

(2008) 04 DEL CK 0069
In the Delhi High Court
Case No : WP (C) No. 12112 of 2006

Vinedale Distilleries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(1)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2), 13(3A), 13(4)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2008) 145 CompCas 396 : (2009) 1 CompLJ 75

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Jayant Bhushan, Mahesh Agarwal, Rishi Agarwala, Bhagwan Swarup Shukla, Ashwini Kumar, Rajeev Kumar, Aksheytinge and Arvind Kumar, for S.K. Aggarwal Grou, for the Appellant; T.K. Ganju and A.K. Thakur, for defendant No. 4, Chetan Sharma and A. Sundram, Sanjay S. Chhabra and Rakesh Tikku, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this Writ Petition under Article 226 and 227 of the Constitution of India, the petitioner has sought a mandamus for respondent No. 3, i.e., Dena Bank to accept the payment of Rs. 2.5 crores as one time settlement, in terms of the RBI guidelines and to close the account of the petitioner. The other direction sought is that Dena Bank should be directed to disclose, by way of an affidavit, list of OTS proposals disposed of by it after the publication of various circulars of RBI for OTS and to set aside the notice dated 16th August, 2005 issued by Dena Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act).

2. The facts in nutshell relevant for the purpose of deciding this petition are that the Dena Bank, Banks Street Hyderabad had given various credit facilities to the

petitioner company by way of cash credit, term loan etc demand loan, funded interest loan etc. The total amount (along with interest) payable by the petitioner company to the respondent No. 3 in July, 1995 was Rs. 1,97,16,250.26. This loan was secured by mortgaging of immovable properties and movable assets of the petitioner. The immovable properties of the petitioner consisted of 54,450 square feet of area in Karla Taluka, District- Pune and 62 acres 36 guntas of land on which distillery of the petitioner was situated at village Premavati Peth, West Taluka, District-Hyderabad, Andhra Pradesh. In 1989, the petitioner had become a sick company and it moved BIFR, to be declared so. On 24th September, 1991, BIFR sanctioned a scheme for rehabilitation of the company and wanted Dena Bank to fund the scheme of rehabilitation by giving further funds to the tune of Rs. 2.72 crores to the company. However, an internal management tussle going on in the company between Aggarwal Group and Chabaria Group. Looking into the previous record of the petitioner company and possibility of non recovery of its funds, Dena Bank refused to give further credits of 2.72 crores to the company. Several Court cases between the different groups fighting among themselves for management of company came to be filed at Hyderabad Courts and Mumbai High Court. In 1994, the Hon''ble Supreme Court transferred all pending suits between different groups to Delhi High Court. Therefore, this Writ Petition has also been filed in Delhi High Court.

3. By an order dated 13th February, 1995 in FAO No. 265 of 1994, a Division Bench of this Court passed an order appointing Aggarwal Group as joint receiver of the company. The matter was taken up to Supreme Court. The Hon''ble Supreme Court modified the order and observed that instead of joint receiver, Aggarwal Group shall act as Court Commissioner.

4. In 1995, a total prohibition was imposed in Andhra Pradesh with the result no further steps could be taken for revival of manufacturing or industrial activity of the petitioner company. The value of assets of the company kept rising. With the increase in value of assets, the fight to control the company became more fierce and intense. In 1997, prohibition imposed by Government of Andhra was lifted. The company still could not be revived and now this company does no business. It is stated that in 1999, the petitioner approached Dena Bank for restructuring its debts.

5. On 27th July, 2000 vide circular No. DBOD.BP.BC 11/21.01.040/99-00 RBI published a one time settlement scheme (here-in-after referred to as OTS Scheme) applicable to all Public Sector Banks. On 21st August, 2000, Dena Bank wrote a letter to the petitioner informing about the guidelines of RBI and that the petitioner was eligible for OTS. The petitioner was informed that RBI guidelines were operative till 31st March, 2001 and the petitioner should utilize the opportunity and call on the branch manager immediately for settling the dues. In case of no favorable response being received from the petitioner, it would be deemed that the petitioner was not interested in settlement of bank dues.

