

(2019) 06 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 2390 of 2002

M/S. Y. Pani & Co. Pvt. Ltd.

APPELLANT

Vs

Orissa State Financial Corporation & Others

RESPONDENT

Date of Decision : 04-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
State Financial Corporations Act, 1951 — Section 29, 30, 30(a), 30(b), 30(c), 30(d),
30(e), 30(f)

Citation : (2019) 06 OHC CK 0001

Hon'ble Judges : Sanju Panda, J;S. K. Sahoo, J

Bench : Division Bench

Advocate : Ganeshwar Rath, Bijoy Kumar Dash

Final Decision : Dismissed

Judgement

S. K. SAHOO, J.

1. The petitioner Y. Pani & Co. Pvt. Ltd. (hereafter "petitioner company") represented through its Managing Director Sri Y. Ramamani has

filed this writ petition challenging the impugned notice dated 03.01.2002 issued by Branch Manager, Orissa State Financial Corporation (hereafter

"O.S.F.C."), Angul Branch vide Annexure-20 for recalling the entire outstanding loan liability under section 30 of the State Financial

Corporations Act, 1951 (hereafter "S.F.C. Act") and thereby proposing to take action under section 29 of the S.F.C. Act and also rejecting the

representation filed by the petitioner company against such impugned notice in its letter dated 20.02.2002 vide Annexure-24.

2. It is the case of the petitioner company that it is a Private Limited Company. A hotel promoted by Sunil Resorts (P) Ltd. situated at Angul which

was a partially completed one was seized by the O.S.F.C. and it was decided by the O.S.F.C. authorities after negotiation with the representatives of the petitioner company to hand over possession of the hotel in favour of the petitioner company on leave and licence arrangement basis for a period of one year with certain terms and conditions and accordingly, the opposite party issued letter dated 15.01.1990 vide Annexure-1 to the petitioner company to give consent in writing and for execution of necessary agreement. As per the requirement of the petitioner company, the opposite party supplied a draft copy of leave and license agreement mentioning the terms and conditions for perusal and approval before execution. On 31st March 1990 the leave and license agreement was executed between the petitioner company and opp. party and the hotel was rechristened as "Hotel Raaz" but the opp. party failed in delivering the total premises including the shop rooms to the petitioner company, in removing the seized vehicles kept inside the hotel premises from November 1990 onwards till 1991 and also failed to hand over the keys of the rooms in the first floor to start with the construction and repairing works of the portion given possession to the petitioner company. The O.S.F.C. authorities sanctioned Rs.3.00 lakhs loan on 04.05.1990 to the petitioner company for construction of sewerage line, installation of electricity, construction of some portion of building and boundary wall and a well for water supply. The premises was having electricity dues to the tune of Rs.60,338.10 paisa only for which repairing could not be done due to want of electricity. The opp. party in its letter dated 27.10.1990 vide Annexure-5 allowed the petitioner company to deposit Rs.60,338.10 paisa with the O.S.E.B., Angul division against the electricity dues and also directed that the said amount is to be adjusted towards petitioner company's loan account with a request to the petitioner company to repair the electrical wiring, air conditioner and other repairing works. The petitioner company was directed to report to the Head Office on any working day for complying the other terms and conditions of leave and license agreement after the unit was handed over to it. In the very letter (Annexure-5), the Branch Manager, O.S.F.C. was requested to see that the shop keepers are evicted after realization of balance rent so as to make it convenient to hand over the total project to the petitioner company. It is the case of the petitioner company that the leave and

license agreement was not executed between the parties and the hotel premises on running condition was not handed over to the petitioner company till the date of filing of the writ petition. The petitioner company wrote a letter to the opp. party on 31.10.1990 raising certain disputes after settling the electricity dues. On 23.01.1991 the petitioner company wrote a letter to the Branch Manager, O.S.F.C., Godia Nali, Dhenkanal vide Annexure-6 requesting him to remove the seized vehicles from the premises of Hotel Raaz otherwise rent would be charged for making it a stock yard to keep the seized vehicles. On 17.12.1991 the petitioner company wrote a letter vide Annexure-7 to the opp. party indicating that the shops attached to the hotel were not given in possession to it and also pointed out some other problems in the hotel premises with a request to take immediate step in that regard. On 08.01.1992 the petitioner company wrote another letter vide Annexure-8 to the Deputy General Manager (Recovery) of O.S.F.C. ventilating certain grievances. The opp. party in its letter dated 03.04.1992 vide Annexure-9 intimated to the petitioner company regarding refixation of the license fee for the first year. After receipt of the letter dated 03.04.1992, the petitioner company wrote a letter to the opp. party on 07.04.1992 under Annexure-10 to finalize the accounts considering its difficulties. The opp. party considering the letter written by the petitioner company refixed the monthly fee vide letter dated 27.06.1992 under Annexure-11. On 17.10.1994 the opp. party intimated the petitioner company vide Annexure-12 for making payment of the term loan dues as well as rent account dues. The opp. party issued a letter on 23.12.1994 vide Annexure-17 to the petitioner company asking it to deposit earnest money of Rs.10,000/- and to appear through its authorised representative before the negotiation committee for discussing the offer for purchase of the assets of the hotel unit. After negotiation was held on 04.01.1995, the final offer made by the petitioner company to purchase the hotel unit was accepted and on 13.01.1995 the opp. party wrote a letter to the petitioner company vide Annexure-13 regarding its decision taken to sale the assets of the hotel in favour of the petitioner company for a sum of Rs.36 lakhs with down payment of Rs.6.00 lakhs and with further terms and conditions. The petitioner company was requested to comply with those conditions in time and meet D.G.M.(L) (Documentation) for execution of the documents.

