(2008) 05 CHH CK 0009

In the Chhattisgarh High Court

Case No : Writ Petition No. 112 of 2000

Syntex Packings Pvt. Ltd. (M/s) and Another APPELLANT

Vs

M.P. Financial Corporation and Others RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
State Financial Corporations Act, 1951 — Section 29, 29(1), 29(4), 31
Transfer of Property Act, 1882 — Section 69

Citation : (2009) 3 MPJR 17

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Judgement

S.K. Agnihotri, J.

The Writ Petition No. 112/2000, Writ Petition No. 128/2001 and Writ Petition No. 2404/2004 involve common question of law as to whether the sale of the vacant land & building i.e. Plot No. 97/C, Industrial Area Sirgitti, Bilaspur, pursuant to the sale notice dated 02.10.2000 and consequently handing over possession of the property in dispute and other actions of the respondent-Madhya Pradesh Financial Corporation is vitiated and contrary to the well established principles of auction sale. Further, whether the exercise of power u/s 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as ''the Act, 19510 was legal and proper. Thus, all the three writ petitions are being considered and decided together.

WRIT PETITION NO. 112 OF 2000

This is a petition filed by M/s Syntex Packings Pvt. Ltd. and Praveen Kumar Patel wherein the petitioners (hereinafter referred to as "Syntex") have prayed for a writ in the nature of certiorari to quash the sale letter dated 25.11.2000 and further all letters/documents relating to handing over possession of the Industrial Unit i.e. Plot No. 97/C, Industrial Area, Sirgitti, Bilaspur to respondent No. 4. Further, the respondent Madhya Pradesh Financial Corporation (hereinafter referred to as "the MPFC) he directed to accept amount of Rs.12.95 lakhs against the loan amount and return back the possession of the above stated Industrial Unit with land & building and plant & machinery to Syntex. The Madhya Pradesh Audyogik Vikas Nigam Limited. Raipur, granted lease of the land-in-dispute admeasuring 42,542 sq.ft. The said lease was executed on 25.05.1985 for the same site admeasuring 4313.5 sq.ft. The MPFC sanctioned a term loan of Rs.30 lakhs which was disbursed to the petitioners in the year 1985-86 wherein a subsidy of Rs.4.82 lakhs was granted. On 27.01.1987, the industrial unit became operational. The Syntex failed to pay loan amount in accordance with terms of repayment. Therefore, the first reschedulement for repayment was made on 16.03.1991. The Syntex failed to make payment again even on reschedulement. On 20.12.1994, Rs.6.38 lakhs was waived off being the second reschedulement of payment. According to the Syntex, a total sum of Rs.41.44 lakhs was repaid. The Syntex applied for reschedulement of the loan amount as the Unit became sick. The Syntex was required to pay principal amount of Rs.22.17 lakhs in 10 half yearly installments from 01.10.1995 to 01.04.2000. The interest was charged at the rate of 15.5% per annum on the rescheduled loan. of Rs.22.17 lakhs with penal interest at the rate of 4% per annum. The Syntex paid a sum of Rs.1 lack on 01.01.1996. The Syntex further made a request for one time settlement of dues on 27.12.1995. Rs.1.25 lakhs was paid on 22.06.1996. Thereafter, on 29.07.1996, a sum of Rs.2.5 lakhs was paid. On 23.09.1997 (Annexure P/6) the Syntex requested the MPFC not to take over the Unit and allow the Syntex time till 31st November, 1997 to make the entire payment of the balance amount. Thereafter, no payment was made.

In the meantime, the MPFC took over possession of the property in dispute on 19.09.1997 and informed the Syntex vide letter dated 09.10.1997 (Annexure P/5). It was further informed that the Manager, (Technical) of the Corporation has assessed resalable value of the assets to the tune of Rs.26.70 lakhs for inviting offer for sale of the property-in-dispute. The Syntex was further called upon to submit concrete proposal for liquidation of the dues of the Corporation and running of the Unit, within 7 days. Being aggrieved, the Syntex and M/s Polytex Packing Pvt. Ltd., sister concern of the Syntex, filed a writ petition in the High Court of Madhya Pradesh at Jabalpur, being W.P No. 3960 of 1997. The High Court of Madhya Pradesh on 06.11.1997 (Annexure P/8) passed an interim order to the effect that the MPFC would not transfer or alienate the unit belonging to the petitioners therein. Later on, the writ petition was dismissed as withdrawn on 12.07.2000 with liberty to file a separate writ petition on behalf of the petitioners No. 1 and 2. The MPFC, on 03.10.2000 published a sale notice of several industrial units including the property in dispute in "Nav Bharat" news-paper. Inspection dates were fixed on 3rd and 4th November, 2000 and last date of submission of offer was 17.11.2000. Two offers, one from Spin Packagings and other Legend Distilleries/respondent No. 4 (hereinafter referred to as ''the Legend'') were received. Spin Packagings made an offer of Rs.5 lakhs for the entire assets. The Legend made offer for Rs.6.25 lakhs for the land & building.

On the basis of two offers, the land & building was sold to the Legend for Rs.8 lakhs and the remaining loan liabilities of the Syntex was settled as Rs. 12.99 lakhs.

According to the learned counsel for the Legend, the possession of the land & building was handed over to the Legend on receipt of consideration, on 29.11.2000. The plant & machinery was removed by the MPFC and was kept in safe custody. Being aggrieved, the Syntex have filed this petition seeking the aforementioned reliefs, on 12.12.2000.

WRIT PETITION NO. 128 OF 2001

This is a petition filed by Shri Salabh Chaturvedi (hereinafter referred to as ''Salabh'') who claims to be a small scale industrialist engaged in the business of manufacturing of ointments. According to Salabh, the entire Unit was to be put on sale on "AS IS WHERE IS BASIS". Therefore he could not make his offer for purchase of only the vacant land & building. The land & building was sold separately which was a clear departure from the terms of the advertisement. Had it been in the advertisement, Salabh would have made offer for the vacant land & building. Thus, the sale is contrary to the advertisement. It was further stated that the petitioner contacted the office of the Branch Manager, MPFC with a query for purchase of land & building. He was told that the property was offered for sale on "AS IS WHERE IS BASIS". There could be no change in terms and conditions. Under no circumstances, vacant land & building can be sold. Salabh had sent a letter dated 15.11.2000 (Annexure P/3) expressing his intention to purchase land & building. Thus, the petitioner has filed this petition seeking a writ in the nature of certiorari to quash the sale order dated 25.11.2000 and further restraining the Legend from doing any activity including business in the Industrial Area at the plot No. 97/C, Sirgitti. It was further prayed that the property in dispute be re-advertised for fresh sale so that Salabh can get opportunity to participate in the same. Thus, this petition was filed on 24.01.2001. The petitioner filed a defective affidavit for which Salabh was permitted to file proper affidavit by order dated 07.05.2008.

