

(2009) 11 P&H CK 0193
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12861 of 2006

M/S Rama Petrochemical Ltd. and Others	APPELLANT
Vs	
Punjab State Industrial Development Corporation Limited and Others	RESPONDENT

Date of Decision : 27-11-2009

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 2, 25
Punjab Public Moneys (Recovery of Dues) Act, 1983 — Section 2, 3, 3(1)
Securities Contracts (Regulation) Act, 1956 — Section 13, 16, 16(1), 28(2)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 22
State Financial Corporations Act, 1951 — Section 29, 30, 31, 32, 32A

Citation : (2011) 1 ILR (P&H) 44

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution challenges orders dated 15th February, 2006 (P-11), passed by Specified Authority u/s 3 of the Punjab Public Moneys (Recovery of Dues) Act, 1983 (for brevity, "the 1983 Act"). The Specified Authority has rejected the prayer of the petitioners for staying recovery proceedings by invoking the bar contemplated by Sick Industrial Companies (Special Provisions) Act, 1985 (for brevity, "SICA"). Another order dated 31st May, 2006 (P-9), passed by the same Specified Authority is under challenge whereby "Recovery Certificate" for recovery of Rs. 441.96 lacs (as on 31st March, 2005) along with further interest as per the terms of the agreement till the date of final settlement has been ordered to be issued. Also under challenge is the consequential recovery certificate along with letter dated 14th June, 2006 (P-14) issued by the Punjab State Industrial Development Corporation Limited (for brevity, "PSIDC") to the Collector, Mohali, for effecting recovery of its dues as arrears of land revenue.

2. Brief facts of the case are that PSIDC respondent No. 1 is a public sector undertaking owned and controlled by the State of Punjab within the meaning of Section 617 of the Companies Act, 1956 (for brevity, "Companies Act"). It has been established on 31st January, 1996 when it was registered as such with the Registrar of Companies. The whole amount invested in the PSIDC is received in the form of equity contribution from the State Government. A detailed chart disclosing the receipt of amount yearwise since 1966-67 to 1990-91 has been furnished in the form of Annexure R-1 appended with its written statement. Therefore, it is evidence that the PSIDC is fully Government owned company within the meaning of Section 617 of the Companies Act. A perusal of Clause III-A of Memorandum and Articles of Association of PSIDC reveals the main objects for its establishment. Two of the objects which are closely associated with the controversy are reproduced hereunder :--

(1) To promote, improve, establish, execute, manage and administer industries, projects or enterprises for manufacture and production of plant, machinery, tools, implements, materials, substances, goods, or things of any description which in the opinion of the Company are likely to promote or advance the Industrial Development of Punjab.

(2) to (5) xxx xxx xxx

(6) To promote and operate Schemes of the Industrial Development of Punjab and for that purpose to prepare and get or cause to be prepared investigations and studies for feasibility reports; detailed project reports, market studies, statistics and other relevant information for the establishment of any industry undertaking and to promote and establish companies, and associations for the execution of such industrial projects. To plan, formulate and execute projects, in particular for setting up industries in the lines of production which are important in the opinion of the Company for the Industrial Development of Punjab.

3. The main object of PSIDC is to promote industry in a planned manner and to speed up industrialisation in the State of Punjab through various schemes. Other than providing terms loans to various companies, one of the object of the PSIDC is to promote industrial and infrastructure projects in Assisted and Joint Sector by entering into Financial Collaboration Agreements for setting up projects in the joint venture. In this manner, PSIDC invests in the equity share capital of the company which is incorporated in joint sector.

4. On 18th March, 1999, M/s Rama Petrochemical Limited-Petitioner No. 1 and PSIDC entered into a Finance Collaboration Agreement for setting up a project for the manufacture of All Grade Gelatine (P-1). PSIDC had also agreed to make investment in the equity capital of Rama Petrochemical Limited on a proportionate matching basis only after the project has been financed by Central/State Financial Institutions and after the collaborator has contributed at least half of its share of equity. The equity capital of company was to be held as follows :-

(A) PSIDC

..

Rs. 300.00 lacs.

(B) Collaborator

..

Rs. 2010.00 lacs

Total Equity Capital

..

Rs. 2310.00 lacs

5. In clause 14 of the Financial Collaboration Agreement the number of Directors is mentioned. It has also been stated that as long as the Corporation holds not less than 25% of the paid up equity capital of the company, they shall have the right to nominate or have appointed one Director and three Director respectively on the Board of Directors of the Company. Clause 22 of the Financial Collaboration Agreement (P-1) pertains to buy-back of equity share holding. As per sub-clause (a) of clause 22. the company was bound to buy back and purchase the equity shareholdings of the PSIDC in the company in two equal instalments before the expiry of third and fourth years after the commencement of commercial production. As per the methodology of purchase of shares, given in sub-clause (c) and (d) of clause 22. other options were available with the Corporation. The calculation of the price to be paid to the Corporation was clearly spelled out and not speculative. Similarly, under sub-clause (j) of clause 22. an option was available with the Corporation without prejudice to other options to invoke the 1983 Act for recovery of its arrears apart from other options available as per clause 22 and 32 to invoke the arbitration clause. Clause 22 of the financial Collaboration Agreement being relevant reads thus :

22(a) The COLLABORATOR shall have the option to buy. at any time, after the commencement of commercial production, by the COMPANY, the equity share holding of the CORPORATION in the COMPANY. If the COMPANY has made a public issue of its shares, the COLLABORATOR only after the quotation for shares in question is available at Stock Exchange(s) where the shares of the COMPANY are listed. However. after the date of commencement production by the company as referred to clause 21 hereinabove, the COLLABORATOR shall be found to purchase the said equity shareholdings of the CORPORATION in the COMPANY in two equal instalments before the expiry of 3rd and 4th years after commencement of commercial production.

(b) "The sale price of such share shall be determined by adopting the following methods and the higher price arrived at by any one of these methods shall be taken as the final sale price of the shares.