6. The petitioner on 11th September, 2000 wrote to the Dena Bank that its

outstanding principal liability was only Rs. 35 lacs and not what the Bank was saying and they wanted bank to convey a proposal for settlement in terms of OTS scheme. Admittedly, nobody visited the bank or contacted the manager. However, the Bank vide its letter dated 21st September, 2000 wrote to the petitioner that as per guidelines issued by RBI with regard to OTS, the petitioner has to arrange payment of 100% outstanding dues to the Bank as on 31st March, 1997. In case the payment was made in lumpsum, interest would be waived from 1st April, 1997 onward on the dues of the bank. Alternatively the petitioner may arrange at least 50% down payment as per the ledger outstanding as on 31st March, 1997 and the balance amount in monthly installments spread over 2 to 3 years with PLR interest for the re-payment period. The bank also wrote if the offer on these lines was received from the petitioner, the same shall be processed and submitted to the top management for approval. It seems, thereafter, some discussion took place between petitioner's representative and the Deputy General Manager (Regional Authority) on the proposal on 10th March, 2001 and on the same date, i.e., 10th March, 2001 Bank again wrote to the petitioner that the petitioner should make lumpsum payment of Rs. 199.69 lacs before 31st March, 2001 for availing OTS opportunity in terms of RBI guidelines. And in case petitioner was not able to pay entire payment in lumpsum, the petitioner was advised to pay at least Rs. 50 lacs before 31st March, 2001 and balance amount about Rs. 1.5 crores in installments within a period of one year with interest at the existing prime lending rate from date of settlement up to date of final payment. The petitioner did not avail the offer and did not pay lumpsum or 50 lacs, i.e., 25% of payment before 31st March, 2001. In the meantime, RBI extended the time limit for OTS settlement up to 30th June, 2001 and the Bank informed about this extension to the petitioner vide letter dated 7th May, 2001. The petitioner vide letter dated 12th May, 2001 enclosed pay order for Rs. 3 lacs on State Bank of Mysore and Secunderabad and 2 cheques for Rs. 22 lacs and 25 lacs drawn on State Bank of Mysore and Secunderabad giving a reference to the letter dated 10th March, 2001 of the Dena Bank. The petitioner observed that with this sending of draft and cheques, the compromise settlement should be confirmed by the Bank in terms of RBI guidelines. The petitioner also wrote that though the acceptance of the OTS proposal was conveyed to the Bank as per letter dated 10th March, 2001, however, the letter was held up with a view that certain clearances had to be obtained from the head office of Dena Bank. It seems that letter dated 12th May, 2001 was not sent to the Bank, though prepared, since there is another letter filed by the petitioner on record dated 14th May, 2001 whereby the petitioner has stated that it was enclosing bank draft of Rs. 1 lac and 2 cheques of Rs. 25 lacs and 24 lacs. It was also stated that balance amount of Rs. 149.69 lacs plus interest will be paid in 3 quarterly installments. This letter was duly received by the Bank. There is no correspondence between the petitioner and the Bank thereafter. None has been placed on record which only shows that the proposal of the petitioner did not go through with the Bank. The next letter, on record, is of 15th April, 2002 written by the petitioner to the Bank. By this letter,

the petitioner gave a proposal to the Bank for approval. The proposal for one time settlement sent to Bank by the petitioner was to pay Rs. 199.69 lacs in full and final settlement of all dues to the Bank on or before 30th June, 2002 and on receipt of this amount, the Bank to release all securities and guarantees held by the Bank to secure the account. An amount of Rs. 10 lacs was deposited by the petitioner in no lien account of its own and it was stated that the balance amount would be paid after the proposal was accepted. Although, nothing appears on record about the first proposal but it is apparent that the proposal of the petitioner was not in accordance with the modified guidelines. The Bank had earlier urged the petitioner to clear dues along with interest as outstanding on 31st March, 1997. The dues were informed to be Rs. 199.69 crores and the amount was to be paid before 31st March, 2001 or before the extended period of 30th June, 2001. It is not clear what happened to the proposal. However, during the arguments, counsel for the Bank stated that there was no formal Board Resolution of the company approving this proposal and the Bank could not act on the proposal because of petitioners failure in sending a Board Resolution and other necessary documents as there was in-fight going on between the several groups of the petitioners directors and shareholders.

7. The petitioner has placed on record another letter dated 14th February, 2003 written by the Dena Bank to the petitioner wherein the petitioner was again informed about RBI having decided to give one more opportunity to the borrowers to come forward for settlement of their outstanding dues and this was applicable for chronic non-performance assets as on 31st March, 2000. It was informed to petitioner that guidelines were not applicable to the willful defaulters and borrowers with malfeasance. The petitioner was advised by the bank to take advantage of the concessions offered under the scheme to avoid risk of sale of assets under SARFAESI Act.

8. The petitioner wrote back vide letter dated 24th February, 2003 that the Bank was supposed to settle the account as per ledger outstanding of the bank which in the case of petitioner was Rs. 1.99 crores as shown in earlier correspondence and requested the Bank to take up the matter and give consent for one time settlement. The Bank seems to have written a letter to the petitioner dated 12th March, 2003. This letter has not been placed on record by the petitioner. The petitioner has only placed on record its reply dated 31st March, 2003. Vide reply of the petitioner, it can be inferred that the Bank raised question about the authority of Mr. S.K. Aggarwal and asked him to justify the offer of compromise and settlement. Vide letter dated 31st March, 2003, the petitioner pleaded that the petitioner was authorized by the order of Delhi High Court to run the company and to ensure the assets of the company are protected. It was also stated that management of the company was to be continued to Aggarwal Groups through the Board of Directors and Aggarwal Group was managing the affairs of the company under the Chairmanship of Mr. S.K. Aggarwal.

9. The petitioner re-emphasized that Dena Bank should accept the proposal for

one-time settlement and should not keep on blaming the management for not settling the dues.

10. Vide letter dated 29th April 2003, the Bank informed the petitioner that the bank was agreeable to settle the dues in terms of the RBI's OTS Scheme and the petitioner company was eligible to settle the dues in terms of the said scheme, however, written objections were received by the Bank from Mr. Anil Aggarwal, Abhishek Aggarwal, OYN Murti and S. Aggarwal claiming to be the directors of the company to the effect that they are part of Aggarwal Group of directors and were already acting as Commissioner of the Court as per directions of the Supreme Court. They had claimed that they were involved in day-to-day management of the company in the capacity of directors of the company and OTS proposal scheme of S.K. Aggarwal was without approval of the Board of Directors and as such the said proposal should not be considered by the bank. The Bank stated that in view of these objections raised from different directors of the company, the OTS proposal sent by the petitioner company should be duly approved by the Board of Directors authorizing one or more directors to discuss with the officials of the bank to settle the dues in terms of RBI's OTS Scheme. A certified copy of board resolution be also sent to the bank. The petitioner was informed that the scheme was non discriminatory and non discretionary and has to remain in force up to 30th April 2003.