WRIT PETITION NO. 2404 OF 2004

This is a petition filed by M/s. Legend Distilleries Pvt. Ltd. who was the purchaser of the land & building of the disputed property, seeking a relief that the order dated 05.07.2004 (Annexure P/10) passed by the Chhattisgarh State Industrial Development Corporation, where by lease dead of plot No. 97/C, Sirgitti Industrial Area, Bilaspur, could not be executed in favour of the petitioner on the ground that the dispute is pending in the High Court, be quashed. The Legend further sought direction for execution of the lease deed in favour of the Legend.

This Court, on 29.12.2000, in W.P. No. 112/2000, passed the following order:

Shri Jain, learned counsel for respondent No. 4 submits that the petitioner obtained the interim order after making certain misrepresentations. According to him, the petitioner made a submission before the Court that the was ready and willing to pay a sum of Rs.12.95 lakhs toward the dues, but his entire unit was sold for Rs.8 lakhs. According to him, the land and building have been sold to respondent No. 4 for Rs. 8 lakhs while the balance has to be adjusted for Rs. 12.99 lakhs. According to him, the plant and machinery are to remain with the petitioner on his paying Rs. 12.99 lakhs. Supporting the application, Shri Aradhe, learned counsel for respondents 1 to 3 submits that from the minutes Annexure R-1 annexed with the return of respondent Nos. 1 to 3, it would clearly appear that the land and building were to be sold for Rs. 8 lakhs and the balance settled amount of Rs. 12.99 lakhs are payable by the petitioner on or before 25.03.2001. He submits that the petitioner obtained the interim order by playing fraud upon the court and making mis-representation. Shri Manindra Shrivastava, learned counsel for the petitioner submits that from a perusal of the petition, it would clearly appear that the petitioner did not make any mis-representation rather, he clearly stated before the Court that the land and building were sold for a sum of Rs.8 lakhs only. He, however, submits that the minutes Annexure P/1 are forged and appears to have been concocted to suit the requirements of the respondents and as such no reliance can be placed upon it. He also submits that the affidavit of the Executive Director came to the file subsequently and as such it cannot be relied upon. He further submits that if the minutes were timely recorded, it was expected of the respondent No. 1 to 3 to issue a letter to the petitioners to remove the plant & machinery. According to him, as no letter has been issued to the petitioner regarding the said proceedings, the foul is floating on the surface of the record. He further submits that the possession was illegally taken and the affidavit of the Executive Director is contrary to minutes. He lastly submits that how could the building and the land belonging to the petitioner be shown to be property of respondent No. 4 in his application to the Excise Commissioner. He submits that everything was fixed and the petitioner has been thrown out of the possession of his property unceremoniously. I have heard the parties and have perused the records. True, it is that the petition contains allegations that the land and building have been sold for Rs.8 lakhs, but from the texture and tenor of the order passed by this Court, it appears that it was submitted before the Court that the petitioner was ready and willing to pay Rs.12.95 lakhs towards the dues, but his property was sold for Rs.8 lakhs. From the order, it does not appear that the petitioners'' plant & machinery were not to be sold for the same amount of Rs.8 lakhs.

So far as the question of ante-dated or fraudulent recording of the minutes are concerned, that would be a question to be seen at the time of final hearing. The respondents have clearly stated that the plant and machinery belonging to the petitioners have been removed and possession of the property has already been given to respondent No. 4. If that is so, it would not be proper to say that everything belonging to the petitioners was sold for Rs. 8 lakhs. From a document annexed with annexure R-1, it clearly appears that on 5/6.12.2000, a letter was sent by the MPFC to the petitioner informing him of the minutes. The said letter clearly speaks that the settled amount of Rs.12.99 lakhs is to be paid by the petitioners on or before 25.03.2001. The letter further says that after due discussion, the Committee had approved for settlement of loan liabilities @ Rs.12.99 lakhs after adjusting the sale proceeds of land & building.

The argument of the petitioners that their factory site was shown as the factory site for respondent No. 1 much before property was purchased by respondent No. 4 appears to be lucrative, but according to Shri Jain, respondent No. 4 was not required to inform the Excise Commissioner that they would open the plant at a particular site. Be that as it may, the question for consideration is whether the stay order passed earlier deserves to be vacated or not?

Having gone through the entire material available on the record, I am of the opinion that the interim order granted by this Court deserves to be vacated. It is accordingly vacated with the following terms and conditions:

(a) The plant and machinery belonging to the petitioners would be kept in safe custody by the MPFC until further orders from this Court. Any damage to the said plant and machinery would make the MPFC liable for its reimbursement. (b) Respondent No. 4 may proceed with the installation of his factory at his own risk to cost and consequences. It is made clear that if the petition is allowed, the respondent No. 4 would be required to remove his plant & machinery and restore the property to its original shape and situation.

(c) The vacation of the interim order shall not affect the merits of the matter and the petitioner shall be heard finally by this Court.

(d) At the time of hearing, the respondent MPFC shall place on records the original minutes recorded by the MPFC showing the alleged settlement of the dispute.

(c) The parties if still are of the opinion that they are required to file certain more documents or additional pleadings, they may do so within 15 days from today.

The matter be listed for further hearing on 29th of January, 2001. Copy to all the parties today itself."

This Court, in W.P. No. 128/2001 passed an order of status quo on the basis that no business was in existence in plot No. 97/C, Sirgitti Industrial Area, Bilaspur. Thereafter, it was clarified on 09.05.2001 as under:

Mr. Jain learned Sr. Counsel for the respondent No. 5 seeks clarification as regards this Court''s order passed on 24.02.2001 which was passed by way of clarification/modification of earlier order of status quo passed on 01.02.2001. Mr. Jain submits that further clarification may be made by this Court that giving electricity connection and also grant of factory licence and registration with D.I.C. should in no way directly affect the issue raised in this petition which otherwise appears to be in respect of sale deed dated 25.11.2000. It is the submission of Mr. Jain that such clarification will in no way cause any prejudice as regards respective claims on merits in the writ petition. On 24.02.2001 among other things, this Court had stated as follows: Therefore, the order of status quo, in my view, should not stand in the way of issuing licence, if at all the respondent is eligible or entitled to the grant of licence. It is directed accordingly.

Mr. Jain further submits that so far grant of license is concerned, there was a clear direction from this Court that such grant of licence shall depend upon eligibility or entitlement of respondent No. 5 which is for the Competent Authority to consider. If returns had been filed by the respondents, the matter could have been examined on merit by now.

Mr. Sanjay K. Agrawal, learned counsel representing respondent No. 6, however, prays for a short time to enable him to file return.

Mr. A. Sinha, learned counsel for petitioner also prays for a short time to file rejoinder.

It is stated by Mr. Jain that electricity connection, grant of factory licence and also registration with D.I.C. have been refused mainly on the ground that there is an order of status quo passed by this Court. It appears to me that this Court''s order dated 24.02.2001 is otherwise clear and there is no such direction except that there shall be status quo as regards the sale deed dated 25.11.2000. In the light of this Court''s clear order, the Competent Authority should examine and do the needful.

Learned counsel for the petitioner states that there is nothing on record to show that the Competent Authority has refused to give electricity connection; grant of factory licence and registration with D.I.C., on the ground of order of status quo. If that be so, the entire matter is clear and this Court need not pass any further order as regards the interim orders that have already been passed.