(i) an amount equivalent to the amount paid by the CORPORATION for the initial

acquisition of the said shares together with interest at the rate charged by the CORPORATION on its term loans under its IDBI refinance scheme on the date of disbursement, compounded half yearly, calculated from the date of payment of the amount by the CORPORATION to the COMPANY till the date of option, less any amount of dividends received in the meantime by the CORPORATION.

(ii) if the shares are listed on any of the Stock Exchanges in India, the highest price at which the shares were traded at any one of those stock exchanges, three months prior to the date of exercising the option or three months prior to the date on which the COLLABORATOR ought to purchase the shares whichever is higher.

(c) The COLLABORATOR while exercising the option shall deposit 10% of the offer amount along with the letter exercising the option and shall complete the buy-back within one month of the date of option and in the event of his defaulting in fulfilling his offer within the stipulated period, the deposit amount shall stand forfeited.

(d) The CORPORATION shall be bound to sell its equity shareholdings in the COMPANY to the COLLABORATOR, as aforesaid.

(e) The sale and purchase of the shares, as aforesaid, payment of price therefore and delivery of share-scrips and transfer deeds relative thereto, shall be completed within one month of the exercise by the COLLABORATOR of its right to buy the said shares from the CORPORATION.

However, in case the COLLABORATOR fails to pay the consideration within one month from the date of exercise of option to purchase the shares held by the CORPORATION in the COMPANY, then and in that case, the CORPORATION shall transfer the shares to the COLLABORATOR at the highest market price prevalent on the date of payment of the consideration or the price shares determined according to Clause 22(b) and interest thereon at the rate of 24% (Twenty four percent) per annum till the date of payment, whichever is higher.

(f) In the event the COLLABORATOR fails to purchase the equity shares of the CORPORATION in the COMPANY as provided in Clause 22(a) above, the Managing Director appointed by the COLLABORATOR shall automatically vacate the office within 30 days of the receipt of notice to this effect from the CORPORATION and the CORPORATION shall have the option of recommending one of its nominees to be appointed as Managing Director by the Board of Directors of the COMPANY and the said nominee of the CORPORATION, after being appointed shall continue as Managing Director so long as the default on the part of the COLLABORATOR continues.

(g) Immediately upon the completion of the payment by the COLLABORATOR of the full amount payable in respect of purchase of shares mentioned in Clause 22(a) hereinabove, this clause will cease to be operative and the management of the COMPANY will be carried on as before by the Managing Director who will be

appointed by the Board of Directors in terms of Clause 16 of this Agreement.

(h) Without prejudice to the provisions of Clause 22(f) above, the CORPORATION shall also, in the event of the COLLABORATOR failing to purchase the equity shares of the CORPORATION in the COMPANY as provided in Clause 22(a) to (b) above be entitled to sell its shares in the COMPANY at the risk and cost of the COLLABORATOR either by public auction or through recognized share brokers of the Stock Exchange where the shares are listed or by private negotiations and the COLLABORATOR will be liable to meet any loss or damage that may be suffered by the CORPORATION.

(i) The CORPORATION reserves the right to accept the option(s) (Not exceeding two) of the COLLABORATOR for buy back of shares in installments. However, the COLLABORATOR cannot exercise its second option for buy back of the balance shares unless payment of consideration along with interest on delayed payment in respect of the first option has been completed.

(j) Without prejudice to the other rights of the CORPORATION under the agreement, the CORPORATION shall be entitled to recover the amount by the COLLABORATOR under this agreement as arrears of land revenue under the Punjab Public Moneys (Recovery of Dues) Act. 1983.

6. In pursuance of the aforementioned agreement, a new company, namely. M/s Rama Industries Limited (for brevity, "Rama Company") was set up in joint sector and both petitioner No. 1 and PSIDC invested in the equity of the said Company. In furtherance thereto another supplementary Collaboration Agreement was executed between the parties on 12th October, 2000 (P-2). Petitioner No. 1 transferred a part of its equity share holding in Rama Company to M/s Blue Lagoon Investments Private Limited-petitioner No. 2 (for brevity, "BLIP") and M/s Truebell Holdings and Impex Private Limited-petitioner No. 3 (for brevity, "THIP"). As per this supplementary agreement, all the three collaborator companies agreed to buy back the equity share-holdings of PSIDC and in terms of clause 8 of the supplementary agreement they categorically held that the Collaborator Company (BLIP and THIP) would be jointly and severally responsible to buy back the equity shareholdings in the company along with the collaborator Rama Petrochemicals Limited-petitioner No. 1.

7. It has remained undisputed that commercial production by the company commenced on 1st July, 2001. The first instalment had fallen due on 30th June, 2004 when period of three years expired as per the terms of clause 22(a) of the Financial Collaboration Agreement. The second instalment became payable on 30th June, 2005, as is evident from reading of clause 22(a) of the Financial Collaboration Agreement. It is worthwhile to notice that clause 22(a) specifically stipulates that after the date of commencement of production by the company, the collaborator i.e. petitioner No. 1 was bound to purchase the said equity share holdings of PSIDC in the company in two equal instalments before expiry of 3rd and 4th years.

8. On 25th May, 2005. PSIDC filed an application before the competent authority u/s 3 of the 1983 Act for recovery of Rs. 441.96 lacs from the petitioners on the ground that it had invested an amount of Rs. 300 lacs in the equity of the Rama Company. It was further asserted in the said application that the date of commercial production was 1st July, 2001. It was also averred that disinvestment was to be made in two installments and the first installment became due on 30th June, 2004 and the second installment was due for 30th June. 2005. The PSIDC further claimed that the petitioners were also liable to pay interest at the rate chargeable under the IDBI Refinance Scheme on the date of disbursement, compounded half yearly and calculated from the date of payment of the amount by it. However, the petitioners failed to retrieve the amount invested by the PSIDC (P-3).