11. On May 07, 2003, the petitioner company wrote to the Bank that there was a meeting held at BIFR's in May 2003 wherein BIFR was informed of the fact that the bank has accepted the proposal of the company regarding compromise settlement. BIFR, however, advised the bank and the petitioner to wait for actual approval of the financial transactions between the company and the bank. The petitioner, Therefore, was waiting for final advise of BIFR and further directions in this regard. The bank was requested that as soon as it gets minutes of meeting from BIFR, it should take necessary action on that. The bank was advised for acceptance of proposal for OTS. The bank vide letter dated 8th May 2003 again wrote to the company about the objections raised by the other directors of the company and the bank expressed surprise that its letter dated 29th April 2003 has been interpreted as if the bank has conveyed the acceptance of OTS settlement. The bank clarified that it is only the competent authority who takes decision on OTS settlement. The company was to send the Board Resolution and the advise or orders/directions of BIFR and the Court in this respect so that the matter can be placed before the competent authority for settlement and for approval. On 15th May 2003 Mr. S.K. Aggarwal, acting as Chairman wrote another letter to the Bank stating that the proposal of the petitioner company was to clear the dues of the bank as per RBI OTS scheme after the confirmation. The dues shall be paid either by 12 monthly equal installments or 4 quarterly installments + interests on equal value and the company shall abide by the conditions stipulated by the Bank. The petitioner also urged that the settlement as per OTS/acceptance should be as per directions/order of BIFR/Court. The petitioner was agreeable in principle to settle the dues. On 9th June 2003, the

petitioner wrote a letter, enclosing minutes of meeting of 5th May 2003 with BIFR wherein BIFR had observed that Dena Bank should accept any OTS Scheme from the company only if there was prior approval of the Board (BIFR). The petitioner requested the bank to write to the board seeking their approval for settlement of the dues under RBI's OTS Scheme as per proposal given by the petitioner. On 10th July 2003, the petitioner sent a copy of the resolution passed by the Board of Directors of the company authorizing Mr. S.K. Aggarwal to negotiate with the bank for settling the dues under RBI OTS Scheme. On 26th September 2003, the petitioner wrote to Dena Bank to reconfirm the decision regarding OTS as per the RBI's guidelines as mentioned by the Bank in earlier correspondence.

12. It is submitted by the petitioner that the petitioner company had been willing to settle its dues under RBI's OTS Scheme. Dena Bank, should have been interested in getting its dues under the Scheme irrespective of any objections by any third party. Dena bank, however, did not confirm its decision regarding approval of the petitioner's offer of settlement under RBI's OTS Scheme and delayed the acceptance of the proposed settlement of its dues as per the RBI's guidelines on one or the other frivolous pretext despite the fact that the bank itself had initiated the move for settlement of dues. However, the bank on 16th August 2005 illegally and wrongfully issued a notice u/s 13(2) of SARFAESI Act against the petitioner company to take appropriate legal action for selling the assets of the petitioner company. The bank could not have issued a notice u/s 13(2) of the SARFAESI Act, since the petitioner, time and again had been asking the bank to accept dues under RBI's OTS Scheme. It is submitted that the correspondence between the bank and the petitioner amounted to a concluded contract between petitioner company and defendant No. 3 Bank for entering into one-time-settlement. Even the 25% of the total amount, as per the OTS Scheme was sent to the bank but there was no progress on the part of bank in this regard. On 3rd September 2003, another statutory OTS Scheme was published by RBI vide circular No. 39/06.02.31/2005-2006 applicable to all public sector banks. This scheme was exactly the same as the earlier two schemes. However, the respondent bank had started claiming Rs. 11.02 crores from the petitioner company under Scrutization Act as against 1.99 crores which was the ledger balance as on 31st March 1997. On 13th October 2005, the petitioner again offered to the bank as per the guidelines to pay the lumpsum balance of Rs. 2.07 crores to the bank vide letter dated 13th October 2005. The petitioner company also gave reply to the notice dated 14th October 2005 issued by the bank under Scrutization Act. On 28th October 2005, during hearing of the application being is No. 8037 of 2005 in the suit being No. 1514 of 1994 filed by Sanman Group Dena Bank made a statement that the representation of petitioner for one time settlement had already been rejected. However, no copy of the rejection letter was either filed in the Court or sent to the petitioner company. The petitioner, Therefore, filed a writ petition against Dena Bank and others being Writ Petition No. 26391 of 2005 before Andhra Pradesh High Court on 12th December 2005 and the A.P. High Court disposed of the said writ petition with directions to Dena

Bank to consider the application of the petitioner for OTS and dispose of the representation of the petitioner in accordance with law. Dena Bank vide letter dated 9th December 2005 informed the petitioner that its offer has been rejected by the Head Office. Vide letter dated 12th December 2005, Dena Bank also replied to the objections raised by the petitioner against invoking SARFAESI Act and denied that the notice issued by Dena Bank u/s 13(2) of the Act was invalid. After receipt of letter from Dena Bank, rejecting onetime settlement offer, the petitioner moved another Writ Petition before A.P. High Court being No. 27028 of 2005 challenging the so-called rejection by Dena Bank. On 21st December 2005, A.P. High Court passed following order - Without expressing any opinion as to whether the petitioner is entitled for one time settlement or not, this Court directed to consider and dispose of the representation of the petitioner, but prior to the said order itself the fourth respondent rejected the representation of the petitioner offering one time settlement for Rs. 2,50,00,000/- (Two and half crore). It is submitted that the rejection order is without assigning any reasons and it is also not stated whether the guidelines issued by the first respondent applies or not. It is further submitted that no proceedings have been passed u/s 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the Act).