It is the further case of the petitioner company that even though the agreement of leave and license envisaged that any arrear of license fee shall be adjusted against the depreciated value of the assets created by the petitioner company but the valuation was made by O.S.F.C. authorities without the consent of the petitioner and that to without considering norms fixed under the Companies Act, 1956. In that respect the petitioner company wrote a letter to the Managing Director, O.S.F.C. on 05.10.1996 vide Annexure-14 asking him to intimate the total amount of principal and interest due so that necessary calculation can be made. According to the petitioner company, the total loan received from O.S.F.C. as on 31.03.1995 was Rs.90,164.27 and the interest thereon @ 12.5% per annum comes to Rs.11,270.90 which was mitigated by payment of Rs.1,00,000/- on 31.03.1996 by the petitioner company and therefore, there was no dues of the opp. party for loan of Rs.3 lakhs paid in July 1990 rather the petitioner company was to get Rs.9,44,350.00 from the opp. party.

It is the further case of the petitioner company that considering its application, the opp. party sanctioned an additional term loan of Rs. 10 lakhs on 08.04.1999 for completion and renovation of the hotel and released the loan in May 2000 with moratorium period till June 2001. The 2nd floor was completed in the year 2001. The opp. party rephased the loan on 08.04.1999 for eight and half years. The total principal outstanding for rephasing was Rs.8,60,000/- and interest thereon due @ 17.5% per annum amounts to Rs.2,25,750/-.

It is the further case of the petitioner company that though the property was transferred to it on 01.04.1995 but the opp. party did not give possession of 3000 square feet of the property in which shop rooms were constructed in the ground floor of the hotel and the rent of such shop rooms would have fetched Rs.12/- per square feet and the total rent would have come to Rs.32.40 lakhs from 01.04.1995 to 31.03.2002. According to the petitioner company, if the rent of the shop rooms is taken into account, the total payment of interest for Rs.23,40,650.00 would come to â??nilâ?? as on 31.03.2002 and the principal outstanding would come down to Rs.20,67,436.00 as on 31.01.2002.

It is the further case of the petitioner company that the opposite party issued the impugned notice on 03.01.2002 for recalling the entire liability of

Rs.84,88,451.17 under section 30 of the S.F.C. Act and asking the petitioner to pay the amount within fifteen days failing which action as

contemplated under section 29 of the S.F.C. Act shall be taken. In response to such notice, the petitioner company submitted its explanation on

15.01.2002 vide Annexure-22 indicating therein that invocation of provision under section 30 of the S.F.C. Act by the O.S.F.C. was not proper and

justified and further indicated the reasons for becoming a defaulter in repayment of principal and interest of the property transferred through

agreement for sale on deferred payment basis. A request was made by the petitioner company to consider the rephasing made by the O.S.F.C. in

1999. The opp. party rejected the explanation submitted by the petitioner and intimated the same to the petitioner vide letter dated 20.02.2002 under

Annexure-24 which is also impugned in this writ petition.

It is the case of the petitioner company that since the sale has not been finalized and total possession of the hotel premises was not delivered to the

petitioner, it would be deemed that the petitioner was in leave and license basis and the interest of Rs.36 lakhs calculated by O.S.F.C. is bad and

illegal.

3. The opp. party O.S.F.C. filed the counter affidavit contending therein that the opp. party advanced term loan in favour of M/s. Sunil Resorts (P)

Ltd. for setting up a hotel -cum-lodge at Angul. Consequent upon failure to repay the dues of the O.S.F.C. in terms of the loan agreement, the

corporation after issuing due notices, took over possession of the hotel unit under section 29 of the S.F.C. Act on 24.01.1989.

It is the case of the opposite party that since it was a running hotel, before taking steps for sale in favour of any third person, the hotel was given on

leave and license basis to the petitioner company on 17.07.1990 on execution of leave and license agreement dated 30.03.1990. The possession of the

hotel was handed to the petitioner company along with the moveable assets; however, the shop rooms which were occupied by third parties given on

rental basis by the earlier borrower could not be delivered to the petitioner company.