9. The petitioners filed their reply to the aforementioned application raising various objections (P-4). They took the plea that the application was not maintainable as no loan, advance or grant was given to them as envisaged u/s 3 of the 1983 Act. According to the petitioners the Competent Authority u/s 3 of the 1983 Act has no jurisdiction to entertain the application because under the provisions of the 1983 Act only certain dues advanced under the "State-sponsored Scheme" could be recovered. The petitioners also submitted that Clause 22 of the financial Collaboration Agreement was illegal because it was contrary to the provisions of the Security Contracts (Regulation) Act, 1956 (for brevity, "the 1956 Act") as well as the notification issued u/s 13 and 16 of that Act. According to them, since the financial Collaboration Agreement was executed between petitioner No. 1 and PSIDC, therefore, both of them were equally liable for the losses suffered in making the investment in Rama Company.

10. A reference u/s 15(1) of SICA was filed by the petitioners before the Board for Industrial and financial Reconstruction (for brevity, "BIFR"), which stands registered as Case No. 322/2001. The BIFR declared Rama Company as sick company. - vide its order, dated 18th June, 2002 (P-5). BIFR directed the company to submit the rehabilitation package u/s 17(2) with the consent of the secured creditors from whom consent u/s 19 is required so that the same could be taken on record. BIFR considered three years to be reasonable period to make its network positive while meeting all its financial objections.

11. On 13th September, 2005, the petitioners also filed an application u/s 22 of SICA before the Competent Authority-respondent No. 2 for suspension/staying the proceedings initiated under the 1983 Act (P-6). Reply to the said application was filed by PSIDC on 28th October, 2005 (P-6). It has been submitted by the petitioners that the Competent Authority-respondent No. 2 took up the matter on 15th February, 2006 and arguments were heard. The hearing was adjourned to 8th March, 2006 for argument in the main case. However, no order rejecting the application (P-6) was dictated in the Court nor the same was conveyed at any stage. The application filed by the PSIDC (P-3) was contested by the petitioners. They also furnished their written arguments (P-8). On 31st May, 2006, the

Competent Authority-respondent No. 2 passed an order whereby Recovery Certificate has been issued for an amount of Rs. 441.96 lacs (as on 31st March, 2005) along with further interest as per the terms of the agreement till the date of final settlement (P-9).

12. The petitioner has alleged that he had applied for a copy of the Recovery Certificate, however, PSIDC-respondent No. 1 refused to supply the same,--vide letter, dated 29th June, 2006 (P-10). Therefore, the petitioner filed C WP No. 10111 of 2006 in this Court. After issuance of notice of motion PSIDC filed their written statement along with an order, dated 15th February, 2006 passed by the Competent Authority-respondent No. 2 rejecting the application u/s 22 of SICA, which was filed by the petitioners (P-11). On 3rd August, 2006, the aforementioned writ petition was dismissed as withdrawn with liberty to challenge order, dated 15th February, 2006 (P-12).

13. The petition has been opposed by PSIDC and a detailed written statement has been filed. It has been asserted that the recovery of public dues under the 1983 Act is a valid mode which is supported by various judicial pronouncements. The PSIDC has also claimed that it is a fully State owned governmental financial institution within the meaning of Section 617 of the Companies Act and the finances are infused by the State Government which are recouped by the State exchequer to the Corporation as per its aims and objects which have been enshrined in the Memorandum and Articles of Association. The loans are advanced and equity to Collaborator companies is forwarded with the object of industrialisation of the State. The moneys recovered by the mode provided by the 1983 Act are recycled for promotion of new industry. In that regard reference has been made to Section 2(c), 2(d), 2(e) and 2(h) of the 1983 Act to point out that PSIDC is covered by the expression "Corporation" u/s 2(c) as also u/s 2(d) if it renders financial assistance for establishing, expanding modernisation, renovating or running any industrial undertaking. The expression "State-sponsored scheme" u/s 2(h) of the 1983 Act has been used to mean a scheme sponsored by way of financial assistance by the State Government under which the finances are advanced to a corporation or Government company or Government guarantees or agrees to guarantee repayment of loan advanced.

14. The PSIDC has also made reference to Section 3 of the 1983 Act which provides for recovery of the amount from a defaulter and elaborate procedure provided therein. In respect of the assertion of the petitioners that the Managing Director of PSIDC cannot be nominated as a competent authority u/s 3 of the 1983 Act. it has been urged that there is no legal bar to his appointment and the doctrine of bias would not apply till it is shown that the competent authority had a personal interest in the matter. The PSIDC has placed specific reliance on sub-clause (j) of clause 22 of the Financial Collaboration Agreement to assert that the Financial Collaboration Agreement was signed in the year 1999 with the express provision of invoking the 1983 Act in case of default. The agreement has been duly signed by the parties and it is a concluded contract. It has been urged that

the petitioners are estopped by their own act and conduct from raising the objection regarding recovery under the 1983 Act at such a belated stage when the event of default has occurred by non-payment of the liabilities.

15. Mr. Rahul Sharma, learned counsel for the petitioners has made the following submissions to attack the order, dated 31st May, 2006 (P-9) and the consequential recovery certificate (P-14) sent by the PSIDC to the Collector, SAS Nagar, Mohali, to make recovery as per the provisions of Section 3 of the 1983 Act.

16. Mr. Sharma has firstly submitted that the claim made by PSIDC does not fall within the purview of 1983 Act as no loan or grant has been sanctioned by it in favour of the petitioner under State-sponsored Scheme. According to the learned counsel it is only the loan advanced from State-sponsored Scheme which are covered by the 1983 Act and recovery of only such loan amount could be effected by adopting the mode provided by 1983 Act. In support of his submission learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of Iqbal Naseer Usmani Vs. Central Bank of India and Others, , and argued that in absence of evidence to suggest that the loan was advanced under a State-sponsored Scheme as required by Section 3, the 1983 Act would not apply and the proceedings initiated therein are wholly without jurisdiction. Mr. Sharma has also placed reliance on a full Bench judgment of Allahabad High Court in the case of Smt. Sharda Devi Vs. State of U.P. and Others, , and argued that the U.P. Public Moneys (Recover) of Dues) Act, 1972 (for brevity, "the U.P. Act") is pari materia to that of 1983 Act. The question by the Full Bench of Allahabad High Court was decided which support the claim of the petitioner and it was held that the loan advanced by a banking company to a borrower under State-sponsored Scheme alone could be recovered by taking recourse to Section 3 and not otherwise.