Having regard to the facts and circumstances of the case, the respondents 2 to 5 are directed not to take any coercive steps and not to pass any proceedings u/s 13(4) of the Act subject to the condition that the petitioner deposits a sum of Rs. 70,00,000/- (Rupees Seventy lakhs only) within four weeks from today. If the said amount is not deposited within the prescribed time, the interim direction automatically stands vacated and it is open for the respondents to take appropriate proceedings under the Act.

The petitioner stated that since the application for clarification moved by the petitioner was not coming up for hearing, the petitioner sent to Dena Bank a cheque of Rs. 75 lac as 25% of the OTS Settlement. However, Dena Bank issued a letter that it had not received the payment of Rs. 70 lac as per the orders passed by the High Court Andhra Pradesh. The Writ Petition before the Andhra Pradesh High Court came up for hearing on 25th January 2006, then on 27th January 2006 and 28th January 2006. On 28th January 2006, another Writ Petition was filed by Mr. Anil Aggarwal a director of the Board, heading a separate group out of Aggarwal Group. After hearing arguments in the two Writ Petitions, the Andhra Pradesh High Court passed the following order:

This Court is of the opinion that the orders of the Delhi High Court will not come in the way of the Dena Bank to proceed with the recovery proceedings under the SARFAESI Act and also as the interim order of this Court was not complied, the respondent bank has rightly passed orders dated 24.01.2006 u/s 13(4) of the SARFAESI Act as all the concerned of either the Vinedale Distilleries Limited or the Sanman Distributors have failed to pay the bank amounts pursuant to the notice u/s 13(2) of the SARFAESI Act. Questioning the notice dated 24.01.2006

issued by the Dena Bank, W.P. No. 1342 of 2006 has been filed by M/s Vinedale Distilleries Limited - petitioner, represented by its Director/Court Commissioner, Sri Anil Kumar Aggarwal, s/o Late Om Prakash Aggarwal.

I have heard both the learned Counsel appearing for the petitioners, learned Counsel appearing for the RBI, learned Counsel appearing for the Dena Bank and the learned Counsel appearing for the M/s Sanman Distributors - fifth respondent in W.P. No. 1342 of 2006.

Several arguments have been advanced before this Court by the respective counsel for the petitioners stating that without withdrawing the application in O.A. No. 29 of 2004 before the Debt Recovery Tribunal u/s 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1933, the respondent bank authorities cannot initiate proceedings under the SARFAESI Act. It is further stated that u/s 13(3A) of the SARFAESI Act without considering the objections filed by the borrower within one week from the date of receipt of the representation or objection the secured creditor cannot take any further action u/s 13(4) of the SARFAESI Act.

Learned Counsel appearing for the Dena Bank submits that the objections of the petitioners have been considered but the objections of the fifth respondent in W.P. No. 1342 of 2006 have not been considered. Learned Counsel for the petitioners further submits that any security interest accrued on the agricultural lands in favor of the respondent bank under the provisions of the SARFAESI Act cannot be made applicable and Therefore, the orders passed u/s 13(4) of the SARFAESI Act are illegal and unsustainable.

The Authorized Officer of the Dena Bank issued a notice dated 24.01.2006 to Sri Anil Kumar Agarwal, petitioner in W.P. No. 1342 of 2006, u/s 13(4) the SARFAESI Act, wherein Item No. 2 is extracted:

2. All that piece and parcel of agricultural land, situated at Premavatipeth Village, Hyderabad West Taluk, Hyderabad District , Andhra Pradesh, bearing Survey Nos. and ad measuring as follows:

Survey No. Extent of Area 57 11 Acres 9 Guntas 58 4 Acres 3 Guntas 59 9 Acres 17 Guntas 60 4 Acres 21 Guntas 61 1 Acres 37 Guntas 62 6 Acres 31 Guntas 63 4 Acres 13 Guntas 64 8 Acres 16 Guntas 68(Part) 4 Acres 23 Guntas 86 7 Acres 26 Guntas Total: 62 Acres 36

along with buildings and structures standing thereon.- Having stated Item No. 2 properties as agricultural land in the above notice, the same has been mentioned in the paper notification dated 24.01.2006 as factory, which is extracted as follows:

2. All that piece and parcel of factory land, situated at Premavatipeth Village, Hyderabad West Taluk, Hyderabad District ,Andhra Pradesh, bearing Survey Nos. and admeasuring as follows:

Survey No. Extent of Area 57 11 Acres 9 Guntas 58 4 Acres 3 Guntas 59 9 Acres 17 Guntas 60 4 Acres 21 Guntas 61 1 Acres 37 Guntas 62 6 Acres 31 Guntas 63 4 Acres 13 Guntas 64 8 Acres 16 Guntas 68(Part) 4 Acres 23 Guntas 86 7 Acres 26 Guntas Total: 62 Acres 36

along with buildings and structures standing thereon.- It is pertinent to note that the above two notices were signed by the same Authorized Officer of Dena Bank:

I am of the opinion that all the issues raised in these two writ petitions cannot be decided by this Court as there is a legal bar for OTS at the instance of the petitioners in view of the orders passed by the Delhi High Court in FAO (OS) No. 265 of 1994 dated 13.02.1995. As against the orders passed in CS(OS) No. 1514 of 1994 Sri Statish Kumar Agarwal and others filed an appeal in FAO (OS) No. 265 of 1994 before the Division Bench of the Delhi High Court in which Vinedale Distilleries Limited and others were respondents and it is just and proper to extract the said order:

...On the basis of the our findings on Points 1 to 3 and Point 4 and in the light of our discussion on Point 5 to 8, we are of the view that while continuing the Aggarwal Group in the management of Vinedale, various conditions must be imposed.