It is further stated in the counter affidavit that as per the original terms and conditions of the leave and license agreement, the petitioner company was

required to pay license fee @ Rs.15,000/- per month for first three months,

Rs.20,000/- per month from 4th to 9th month and Rs.25,000/-per month from 10th month onwards. However, considering the fact that shop rooms could not be given in possession to the petitioner company immediately, the monthly license fees as mentioned above was reduced and communicated to the petitioner company vide Annexure-9. Since the hotel required immediate renovation for running, the corporation sanctioned a loan of Rs.3,00,000/- (rupees three lakh only) on 04.05.1990 vide Annexure-4 which was to be repaid by the petitioner company with interest and the petitioner company availed such loan.

It is further stated in the counter affidavit that the corporation advertised the hotel unit for sale and the final offer of the petitioner company to purchase it at Rs.36,00,000/-(rupees thirty six lakh only) with down payment of Rs.6,00,00/-(rupees six lakh only) was accepted by the opposite party and communicated to the petitioner. The petitioner's company entered into a sale agreement with the corporation on 31.03.1995 and thereafter became a loanee to the opp. party corporation. The petitioner company was due to pay Rs.4,51,871/- towards leave and license fee from 17.07.1990 to 31.03.1995, whereas it actually paid Rs.4,33,203.29 paisa on the same account and an amount of Rs.18,667.71 paisa remained unpaid to the corporation by 01.04.1995. On the request of the petitioner company to reduce the down payment, the value of the assets created by it during the period of leave and license as assessed to be Rs.3.43 lakhs was adjusted from the sale value and the petitioner was required to pay the balance sale amount of Rs.32,57,000/- with interest. Since the petitioner company could not be given possession of the shop rooms in the ground floor, the sale consideration amount was further reduced by Rs.5.96 lakhs on request of the petitioner company and it was liable to pay the balance amount. A stand was taken in the counter affidavit that though the petitioner company was running and generating income from the hotel business but it failed to pay back the dues of the corporation. Due to such default, the corporation issued number of demand notices. One of such notices was issued on 16.11.1998 which clearly showed that the petitioner company was a defaulter. At the request of the petitioner company, the corporation sanctioned an additional loan of Rs.10,00,00/- (rupees ten lakhs) on dated 13.05.1999 for renovation of the hotel and the petitioner company was required to repay

the above amount in terms of the agreement over and above the sale consideration amount. By the time such additional loan was sanctioned, the petitioner company was required to pay deferred installment on earlier loan and interest outstanding amounting to Rs.13.58 lakhs which was directed to be paid in eight installments with interest @ 17.5% per annum as per the condition of sanction order to which the petitioner company accepted and entered into agreement with the corporation.

It is the further case of the opposite party that as possession of the shop rooms could not be delivered; there was reduction of the sale consideration

by Rs.5.96 lakhs. In spite of that, the petitioner company delayed and avoided making payment of installments and raised baseless disputes time and

again. Since no payment was made and the petitioner company was not in a mood to make payment except raising various baseless disputes, the opp.

party corporation issued notice to the petitioner for recalling the entire outstanding loan liability as per Annexure-20 since huge public money was

blocked. Instead of making payment to the corporation as per the terms of the agreement, the petitioner company by making false and bald allegations

enjoyed the property taking advantage of the interim order of this Court dated 05.03.2002. Stand was taken by the opposite party that the claim of the

petitioner company towards getting rent of the shop rooms from the corporation is baseless and incorrect since the corporation had duly reduced the

sale price of the hotel to the tune of Rs.5.96 lakhs and as such no further claim could be made by the petitioner on that score.

It is the further case of the opp. party that before giving the hotel on leave and license basis, some vehicles were parked inside the hotel premises in

one corner of the hotel for its safe custody after those were seized by the corporation from 3rd parties and at no point of time there was any

hindrance in the smooth running of the hotel on account of such parking and subsequently the vehicles were removed on the request of the petitioner.

It is the further case of the opp. party that for evicting the shop keepers continuing forcibly in the shop rooms, the corporation filed Title Suit No.207 of

1999 before the learned Civil Judge (Senior Division), Angul and the petitioner cannot agitate anything against the same as he had been duly

compensated by way of reduction of license fee from the sale price after the sale was finalized in its favour.

It is the further case of the opp. party that the petitioner company continued to be in possession of the hotel unit since 17.07.1990, entered into a sale

agreement with the opp. party on 31.03.1995 and it is liable to pay the outstanding dues to the corporation as per loan recall notice vide Annexure- 20.

The petitioner company is taking undue advantage on account of the interim order dated 05.03.2002 passed by this Court, enjoying the property, generating income but not paying the dues to the corporation.