17. The second submission of Mr. Sharnia is that clause 22 of the financial Collaboration Agreement (P-1), which is the basis of the claim made by PSIDC is illegal, void and, therefore, the same cannot be enforced in law. Accordingly to the learned counsel, clause 22 of the financial Collaboration Agreement is not a spot delivery contract and it violates Section 16 of the Securities Contracts (Regulation) Act, 1956. According to the learned counsel clause 22 of the financial Collaboration Agreement contemplates the purchase of Security at a future date and, therefore, it is speculative in nature. In support of his submission, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of B.O.I. Finance Ltd. Vs. Custodian and Others, , and argued that a circular issued by the Reserve Bank of India u/s 36(1) prohibits the banking company from entering into buyback transactions which are not made public. They were required not to enter into buyback contracts which were not according to the circular. He has then placed reliance on a judgment of Calcutta High Court in the case of B.K. Holdings (P) Ltd. versus Prem Chand Jute Mills, (1983) 53 Comp Cas 367, and argued that the unquoted

shares of public limited company are also marketable securities as there is express prohibition by the 1956 Act. Another ground of attack raised by Mr. Sharma is that no consideration had flown from PSIDC to the petitioners. The financial Collaboration Agreement (P-1) itself is void as per provisions of Section 25 of the Contract Act, 1872 (for brevity, "the Contract Act"). In that regard he has placed reliance on the judgment of Hon'ble the Supreme Court in the case of B.O.I. Finance Ltd. (supra).

18. The third ground of challenge to demolish order dated 31st May, 2006 is that the Managing Director of PSIDC could not act as a competent authority" as it would result into "judging one's own cause". Once the Managing Director of PSIDC has been appointed as the competent authority then the elementary principle of law that "nobody can be judge of his own cause" stands flagrantly violated. Elaborating his argument, Mr. Sharma has submitted that the legislature can be deemed to have authorised the Managing Director of PSIDC to entertain an application u/s 3 of the 1983 Act contemplating that it would involve only the interest of the State Government presuming that the loan was advanced under State sponsored Scheme.

19. The fourth submission of the learned counsel for the petitioners is that the Statement of Account filed by PSIDC along with its application on 25th May, 2005 (P-3) was at variance with the amount claimed and ordered to be recovered by the impugned order dated 31st May, 2006 (P-9). On the basis of the material placed before the Managing Director, the issuance of recovery certificate was not justified. In support of his submission, learned counsel has placed reliance on two judgments of Hon'ble the Supreme Court rendered in the case of Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd., , and S.K. Bhargava versus Collector, Chandigarh, (1998) 5 S.C.C. 171.

20. The last submission of the learned counsel for the petitioners is that the finding recorded by the Managing Director to the effect that the provisions of the 1983 Act pari materia to that of the Haryana Public Monies (Recovery of Dues) Act, 1979 (for brevity, "the Haryana Act") is factually incorrect and the Division Bench judgment of this Court rendered in the case of Vivek Sarin and Others Vs. State of Haryana and Others, , would not be applicable. According to the learned counsel there is no definition of expression "defaulter" under the 1983 Act whereas the Division Bench has come to the conclusion that the failure by a person to comply with the terms of financial Collaboration Agreement would amount to a default as per the Haryana Act. Mr. Sharma has further asserted that Section 3 of the Haryana Act is not pari materia to Section 3 of the 1983 Act.

21. Apart from the aforesaid submissions, Mr. Sharma has made additional submissions by assailing order dated 15th February, 2006 (P-11) whereby the application filed by the petitioner before the competent authority under the 1983 Act was dismissed. In the application, the petitioner had prayed that the recovery proceedings be adjourned because the petitioner has been declared as a sick industrial company under SICA and there is a specific bar u/s 22 that once a

reference is registered by the BIFR no proceedings under the 1983 Act could have been initiated. According to the learned counsel the reference in respect of the petitioner stands registered on 18th June, 2002 (P-5) and, therefore, the Collector or the Recovery Officer should have stopped proceedings.

22. Per Contra. Mr. N.S. Boparai appearing for PSIDC has reiterated that it is fully owned Government Corporation within the meaning of Section 617 of the Companies Act and is also notified under the State Financial Corporations Act, 1951 (for brevity, the Financial Corporations Act) for the limited purpose of recovery of its dues, He has further submitted that PSIDC has also been notified under the 1983 Act.--vide notification dated 18th September, 1986 (Mark "A"). He has drawn our attention to object III-A of the Memorandum and Articles of Association of PSID Camongst others. An examination of Memorandum and Articles of Association show that it is fully owned Government company to promote industries in the State of Punjab through various schemes. The entire money to the corporation has been infused by the State Government as is evident from the data furnished since its inception in 1966. appended with the written statement as Annexure R-1. According to the learned counsel the main object for which PSIDC has been established is to promote, improve, establish, execute moneys which are likely to promote and advance industrial development in Punjab.

23. In the background of the aforesaid factual position, Mr. N.S. Boparai has submitted that the constitutional validity of the U.P. Act has been upheld by Hon"ble the Supreme Court in the case of Director of Industries, U.P. and Others Vs. Deep Chand Agarwal, . He has further claimed that the provisions of the 1983 Act are pari materia to the U.P. Act because both the Acts aimed at one object, which enable the State Government and the Corporation to recover the sums advanced as arrears of land revenue. He has also placed reliance on two Division Bench judgments of this Court rendered in the cases of Vivek Sarin's case (supra) and Vipin K. Singla versus Haryana Financial Corporation, 2000 (1) PLR 303, wherein the constitutional validity of the Haryana Act has been upheld. Learned counsel has also relied upon a Single Bench judgment of this Court rendered in the case of Swaraj Engines Limited versus Punjab State Industrial Development Corporation 2008 (1) Bankers Journal 390, upholding the constitutional validity of the 1983 Act, which in turn is based on the judgment of Hon"ble the Supreme Court rendered in S.K. Bhargava's case (supra). Therefore, there is no doubt that the State legislature enjoys competence to enact such Acts for recovery of its dues.