There is one more hurdle here for our appointing any person as a Receiver or group of persons as Joint Receivers and that is because of Section 22 of the Sick Industries companies (Special Provisions) Act, 1985. That Section requires sanction of the Board of Industrial and Financial Reconstruction (i.e. BIFR). We propose to await the sanction of the BIFR and for the purpose of enabling the BIFR to pass appropriate orders, we shall indicate what order we propose to pass after receiving its sanction.

(1) The Aggarwal group of directors of Vinedale shall continue in management and control of Vinedale, the nominee of the BIFR on the Board shall also continue till such time as the BIFR would want him to continue.

(2) The Aggarwal group of Directors will have to be Joint Receivers the Vinedale Company and shall be answerable to this Court for their actions of omissions.

(3) This Court shall be entitled to issue directions to the Receivers for implementing the schemes/orders of the BIFR/AIFR. This Court does not intend to do anything which will conflict with the powers of the BIFR/AIFR.

(4) The Sanman group can nominate a person on its behalf to be present at every meeting of Vinedale, whether it be the meeting of the board, Annul General Meeting or EOGM or any other statutory meeting. The said nominee shall not be entitled to vote but shall be entitled to receive the agenda or connected papers of the meetings and offer his suggestions, if any, he shall also be entitled to call for a look into correspondent. Account Books or Bank Accounts for the purpose of knowing the details off the management.

(5) The Receives shall manage and control the Vinedale as representatives of this Court and shall file quarterly reports in this Court in respect of all their actions or decisions and it shall be open to the Sanman group to file its objections. This report shall refer to decisions taken, the turnover, the investment/loans, the contracts, the financial affairs, taxes and duties, income and expenditure etc.

(6) The Aggarwal group shall have to furnish Bank guarantee in a sum of Rs. 2 crore within the time to be specified by this Court to meet any contingencies that might arise on Account of orders to be passed by this Court.

(7) The Sanman group which has custody of the original share certificates of Vinedale/four investment Companies (i.e. Deccan Securities, Deccan Holding, Yogeshwar and Chamunda) shall not encumber the certificates nor transfer nor part with them without sanction of this Court.

(8) It will be open to the Receivers (the Aggarwal group) to seek appropriate orders from this Court.

(9) It will be open to the Sanman Group to file objections to the Reports filed by the Receivers and seek appropriate directions.

(10) Future orders in these suits/IA shall be passed by the learned Single Judge who shall be entitled to pass orders, even in modification of the orders passed by us in this order.

A copy of this order will now be forwarded to the BIFR which may, after issue of notice to the parties, pass appropriate orders u/s 22 of the Sick Industries Companies (Especial Provisions) Act, 1985. It will be open to the BIFR to make any suggestions for the consideration of this Court, in regard to the appointing the Aggarwal group as Joint- Receivers.

We do not, however, think it necessary to await the sanction of the BIFR for directing the Aggarwal group to furnish bank guarantees in a sum of Rs. 2 crores as stated earlier and they shall do so within three months from today. Similarly, the Sanman groups are hereby restrained from today transferring or encumbering the share certificates of Vinedale and of the four investment companies, namely, Deccan Holdings, Deccan Securities, Chamunda and Yogeshwar.

Aggarwal Group will not enter into any agreement of sale or any transfer or encumber immovable properties of the Vindale or of the four investment companies without the sanction of this Court. This direction shall also be operative from today.

The interim order passed by the Bombay High Court on 14.06.1993 shall continue to be in force till we pass final orders in these applications after receipt of the orders from the BIFR but this will not amount to disturbing the management of the Vindale by the Aggarwal Group.

We also think it is necessary to have an inventory made of all the movable and

immovable properties of Vindale Distilleries and for this purpose we appoint Mr. C. Sadasiva Reddy, Advocate (Telephone No. 225110), Andhra Pradesh High Court to be the Commissioner to prepare an inventory in regard to the movable and immovable properties of Vinedale. This will be done after issuing appropriate notice to both the parties or their respective advocates on record. commissioner should send notice to Mr. S.K Aggarwal on behalf of the Aggarwal Group, Mr. Shankar Sanyal at his Bombay address and Mr. Jagdish Hinduja at his Bombay address. Initial fees of Rs. 15,000/- is fixed to be paid to the Commissioner which will be paid by Mr. S.K. Aggarwal on behalf of the company. BIFR will fix a date for hearing within three weeks from today with a view to enabling the BIFR to pass final orders within six weeks.

It will be helpful if the BIFR is able to pass its orders within six weeks from today.

The appeal and the Ias in the transferred suits are disposed of accordingly for the present. Post them on 7.4.1995 for further orders, on receipt of the orders of the BIFR.

As against the said order S.K. Agarwal filed SLP before the Supreme Court of India and the Hon"ble Supreme Court made the following order:

Issue notice.

Issue notice also in the application of stay. The Caveator (respondent No. 7) has filed counter affidavit. The High Court, during the pendency of the suit as an interim measure, while continuing the Aggarwal Group to remain in management of Vinedale, imposed 10 conditions (details at pages 143 to 145 of the paper book). The grievance of the petitioners at this stage relates to conditions No. 2, 4 and 6. We have heard learned Counsel for the parties.