4. The petitioner company filed its rejoinder affidavit to the counter filed by the opp. party wherein it is averred that the averments taken in different

paragraphs of the counter affidavit are false and fabricated. In the terms and conditions of the leave and license agreement, it is specifically mentioned

that the shopkeepers who were in possession of the shops let out by the original loanee i.e. Hotel Sunil (P) Resorts would be persuaded to pay rent

directly to the petitioner company. It is further averred that the opp. party corporation filed Title Suit No.207 of 1999 in the Court of learned Civil

Judge (Senior Division), Angul against the defendants who were in unauthorized occupation of the shop rooms praying therein for declaration of right,

title and interest over the suit land and that the defendants have no right over the schedule land and the shop rooms over there and their

possession thereof was unauthorized, with a further prayer for delivery of vacant possession of the shop rooms over schedule land. The

plaintiff succeeded in the said suit but possession of the shop rooms was not taken. Several disputed factual aspects were highlighted in the rejoinder

affidavit. It is averred that the petitioner company created assets to the tune of Rs.7,00,000/- (rupees seven lakhs) in the hotel, out of which the opp.

party had advanced a loan of Rs.3,00,000/- (rupees three lakhs) but the assets were valued at Rs.3,43,000/- (rupees three lakhs forty three thousand)

by the opp. party vide letter dated 17.03.1998 without any basis and without consulting the petitioner company. As per the direction of the opp. party,

the vouchers of the expenditure towards purchase of assets amounting to Rs.7,00,000/- (rupees seven lakhs) were submitted and the amount

mentioned in those vouchers ought to have been adjusted against the loan advanced to the petitioner company.

It is further averred in the rejoinder affidavit that the petitioner company at no point of time requested the opp. party to reduce the sale consideration

amount of Rs.5,96,000/-(rupees five lakhs ninety six thousand). The opposite party arbitrarily reduced such amount on account of non-delivery of the shop rooms without the consent of the petitioner company and without any agreement. It is the case of the petitioner company that the total auction sale consideration of Rs.36 lakhs cannot be reduced by a letter without making any agreement with the petitioner company. According to the petitioner company, it had repaid the entire loan amount with interest to the opp. party as indicated in its letter dated 18.10.2004 vide Annexure-29 by paying cash and adjustment from the rent receivable from the shopkeepers. The reduction of license fee was on account of the fact that there was no income from the hotel rooms which were inhabitable. The hotel is a three storied building and the ground floor consisted of shop rooms. The first floor was in a dilapidated condition and the second floor was incomplete. Considering these aspects, the opp. party corporation had reduced the license fee but wrongly depicted such reduction to be on account of non-delivery of eight shop rooms to the petitioner company. The petitioner company complied all the terms and conditions of the leave and license agreement and the sale agreement but the opp. Party did not give possession of the shops to the petitioner company rather collected the rent from the shopkeepers. The opp. Party also did not give possession of 9.00 decimal of land out of 44.00 decimal as per the sale agreement.

It is further averred in the rejoinder affidavit that the opposite party issued the impugned recall notice vide Annexure-20 on 03.01.2002 for

Rs.84,88,451.17 paisa which consists of auction sale price of Rs.36 lakhs shown as a loan. The default amount of interest was shown as

Rs.46,10,957.92 paisa and the principal amount which the opposite party had shown in the recall notice was Rs.38,77,493.25 paisa. According to the

petitioner, Rs.36 lakhs as a loan cannot be taken into consideration and interest calculated by the opposite party thereon is illegal. Some money

receipts were annexed to the rejoinder affidavit vide Annexure-35 series.

5. Mr. Ganeshwar Rath, learned Senior Advocate appearing for the petitioner company filed an events chart as well as notes of submission and

emphatically contended that there was an agreement to sale the immovable assets on 31.03.1995 between the opp. party corporation and the petitioner