24. Controverting the argument advanced by the petitioners that clause 22 of the Financial Collaboration Agreement violates Section 16(1) of the 1956 Act, Mr. Boparai has submitted that the notification on which reliance has been placed by the petitioner stand rescinded.--vide notification No. 186(E), dated 1st March, 2000. Accordingly, the argument raised is that supplementary agreement entered into between the parties on 12th October, 2000 by infusing two other

companies, namely, M/s Blue Lagoon Investments Private Limited (petitioner No. 2) and M/s Truebell Holdings & Impex Private Limited (petitioner No. 3). It has, thus, been argued that when supplementary agreement was executed, the notification u/s 16(1) was not in existence, which stood rescinded on 1st March, 2000,-- vide notification No. 186(E). A copy of the notification dated 1st March, 2000 rescinding earlier notification dated 27th June, 1969 has been placed on record as Mark "B".

25. Mr. Boparai has also submitted that in any case clause 22 of the Financial Collaboration Agreement is not violative of 1956 Act as the mechanism for calculating the price to be paid by the collaborator is not left to any speculation and the same has been clearly spelled out. Another submission in that regard made by the learned counsel is that the 1956 Act would also not be applicable because u/s 28(2), the notification issued by the Central Government on 27th June, 1969 expressly exempts the application of the 1956 Act in certain cases which include promotion or collaboration agreements entered into in pursuance of Memorandum and Articles of Association.

26. Mr. Boparai then argued that the Financial Collaboration Agreement cannot be attacked on the ground of lack of valuable consideration. In that regard he has placed reliance on Section 2(d) of the Contract Act, 1872, which clearly spells out that any promise made or done or abstained from doing would also be called "consideration" for such promise.

27. Referring to the principles of mutuality, Mr. Boparai has argued that it does not lie in the mouth of the petitioner to challenge a part of the Financial Collaboration Agreement and accept the other part as valid. A party to a contract cannot accept or reject the same transaction by keeping the advantageous under un-challenged part. In such a situation a party has to accept the other part also, no matter howsoever dis-advantageous it may be. In the same breath, learned counsel has explained another aspect by arguing that no party could rescind a contract or term it illegal at a mature stage at his convenience. In support of the aforesaid submission, learned counsel has placed reliance on two judgments of Hon'ble the Supreme Court rendered in the cases of Ganga Retreat and Towers Ltd. and Another Vs. State of Rajasthan and Others, , and Nagubai Ammal and Others Vs. B. Shama Rao and Others, . According to the learned counsel once a contract stand concluded between the parties then it cannot be altered after enjoying advantages from such a contract and challenge the same to be illegal or void.

28. Reacting to the attack on order dated 15th February, 2006, passed by the competent authority under the 1983 Act, Mr. Boparai has submitted that firstly petitioner Nos. 1 to 3 are not before BIFR and they are covered by the supplementary agreement dated 12th October, 2000. On merit, learned counsel has submitted that Rama Petrochemical Limited-petitioner No. 1 alone was registered with the BIFR. Even petitioner No. 1 does not enjoy any protection because BIFR had passed order in 2002 granting three years time to make the

network positive which has expired on 17th June, 2005. Petitioner No. 1 submitted its reply before the competent authority on 18th July, 2005. which is after the expiry of three years time. The judgment of Hon"ble the Supreme Court in Kailash Nath Aggarwal's case (supra) has been heavily relied upon by Mr. Boparai to argue that there is no protection to guarantors like petitioner No. 1 in recovery proceedings which were initiated under a similar legislation i.e. U.P. Act. Therefore, it is immaterial whether petitioner No. 1 was registered with the BIFR or not.

29. In response to the argument that the Managing Director of PSIDC cannot be Judge in his own cause. Mr. Boparai has argued that the legislature has very clearly empowered the Managing Director to pass appropriate order for recovery of the dues u/s 3(1)(c)(iii) of the 1983 Act. Even otherwise there are no allegations of mala fide against the Managing Director-cum-Specificd Authority. The authority of the Managing Director has been upheld by Hon"ble the Supreme Court in the case of Delhi Financial Corporation versus Rajiv Anand, (2004) 2 S.C.C. 625.

30. While concluding his arguments. Mr. Boparai has submitted that the judgment of Hon"ble the Supreme Court rendered in the case of Iqbal Nassir (supra) would not apply to the facts and circumstances of the present case because there the banking institution involving Central Legislation was in question whereas in the instant case the Financial Collaboration Agreement is under the State Legislation. Moreover, there is no agreement between the parties with regard to application of a legislation like 1983 Act and no notification was available in Iqbal Nassir's case (supra) notifying the Central Bank of India as an authorised financial corporation to recover its dues under the Recovery of Dues Act of that State. He has distinguished the judgment of the Full Bench of Allahabad High Court in Sharda Devi's case (supra) on the same grounds. Mr. Boparai has submitted that it is clearly laid down in that case that banking falls under the Union List and. therefore, recovery of dues under the U.P. Act was not considered applicable and the 1983 Act has the same aims and object for speedy recovery of its dues.

31. Keeping in view the aforesaid facts, pleadings and rival contentions of the parties. I find that the following substantive questions of law would arise for determination in this matter :--

(A) Whether the admitted outstanding dues of a financial corporation could be recovered by it u/s 3 of the Punjab Public Moneys (Recovery of Dues) Act. 1983 ?

(B) Whether clause 22 of the Financial Collaboration Agreement violates Section 16 of the Securities Contracts (Regulation) Act, 1956 and, therefore, liable to be declared as illegal ?