Shri Manindra Shrivastava, learned senior counsel appearing with Shri Ashish Shrivastava, learned Advocate would submit that despite the settlement having been arrived on 25.11.2000 to the effect that Syntex would pay the balance amount of Rs. 12.95 lakhs within a period of 15 days, MPFC proceeded with sale of the vacant land & building on 25.11.2000 as is clear from the affidavit of Shri N.K. Verma (Annexure P/14). Shri Verma, according to Shri Shrivastava had made an offer of Rs.5 lakhs and further settle the amount of Rs. 12.95 lakhs within a period of 15 days. The minutes of the meeting dated 25.11.2000 filed by MPFC does not contain signature of Shri Verma. Thus, the same cannot be relied on. Shri Verma is an independent person and his affidavit may be accepted. Shri Shrivastava would further contend that the minutes of the meeting dated 25.11.2000 (Annexure R/1) should be rejected as it does not contain signature of Syntex. MPFC has not explained about the procedure adopted for recording of the minutes of the meeting.

Shri Shrivastava would next contend that the sale notice was for sale of the entire industrial unit on "AS IS WHERE IS BASIS". The offer of Legend was only in respect of the vacant land & building. The same ought to have been rejected as Salabh had also written that if the sale of vacant land & building was permissible, he should have been informed. M/s Spin Packagings Pvt. Ltd. made an offer for the entire unit and Legend made the offer for only land & building, which was accepted by MPFC. The same is contrary to the terms and conditions of the sale notice published on 03.10.2000, in the newspaper. Members present in the meeting namely Shri C.K.K. Nair and Shri Alok Chandravanshi have also filed their affidavit in this Court stating that Syntex has agreed for sale of land & building and agree to remove the plant and machinery. The affidavit of Shri Bhojane, Executive Director, MPFC may not be believed as the same is not supported by affidavits of other persons. The sale letter dated 25.11.2000 was not endorsed to Syntex for removing the plant and machinery. The letter dated 5/6.12.2000 to Syntex provides for payment of settled amount of Rs.12.99 lakhs on or before 25.03.2001 after sale of the land & building. The land & building was sold for a sum of Rs.8 lakhs to the Legend and the Syntex was directed to pay a sum of Rs.12.99 lakhs after sale of the land & building. Thus, the Syntex was liable to pay a sum of Rs.20.99 lakhs in the month of March, 2001. Syntex has disputed the affidavit of Shri Thomas Mathew also.

Shri Shrivastava would further contend that the action MPFC to sell out a portion of the Industrial Unit i.e. the land & building to the Legend, ignoring their own valuation report is arbitrary, malafide and gross abuse and misuse of power conferred u/s 29 of the Act, 1951. The sale notice indicates sale of Industrial Unit. Accordingly, Spin Packagings made offer for the entire unit and the Legend made an offer for only the land & building. Salabh could not make offer as he was told that the entire industrial unit was for sale and not only the land & building. Thus, it appears to be a clandestine deal between the MPFC and the Legend as even the MPFC could not procure the sale price as per the valuation of MPFC and as such the entire sale be rejected being arbitrary and unreasonable. The MPFC may be directed to fix the minimum reserve price of the mortgaged asset i.e., running industrial unit with plant and machinery. The Manager (Technical) of MPFC has assessed the value of the assets at Rs.26.70 lakhs vide his letter dated 09.10.1997. Thus, the minimum fix price ought to have been fixed. It is well known that if in the first sale the value was not obtained, MPFC ought to have attempted for second auction sale to obtain the real price of the unit. The land & building, out of total valuation assessed at Rs.23.75 lakhs, was assessed at Rs.11 lakhs and the same was sold for Rs.8 lakhs only. No attempts were made by the MPFC to obtain the best possible price. Clause 5 of the terms and conditions of sale (at page 41 and 61) provides for payment of the agreed price immediately on receipt of communication of acceptance of the offer from the MPFC. The MPFC could not insist on payment of Rs.8 lakhs immediately. The Legend was allowed to make the payment on 29.11.2000. The entire exercise of sale is bad in law, arbitrary, unreasonable and discriminatory. The same deserves to be quashed. The Syntex be given an opportunity to pay a sum of Rs.12.95 lakhs as per settlement arrived on 25.11.2000 with interest.

Shri Rajendra Tiwari, learned senior counsel appearing with Shri Abhishek Sinha, learned Advocate for Salabh would submit that Salabh was prevented from participating in the sale of the land & building. The petitioner was informed by the Branch Manager of MPFC that in no event, sale of only land & building could be permitted. Salabh had written a letter on 15.11.2000 (Annexure P/3) expressing its intention that Salabh was desirous of purchasing land & building. In the event, the same was permissible, Salabh should be informed. No information was received by Salabh. Salabh is a small scale industrialist engaged in the business of manufacturing of ointment. For the purpose expansion of business, Salabh wanted to purchase the land & building. The sale notice dated 03.10.2000 clearly indicates "Industrial Units for sale" on "AS IS WHERE IS BASIS". The details of land & building and plant & machinery were provided. It was no where provided that the sale could be made separately item-wise i.e. land & building and plant & machinery separately. Accordingly, Spin Packagings made an offer for purchase of the entire industrial unit. Salabh, relying on terms and conditions of the sale notice, did not participate as on enquiry, he was told that the entire industrial unit was on sale. On 09.11.2000, Legend made on offer for purchase of the industrial unit for a sum of Rs.6.21 lakhs. Thereafter, it was confined to only land & building. Negotiations were made between the bidders only i.e., the Spin Packagings and the Legend. The Legend was allowed to purchase only land & building for a sum of Rs.8 lakhs.

Shri Tiwari would further submit that Salabh received a letter on 22.01.2001 in reply to letter dated 15.11.2000 which shows that no decision was taken to sell the concerned property until 22.01.2001 as it was stated in the letter that if Salabh is interested for any part or entire assets then he may send offer alongwith the prescribed tender fee and earnest money. It is further contended that the Syntex has placed a map on record indicating that the plan was sanctioned by Excise Commissioner on 30.10.2000 before submission of the tender with regard to the disputed plot which indicates that there was a collusion between MPFC and the Legend. Had Salabh known the fact that the land & building could be purchased separately, Salabh was ready to offer Rs.10 lakhs at the minimum. It was further stated that the certain pages are missing in the minutes after 06.10.2000 till 22.11.2000. Thus, there was material irregularity in the process of sale and absence of transparency. It is the duty of the public authority to protect the interest of both the parties i.e., the debtor and the auction purchaser. In the present case, there was a collusion between MPFC and the auction purchaser to the detriment of the debtor. The land & building was sold at much lower price. The authorities ought to have attempted to obtain the best price. "AS IS WHERE IS BASIS" means entire industrial unit. It does not permit sale of one portion of the industrial unit i.e. land & building. The sale of the land & building was, thus, vitiated and deserves to be quashed with cost.