company and in that agreement, it was stipulated that immovable assets would

be sold by the vender by execution of registered conveyance deed in favour of the vendee or his order and the vendee shall bear the registration fee and/or stamp fee as per law on the date of execution of conveyance deed on the total purchase consideration of immovables. It is contended that no sale deed was executed between the parties and there was no delivery of possession of the hotel but the opp. party corporation without any sale agreement or sale deed unilaterally reduced the sale price to Rs.30,04,000/- from the original sale consideration of Rs.36,00,000/- by deducting Rs.5,96,000/- on account of non-delivery of the shop rooms in the ground floor. According to Mr. Rath, section 29 of the S.F.C. Act prescribes that if any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any installment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation, action as contemplated under the said section can be taken and since in the present case, there is no agreement between the parties regarding the sale price of the hotel to the tune of Rs.23,46,000/- and no sale deed has been executed and no delivery of possession has been made, the question of any default made by the petitioner company to attract the provision under section 29 of the S.F.C. Act does not arise. It is further contended that after the recall notice dated 03.01.2002, the petitioner company paid around Rs.11,00,000/- (rupees eleven lakhs) to the corporation and the company is due to get Rs.60,638/- from the corporation which was paid to O.S.E.B., Rs.59,000/- fixed deposits of Andhra Bank and Canara Bank, Bhubaneswar pending with the corporation, Rs.22,00,000/-(rupees twenty two lakhs) spent on the hotel. It is contended that the impugned recall notice as well as rejection of the representation filed by the petitioner against such notice by the corporation is clearly illegal and unconstitutional and should be quashed. Mr. Bijoy Kumar Dash, learned counsel appearing for the opp. party corporation on the other hand filed a date chart and some documents with a memo and contended that the sequence of events would indicate that after the corporation took over possession of the hotel which was a running one, before taking steps to sale in favour of any third person, on the basis of a leave and license agreement, the physical possession of the hotel was handed over to the petitioner company on 18.06.1990. The corporation

sanctioned a term loan of Rs.3,00,000/- (rupees three lakhs) which was to be repaid by the petitioner company with interest as per terms and conditions vide Annexure-4 and the petitioner company was also given opportunity for finalization of the sale of the unit after negotiation. Mr. Dash further contended that when the corporation advertised the hotel for sale, the petitioner company approached the corporation and made its offer to purchase the hotel for Rs.36,00,000/- with down payment of Rs.6,00,000/- which was accepted by the corporation. The opp. party corporation issued a letter of intent to the petitioner company on 31.03.1995 relating to the sanction of additional loan of Rs.30 lakhs with certain terms and conditions and all the terms and conditions mentioned therein were accepted in writing by the Managing Director of the petitioner company. A sale agreement was executed on 31.03.1995 between the parties which clearly indicates that possession of the hotel was given to the petitioner company and that sale deed would be executed later on. Letter of hypothecation of tangible property was executed by the Managing Director of the petitioner company in favour of the opposite party corporation to secure loan of Rs. 30 lakhs on 31.03.1995. Document relating to the sale of schedule moveable assets of the hotel and its delivery of possession in favour of the petitioner company was placed. It is contended that the demand notices were issued to the petitioner company on account of the fact that even though it was running the hotel and generating income but it failed to pay back the dues of the corporation. It is contended that the corporation also sanctioned an additional loan of Rs.10,00,000/- (rupees ten lakhs) to the petitioner and there was every justification for taking recourse for issuance of the impugned recall notice dated 03.01.2002 vide Annexure-20 and also rejecting the representation filed by the petitioner company by letter dated 20.02.2002 vide Annexure-24. It is argued that the petitioner company has taken undue advantage of the interim order passed by this Court on 05.03.2002 not to take any coercive action and has not taken any step to clear the dues of the corporation for which the outstanding dues against the petitioner as on 30.06.2018 had gone upto Rs.15,64,90,767.90 paisa. It is contended that since there is no illegality or arbitrariness in the action of the corporation, the writ petition should be dismissed. The learned counsel placed reliance in the case of The State Financial Corporation -Vrs.- M/s. Jagadamba Oil Mills

reported in A.I.R. 2002 S.C. 834.

6. It is not in dispute that the impugned notice dated 03.01.2002 vide Annexure-20 was issued by the opp. party corporation to the petitioner company under section 30 of the S.F.C. Act for recalling the entire liability. In the said notice, it is mentioned that as on 30.06.2001, the total amount dues from the petitioner towards full discharge of all the liabilities was Rs.38,77,493.25 paisa as principal and Rs.46,10,957.92 paisa as interest and the petitioner company was called upon to pay the entire amount within fifteen days failing which action contemplated under section 29 of the S.F.C. Act would be taken.

The S.F.C. Act was enacted for the grant of financial assistance to industrial concerns with a view to boost up industrialisation. The action

contemplated by section 29 of the S.F.C. Act is undoubtedly a coercive measure directed at the takeover of the management and property of the

industrial concern and confers a further right on the Financial Corporation to transfer by way of lease or sale the properties of the said concern and

any such transfer effected by the Financial Corporation would vest in the transferee all rights in or to the transferred property as if the transfer was

made by the owner of the property. Under the said provision, the Financial Corporation will have the same rights and powers with respect to goods

manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods. It is,

therefore, obvious on a plain reading of section 29 of the S.F.C. Act that it permits coercive action against the defaulting industrial concern of the type

which would be taken in execution or distress proceedings; the only difference being that in the latter case the concerned party would have to use the

forum prescribed by law for the purpose of securing attachment and sale of property of the defaulting industrial concern whereas in the case of a

Financial Corporation that right is conferred on the creditor corporation itself which is permitted to take over the management and possession of the

properties and deal with them as if it were the owner of the properties.

