apportionment of assets and liabilities is pending consideration before the Central Government. He states that in the case relating to High Tension Insulator Factory Works v. State of Jharkhand, a Division Bench of this Court observed in "W.P. (PIL) No. 1367 of 2002" that in relation to a unit functioning within the State of Jharkhand after the appointed day suggests and clearly means that it is the State of Jharkhand who would have all the controls over that unit including those of administration and operational control and that the interest of the State of Jharkhand are paramount.

In view of what has already been held above, both these arguments at the very threshold, must be rejected as the Division Bench was dealing with the interpretation of provisions relating to industrial/commercial undertakings of the State of Jharkhand located in Jharkhand and the consequences thereof. Admittedly, the points in issue in this writ petition were not involved in that case. Additionally, in the instant case, the matter relates to a Unit established by a private entrepreneur which has fallen from grace as, instead of diligently repaying its debts, it has chosen to assert, through this writ petition, that the institution which had given the loan to it, has neither the authority nor the locus to ask for the dues to be paid back to it.

25. In the backdrop of what has been stated above, one has to bear in mind that we are dealing in this matter under powers conferred under Article 226 of the Constitution of India. The scope of judicial review under Article 226 is limited. In matters relating to Sections 29 and 30 of S.F.C, Act, 1951, the High Court cannot act as an appellate Forum over the decision of the Corporation and it has to see only as to whether the Corporation has acted in a just and fair manner or not in dealing with the matter. The Court does not protect people who are chronic defaulters and the Courts, in order to balance equities, has also to see as to whether the Corporation has justified its act and the same are fair and reasonable. Reference in this context may be made to the Judgment of the Patna High Court in the cases of Bihar State Financial Corporation and Ors. v. Swad Phar-maceuticals Ltd., reported in 2000 (4) PLJR 595 and in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, described as The State Financial Corporation & another v. Jagdamba Oil Mills & another.

26. In the instant case it will be evident from Annexure-R-4B of the counter affidavit of respondent Nos. 4 to 7 that the first disbursement was made on 27.3.1989 and the total sanctioned refinance as well as total sanctioned term

loan was to be repaid within ten (10) years from the date of first disbursement. From a perusal of Annexure-R-4C, it will be evident that up to 23.2.1998 the petitioners have repaid a total sum of Rs. 7,97,674, In their counter affidavit the respondent Nos. 4 to 7 have stated that against the sanctioned term loan of Rs. 20.64 lakhs, the petitioner has repaid only a sum of Rs. 7.98 lacs and after the last payment i.e. 23.2.1998 it has not paid any amount to the Corporation as a consequence of which as on 30.9.2001, a sum of Rs. 115.20 lacs became outstanding. These respondents have further stated that the demand notice intimating the dues were regularly sent to the petitioners twice a year but inspite of receiving such notice, the petitioners continued defaulting/ dishonouring the demands year after year. The details of these demands have been annexed as Annexure-R-4D in the counter affidavit of these respondents as also in paragraphs 23 and 24 of their counter affidavit.

27. These respondents have further stated that the Board of Directors of the respondent Corporation in its meeting dated 16.3.1998 had, in order to help the petitioner's unit, approved on the petitioner's application, a rehabilitation package and sanctioned rehabilitation term loan of Rupees Forty One Lacs to the writ petitioners subject to fulfillment of the terms and conditions mentioned therein including execution of supplementary agreement and the aforesaid resolution of the Board of Directors of the respondent Corporation was communicated vide letter dated 4.4.1998, but even thereafter, the petitioners did not execute the supplementary agreement nor procured approval of package from other institutions and as such the rehabilitation term loan could not be given. It has to be noted that rehabilitation was given to them on 7.4.1998 subject to fulfillment of terms and conditions mentioned, but the petitioners did not do so and therefore the Rehabilitation package would be deemed to have lapsed.

28. The respondent Nos. 4 to 7 have also stated that in terms of the provisions of Memorandum and Articles of Associations, they have raised loans from I.D.B.I, under the refinance scheme and also from other sources. They have stated that the loans given by the said Bank to this Corporation has to be returned along with interest as fixed from time to time and as on date, the Corporation owes a sum of Rs. 123/- crores which it has to repay without delay. This huge outstanding amount has to be paid on account of the fact that money given as loan by the Corporation to various entrepreneurs having not been repaid by them to it.

29. In answer to the question as to whether a Unit which has been declared sick, can the BICICO, thereafter invoke Sections 29 and 30 of the S.F.C. Act, 1951, it is relevant to look into the provisions of the VIIth Schedule appended to the Constitution of India. The VIIth Schedule is List-I being the Union List and Entry No. 43 thereto relates to incorporation, regulation and winding up of Trading Corporation, including Banking, Insurance and Financial Corporations but not Cooperative Societies. The State Financial Corporation Act is a Central Legislation

and it pertains to Entry No. 43 being an act to provide for the incorporation and regulation of the State Financial Corporation.

30. The argument of Mr. B. Poddar to the effect that since rehabilitation was pending and therefore, u/s 16 of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, BICICO cannot invoke the provisions of Sections 29 and 30 cannot be accepted because from a perusal of the resolution of rehabilitation which is contained at Annexure-R-4E, it is apparent that that rehabilitation was subject to fulfillment of terms and conditions, copy whereof has been enclosed thereto. Since the petitioners did not fulfill the terms and conditions, they cannot be allowed to raise this issue at this stage. That being the position, this Court does not find any infirmity in the action of the respondent Corporation in issuing the impugned notice. Moreover, if the petitioner alleged violations of the provisions of the Sick Industrial Companies (Special Provision) Act, 1985 then the proper remedy for the petitioner was to have approached the Board and not this Court as it has already been held in the foregoing paragraphs, following the Judgments of the Supreme Court that in cases of chronic defaulters, this Court would not sit as a Court of Appeal. Moreover, this Court also does not find any mala fides on the part of the respondents in having issued the impugned notice and in that view also, this Court is not inclined to interfere.

31. For the reasons aforesaid, Court is not inclined to interfere in this case and holds that there is no merit in this Writ Application.

This writ petition is accordingly dismissed. There will however, be no order as to costs.

ORDER

After the aforesaid order was delivered in this case, Mr. Pankaj Kumar, J.C. to A. Allam, learned counsel for the State of Bihar has filed a counter affidavit wherein they have stated that BICICO is a Corporate Body registered under the Companies Act and as such entire activity is regulated/run and controlled by the Memorandum and Articles of Association through Board of Directors of the Corporation.

Let this affidavit be also kept on record.