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**(2014) 02 MP CK 0063**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 5812 of 2013**

Virendra Builders and Developers Pvt. Ltd. and Another

APPELLANT

Vs

Industrial Infrastructure Development Corp. and Others

RESPONDENT

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**Date of Decision : 20-02-2014**

**Acts Referred:**

State Financial Corporations Act, 1951 — Section 11 29 29(5)

**Citation : (2014) 1 JLJ 421**

**Hon'ble Judges : S.K. Gangele, J;D.K. Paliwal, J**

**Bench : Division Bench**

**Advocate : D.K. Agrawal, for the Appellant; Anil Sharma, Advocate for Respondents 1 to 3 and Shri Kunal Suryavanshi, Advocate, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S.K. Gangele, J.—Petitioners have filed this petition against the orders Annexure P/1 and P/2. They have also prayed for a relief that respondents 1 to 3 be directed to transfer lease hold rights in favour of the petitioners after payment of 20% of the premium amount. M/s. Anujag Steel Udyog Pvt. Ltd. was granted lease of a land admeasuring 20966.78 sq. meter, i.e. 2.0966 hectares situated at Industrial Area Malanpur, District Bhind by MP Audyogik Kendra Vikas Nigam (G) Ltd. for the purposes of establishment of a steel casting unit with certain conditions. The lease was for a period of 99 years. Respondent No. 4 - MP Financial Corporation advanced a loan of Rs. 60 lacs in favour of M/s. Anujag Steel Udyog Pvt. Ltd. and thereafter a mortgage deed was executed by M/s. Anujag Steel Udyog Pvt. Ltd. in favour of the respondent No. 4 on 30/4/2009, in consequences thereof lease hold rights and plant and machinery transferred were in favour of the respondent No. 4 Financial Corporation. The Unit did not repay the loan and it was a defaulter. Consequently, respondent No. 4 had taken physical possession of the unit in the year 1999 including land and building. It published an advertisement on 5/10/2012 in regard to auction and sale of the mortgaged property of the unit. Copy of the publication has been filed as

Annexure P/3 alongwith petition. Following description was mentioned in the advertisement:

All fixed assets of the industrial units as mentioned hereunder on "AS IS WHERE IS AND WHATEVER IS" basis are available for sale in exercise of rights u/s. 29 of the SFC's Act, 1951 on Tender Cum Auction basis.

2. The petitioners participated in the auction proceedings and submitted their bid of Rs. 24 lacs. It was approved by the respondent No. 4 Financial Corporation in its meeting held on 26/10/2012. The petitioners were communicated the decision on 5/11/2012 vide communication Annexure P/4. The sale was confirmed on the following terms and conditions:

1. The possession of the fixed assets of the unit sold shall be given to the purchaser company of his authorised nominee only after receipt of full sale price.

2. The purchaser company shall enter into an agreement with the corporation at his own expenses and take possession of the assets sold immediately but within 7 days after payment as above.

3. In case the purchaser company fails to make the payment of full sale price and/or execute the agreement with the corporation and/or take the possession of the unit within the stipulated time, the deal shall stand cancelled immediately and the amount already deposited with further payment if any received by the corporation forfeited without any notice and/or information to the purchaser company and corporation shall be free to sale the same for recovery of balance outstanding loan in the loan account.

4. The Statutory liabilities towards PF ESI and Commercial Tax/VAT only shall be dealt with by the corporation in accordance with the prevailing laws.

5. As regards the non-statutory and other liabilities The purchaser shall have to deal with all such matters at the purchases company level and cost. The Corporation shall not be responsible or liable financially or otherwise in any manner in all such matters and that no claim shall be accepted by the corporation in these regards.

6. The purchaser company will have to get the property including lease of the land as well as licences/permits, clearance if any and the utility services transferred at its own level and cost from the respective authorities concerned.

7. The purchaser company shall bear the requisite stamp duty and registration charges for getting the sale deed/transfer deed executed and registered in his/their favour as per the prevailing deed/transfer deed executed and registered in his/their favour immediately after payment of full sale price.

8. The purchaser shall at his own cost get the conveyance deed executed with proper stamp duty chargeable as per the laws.

9. The land being leasehold the purchaser shall get the lease transferred in their

favour from IIDC, Gwalior at their own costs and expenses immediately.