While maintaining the interim order of the High Court for continuing the Aggarwal Group in the management of Vinedale, we make the following substitutions/modifications to the above mentioned conditions till further orders from this Court:

(a) The words receivers or joint receivers wherever appearing in the operative part of the order of the High Court shall be read as "Court Commissioner".

(b) That the provisions of Order 40 CPC shall apply mutates mutants insofar as the "Court Commissioners" are concerned.

(c) Condition No. 4, shall be substituted by the following:

That the High Court may nominate a person belonging to the Sanman Group to be present at every meeting of Vinedale, whether it be the meeting of the Board or Annual General Meeting or EOGM or any other statutory meeting but the said nominee shall have no right to vote at the meetings. He shall however, be entitled to receive the agenda and the relevant papers for the meetings. The nominee shall also be entitled to call for and examine the books of accounts and ledgers besides cash books for the purpose of keeping himself informed about

the financial matters of the company.

(d) Condition No. 6 shall be substituted to read as follows:

The Aggarwal Group shall furnish property security in the sum of Rs. 1.50 crores (Rupees one crore fifty lakhs) within 3(three) months to the satisfaction of the Registrar, High Court of Delhi, in addition to a bank guarantee in the sum of Rs. 50 lakhs (Rupees fifty lakhs) to be furnished within 3(three) months from the date of this order, to meet any contingencies that might arise on account of the orders to be passed by the High Court or by this Court.

Subject to the above conditions/modifications the order made by the High Court on 13.2.1995 and the conditions imposed shall continue to remain in force and shall be punctually obeyed till further orders.

We, however, clarify that the Aggarwal group shall not create any third party rights in respect of the property of Vinedale nor transfer the shares or create any encumbrance without the sanction of the High Court.

In view of the aforesaid orders, I am of the opinion that the petitioners are not entitled to question the action of the Dena Bank before this Court as they have to take appropriate orders from the Delhi High Court as they have to take appropriate orders from the Delhi High Court only in the said pending suit. It is also brought to my notice that the fifth respondent in W.P. No. 1342 of 2006 filed an application challenging the 13(2) notice issued by the bank in I.A. Nos. 8021 and 8023 of 2005 in CS(OS) No. 1514 of 1994 wherein notice was issued to the respondent and ordered that any action taken will be subject to further of the said Court by order dated 07.10.2005.

As the petitioners and the fifth respondent in W.P. No. 1342 of 2006 are very anxious to settle the bank amount, I feel it appropriate to direct both the petitioners and the fifth respondent to approach the Delhi High Court and obtain appropriate orders in the pending suit as both the parties are not entitled to enter into any settlement with the bank for OTS without obtaining prior orders of the Delhi High Court.

The writ petitions are accordingly disposed of with a liberty to the petitioners and fifth respondent to W.P. No. 1342 of 2006 to approach the Delhi High Court to obtain appropriate orders either for OTS with the Dena Bank or for questioning the action of the Dena Bank in initiating the recovery proceedings under the SARFAESI Act. So as to enable the petitioners and the fifth respondent to obtain appropriate orders before the Delhi High Court all the parties including the bank authorities are directed to maintain status quo in all aspects obtaining as on today for a period of three weeks. No costs.

13. The petitioner company submits that the present petition has been filed before this Court after disposal of the writ petitions before A.P. High Court and Dena Bank should be directed to accept under the OTS Scheme a sum of Rs. 2.5 crores and close the account. It is stated that the bank for callous reasons has

been avoiding to receive the payment under OTS Scheme for last 5 years and has issued notice under SARFAESI Act only to somehow recover from the petitioner company those amounts which are not at all payable to Dena Bank. A prayer is made in the writ petition to the effect that Dena Bank could not discriminate and could not have acted contrary to RBI directions.

14. There are several groups which are fighting for grabbing this company despite the fact that the company is not doing any business since 1995 and is lying closed. Why they are fighting? Because the company has prime land of more than 62 acres, in Hyderabad, on a small part of which is factory and another land in Pune. The total value of these properties may be between Rs. 200 to Rs. 300 crores. At the time when loan was taken from the bank, both these properties were mortgaged with the bank. The loan amount at that time may be around Rs. 1.5 or Rs. 2 crore. The value of the property also must have been almost the same, otherwise, there would have been no necessity of mortgaging these properties along with movable assets of the company for securing the loan. With the passage of time, the value of the properties has risen phenomenically and that is why each group wants to have control of the company. S.K. Aggarwal group, appointed by this Court as court commissioner itself got split into S.K. Aggarwal Group and Anil Aggarwal Group and both of them are now fighting for taking over control over the company apart from Sanman Group. During arguments, the counsel for Sanman Group and Anil Aggarwal Group stated that if they are allowed to manage the company, they are prepared to discharge the entire debts of the bank as per the demand of the bank and as per the notice given under SARFAESI Act.

15. It can be gathered from the written arguments filed that while parties want to grab the property worth about Rs. 300 crore of the company, they do not want to pay the dues of the bank as claimed by the bank (between Rs. 11 to 12 crore) and want that the bank should be satisfied with the amount of Rs. 2.5 crore which was due and payable to the bank sometime in 1997.