Section 30 of the S.F.C. Act reads as follows:-

â??30. Power to call for repayment before agreed period.- Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in

writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,-

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

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

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

thereof; or

Â (d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured

by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to

the satisfaction of the Board should be given and such security is not given; or

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

of the industrial concern without being replaced; or

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

Therefore, section 30 of the S.F.C. Act empowers the Financial Corporation to call for repayment before the agreed period from any industrial

concern to which it has granted any loan or advance, if it appears to the corporation that such industrial concern has failed to comply with the terms of

its contract with the corporation in the matter of loan and if it appears that there is reasonable apprehension that the industrial concern is unable to pay

its debts and any machinery, plant or other equipment whether forming part of the security or otherwise are being removed from the premises of the

industrial concern without any information to the corporation. In either circumstance or for any other reason, if the corporation thinks it necessary to

protect its interests, may at once call for repayment. A notice in writing is to be issued by the corporation to the industrial concern, since the power to

call for repayment of any loan or advance before the agreed period may, in such case, be exercised even if there is no default on the part of the

industrial concern to make repayment in terms of the agreement with the corporation. The authority has to arrive at a subjective satisfaction in a

particular case regarding fulfillment of any of the conditions under clauses (a) to (f) as enumerated under section 30 of the S.F.C. Act before issuing

any notice to the industrial concern to discharge forthwith its liabilities in full to the corporation. In the present case, the action seems to have been

taken on the basis of clauses (b) and (c) of section 30 of the S.F.C. Act.

7. Adverting to the contentions raised by the learned counsel for the respective parties and on careful analysis of the documents filed by the parties,

the following things emerge:

(a) Due to failure of repayment of the dues of the opp. party in terms of the loan agreement, the possession of the hotel unit of M/s. Sunil Resorts (P) Ltd. was taken

over under section 29 of the S.F.C. Act by the opp. party.

Â (b) The hotel was given to the petitioner company by the opp. party on the basis of leave and license agreement dated 30.03.1990 and the monthly leave and

license fee was fixed.

(c) On consideration of the application of the petitioner company, a term loan of Rs.3.00 lakh was sanctioned and disbursed by the opp. party in favour of the

petitioner company which reveals from the letter of the opposite party dated 04.05.1990 vide Annexure-4.

(d) The Managing Director of the petitioner company took over physical possession of the hotel on 18.06.1990 as reveals from the document filed by the learned

counsel for the opposite party.

(e) As per the original terms and conditions, the petitioner company was required to pay leave and license fee to the opp. party @ Rs.15,000/- per month for the first

three months, Rs.20,000/- per month from fourth month to ninth month and Rs.25,000/- per month from tenth month onwards.

(f) The petitioner company submitted representations vide Annexures 7 and 8 to the corporation which are dated 17.12.1991 and 08.01.1992 respectively regarding

non-delivery of the possession of the shop rooms and unauthorized occupation of such shop rooms by some persons with a prayer to take steps for vacating the shop rooms. The opposite party considering the representation dated 08.01.1992 of the petitioner company and after having discussion with the petitioner, reduced the license fees for the first year and made it Rs.7,000/- per month for the first three months, Rs.12,000/- per month from fourth month to ninth month and Rs.17,000/-

per month from tenth month to twelve month and the license fee for the second year was fixed @ Rs.8,000/- per month and such decision was intimated in writing to

the petitioner company vide letter dated 03.04.1992 (Annexure-9). The petitioner company submitted further representation on 07.04.1992 vide Annexure-10 regarding

reconsideration of such license fees and the opp. party again considering such representation and difficulties of the petitioner company agreed to charge monthly fee

of Rs.8,000/-till the license is valid and accordingly intimated the same to the petitioner company vide its letter dated 27.06.1992 (Annexure- 11) but directed that the

license period would be extended after payment of arrear dues towards license fees upto May 1992 and term loan dues.

(g) On the offer made by the petitioner company to purchase the assets of the hotel, there was negotiation between the parties and it was decided by the opposite

party to sale such assets to the petitioner company with a price of Rs.36.00 lakhs with down payment of Rs.6.00 lakhs which includes the value of the assets of

Rs.3.43 lakhs invested by the petitioner company and thus the net sale price value was fixed to Rs.32.57 lakhs. The other terms and conditions were fixed and it was

intimated to the petitioner company vide letter dated 13.01.1995 under Annexure-13. The opp. party corporation issued a letter of intent to the petitioner company on

31.03.1995 relating to the sanction of additional loan of Rs.30 lakhs with certain terms and conditions and all the terms and conditions mentioned therein were

accepted by the Managing Director of the petitioner company in writing. In such letter of intent, it was mentioned, inter alia, that the corporation shall have right and

option to call in loan and take all appropriate proceedings for recovery thereof in the event there is any default in payment of any of the installments of interests and

principal for a period exceeding one month. A sale agreement was executed on 31.03.1995 between the parties which clearly indicates that possession of the hotel was

given to the petitioner company and that sale deed would be executed later on. The Managing Director of the petitioner company also gave written undertaking on