10. The purchaser company shall use the land for the industrial purpose only as per the terms of lease.

The purchaser company should in his/her own interest pay the entire sale price to the corporation at the earliest possible obtain possession of the assets sold and get the sale deed executed and registered in favour of the company for the purpose of transfer of title in this regard. It is clarified that so long as the title is not passed in favour of the successful purchaser company, the owner (Mortgagor) possesses the right of redemption of the property. In that event, the deal of sale might be cancelled followed by refund of the sale price (include EMD) deposited.

It is further clarified that in the event of cancellation of deed of sale the purchaser company shall not be entitled to any interest on the price deposited and/or compensation etc.

3. The petitioners deposited the entire amount of Rs. 24 lacs and submitted an application for handing over possession of the Unit to them. The Financial Corporation respondent No. 4 wrote a letter to the Collector for grant of relaxation in stamp duty for execution of the sale deed in favour of the petitioners vide letter dated 3/12/2012. An agreement was also executed between the petitioners and respondent No. 4 Financial Corporation on the following terms and conditions:

The purchaser has deposited the entire sale price, i.e. Manner:

4. In accordance with the agreement, respondents 1 to 3 were liable to transfer the lease hold rights of the industrial plot in favour of the petitioners on payment of 20% of the premium amount at Rs. 7,74,700/-. However, vide impugned order Annexure P/2, respondent No. 1 informed the petitioners that permission had been granted to transfer the lease of an area admeasuring 19367.50 sq. meter on the terms and conditions that the petitioners had to pay an amount of Rs. 1,62,34,295/- under the following headings:

5. The petitioners are aggrieved by the aforesaid condition and direction of respondent No. 1 to the petitioners to deposit an amount of Rs. 1,62,34,295/-.

6. Contention of the petitioners in this petition is that they had purchased the Unit in an open auction from M.P. Financial Corporation - respondent No. 4, and in accordance with the terms and conditions of the transfer of Unit which were applicable between the petitioners and respondent No. 4 Financial Corporation the petitioners are liable to pay only 20% of the premium amount, i.e. Rs. 7,74,700/-.

7. Respondents No. 1 to 3 in their return pleaded that earlier lease was granted in favour of M/s. Anujag Steel Udyog Pvt. Ltd. on certain terms and conditions. Aforesaid Unit did not comply the terms and conditions. Thereafter, lease was

cancelled. It is further pleaded that petitioners had to pay the amount which was due against the Unit, i.e. M/s. Anujag Steel Udyog Pvt. Ltd. and also under certain heads mentioned in the letter. Respondents 1 to 3 further pleaded that they can transfer or lease out the land in accordance with the provisions of Madhya Pradesh State Industrial Land and Industrial Building Management Rules, 2008, hence, the orders Annexures P/1 and P/2 are in accordance with law.

8. Respondent No. 4 Financial Corporation in its reply submitted that earlier the Unit M/s. Anujag Steel Udyog Pvt. Ltd. had taken a loan of Rs. 60 lacs from it and had mortgaged its plant, machinery and land in favour of respondent No. 4. In accordance with the provisions of Section 29 of the State Financial Corporations Act, 1951 (for short, the "Act") the Financial Corporation became deemed owner of the property of the defaulter industrial unit, i.e. M/s. Anujag Steel Udyog Pvt. Ltd. and, thereafter, it had sold the Unit in an open auction. A High Level Committee was constituted in regard to transfer of lands of the industrial units consisting officers of Madhya Pradesh Industrial Infrastructure Development Corporation, Madhya Pradesh State Industrial Development Corporation and MP Financial Corporation. Meetings were held on 15/7/1998 and thereafter on 6/10/2004 and certain decisions had been taken in regard to transfer of lease hold rights of concerned unit after sale, and the lease is to be transferred in favour of the purchaser on depositing 20% of the premium amount. Copy of the minutes of the meeting have been filed as Annexures R/4-1 and R/4-2 alongwith the return of respondent No. 4.