Shri Gautam Bhaduri, learned counsel appearing for the MPFC, per contra, would submit that Syntex availed loan to the extent of Rs.30 lakhs and failed to repay the loan in accordance with the terms of the repayment agreed between the parties. MPFC gave sufficient opportunity by granting rescheduling the mode of payment and further waiving off a part of the interest. In the event, when the Syntex became chronic defaulter, MPFC had no choice but to proceed for recovery of the outstanding dues. Syntex was granted four reschedulements. MPFC took over the possession of the property in exercise of the powers conferred u/s 29 of the Act, 1951. Syntex, alongwith its sister concern, M/s Ploytex filed a writ petition in the High Court of Madhya Pradesh at Jabalpur, being W.P No. 3960 of 1997. The proceedings were pending for a long period after grant of interim relief. The Syntex did not take any steps to show its bonafide by making repayment in time or honouring the settlement by making the repayment within the prescribed time. It is admitted that Syntex came out with a proposal to make payment within a period of 15 days but no payment was made as per proposal of the Syntex. Accordingly, MPFC initiated proceedings to recover its outstanding dues under the provisions of section 29 of the Act, 1951. Syntex made false promises on several occasions but never honoured its promises by making payment as per schedule and within the prescribed time. This petition involves disputed question of facts and the same cannot be resolved by deciding the same in the writ petition.

Shri Bhaduri would next contend that Salabh cannot challenge the sale proceedings as Salabh had not participated or made any offer except that Salabh was ready and willing to purchase the land & building in its letter dated 15.11.2000. Salabh ought to have made some offer for the purchase of the land & building or for purchase of the entire property. Thus, the petition filed by Salabh deserves to be dismissed as Salabh has no locus standi to challenge the sale of the land & building.

"AS IS WHERE IS BASIS" means the status of the property not the entire property. The advertisement clearly gives the details of items to be sold. First was land & building and second, was plant & machinery. There was no ambiguity in the advertisement. Right at the top that "INDUSTRIAL UNITS FOR SALE" was intended to sell land & building and plant & machinery, not only jointly, but separately also. On 12.01.1995, on the request of Syntex, rescheduling of payment was made whereby Syntex was required to pay Rs.22.17 lakhs in 10 installments. No payment was made. Syntex again made a request on 27.12.1995 for one time settlement. The settlement was done on 20.02.1996 for a payment of Rs.16 lakhs. Syntex paid Rs.4.75 lakhs in three installments upto 30th July, 1996. Thereafter, no payment was made against the one time settlement. Notice as contemplated under- section 29 of the Act, 1951 was sent to the Syntex on 09.10.1997 whereby the Syntex was asked to submit concrete proposal for liquidation of dues of the MPFC and running the unit. The property in question was taken over on 19.09.1997 by MPFC which was challenged in W.P. No. 3960 of 1997. The same was dismissed as withdrawn on 12.07.2000. Therefore, on 30.10.2000, the notice for sale of industrial unit was published. Two bidders came forward and after negotiation, higher amount offered by Legend for purchase of the land & building i.e., Rs.8 lakhs was accepted and accordingly sale was made. Efforts were made to fetch the maximum price as bidders were called for negotiation. Syntax did not submit any proposal even in the meeting attended by Shri Praveen Patel (Petitioner No. 2 in W.P No. 112/2000). Syntex was directed to remain present on 01.12.2000 to remove the plant and machinery. The Syntex remained absent. Thus, the plant and machinery was removed by MPFC and the same is in safe custody of MPFC. The entire sale proceedings was in accordance with law. MPFC has made efforts to fetch maximum price and sale was made accordingly. There is no irregularity, illegality or collusion in the deal. No page was missing in the minutes of the record of the MPFC as there was no continuous pagination. The note sheet of M/s. Syntex Packaging Pvt. Ltd. bearing file No. 1598-A. The note sheet bearing page No. 48 is tolerated by photocopy of a note sheet of M/s. Polycin Coating Pvt. Ltd. This photocopy bears to page numbers. One is ''35'' of M/s Polycin Coating Pvt. Ltd. and other is ''49'' number which is continuation of an early page - 48 of M/s. Syntex Packaging Pvt. Ltd. The original page ''35'' and ''36'' are attached in the note sheet of M/s. Polycin Coating Pvt. Ltd. in file No. 1859-A. However, while continuing note sheet both the page numbers are reflected is ''37'' & ''51'' in M/s. Syntex Packaging Pvt. Ltd. note sheet. Thereafter, the page number continued as upto marking ''52'' & ''66'' both. However while continuation of page number attached as photocopy which is of M/s. Polytex Packaging Pvt. Ltd. page ''67'' & ''68'' are marked. The file of M/s. Polycin Coating Pvt. Ltd. is also placed bearing No. 1682. The Note sheet page No. 72'' & 73'' are attached as photocopy with M/s. Syntex Packaging Pvt. Ltd. file. Therefore both the numbers have been continued in the note sheet of M/s. Syntex Packaging Pvt. Ltd. upto page 77'', i.e. 67 then 73-68 and onwards. The note sheets after 06.01.2000 and 05.12.2000 are continuous. Thus, this petition deserves to be dismissed.

Shri Rajeev Shrivastava, learned counsel appearing for Legend would submit that Legend has purchased the vacant land & building of the property in dispute for a sum of Rs.8 lakhs. Initially, the Legend made an offer of Rs.6.21 lakhs. After negotiation, it was increased to Rs.8 lakhs. The sale was made in favour of the Legend as the offer of Legend was the highest for purchase of the land & building. Legend has, thereafter, invested Rs.85 lakhs in the property. The contention of learned counsel appearing for Salabh that there was a deal between the MPFC and the Legend before the sale of the land was complete as was clear from the map having approval of the Excise Commissioner, Gwalior on 30.10.2000, is without any basis. The Legend has made an offer on 09.11.2000 and thereafter, after negotiation, the sale was made on 25.11.2000. Thus the map has nothing to do with the deal. The map was prepared and submitted for approval before the Excise Commissioner of the proposed site which Legend decided in advance before purchase of the land & building of the property in dispute. In regard to the contention of learned counsel appearing for Syntex and Salabh that "AS IS WHERE IS BASIS" means the entire unit, the advertisement clearly indicates that the land & building and the plant & machinery were kept in different columns. That means, that the land & building was also available for sale separately. An auction sale can be set aside only on two conditions i.e., (i) proved material irregularity or fraud in the auction (ii) material irregularity or fraud so committed has caused substantial injury to the petitioner.

In the present case, there is neither material irregularity or fraud nor any substantial injury has been caused either to the MPFC or to Syntex. Syntex, being a chronic defaulter cannot contend that he ought to have been given an opportunity to make payment as the loan was granted in the year 1985 and sufficient opportunity, after making several rescheduling of payment, was granted. No attempt has been made to make the full and final payment. Thus, MPFC was forced to take action under the provisions of section 29 of the Act, 1951. The action of MPFC was transparent as a public notice was issued in the news-paper for sale of the industrial unit. Pursuant to that, except Legend and Spin Packagings, no one had come forward to offer their bids for purchase of the property. Salabh, it appears indulged into correspondence but did not come with proposal that it was ready to purchase land & building for Rs.10 lakhs before 25.11.2000. The submission that Salabh was ready to purchase the disputed property for higher amount is only an after thought and has been taken for the first time in this petition. The assessed value of the land & building was not the market price as Spin Packagings offered Rs.5 lakhs for the land & building and plant & machinery in total. This clearly indicates that what would have been the value of the land & building as on November, 2000. The Legend is a bonafide purchase of and has invested about Rs.85 lakhs. Thus, the petitions filed by Syntex and Salabh be rejected and the petition filed by Legend be allowed as after purchase of the land & building of the property in dispute. Legend is entitled to get the lease deed executed in its favour.