31.03.1995 to pay the revised rate of interest as and when applicable amended by the opposite party from time to time during subsistence of the loan. Letter of

hypothecation of tangible property was executed on 31.03.1995 by the Managing Director of the petitioner company in favour of the opposite party corporation to

secure loan of Rs. 30 lakhs. Letter of hypothecation clearly indicates that in accordance with the provisions of section 29 and section 30 of the S.F.C. Act, the corporation might issue notice to the petitioner company to discharge in full its liability to the corporation, inter alia, if there is any default in any of the terms and

conditions by the petitioner company. Document relating to the sale of schedule moveable assets of the hotel and taking its delivery of possession was executed on

31.03.1995 by the Managing Director of the petitioner company.

(h) The opp. party filed Title Suit No.207 of 1999 in the Court of learned Civil Judge (Senior Division), Angul against eight defendants who were in unauthorized occupation of the shop rooms situated in the ground floor of the hotel praying therein for declaration of right, title and interest over the suit land and that the

defendants have no right over the Schedule land and the shop rooms over there and their possession thereof was unauthorized, with a further prayer for

delivery of vacant possession of the shop rooms over schedule land. This writ petition was filed on 25.02.2002 and during pendency of the writ petition, the learned Civil Judge vide judgment dated 18.01.2011 held that the defendants were in unauthorized occupation of the nine shop rooms of the hotel and decreed the

suit in favour of the opp. party and the defendants were directed to give vacant possession of the shop rooms to the opp. party.

8. The main dispute between the parties relates to non-delivery of nine shop

rooms which were in the ground floor of the hotel to the petitioner company by the opposite party. It seems that when the decision was taken by the opposite party to hand over the possession of the hotel in favour of the petitioner company on the basis of leave and license agreement for a period of one year, the shop rooms were in unauthorized possession of some persons to whom the shops were let out by the original loanee i.e. Hotel Sunil (P) Resorts.

It is indicated in the letter dated 15.01.1990 of the corporation vide Annexure-1 that the shop keepers who were in possession of the shops let out by the original loanee would be persuaded to pay the rent directly to the petitioner company. Letter issued by the Joint General Manager, Recovery of the opposite party Corporation dated 27.10.1990 to the Branch Manager, O.S.F.C., Dhenkanal Branch vide Annexure-5 indicates that request was made to see that the shop keepers are evicted after realization of the balance rent so as to make it convenient to hand over the total project to the petitioner company. Since the shop keepers who were in unauthorized possession could not be evicted in spite of such request been made vide Annexure-5 and representations were made by the petitioner company in that respect to the opposite party corporation highlighting loosing of rent of the shop rooms, the opposite party reduced the license fee as per its letter dated 03.04.1992 vide Annexure-9. The license fee was further reduced considering the representation of the petitioner company dated 07.04.1992. After execution of the sale agreement on 31.03.1995, the possession of the shop rooms could not be handed over to the petitioner company for which the corporation took a decision to reduce the original sale consideration amount by Rs.5.96 lakhs.

There is no dispute that the petitioner company was never given possession of the nine shop rooms situated in the ground floor of the hotel either at the time of execution of leave and license agreement dated 30.03.1990 or at the time of execution of agreement to sale the hotel unit on 31.03.1995.

The reason for which the opposite party corporation could not hand over such possession was that the shop rooms were in unauthorized possession of some persons and they were not vacating the same in spite of the request of the opposite party and even after sending registered notices to them for vacation for which the opposite party was constrained to file Title Suit No.207 of

1999 in the Court of Civil Judge (Senior Division), Angul which was subjudiced when this writ petition was filed, which ultimately decreed in favour of the plaintiff as per judgment dated 18.01.2011. It cannot be lost sight of the fact that in Annexure-1 which is dated 15.01.1990, the opposite party has reflected that it agreed to hand over possession of the hotel in favour of the petitioner company on leave and license agreement for a period of one year, inter alia, with condition that the shop keepers who were in possession of the shops let out by the original lessee would be persuaded to pay the rent directly to the company. The copy of the leave and license agreement dated 30.03.1990 has not been filed by either party and therefore, it is not clear as to what was mentioned therein in respect of the shops.