(C) Whether Section 22 of the Sick Industrial Companies (Special Provisions) Act. 1985, would apply to the recovery proceedings initiated u/s 3 of the Punjab Public Moneys (Recovery of Dues) Act, 1983?

32. Before taking up the aforesaid legal issues one thing may deserve to be noticed. The PSIDC is covered by the State Financial Corporation Act, 1951. On the request made by the State of Punjab, a notification u/s 46(1) of the Financial Corporation Act was issued by the Government of India on 13th May, 1988. According to the notification the provisions of Sections 29, 30, 31, 32, 32A, 32B. 32C, 32D, 32E and 32F of the Financial Corporation Act would apply to the PSIDC (Mark "B").

RE : QUESTION (A) :

33. The PSIDC is covered by the 1983 Act and a notification dated 18th September, 1986 to that effect was issued u/s 2(c) of the 1983 Act, which is Mark "A". The aforesaid notification reads thus:-

No. S.O. 42/PA1/85/S.2/86.--In pursuance of the provisions of clause (c) of section 2 of the Punjab Public Moneys (Recovery of Dues)Act, 1983 (Punjab Act No. 1 of 1985), the Governor of Punjab is pleased to specify the following Corporations for the purposes of the above-said Act, namely :--

1. The Punjab State Industrial Development Corporation Limited.

2. to 6. xxx xxx xxx

34. It is pertinent to notice that the expression "corporation" used in Section 2(c) of the 1983 Act means the Punjab Financial Corporation established under the State Financial Corporation Act, 1951. It includes any other corporation owned or controlled by the Central or State Government which the State Government by notification may specify. Accordingly, notification dated 18th September. 1986 (Mark "A") has been issued stipulating that the 1983 Act was applicable to PSIDC.

35. By invoking Section 3 of the 1983 Act. the PSIDC has sought to recover its dues. Therefore, it would be necessary to examine the provisions of Section 3 of the 1983 Act, which reads thus :

3. Recovery of certain dues as arrears of land revenue :

(1) Where any person is a party-

(a) to any agreement, relating to a loan, advance or grant given or relaing to credit in respect of or relating to hire purchase of goods sold by the State Government, a banking company, a Corporation or a Government company, as the case may be, under a State sponsored scheme; or

(b) to any agreement relating to a guarantee given by the State Government, a banking company, a Corporation or a Government company in respect of a loan raised by an Industrial Concern : or

(c) to any agreement providing that any money payable thereunder to the State Government shall be recoverable as an arrear of land revenue; and such person-

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- (i) makes any default in repayment of the loan or advance or any instalment thereof; or
- (ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or any portion thereof; or
- (iii) otherwise fails to comply with the terms of the agreements;

then in the case of the State Government, such officer as may be authorised in that behalf by the State Government by notification. and in the case of a banking company, a Corporation or a Government Company, the Managing Director, thereof by whatever name called, may send a certificate to the Collector mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue.

(2) A certificate sent under sub-section (1) shall be conclusive proof of the matter stated therein and the Collector on receiving such certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

(3) Where the property of any person referred to in sub-section (1) is subject to any mortgage, charge, pledge or other encumbrance in favour of the State Government, a banking Company, a Corporation or a Government Company, as the case may be. then---

(a) in every case of a pledge of goods, proceedings shall first be taken for the sale of goods so pledged and if the proceeds of such sale are less than the sum due. then proceedings shall be taken for recovery of the balance :

Provided that where the State Government is of opinion that it is necessary so do for safeguarding the recovery of the sum due to it. a banking company, a Corporation or a Government company, as the case may be. it may for reasons to be recorded in writing direct proceedings to be taken for recovery of the sum due before or at the same time as the proceedings are taken for sale of the goods pledged:

(b) in every case of a mortgage, charge or other encumbrance on immovable property, such property or as the case may be. the interest therein of the person referred to in sub-section 9(1) shall first be sold in proceedings for recovery of the sum due from that person and any other proceedings may be taken only if the Collector certifies that there is no prospect of realisation of the sum due through the first mentioned process within a reasonable time.

36. A close analysis of Section 3 would show that if a person is a party to any agreement resulting to a loan, advance or grant given or relating to credit or relating to higher purchase of goods sold by the State Government, a Banking Company, a Corporation or a Government Company under a State-sponsored Scheme then the recovery could be effected under the provisions of the 1983

Act. It is evident that a person is required to be a party to any agreement relating to a loan, advance or grant given by the State Government, a banking company, a corporation or a Government company, would not necessarily mean that it has to be only under a State-sponsored Scheme. The expression "State-sponsored Scheme" has been defined by clause (h) of Section 2 of the 1983 Act to mean a scheme sponsored by way of financial assistance by the State Government under which it advance money to a corporation or Government Company for the purposes of disbursing loans, advances or grants or for the purposes of sale of goods on credit or hire-purchase. Section 2(h) of the 1983 Act reads thus :--

2(h) "State-sponsored Scheme" means a scheme sponsored by way of financial assistance by the State Government under which it-

(i) advances money to a Corporation or a Government Company for the purpose of disbursing loans, advances or grants or for the purpose of sale of goods on credit or hire purchase; or

(ii) guarantees or agrees to guarantee the repayment of a loan advanced or grant or the payment of the price of goods sold on credit or hire-purchase.

37. The present case involves the dues of a Government company which has received all its finances from the State and provisions of Section 3 of the 1983 Act cannot be stretched by interpretation to confine the recovery by way of arrears of land revenue only in respect of State-sponsored Schemes. Such an interpretation would defeat the very object of the 1983 Act, which was enacted for speedy recovery of the dues of the State Government or the Punjab Financial Corporation or any other Corporation like PSIDC.