I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto with additional documents filed time to time. Admittedly, a sum of Rs.30 Lakhs was sanctioned on 15th January 1985 pursuant to the application dated 03.09.1984 in favour of Syntex for setting up an industrial unit at plot No. 97/C, Sector A, Industrial Complex, Sirgitti, Bilaspur. The terms and conditions of the agreement provided for payment of interest at the rate of 15% per annum with a rebate of 11/2% if the payment is made as per schedule. Further rebate of 1% was admissible in backward district after availing refinance from I.D.B.I. 12 half yearly installments were fixed. First installment was Rs.2 lakhs,- next 10 installments were Rs. 2.5 lakhs total Rs. 25 lakhs and the last installment was Rs.3 lakhs. The entire amount was payable within six years from January 1985 by 1991. As stated above, time and again several payment schedule was made. On 26.02.1996, a settlement was done for payment of loan amount at Rs.16 lakhs, Rs.8 lakhs payable by March, 1996 and Rs. 8 lakhs by June, 1996. Syntex failed to honour settlement and sent a telegram on 22.6.96 (Annexure P/4) as under:

Fax for General Manager, (Recovery) M.P. Financial Corporation, Indore (M.P.)

Sub.: Settlement of loan account.

Ref.: Your telegram copy received by post.

Dear Sir,

Our loan account was settled for a sum of Rs. 16.00 lacs and were to make the payment of Rs. 8.00 lacs by March, 96. Due to failure in negotiations with the financer, we could not make the payment.

We have already deposited a sum of Rs. 1.00 lacs last month and another Rs. 1.25 lacs toay at Bilaspur office. The balance amount will also be paid shortly.

We are making all the sincere efforts to liquidate the balance amount as early as possible.

We request you not to cancel the settlement and oblige.

Thanking you,

Yours faithfully, For Syntax Packings Pvt. Ltd.

Sd/- (Pravin Patel) Director.

On 9.10.1997 (Annexure P/5 to W.P. No. 112/2000) a notice was issued to all the Directors of Syntax to make the payment within seven days failing which, the MPFC would advertise the sale of the assets which reads as under:

Mr. P.K. Patel, Director of M/s. Syntex Packings (P) Ltd. House of Dr. Sahu, Vidhya Up Nagar, BILASPUR Mr. A.R. Das, Director of M/s. Syntex Packings (P) Ltd., House of Dr. Sahu, Vidhya Up Nagar, BILASPUR

Mr. P.K. Shah, Director of M/s. Syntex Packings (P) Ltd., House of Dr. Sahu, Vidhya Up Nagar, BILASPUR

Mr. S.R. Patel Director of M/s. Syntex Packings (P) Ltd., House of Dr. Sahu, Vidhya Up Nagar, BILASPUR

Reg. : Further Action under Sec. 29 of the State Financial Corporation''s Act. 1951.

Dear Sirs,

You are aware that the Corporation on 19.09.1997 has taken over possession of the mortgaged assets u/s 29 of the State Financial Corporation Act, 1951 for recovery of outstanding dues Rs. 11,25,000.00 as on 31.07.1997 in your term loan accounts with the Corporation, by SALE of the assets.

The Manager (Technical) of the Corporation has assessed realizable value of the assets of Rs.26,70,000/- for inviting offers for sale.

If you have any concrete proposal for liquidation of dues of the Corporation and running of unit, the same may be submitted to the Corporation at its Head Office or Branch Office, accompanied by payment of interest overdues and 25% of the principal dues, within 7 days from this letter, failing which, the Corporation shall advertise the sale of the assets.

Thanking You

Yours faithfully, Sd/- Dy. General Manager

The Syntex and its sister concern Polytex Packings Private Limited challenged the validity of the said notice in W.P. No. 3960 of 1997 which was dismissed as withdrawn on 12.07.2000 with liberty to file a separate writ petitions. After the petition was dismissed as withdrawn, the MPFC advertised the sale notice on'' 03.10.2000 stating as under:

"INDUSTRIAL UNITS FOR SALE"

Enquiries are invited for sale of the following industrial units on "As is where is Basis"

S.No.

Name of the Unit & Products

Land Sq. Mtr. Factor Building (Approx)

Plant & Machinery

XXX

XXX.

XXX

XXX

XXX

XXX

XXX

M/s. Syntex Packaging (P) Plant No. 97, C Sirgitti Industrial Area BILASPUR (M.P.) HYPE Woven Sakes)

3953 sq.mt. (Free hold) 972 sq. Mt.

Tape Plant (Windsor Make) & Circular Looms 6 Nos.

XXX

XXX

XXX

XXX

XXX

XXX

XXX

XXX

DATE OF INSPECTION 3rd 4th NOVEMBER, 2000 BETWEEN 11:00 A.M. TO 17:00 P.M.

LAST DATE FOR SUBMISSION OF OFFERS 17.11.2000 BY 05:00 P.M.

E.M.D. and Tender Fees (Not Refundable) by D D.

The other terms and conditions & details of plant & machinery tender fees & EMD can be obtained on payment of Rs. 30/- from above offices on any working day. These terms and conditions are integral part of this advertisement.

The Corporation reserves the right to reject any/all offers without assigning any reasons whatsoever.

For the inspection of the unit(s) at Sr. No. 1 to 7 interested persons may contact Raipur Office.

For the inspection of the Unit(s) at Sr. No. 8 to 12 interested persons may contact Bilaspur Office.

The offer should be subscribed on the envelope.

Offer for purchase of.....(Name of Unit) and Advertisement No........ Place Raipur,

General Manager

Date Oct. 2nd 2000

Pursuant to the said notice, Spin Packagings and Legend made their offers which are reflected in the minutes of the meeting. The Spin Packagings made its offer in the following terms :

"LETTER OF OFFER"

Date: 17.11.2K

To,

The M.P. Financial Corporation

....

BILASPUR

Sub : 1. Offer for the purchase of assets of M/s. Syntax Packaging (P) Ltd.

Yours advertisement No. published in NAV BHARAT dated 03.10.2K

Dear Sir,

(1) We are interested to purchase following assets of the captioned unit i.e., Land and Building/Plant and Machinery/Entire assets.

(Please delete inapplicable item).

(2) Our offer price is

For Entire Assets :

Rs.5.00

For Land & Building Only :

Rs.5.00

For Plant & Machinery Only :

Rs.5.00 Lakh only

(3) Particulars of payment for tender:

Cash down/Deferred

(i) Tender Fees (Non Refundable):

D.D. No. BC 00/013 182246

Dt. 16.11.2k drawn on MPFC Bilaspur

In favour of MPFC

(ii) Earnest Money (Refundable but non-interest bearing)"

D.D. No. BC 00/013/182245

dt. 16.11 drawn on

MPFC Bilaspur in favour of MPFC Ltd.