16. At the time when the suits were transferred to this Court under the Orders of Hon'ble Supreme Court, various groups viz Sanman Group and Aggarwal Groups were fighting for having control over the management of the company. This Court allowed Aggarwal Group of directors to continue with the management and control of the company of the petitioner along with nominee of BIFR and Board and made it clear that the Aggarwal Group of directors shall be the joint receivers of the company and shall be answerable to the Court for their action and omissions. It was also made clear that the Court shall be entitled to issue directions to the receivers for implementing the scheme and orders of BIFR and AIIFR. Sanman Group was also authorized to nominate a person on its behalf to be present at every Board meeting of the company and also at AGMs whether it was an AGM or EOG meeting etc. Receivers were also told that they shall manage and control the company as representative of the Court and shall file a quarterly report in respect of their actions and decisions before the Court. The

order passed by this Court was further amended by the Hon'ble Supreme Court and instead of joint receivers, the Aggarwal Group was to act as the Court Commissioner and provisions of Order 40 CPC were to be applicable mutates mutants to them. The Supreme Court also made it mandatory that Aggarwal Group shall not create any third party right qua property of the company in transferring shares of the group in encumbrance without the sanction of the High Court. At the time when this Court passed the order, the company was before BIFR and BIFR was looking into the question of revival of the company to invoke the scheme for its rehabilitation. This was in 1995. However, after 1995, absolute prohibition came into force. In 1997 when prohibition ended, still the company could do no business since the revival scheme sanctioned by BIFR could not be implemented for paucity of funds. It was also found by State Pollution Control Board that the company was not meeting the minimum requirement of discharging untreated affluent into the Pro Jee Tank and was causing or likely to cause water pollution. Vide order dated 11th September 2001, a closure order was passed by A.P. Pollution Control Board of this Company. The company did not operate even for a single day right from 1995 onwards. The closure order still seems to be in operation.

17. It is apparent from the correspondence of the petitioner with the Bank that the Bank had offered to settle its dues under RBI OTS Scheme as back as in August 2000, categorically telling the petitioner that the Scheme was open up to 31.3.2001. The petitioner did not send its Director to the Bank. The letters were written to the Bank without calling Board Meeting and without a Board Resolution. It is the case of the petitioner itself that no permission of BIFR was sought before the offer was made by the petitioner in response of the letter. The bank received letters from S.K. Aggarwal offering to accept OTS but simultaneously the bank also received the letter from other Directors objecting to the right of Mr. S.K. Aggarwal to make any offer of payment out of the common funds to the bank. The other directors also wrote to the bank that they were all members of the board and they were joint commissioners and no Board Resolution has been passed. The bank, Therefore, was justified in asking S.K. Aggarwal, who was writing letters to the bank to produce board resolution and to make offer along with the board resolution with the consent of the board. This offer was to be made before 31st March 2001 and subsequently within extended time before 30th June 2001. Along with the offer, the petitioner was supposed to deposit the down payment either of full amount or a minimum of 25% of the whole amount and was to give scheme for payment of the rest of the amount. It was also known to the petitioner that consent of BIFR was necessary since the entire company was before BIFR and the amount could not have been paid out of the assets of the company to the bank without concurrence of BIFR. Any offer made without a concurrence of BIFR to the bank was, Therefore, not a valid offer. Thus, the offer made by S.K. Aggarwal on behalf of the company in 2001 was no offer in the eyes of law. The to scheme again came to be revived by Reserve Bank of India in 2003 and the bank again wrote to the petitioner for

availing the scheme. Mr. S.K. Aggarwal of S.K. Aggarwal Group wrote to the bank about his authority to deal with the bank but ultimately vide letter dated 7th May 2003, S.K. Aggarwal Group told the bank that the concurrence of BIFR was necessary and the final minutes of BIFR and its further directions were to be awaited. Vide letter dated 8th May 2003 bank again wrote to the company that the company should comply with the directives/orders of BIFR and send settlement proposal for approval of the bank in terms of the Scheme. The minutes of meeting of BIFR were forwarded to the bank on 9th June 2003. BIFR in its minutes directed the bank to accept any OTS from company only with prior approval of the authority (BIFR). It is thus clear that even if the proposal was sent by Mr. S.K. Aggarwal to the bank, this proposal could be rejected by BIFR if it was found against the interest of company by BIFR. Apart from this there were varying groups who were representing to the bank that Mr. S.K. Aggarwal was acting illegally and contrary to the wishes of the board and these groups were writing letters to the bank. There is no wonder that the bank did not want to involve itself in another set of litigation with one or the other group of the company facing favoritism allegations. In view of the fact that different directors and varying groups were writing to the bank about the authority of Mr. S.K. Aggarwal, Mr. S.K. Aggarwal could have approached this Court seeking directions of the Court, authorizing S.K. Aggarwal to proceed further with the proposal of OTS but S.K. Aggarwal did not approach the Court despite being appointed by the Court as Court Commissioner and that is the reason that A.P. High Court in its order mentioned that the petitioners were not entitled to question the bank before A.P. High Court as they had not taken appropriate orders from Delhi High Court in the pending suit. In the writ petition filed before the A.P. High Court being W.P. No. 27028 of 2005, A.P. High Court had directed the petitioner to deposit Rs. 70 lac within four weeks. This amount was not deposited by the petitioner, rather the petitioner sent a letter dated 19th January 2006, one day after the expiry of period of four weeks that the bank may encash the enclosed cheque of Rs. 70 lac only if it was agreeable for OTS settlement as per RBI Guidelines. The letter was contrary to the spirit of the order of the A.P. High Court since the A.P. High Court has not put any rider while directing the petitioner to deposit a sum of Rs. 70 lac.