38. The matter is not res integra Hon"ble the Supreme Court in the case of Deep Chand Aggarwal (supra) has considered similar provisions of U.P. Public Moneys (Recovery of Dues) Act, 1965. Another similar provision of the Haryana Act came up for consideration of Hon"ble the Supreme Court in the case of S.K. Bhargava (supra). In both the aforesaid cases it has been held that the dues of a corporation could be recovered as arrears of land revenue. A Division Bench of this Court has the occasion to consider the aforesaid issue in the case of Vivek Sarin (supra). One of the question raised in the said case was whether the provisions of the Haryana Act were ultra vires. The Division Bench held that by virtue of Entry 43 of List-II, the State legislature is competent to legislate in respect of public debts of the State. The State law is calculated to ensure a quick recovery of public dues. For the aforesaid proposition the Division Bench placed reliance on the judgment of Hon"ble the Supreme Court in Deep Chand Aggarwal's case (supra). Similar view has been taken by a Division Bench of this Court in the case of Vipin K. Singla (supra) and by a learned Single Judge of this Court in the case of Swaraj Engines Limited (supra).

39. Moreover, the petitioners have agreed by execution of Financial Collaboration Agreement (P-1) and Supplementary Agreement (P-2) that the 1983 Act shall be

applicable. It cannot now be argued by them that such an Act would not apply. It is one thing to say that there is no estoppel against a statute but it is quite another thing that the parties by mutual agreement may resolve a particular mode of payment and recovery which might have reflections in a statute. The petitioners having agreed to the aforesaid mode cannot now wriggle out of the covenants duly signed and accepted. The arrangement made by the parties by signing the solemn covenants cannot now be defeated by raising arguments based on technicality of a statute.

40. The argument of the learned counsel for the petitioners based on the judgment of Hon''ble the Supreme Court in Iqbal Nassir's case (supra) is wholly misplaced. In that case the Central Bank of India after obtaining a decree from a civil court had sought its execution for recovery of decretal amount as arrears of land revenue. Hon''ble the Supreme Court held that the provisions of the U.P. Act were not intended to supplant the machinery for execution of all decrees under the provisions of the CPC and were confined to special cases enumerated in the Act. The amount of loan was advanced by the Central Bank of India for the purchase of a motor vehicle and decree was obtained on account of default in payment of instalments. The aforesaid judgment has no application to the facts of the present case. The loans which have been advanced by the PSIDC to the petitioners partakes the character of Government dues as it is a Government company wholly financed by the State. All its finances have been contributed by the State Government as is evident from the data provided by it in Annexure R-1. The basic reason for excluding the banking company like the Central Bank of India from the operation of any State law like the U.P. Act was that the law in respect of banking could be framed by the Parliament as per Entry 45 of List-I of the Constitution. In the instant case we are not dealing with a banking company. It is also worthwhile to notice that the Central Bank of India was not engaged in the implementation of the State-sponsored Scheme. There are schemes like Marginal Money Scheme by the Khadi Village and Industries Commission, which are implemented through Cooperative Banks or the Punjab National Bank or other banking companies. Therefore, the argument has no substance and I have no hesitation to reject the same.

RE : QUESTION (B) :

41. The PSIDC is excluded from the operation of the 1956 Act as a notification u/s 28(2) of that Act has been issued. The Central Government is vested with the power u/s 28(2) of the 1956 Act to issue a notification in that regard. If it is satisfied that such a course is in the interest of trade and commerce or the economic development of the country or it is necessary or expedient to specify any clause of contracts to which this Act or any provision contained therein would not apply, a notification to that effect can be issued specifying condition, limit or restriction subject to which the provisions of the 1956 Act were not to apply. Accordingly, a notification u/s 28(2) has already been issued on 27th June, 1961, which has exempted contracts for pre-emption or similar rights contained in the

collaboration agreements such as the present Financial Collaboration Agreement from the rigours of the provisions of the 1956 Act. The aforesaid notification issued u/s 28(2) has been relied upon by the learned counsel for the PSIDC, which reads thus:--

Whereas the Central Government is satisfied that in the interest of trade and commerce or the economic development of the country, it is necessary or expedient so to do; Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 28 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Central Government hereby specifies contracts for pre-emption of similar rights contained in the promotion or collaboration agreements or in the articles of association of limited companies as contracts to which the said Act shall not apply. Notification S.O. 1490, dated 27th June, 1961.

42. Mr. Rahul Sharma, learned counsel for the petitioners has, however, placed reliance on a notification dated 27th June, 1969, which would also not cut any ice because the notification dated 27th June, 1961 still holds the field and would not affect the entitlement of the PSIDC to enter into agreement providing for buy-back of equities by a company to whom it has advanced loans.

43. The judgment of Hon'ble the Supreme Court in the case of B.O.I. Finance Ltd. (supra) on which reliance has been placed by Mr. Sharma, learned counsel for the petitioner, would not be attracted to the facts of the present case because that was a case u/s 16(1) of the 1956 Act and the contract in that case was held to be unlawful as it was in contravention of the provisions of Section 53 of the Contract Act. Likewise, the Financial Collaboration Agreement cannot be regarded as a contract without "consideration" as has been sought to be urged by the learned counsel for the petitioner. He cited Section 25 of the Contract Act to argue that if a contract lacks "valuable consideration" then as per Section 25 it is void. Such an argument lacks complete understanding of the expression "consideration" as defined in Section 2(d) of the Contract Act. The aforesaid provision reads thus :--

2. Interpretation-clause.--In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:--

(a) to (c) xxx xxx xxx

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

44. In the present case, the PSIDC has invested huge sum of money with the object of promoting and improving industrial development in the State of Punjab, which is one of the objects enumerated in the Memorandum and Articles of Association. Apart from the above, Clause 22(a) of the Financial Collaboration