SPIN PACKAGING LTD.

Constitution and address with Telephone No.(s) of the offerer (Proprietor, Partnership Firm, Pvt. Ltd. Company, Public Ltd. Company)

SPIN PACKAGING LTD. INDUSTRIAL AREA Sector C

SIRGITTY BILASPUR (C.G.)

We have gone through the terms and conditions of sale, and agree to abide with the same and our offer is subject to the terms of sale. We understand that the offer(s) submitted by us are subject to negotiations at the instance of the Corporation. We confirm that the constitution of the offerer as referred to above will remain same till full payment of the sale price and execution/ registration of the transfer documents.

Any special condition enumerated by the Corporation at the time of negotiation shall be binding on the purchaser.

FOR SPIN PACKAGING LTD. Sd/- Sig nature Director

Name & Status RAMAVTAR AGRAWAL MANAGING DIRECTOR

..

For and on behalf of

M/s. SPIN PACKAGING LTD.

SIRGITTY BILASPUR

The Legend made its offer in the following terms :

Serial No................

TENDER FORM

To,

The Managing Director/Dy. General Manager MP Financial Corporation, Zonal Office RAIPUR

Sub.: Offer in case of M/s. SYNTEX PACKAGING (P) PLOT NO. 97, C SIRGITTI INDUSTRIAL AREA, BILASPUR Ref.: Ad. No. 05/2000-2001 dated 02.10.2000 This is in reference to your advertisement published in DAINIK BHASKAR (BILASPUR) dated 03.10.2000. We are interested in purchasing the fixed assets (Land Building) as mentioned in the advertisement of the above unit on "as is where is basis" and submit our offer as under:

Cash Down Rs.6.21 lakh (Rupees Six Lakh Twenty One Thousand Only)

(Subject to Negotiations if necessary). Deferred Payment Basis Rs.NIL (Details of Payment as follows:)

We agree to abide by the terms and conditions of the offer as per the details given by you. End.

(1) Tender Fees Rs.25000/- by DD No. 050899 dated 09.11.2000 (Non refundable)

(2) Earnest Money Rs.25000/- by DD/B''Cheque No. 050898

(Refundable without interest)

Applicant''s Signature

Sd/-

Name

: A.K. ARORA

Designation

: DIRECTOR

Organisation

: LEGEND DISTILLERIES PVT. LTD.

Address

: 23. ZONE-11

M.P. NAGAR, BHOPAL-462 011

Telephone No.

: 552885/558002

The relevant portion of the minutes of the meeting dated 25.11.2000 is as under:

Minutes of SCM dated 25.11.2000 at H.O. 6. M/s Syntex Packagings P.Ltd., Bilaspur (Settlement cum sale consideration)

The Committee noted that the loan to this unit was disbursed in 1984-86 and the loan account was also rescheduled once. The loan account of the party was settled at Rs. 16.00 lacs by the Recovery Committee in its meeting held on 20.02.1996. After settlement, the party paid only Rs.4.25 lacs and therefore, the unit was subsequently taken over on 19.09.1997. The party filed petition before the Hon''ble High Court and obtained stay, which was finally dismissed on 12.07.2000. The Corporation released an advertisement for sale of the assets, against which the following two offers have been received, as under:

(i) M/s. Spin Packagings, Bilaspur for entire assets at Rs.5.00 lacs on cash down basis. (ii) M/s. Legend Distilleries, Bhopal for land and building at Rs.6.21 lacs.

Shri N.K. Verma, on behalf of M/s. Spin Packagings and Shri Ajay Arora on behalf of M/s. Legend Distilleries, Bhopal appeared before the Committee. Since both the offerers were interested to increase their offer further, an open bidding was conducted.

(Rs. In lacs)

M/s. Spin Packing

M/s. Legend Distilleries

50

51

75

80

00

05

10

25

50

65

75

80

85

00

Withdrew

The Committee finally approved to sell the land and building to M/s Legend Distilleries, Bhopal, for Rs.8.00 lacs on cash down basis. Shri Praveen Patel, on behalf of the borrower company also requested for a personal hearing before the Committee. Shri Patel appeared before the Committee with a request to settled his loan account also. The Committee informed Shri Patel that his loan account was also settled and he failed to honour the commitments made before the Recovery Committee. He was therefore, clearly advised to come forward with a concrete proposal for payment of the amount, if settled. Shri Patel, indicated that he is not in a position to pay the settled amount himself, but he shall dispose off the plant and machinery and deposit the sale price to the Corporation. After detailed discussion, the Committee approved to settle the remaining loan liabilities in the loan account of the borrower Company (after sale of land and building) at Rs. 12.99 lacs, which is to be paid before 25th March, 2001. Shri Patel was advised to dispose off the machinery immediately so that vacant possession of the land and building can be given to the purchaser. If the borrower is not in a position to dispose off the plant and machinery, the Committee, authorized the DGM, Raipur, to shift the same to other taken over unit and then hand over the possession of land and building to M/s. Legend Distilleries on getting Rs.8.00 lacs.

Ultimately, the offer of Legend for a sum of Rs.8 Lakhs was accepted and sale agreement was executed on 29.11.2000 for sale of the land & building alone. On 05.12.2000, MPFC sent a letter to the Syntex and as such sale was complete and the Syntex was liable to pay Rs. 12.99 lakhs after sale of the land & building payable on or before 25.03.2001. The Syntex again failed to make the said payment also. Thus, the plant and machinery was removed by the MPFC and kept in safe custody. The letter dated 05.12.2000 is as under:

Ref. No. mpfc/settled/8792/94/2000-2001 Dated: 05/12/2000

M/s. Syntex Packaging P. Ltd. 97-C Sector A Industrial Complex Sirgitti Bilaspur

Sub.: Settlement of loan account.

Dear Sir,

Your request for settlement of loan account was placed before the Committee in its meeting held on 25.11.2000. Mr. Patel also appeared before the Committee on behalf of the Company. After detailed discussion and looking to the circumstances of :he case the Committee has approved for settlement of loan liabilities at Rs.12.99 lacs (after sale of land and building) which are payable as under with terms and conditions:

(1) The settled amount of Rs. 12.99 lacs are payable on or before 25.03.2001. (2) In your case the Corporation has already sold the land and building and therefore, only plant and machinery (on as is where is basis) shall be handed over to you on receipt of settled amount. In this regard you are also advised to dispose of the machinery immediately so that vacant possession of land and building can be given to the purchaser.

(3) Please note that in case you fail to deposit the settled amount upto 25.03.2001 the settlement would be cancelled without further notice and the original loan account shall be restored and the amount received against settlement shall be appropriated against the original outstanding.

(4) Please also note that in case in future any amount towards subsidy is received to the Corporation from State/Central Govt. the same shall be adjusted towards sacrifices made by the Corpn. in settlement of loan account.