9. Alongwith the reply of respondents 1 to 3, copy of the letter dated 7/4/1999 written by Deputy General Manager of MP Financial Corporation to the General Manager, Audyogik Kendra Vikas Nigam Ltd. has been filed. By the aforesaid letter, the officer informed respondent No. 1 that the Corporation had taken possession of the Unit in exercise of its rights under sections 29 of the Act, and respondent No. 1 informed respondent No. 4 that an amount of Rs. 3,92,824/- was due against the Unit - M/s. Anujag Steel Udyog Pvt. Ltd. Respondent No. 4 also sought information in regard to the amount due against the erstwhile Unit - M/s. Anujag Steel Udyog Pvt. Ltd. vide letter dated 5/1/2011, and the Regional Manager of the MP Financial Corporation vide letter dated 6/1/2011 (filed as Annexure R/15 with the return of respondents 1 to 3) informed respondent No. 4 that an amount of Rs. 3,48,612/- was due against the Unit M/s. Anujag Steel Udyog Pvt. Ltd.

10. Learned counsel for the petitioners has submitted that the orders issued by respondent No. 1 in regard to payment of the amount are arbitrary and illegal. It is further submitted that the petitioners are not liable to pay the amount which was due against the earlier Unit, i.e. M/s. Anujag Steel Udyog Pvt. Ltd., nor the petitioners are liable to pay other charges as mentioned in the letter at serial number 2 to 6, and prime location charges, because the petitioners have got rights of the Unit in pursuance to the auction proceedings held by MP Financial Corporation. In support of the contentions, learned counsel for the petitioners

has relied upon the following judgments of Hon"ble the Supreme Court in M.P. Housing Board Vs. Shiv Shankar Mandil and Others, , State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, , AI Champdany Industries Limited Vs. The Official Liquidator and Another, , Rana Girders Ltd. Vs. Union of India (UOI) and Others, and a Division Bench decision of this Court in Industrial Infrastructure Development Corporation, Gwalior v. Jai Maa Packers (WA 342/2011 decided on 18/10/2011).

11. Contrary to this, respondent No. 1 has contended that respondent No. 4 Financial Corporation had no right to auction the lease hold rights. It is the duty of the petitioners to pay the amount in favour of respondent No. 1, if the petitioners want transfer of lease in their favour independently.

12. Learned counsel appearing on behalf of respondent No. 4 - Financial Corporation supported the petitioners.

13. Question for consideration before this Court is whether the petitioners be directed to pay the amount independently as mentioned in the letter Annexure P/2 dated 30/3/2013 by which respondent No. 1 had agreed to transfer the lease in favour of the petitioners.

14. It is an admitted fact that the earlier Unit - M/s. Anujag Steel Udyog Pvt. Ltd. was granted lease of the land. Respondent No. 4 advanced loan in favour of the earlier Unit, in consequence thereof, the proprietors executed a mortgaged deed in favour of respondent No. 4. Section 29 of the Act prescribes rights of the Financial Corporation in case of default. It reads thus:

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 thereof or 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 or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise 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

incidental 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.

15. Section 29(5) specifically prescribes that the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern where any action has been taken against the industrial unit. It means that rights which were in favour of the earlier Unit, i.e. M/s. Anujag Steel Udyog Pvt. Ltd. were transferred in favour of the Financial Corporation. The lease hold rights which were granted to the erstwhile Unit M/s. Anujag Steel Udyog Pvt. Ltd. were transferred by implication of section 29 of the Act in favour of respondent No. 4. Thereafter, respondent No. 4 auctioned the unit including plant, machinery and land in favour of the petitioners. The auction and transfer of rights by respondent No. 4 in favour of the petitioners could not be held to be illegal or without any power. When, the Financial Corporation had legal right being deemed owner of the Unit, it had right to transfer the same right in view of the provisions of the Act.

16. Hon"ble the Supreme Court in Rana Girders Ltd. (supra) has considered liability of the purchaser who purchased the property in an auction sale held as per section 29 of the State Financial Corporations Act, 1951 in regard to discharge of liability of central excise which was due against the earlier owner and held as under in para 18 of the judgment:

Insofar as dues of the Government in the form of tax or excise, etc. are concerned, the Court in SICOM case was of the opinion that rights of the Crown to recover the dues would prevail over the right of the subject. The Crown debt means the debts due to the State or the King. Such creditors, however, must be held to mean unsecured creditors. The principle of Crown debt pertains to the common law principle. When Parliament or the State Legislature makes an enactment, the same would prevail over the common law and thus the common law principles which existed on the date of coming into force of the Constitution of India, must yield to a statutory provision. A debt, which is secured or which by reason of the provisions of a statute becomes the first charge over the property must be held to prevail over the Crown debt which is an unsecured one. On this reasoning, the debt payable to the secured creditor like the Financial Corporation was prioritised vis-?-vis the Central excise dues.