Agreement (P-1) has incorporated promises by the petitioner to repay the amount to the PSIDC. The arrangement of repayment is that the first instalment would be repaid when period of three years would expire after the date of production. The second instalment would become payable within one year of the expiry of three years. Petitioner No. 1 Rama Petrochemical Company had also undertaken to purchase the equity share holdings to the extent of the share of the PSIDC in two equal instalments on the date of expiry of third and fourth year. The Financial Collaboration Agreement has been further supplemented by Supplementary Agreement executed on 12th October, 2000 (P-2). According to clause 8 of the Supplementary Agreement it has been categorically provided that in the event of failure of Rama Petrochemical Company to buy back the equity share holdings of the PSIDC then BLIP and THIP are to be jointly and severally responsible to buy back the equity shareholding of the PSIDC along with the Collaborator i.e. Rama Company at the same price and terms and conditions as mentioned in the Financial Collaboration Agreement dated 18th March, 1999 (P-1). Therefore, there is no question of lacking of "consideration" as sought to be urged by the learned counsel for the petitioners. It is, thus, clear that by virtue of clause 22 of the Financial Collaboration Agreement, Rama Company and by virtue of Supplementary Agreement BLIP and THIP along with Rama Company are liable to buy back the equity of PSIDC invested in the new venture Rama Industry. The aforesaid amount became payable as per terms of clause 22(a) of the Financial Collaboration Agreement supplemented by the Supplementary Agreement when the period of three years expired from the date of commercial production by the company. The undisputed date of commercial production is 1st July, 2001 and accordingly the period of three years expired on 31st June, 2004 and the amount of first instalment became payable. The second instalment also became payable on 30th June, 2005 and the same is recoverable from the petitioner. In para 10 of the written statement filed by the PSIDC it has been pointed out that the petitioner has admitted the existence of outstanding dues,-- vide letters dated 5th November, 2004 and 7th January, 2005. There is no mention of any proceedings under SICA Act. Accordingly, no fault can be found in the order dated 15th February, 2006 (P-11) and 31st May, 2006 (P-9) and consequential recovery certificate dated 14th June, 2006 for recovery of Rs. 441.96 lacs (as on 31st March, 2005).

RE : QUESTION (C) :

45. The question then is whether the provisions of Section 22 of SICA Act would be attracted so as to stay any recovery proceedings. It is true that an application for staying the proceedings under SICA Act was filed by Rama Petrochemical-petitioner No. 1. The application was opposed by the PSIDC stating that it has not been made party before the BIFR or any other authority. It was further pointed out that only petitioner No. 1 has invoked the provisions of SICA Act and "BLIP" and "THIP" are not before the BIFR. Therefore, by virtue of Supplementary Agreement (P-2) the recovery could be effected from them. The protection afforded by Section 22 of SICA Act at best could be extended to Rama

Petrochemical Limited-Petitioner No. 1. As per the stand taken by PSIDC,--vide order dated 18th June, 2002. BIFR has granted three years time to petitioner No. 1 to come out with any plans. The aforesaid period expired in 2005. Moreover, the proceedings before BIFR are at the back of PSIDC. Even "BLIP" and "THIP" are not before BIFR. According to clause 8 of the Supplementary Agreement (P-2). dated 12-10-2000. "BLIP" and THIP" are liable to pay buy back equity shareholding in case the Collaborator fails to do so. Clause 8 of the Supplementary Agreement reads thus :--

8. That in case of failure of the COLLABORATOR to buy-back the equity shareholding of the CORPORATION in the COMPANY, BLIP and THIP shall be jointly, and severally responsible to buy-back the equity shareholding of the Corporation in the company along with the COLLABORATOR i.e. Rama Petrochemicals Limited at the price and terms and conditions as mentioned in the said AGREEMENT.

There is, thus, no escape by petitioner Nos. 2 and 3 from the fulfillment of obligation implicit in clause 8 and all of three of them must buy back the equity shareholding jointly or severally. Therefore, I do not find any substance in the aforesaid argument.

46. The aforesaid discussion shows that petitioner No. 1 having agreed to various terms of contract is making an attempt to wriggle out of it by putting forward one excuse or the other. It is well settled that when two parties agree to terms of a contract then it is not for the courts to interpret those contracts unless there is some ambiguity. The general principle appears to be that in agreements and contracts concerning mercantile dealings any one who wants to make a stipulation in derogation from the ordinary law regulating the rights of the parties must do so in clear and unambiguous terms. These principles have been echoed by the Constitution Bench of Hon"ble the Supreme Court in the cases of Central Bank of India Ltd. Vs. Hartford Fire Insurance Co. Ltd., , and General Assurance Society Ltd. Vs. Chandumull Jain and Another, . Therefore, it has to be held that once the parties have agreed to terms of contract howsoever harsh they may be, even if incorporating the provisions of a statute, it would not be open to them to argue that the Act would not apply because the parties had freedom to contract and are supposed to be guided by a sound legal advise in that regard. The Financial Collaboration Agreement (P-1) and Supplementary Agreement (P-2) are not those type of contracts which are hit by the principle of "unconscionable contracts" or "leave it or sign it" type of contracts. Therefore, the parties must perform the contract and cannot avoid the performance of the same by engaging the corporation like PSIDC in the litigation.

47. Mr. Rahul Sharma, learned counsel for the petitioners has also raised another argument that clause (22) of the Financial Collaboration Agreement is speculative in nature and hit by Section 16 of the 1956 Act. The argument seems to be that buy-back of equity in future is speculative in nature. Firstly, no speculation would be involved as the amount has been specified. Secondly, the

provisions of the 1956 Act have been excluded from its application to the Financial Collaboration Agreement and buy-back clauses, as already been noticed in the preceding para where notification dated 27th June. 1961 has been quoted. Therefore, the argument raised is without any substance.

48. The other argument that the Managing Director of the PSIDC could not have been judge in his own cause would not require any detailed consideration in view of the judgment of Hon''ble the Supreme Court rendered in the case of Rajiv Anand (supra). In that case the Managing Director of the Delhi Financial Corporation has assumed the role of deciding the arrears after following the principles of natural justice. Their Lordships'' of Hon''ble the Supreme Court held that such a course is not against the principles of natural justice and the Managing Director cannot be regarded to have acted as judge in his own cause.

49. As a sequel to the above discussion, this petition fails and the same is accordingly dismissed.