18. I also consider that the offer made by Mr. S.K. Aggarwal, acting as Chairman/ Managing Director, was not in conformity with the RBI's guidelines issued prior to 2003 or RBI guidelines issued on 29th January 2003 or thereafter. Under these guidelines, the bank was to identify the cases of willful defaulters/fraud and misfeasance. The RBI's guidelines were meant for NPAs recovery of which have become doubtful or lost as on 31st March 2000 with outstanding balance of Rs. 10 crore or duly on cut off date i.e. 31st March 2000. The last date of receiving of application from the borrower was to be 30th April 2003. Admittedly, in this case, the necessary board resolution along with the proposed scheme for the debts as on 31st March 2000 was not forwarded by the petitioner to the bank. The petitioner sent proposal to the bank for payment of Rs. 1.99 crore qua debts

calculated by the bank as on 1997 where the interest was included only up to July 1995. The Bank never told the petitioner that this was the debt as on 31st March 2000 Rs. 1.99 crore was the debt acknowledged by the petitioner as on 31st March 1997, about which prior proposal was sent by the petitioner under the Scheme which was valid up to 30th June 2001. The proposal under OTS Scheme dated 29.01.2003 was to be sent by 30th April 2001 whereas the petitioner even by May 2003 and June 2003 had not obtained the consent of BIFR for such proposal. The consent of petitioner was communicated on 15th May 2003 wherein a condition was set out that the proposal sent would be subject to directives/orders of BIFR. Even this letter was sent much after the closure date of proposal. The board resolution was sent vide letter dated 10th July 2003 much after the date of closure of the receipt of application. The bank was not obliged to consider any proposal which was not in accordance with the Scheme of RBI. The petitioner contention is that another RBI scheme for one time settlement came into action on 3rd September 2005 and the petitioner was entitled for coverage under this Scheme. This scheme was in respect of companies who have become defaulters or at loss on 31st March 2004 A perusal of RBI's guidelines makes it clear that the guidelines were not applicable in those cases where there was willful defaults and guidelines were applicable only in those cases where outstanding recovery was doubtful. In the instant case, the company is having financial assets worth Rs. 300 crore. The different directors of the company are fighting amongst each other to have control over these assets. The Sanman Group during oral arguments offered to pay the entire debt of the bank as on date if it is given control of the company and Anil Aggarwal Group, which is the broken away group of the S.K. Aggarwal also, during oral arguments, offered to pay the bank's entire payment and have the control of the company. However, in written arguments, they supported the plea that the bank should not recover more than what is recoverable under OTS Scheme. It is clear that there is no lack of capacity with the company in paying the debt of the bank. The only thing is that there is lack of intention to pay the debt of the bank and the intention is to have maximum out of the company's properties and to pay minimum to the bank. It is true that RBI guidelines are to be followed by all the banks universally, without discrimination and without distinction but the RBI's guidelines do not lay down that the banks have to bring under this scheme even those debts where the bank is not doubtful in recovery of the debts and the security available with the bank is more than sufficient to recover the debts. I consider wherever the bank feels that the security available with the bank securing its debts is sufficient to recover the debts and the bank could recover the debts following legal course available to it under SARFAESI Act and the bank should not give up its debt, the bank is justified in rejecting such OTS offers. The value of money which the bank lent years ago is not the same. The bank cannot be compelled to recover the amount which it had lent with no interest or frozen interest despite the fact that the company has sufficient assets. The assets of the company were comparable to the amount lent years ago. If those very assets are sufficient to recover bank's contractual amount, there is no reason why the Bank

should be compelled to accept Lesser amount. In the present case also, the security which was given to the bank at the time of giving loan was almost equal to the loan given by the bank. That shows that the value of the money of the Bank was worth purchasing 62 acres of land. Now if the bank is asked to accept the same money as it lent with interest only up to 1995 or 1997 and give up interest of next 14 years, the Court would be passing an order against equities. The assets created by a party after taking loan from the bank if rise in Geometrical Progression, in the same proportion the value of the money of the bank also falls. The party who took the loan from the bank and invested the same in a property becomes richer at the costs of the bank, if bank is deprived of even the real value of the money in the form of interest. This would be against equities and against law. The intention of the RBI Scheme is to recover the money from those companies where the companies which are not having sufficient assets and the debts become doubtful or there is danger of total loss and it is felt that the legal battle between the bank and the company may take years together and at the end recovery of money of the bank maybe doubtful as company was having no assets. With the coming of SARFAESI Act in force and the bank having sound security, I consider that if the bank can recover its loan along with interest, the bank should not be prevented to recover the real value of the money which was lent and should not be compelled to accept much lesser amount. In case where the company is poor and has so many debts that it would not be able to discharge the bank's liability, Bank must go for OTS but where the bank is sure to recover its debts, the bank cannot be compelled to accept the proposal of one-time settlement even it is made by the petitioner qua NPAs.

19. A company may be having a bad financial situation today and the assets of the bank may become non performing due to bad financial situation but the same company, due to rise in price or various other factors may become a company worth millions and the assets of the company can convert the non performing assets to performing assets and the bank may be in a position to enforce the loan agreement which it entered and recover debt along with interest. The effort of the Court should be that the agreement entered into between parties must be honoured. The effort of the Court should not be that those who do not pay the debt in time or use judicial system as a tool for dragging the cases, should be benefited.

20. In view of my foregoing discussion, I do not find any force in this writ petition. The same is hereby dismissed. No costs.