17. Hon"ble the Supreme Court further held in para 21 as under as to liability of

a buyer in regard to discharge of liability of the earlier owner:

A harmonious reading of the judgments in Macsan and SICOM would tend us to conclude that it is only in those cases where the buyer had purchased the entire unit, i.e. entire business itself, that he would be responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the statute, claiming "first charge for the purchaser". As far as Central Excise Act is concerned, there was no such specific provision as noticed in SICOM as well. The proviso to section 11 is now added by way of amendment in the Act only w.e.f. 10/9/2004. Therefore, we are eschewing our discussion regarding this proviso as that is not applicable insofar as present case is concerned. Accordingly, we thus, hold that insofar as legal position is concerned, UPFC being a secured creditor had priority over the excise dues. We further hold that since the appellant had not purchased the entire unit as a business, as per the statutory framework, he was not liable for discharging the dues of the Excise Department.

Same principles have been enunciated by Hon''ble the Supreme Court in Shreyas Papers Pvt. Ltd. (supra).

18. From the judgments of the Hon''ble the Supreme Court quoted above, the principle of law is that the debt payable to the secured creditor like Financial Corporation has priority over the debts due to Crown or State. Further principle of law is that if the purchaser purchased the entire unit not ongoing as business under statutory frame work, is not liable to discharge the dues of earlier owner.

19. In the present case, the Unit M/s. Anujag Steel Udyog Pvt. Ltd. was a sick unit. It was closed. It had remained closed for pretty long time. The petitioners purchased the land, building and premises in an auction sale. They have to start their business. They have not purchased the entire unit as a business. They had no knowledge about the dues, hence, they are not liable to discharge the dues of respondents 1 to 3, which were due against the erstwhile Unit, i.e. M/s. Anujag Steel Udyog Pvt. Ltd. Respondents themselves in the meetings held on 15/7/1998 and 6/10/2004 agreed that in case of transfer and auction of the property including lease hold rights by MP Financial Corporation, the purchaser would be liable to pay only 20% of the premium amount. In the present case, if the lease of the land is transferred in favour of the purchasers, the decision was taken for the purposes of rehabilitation of the sick unit, looking to the industrial policy of the Government for the purposes of securing loan of MP Financial Corporation, and respondent No. 1 is bound by the decision.

20. Division Bench of this Court in Industrial Infrastructure Development Corporation (supra) in similar circumstances dismissed the appeal filed by respondent No. 1 in another case where the Writ Court allowed the writ petition and held as under:

7. Respondent No. 1 was granted lease of the plot in an open auction. In

accordance with the terms and conditions of the auction respondent No. 1 had deposited the money with respondent No. 2. Possession of the plot had also been handed over to respondent No. 1. An agreement was entered between the officers of the appellant and respondent No. 4 and M.P. Financial Corporation on 15/7/1998. In accordance with the terms and conditions of the aforesaid agreement, which was entered into between the aforesaid persons including representatives of the appellant in the meeting dated 15/7/1998, respondent No. 1 complied the terms and conditions of the auction. Respondent No. 2 MP Financial Corporation also paid an amount of Rs. 7,10,927/- to the present appellant by Cheque No. 009731 dated 09/08/2011 of Union Bank of India which was accepted by the appellant vide letter dated 24th August, 2011.

8. The contention of the present appellant is that in accordance with statutory provisions of the Rules of 1974 and 2008, the appellant is entitled to recover all the dues which were due against the original lessee of the land, M/s. A.P. Foams Pvt. Ltd. from respondent No. 1 could not be accepted because respondent No. 1 participated in the open auction and in accordance with the terms and conditions of the auction it had deposited the amount. The auction was held in pursuance to the agreement and settlement entered into between appellant and respondents 2 and 4. The minutes of the meeting dated 15/07/1998 to this effect has been filed before the Writ Court. In this view of the matter, the present appellant cannot take a different view that the decision taken in the meeting is not binding on the appellant. Apart from this, the appellant also accepted the amount from respondent No. 2.

21. In view of the above, this petition is allowed. Impugned orders Annexure P/1 and P/2 are hereby quashed. It is directed that respondents 1 and 2 shall transfer lease hold rights of the land area 19367.50 sq. meter in favour of the petitioners after receiving 20% of the premium amount of Rs. 7,74,700/- within a period of one month from the date of receipt of copy of this order. No order as to costs.