The draft copy of the leave and license agreement which is attached to the letter of the opposite party dated 06.03.1990 vide Annexure-2 also does not indicate anything specifically relating to the shops. However, after execution of leave and license agreement dated 30.03.1990, when the petitioner company took over physical possession at the hotel along with the assets as per list on 18.06.1990 and thereafter submitted representation dated 19.10.1990, considering such representation, the opposite party in its letter dated 27.10.1990 vide Annexure-5 instructed the Branch Manager, O.S.F.C., Dhenkanal Branch, Dhenkanal to see that the shop keepers are evicted after realization of balance rent so as to make it convenient to hand over the total project to the petitioner company. Since it was not possible to evict the shop keepers, after receiving the representation dated 08.01.1992 from the petitioner company relating to unauthorized occupation of the shop rooms by some persons and loosing of rent of such shops, the opposite party considered the grievances of the petitioner company and reduced the license fee and communicated the same to the petitioner company as per letter dated 03.04.1992 vide Annexure-9. The monthly license fee was further reduced considering the subsequent representation of the petitioner company dated 07.04.1992 and it was communicated as per letter dated 27.06.1992 vide Annexure-11. After execution of sale agreement, when the petitioner company represented relating to non-delivery of the possession of the shop rooms, the opposite party reduced a sum of Rs.5,96,000/- from the original loan liability of the petitioner company. Therefore, in view of the factual scenario, it cannot be said that there was any deliberate laches on

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Schedule of land

Mouza- Angul, P.S.-Angul, Khata No-935, Plot No-779/1864, Area-Ac.0.44 dec. (together with all present and future structures with all its).

In view of such recital in the sale agreement, the contention raised by the learned counsel for the petitioner that there was no delivery of possession of the hotel to the petitioner company by the opposite party cannot be accepted. We are of the view that the petitioner company was in physical possession of the hotel since 18.06.1990 after execution of leave and license agreement dated 30.03.1990 and by execution of sale agreement dated 31.03.1995, such possession of the hotel with the petitioner company was reaffirmed. No registered sale deed has been executed but the petitioner company was in possession of the hotel and the moveable assets of the hotel were also sold to the petitioner company.

9. In case of M/s. Jagadamba Oil Mills (supra) placed by the learned counsel for the petitioner, it is held that the guidelines issued in Mahesh Chandra's Case (A.I.R. 1993 S.C. 935) place unnecessary restrictions on the exercise of power by the Financial Corporation contained in section 29 of the S.F.C. Act by requiring the defaulting unit holder to be associated or consulted at every stage in the sale of the property. It was held that a person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in Mahesh Chandra's Case will only lead to further delay in realization of the dues by the corporation by sale of assets. It is always expected that the corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable after due publicity, wherever possible. It was further held that the issuance of guidelines in Mahesh Chandra's Case are contrary to the letter and the intent of section 29 and it does not lay down the correct law and accordingly the said decision was overruled.

On the request of both the parties, the matter was referred for mediation to the Mediation Centre of this Court as per order dated 05.02.2019. The Mediator furnished the report. On perusal of the report, it revealed that the

mediation failed.

In view of the issuance of letter of intent to the petitioner company on 31.03.1995 relating to the sanction of additional loan of Rs.30 lakhs with certain terms and conditions which were accepted by the Managing Director of the petitioner company in writing and the fact that in such letter of intent, it is mentioned, inter alia, that the corporation shall have right and option to call in loan and take all appropriate proceedings for recovery thereof in the event there is any default in payment of any of the installments of interests and principal for a period exceeding one month, the recitals of the sale agreement executed on 31.03.1995, the written undertaking given by the Managing Director of the petitioner company on 31.03.1995 to pay the revised rate of interest as and when applicable amended by the opposite party from time to time during subsistence of the loan, the letter of hypothecation of tangible property executed on 31.03.1995 by the Managing Director of the petitioner company in favour of the opposite party corporation to secure loan of Rs. 30 lakhs from the corporation and the recitals of the letter of hypothecation which indicate that in accordance with the provisions of section 29 and section 30 of the S.F.C. Act, the corporation might issue notice to the petitioner company to discharge in full its liability to the corporation, inter alia, if there is any default in any of the terms and conditions by the petitioner company, when the petitioner company failed to repay the principal loan amount and its interest in time in spite of issuance of notice by the opposite party for which as on 30.06.2001, the principal amount became Rs.38,77,493.25 paisa and the interest became Rs.46,10,957.92 paisa, we are of the view that the opposite party was quite justified in issuing the impugned notice vide Annexure-20 for recalling the entire outstanding loan liability under section 30 of the S.F.C. Act and also rejecting the representation filed by the petitioner company vide Annexure-24. Some other points which were raised by the learned counsel for the petitioner are highly disputed questions of fact which cannot be decided without taking evidence and therefore, we are not inclined to give our opinion on such points leaving it open to the petitioner company to work out its remedy in the appropriate Court, if so advised.

In view of the foregoing discussions, we find no merit in the writ application which is accordingly dismissed. The interim order dated 05.03.2002

passed in Misc. Case No.2262 of 2002 stands vacated. No cost.

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