(5) The copy of this letter is enclosed herewith which you have to send us back duly signed by the Directors of the Co. in token of acceptance of terms of settlement.

Thanking You

Yours faithfully, Sd/- Dy. Manager (Settlement)

Encl. Duplicate letter,

cc. to : The Branch Manager, MPFC, Bilaspur The Dy. General Manager, MPFC, Raipur

As decided in the Standing Committee on 25.11.2000 if the borrower is not in a position to dispose off the Plant and Machinery, the Committee authorized the Dy. G.M. (Raipur) to shift the same to some other taken over unit and then handover the possession of the land and building to M/s. Legend Distilleries on getting Rs.8.00 lacs. This letter to the purchaser has already been issued separately and copy to you also.

Sd/-

Dy. Manager (Settlement)

This is admitted that the Syntex remained in default for more than 15 years. Thus, MPFC was forced to take recourse to action u/s 29 of the Act, 1951. Section 29 of the Act, 1951 reads as under:

29. Rights of Financial Corporation in case of default - (1) Where 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 instalment therefore [or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the [right to take over the management or possession of both the industrial concerns], as well as the [right to transfer by way of lease or sale] and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation (2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred [as if the transfer] had been made by the owner of the property. (3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

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

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

The contention of learned counsel appearing for Syntex that the Syntex ought to have been given sufficient opportunity to settle the dues is unsustainable, at this stage, as MPFC had already given sufficient opportunities and the Syntex has failed to make payment of the loan advanced by the MPFC. Thus, the action of the MPFC for putting the property on sale cannot be held as vitiated. With regard to the procedure of sale by notice is concerned, a public notice was made on 03.10.2000. Pursuant to that only two bidders made their offers and after proper negotiation as indicated above, the highest bidder was accepted. The Manager (Technical) of the MPFC assessed the value of the assets as under:

Name of the Unit

: M/s. Syntex packaging Pvt. Ltd.

Location

: Plot No. 97 C, Sirgitti Industrial Area, Bilaspur.

Date of Inspection

: 21.11.2000

Date of Last Inspection

: 19.09.1997

As per the instruction, the undersigned visited the above unit to carry out the realizable value of the assets. The unit was taken over by the Corporation on 19.09.1997. The assets deteriorating due to lying idle. The details of the assets and realizable value of the land are given as under:

Land and site development: Land lease hold 3953 sqmtrs. Compound Wall. Tube well Ms. Gate etc.

Rs. in lac

75

Rs. 1.75 Lac

Building

(i) Main Shed with AC sheet 883 Sqmtr. Roofing.

(ii) Office RCC roofing 56 sqmtr.

25

(iii) Time office & toilet 33 sqft.

Total Built up area 972 sqmtr. Flaring of main shetwere seen damaged in some places. One crack has been developed in the wall.

Plant and Machinery

Rs.9.25 lacs

(i) HT 50 Tope plant with extruler 1 set M.S.R.H. Windsor

75

(ii) Circular looms 6 Nos. M.S. Royal Super.

(iii) Copy for waste tape-1

(iv) Electricals

Rs.12.751acs

Thus the total realizable value of the assets is given as under:

Rs. in lac

Land and site dv.

75

Building

25

Plant and Machinery

75

Rs.23.75 lacs

The above valuation has been carried out taking to the condition of assets, some Plinor machinery at the time of taken over greasing and oiling is necessary to for maintaining the machineries.

Sd/- 21.11.2000

Therefore, it is wrong to say that no assessment was done.

The contention of learned counsel appearing for Salabh appears to be without any basis. On reading of letter dated 15.11.2000, it is clear that Salabh has tried to make enquiry but has not made any offer for the purchase of the land & building If Salabli was really interested, he should have made some offer for purchase of the land & building subject to consideration by the MPFC. The same was not done. For the first time, in the petition, when sale was complete, Salabh offered Rs. 10/20 lakhs to purchase the said land. Today, the value of the land as on November, 2000, cannot be assessed even if it is sent for valuation. Subsequent afterthought offer cannot be held as offer was bonafide. Thus, Salabh is estopped from questioning the sale of the property at this stage. Learned counsel has cited a decision of the Supreme Court i.e., Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, that even if Salabh has not participated in the sale proceedings, Salabh has every right to question the proceeding to the effect that State action must not be arbitrary and must be based on some rational and relevant principles which is non-discriminatory. It must not be a kind of extraneous and irrational consideration because that would be denial of equality. In the facts of the case, public notice was issued and there was no denial of equality and it cannot be held as arbitrary. Every person was entitled to offer the bid for purchase of the land & building and plants & machinery.

With regard to the contention that the sale was contrary to the terms of the advertisement i.e., "AS IS WHERE IS BASIS" means entire property, the same does not merit acceptance. Contention of learned counsel appearing for Salabh that Salabh had contacted the Branch Manager, MPFC and he was told that in no event, sale of land & building would be made, is not supported by any document particularly. Thus, the same cannot be relied upon. The word "AS IS WHERE IS BASIS" means status of the property as there is no guarantee or warranty attached to the property. It does not mean either entire property or a part of the property.

In the matter of U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, the Supreme Court observed as under:

10. It is true that the appellant-corporation is an instrumentality of the State created under the State Financial Corporation Act, 1951. The said Act was made by the Parliament with a view to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a period not exceeding 20 years from the date of loan. We agree that the corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose-the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the corporation to receive and resurrect every sick industry irrespective of the cost involved. Promoting industrialization at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one. The above narration of fact shows that the respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the corporation at bay. Approaching the courts through successive writ petitions is but a part of this game. Another circumstance. These corporations are not sitting on Kings Solomon''s mines. They too borrow monies from Government or other financial corporations. They too have to pay interest thereon. The fairness required of it must be tempered-nay, determined, in the light of all these circumstances. Indeed, in a matter between the corporation and its debtor, a writ court has no say except in two situations : (1) there is a statutory violation on the part of the corporation or (2) where the corporation acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean ? Does it mean that the High Court exercising it jurisdiction under Article 226 of the Constitution can sit as an appellate authority over the acts and deeds of the corporation and seek to correct them ? Surely, it cannot

be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints - self imposed undoubtedly - of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

In the matter of Gajraj Jain Vs. State of Bihar and others, AIR 2006 SC 3392 the Supreme Court has held as under:

12. Under S. 29 (1) of the 1951 Act, where any industrial concern under a liability to the Financial Corporation makes any default in repayment of loan, the Corporation is empowered to take over possession of the industrial concern and realize the property pledged, mortgaged or hypothecated or assigned to the Corporation. Under S. 29(4), all costs, charges and expenses incurred by the Corporation as incident to such realization of the property pledged, hypothecated or mortgaged shall be recovered firstly from the industrial concern and the balance shall be paid to the person entitle thereto. As stated above, a charge consist in the right of a creditor to receive the payment out of the proceeds of the realization of property of" fund charged with the debt. A bare reading of subsections (1) and (4) of S. 29 shows that it is similar to S. 69 to T.P. Act under which it is stipulated that the mortgages exercising the power of sale is a trustee of the surplus sale proceeds and after satisfying his own charges he holds the surplus for this subsequent encumbrances and ultimately for the mortgagor (See Rajah Kishendatt Ram Vs. Raja Mumtaz Ali Khan, reported in vol. VI Indian Appeals 145 (PC). Section 29(1) contemplates, therefore, a sale for distribution of sale proceeds and not a sale for distribution of property charged with the debt. It also implies that the first charge holder must act in a manner which protects not only its own interest but also the interest to the subsequent charge holder and the mortgager. This is in turn implies that the first charge holder is bound to obtain the best possible price for the mortgaged and the best possible price must, in the context mean the fair market value.

In the matter of Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and others, (2005) 5 SCC 287 the Supreme Court held as under:

10. There have been several decisions rendered by this Court on the question of tender process, the award of contract and have evolved several principles in regard to the same. Ultimately what prevails with the courts in these matters is that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. We may sum up the legal position thus: (i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest. (ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situated.

(iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons. 11. Broadly stated, the courts would not interfere with the matter of administrative action or change made therein, unless the Government''s action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

Further, in the matter of Duncans Industries Ltd. Vs. State of U.P. and Others, the Supreme Court observed that question of valuation is basically a question of fact and this Court is normally reluctant to interfere with the finding on such question of fact it is based on relevant material on record.

The Supreme Court, in the matter of Everest Wools Pvt. Ltd. and others Vs. U.P. Financial Corporation and others, (2008) 1 SCC 643 has held as under:

17....The Corporation, no doubt, is entitled to realize its dues, but it must be borne in mind that it had been conferred with a special statutory power in terms of section 29 and 31 of the Act of 1951 therefor. Such a power on the Corporation was conferred by an Act of Parliament, inter alia, keeping in view the fact that it being a statutory authority and, thus, being "State" within the meaning of Article 12 of the Constitution of India, will act fairly and reasonably..... Power u/s 29 of the 1951 Act empowers the Corporation to take recourse to either:

(1) take over the possession of the plant and machinery; (2) take over management of an ongoing concern; and

(3) sell the property pledged, mortgaged, hypothecated or assigned to it.

When it takes over possession of the plant and machinery in exercise of its statutory power, apart from its obligation as a "bailee", it also acts as a "trustee". Its action otherwise must be fair and reasonable. It is true that fairness cannot be a one-way street, but then whereas the Corporation indisputably has a right to realize its dues, it must act strictly in terms of the statutory and constitutional scheme. If it acts unfairly, it fails the system. While it exercised its enormous statutory power, it is expected to perform its duites also. Such a duty is envisaged not only under the law but also under Article 14 of the Constitution of India. A person aggrieved by the action of the State must have an effective remedy. The purpose of taking over possession and that too of an ongoing concern, without taking over the management, would be to sell the unit. A buyer may like to purchase the ongoing concern. If the plant and machinery are kept in order and in a working condition, they would fetch one price but if the machinery are stolen or allowed to rust, the same would not.

In the matter of Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others, has laid down certain legal principles which are as under:

19. From the aforesaid, the legal principles that emerge are : (i) The High Court

while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities. (ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations;

(a) there is statutory violation on the part of the Corporation, or (b) where the Corporation acts unfairly i.e., unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision had taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the corporation liable,

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after cue publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action u/s 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporation cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

In the matter of Swastic Automobiles and Others Vs. Bihar State Financial Corporation and Others, cited by Shri Manindra Shrivastava, learned counsel appearing for the Syntex, the Supreme Court observed that the sale cannot be sustained when the property was valued at Rs.20 lakhs and was sold at Rs.1 lakh

98 thousand. This is not the case herein. The land & building was valued at Rs.11 lakhs and the same was sold for Rs.8 lakhs after proper negotiation.

Applying well settled principles as laid down by the Supreme Court in the cases (supra) to the facts of these cases, there is no irregularity, illegality in the sale of the property-in-dispute. The MPFC has issued proper notice for sale and it is clear from the format of tender used by Spin Packagings and Legend that in the tender form, intention of MPFC was clear. Accordingly, Spin Packagings made an offer of Rs.5 lakhs for the entire assets, Rs.5 lakhs for land & building only and Rs.5 lakhs for plant and machinery only. Similarly, Legend in its tender form wherein it was provided land and building/Plant & Machinery/Misc. Fixed Assets, offered only for land & building Rs.6.21 lakhs. The Legend had scored out plant & machinery and misc. fixed assets. If the advertisement notice and tender forms are read together, there was no ambiguity as any person (bidder) could obtain the tender form and make offer in the prescribed tender form which was clear in all respects that the offer was made for the entire assets or for land & building or plant and machinery. Thus, there was no departure from the terms and conditions of the advertised notice for sale.

I have perused the original papers produced by the MPFC and examined the explanation given by MPFC with regard to missing of certain pages. There was no irregularity and the explanation given by the MPFC deserves acceptance. The claim of the Syntex for providing one more opportunity is not justified as the Syntex was given several opportunities. During pendency of the writ petition being W.P. No. 3960 of 1997 in the High Court of Madhya Pradesh at Jabalpur, after having obtained interim order against the MPFC for not alienating, transferring or disposing of the property-in-dispute, Syntex has not shown any bonafide and it had not made any efforts to make the payment during the pendency of the said petition, which was ultimately withdrawn.

Thus, the action taken by the MPFC under provision of section 29 of the Act, 1951 followed by sale of the land & building cannot be held as vitiated. The same was just and proper. It appears that the MPFC has tried its best to procure the optimum price as MPFC entered into negotiations with both the bidders as is clear from the minutes of the meeting dated 25.11.2000 (at preceeding para 24) that the bidders increased the prices. The Spin Packagings withdrew from the negotiation after offering Rs.7.85 lakhs and the highest offer of the Legend for Rs.8 lakhs for purchase of the land & building was accepted. Not getting the valued price of the land & building is not enough to hold that the entire sale was unreasonable.

Delay in accepting the payment cannot be held as a material irregularity which may vitiate the entire proceeding and cause prejudice to the parties. There was no extraneous or irrational consideration and also no denial of equality. There was a public notice advertised in two-three newspapers.

It is well settled that fairness can not be a one way street. The fairness required of the Financial Corporation cannot be carried to the extent of disabling it from recovering what is due to it. The Financial Corporation alone cannot be shackled hand and foot in the name of fairness. The High Court cannot sit as an appellate court over the decision of the MPFC unless the same is arbitrary or discriminatory or unreasonable.

Even otherwise, at this stage, directing re-auction of the property -in-dispute may not be useful as the plant & machinery have been removed by the MPFC in December, 2000, and the same is lying in the custody of the MPFC for the last 7% years. The plant & machinery cannot be restored in original shape as the same might have become junks.

In view of the foregoing and for the reasons mentioned hereinabove, the writ petition No. 112/2000, filed by Syntex and writ petition No. 128/ 2001, filed by Salabh, are dismissed. The writ petition No. 2404/2004, filed by Legend is disposed of in view of the present order as no grievance survives for the Legend.

In the facts and circumstances of the case, no order asto costs.