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A.P. STATE FINANCIAL CORPORATION ETC.

v.

VAJRA CHEMICALS AND ORS. ETC.

JULY 15, 1997

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[S.C. AGRAWAL AND M. JAGANNADHA RAO, JJ.]

State Financial Corporations Act—S-29—Default of payments—Recall-cum-sale notice—Requirement of second notice before sale fulfilled —Unit sold to the highest bidder-respondent being aware of the sale and having accepted it cannot question it.

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Constitution of India, 1950—Art 136—Special leave Jurisdiction—Interference with the findings of fact by the lower Court—Normally not interfered with—However—Supreme Court can and will interfere in cases where without even a pleading, factual issue is raised at the appeal stage for the first time, and where the findings of the Court are contrary to the contents of the affidavits filed in the case and are without reference to the crucial document relevant to the case.

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Appellant brought to sale the respondent's company and sold it to the highest bidder after the Respondent defaulted on payments of the loan amount owed to the Appellant despite being given several opportunities. Writ petitions were filed challenging the sale which were dismissed by Single Judge of the High Court *inter alia*, holding that the respondent was well aware of the sale, that his offer of payment during the pendency of the Writ could not be accepted and that he was adopting delaying tactics. The Division Bench, reversed the decision, *inter alia* for the following reasons viz., though the Corporation gave notice in the begining, 'no independent' notice of sale was given, the fact of an offer of concession made to the buyer was not communicated to the respondent, that the conditions on the file were not adhered to, that the decision to grant six months time to the respondent was not conveyed to them and therefore, the Corporation acted unreasonably. The High Court directed refund of the sale proceeds with interest to the bidder, restoring possession to the respondent who was directed to pay the Corporation the entire dues with interest within six months. Hence, these appeals.

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Allowing the Appeals, this Court A

HELD : 1. The Division Bench of the High Court while allowing the Writ Appeal overlooked the fact that there was no pleading in the writ petition regarding the representation dated 27.12.1993 or the non communication of any decision thereon. No rejoinder was filed by the 1st respondent to contradict the specific averments made in the Corporation's affidavit as to what happened on 27.12.1993 in the Chambers of the Executive Director of the Corporation. There is internal evidence in the endorsement of the Executive Director of the Corporation which shows that the matter was discussed and an arrangement was arrived at in the presence of V, and was reduced to writing and communicated to him and consequential directions were issued to the office of the Corporation to receive Rs.30,000 as out right payment and release the unit and to receive Rs. 50,000 by March 1994, receive post dated cheques and it was also agreed that the first respondent was to make an one time settlement (OTS). The Division Bench therefore, erred in entertaining and accepting a plea put forward by the 1st respondent-company for the first time in the appeal for which there was no foundation in the pleading or affidavits of the 1st respondent Company. [712-G-H; 713-A-C] B C D

2. It is true that this Court does not normally interfere with findings of fact arrived at by the High Court. But where there is no pleading and where a factual issue is permitted to be raised for the first time in a Writ Appeal and findings are given contrary to the affidavits filed by the opposite party and where no reference is made to the contents of the only crucial document in the case, (the endorsement dated 27.12.93 on the representation), this Court can and will interfere. [713-C-D] E F

3. The conduct of the 1st respondent which, in fact, estops it from approaching the Court. The certificate issued by the Bank, after the sale was made, shows that the 1st respondent Company accepted the factum of the sale of the unit. In the additional affidavit dated 10.9.1995 filed before the Division Bench it was stated that the certificate dated 3.7.1995 issued by the Bank showed that the first respondent was aware of the sale finally made by the Corporation and had accepted the sale. From the above certificate of the Bank it is clear that the 1st respondent Company wanted that the balance amount remaining after adjusting the dues to the Cor- G H

A **poration, should go in discharge of the Company's dues to the Bank. The 1st respondent Company was not able to explain what was the occasion for the Company to ask the Bank to move the Corporation. The sale of the unit was on 13.3.1995, the same was approved by the Board of the Corporation on 13.5.1995 and the purchaser had deposited the entire sale**
B **consideration on 21.6.1995. It is not in dispute that the Corporation has paid the Bank the amount covered by the certificate out of the balance of the sale proceeds that remained with the Corporation. This conduct of the company precludes it from questioning the sale. [713-E-F; 714-A-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4701 of
C 1997 Etc.

From the Judgment and Order dated 8.5.96 of the Andhra Pradesh High Court in W.A. No. 946 of 1995.

G.L. Sanghi and Y. Prabhakara Rao for the Appellant.
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R.K. Jain, V.T.M. Prasad Ms. Lalita Pillai and Krishna Kumar for the Appellant in C.A. No. 4702/97.

P.A. Chowdhary, L. Nageshwar Rao and S. Uday Kumar Sagar for
E the Respondents.

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. Leave granted in both the Special Leave Petitions.

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1. These two appeals have been preferred against the judgment of the Andhra Pradesh High Court in W.A. No. 946 of 1995 dated 8.5.1996. Civil Appeal arising out of S.L.P. (C) No. 12831/1996 has been preferred by the Andhra Pradesh State Financial Corporation (hereinafter called the
G Corporation). In C.A. No. arising out of S.L.P. (C) No. 15260/1996, appellant is M/s. Vasant Organics (P) Ltd.

2. The Corporation sanctioned a term loan of Rs. 10,09,080 to the writ petitioner 1st respondent (M/s. Vajra Chemicals (P) Ltd.) on 28.11.1979 and the said amount remained unpaid by the due date -
H 13.2.1987. Upon a representation made by the 1st respondent on 3.3.1990,

the Corporation rescheduled the loan repayment, waived an amount of Rs. 4,48,803.23 and the due date was extended. There was default in payment of the instalments. The 1st respondent made a representation on 17.8.1992 and paid Rs. 25,000 and undertook to pay Rs. 25,000 in the 1st week of September, 1992 and balance of Rs. 1.50 lakhs before 31.12.1992 and other instalments in time. The Corporation sent telegram dated 2.3.1992 and letter dated 4.7.1992 requesting the 1st respondent to make payment. Recall-cum-sale notice was issued on 28.7.1992 for Rs. 9,87,250.79. As the 1st respondent did not avail of the opportunity, the Corporation exercised power under section 29 of the State Financial Corporations Act (hereinafter called the Act) and seized the unit belonging to the 1st respondent on 17.12.1992 and issued an advertisement on 22.2.1993 for sale of the unit. The 1st respondent paid an amount of Rs. 85,000 on 29.6.1993, gave one cheque dated 30.6.1993 for Rs. 20,000 and also gave two post dated cheques dated 21.7.1993 and 27.7.1993 for Rs. 30,000 each and requested the Corporation to release the unit and promised to pay the instalments in time. The Corporation lifted the seizure on 29.6.1993 and handed over the unit to the 1st respondent. However, the post dated cheques, when presented, were dishonoured by the Bank and no offer was made by the 1st respondent to make good the amounts covered by the cheques. In fact, earlier cheques dated 17.9.1984 for Rs. 25,000; 11.3.1985 for Rs. 25,000; 25.3.1985 for Rs. 25,000; 30.3.1985 for Rs. 25,000; 17.7.1985 for Rs. 50,000; 30.12.1989 for Rs. 15,000; 31.3.1990 for Rs. one lakh and 26.11.1992 for Rs. 1.99 lakhs were dishonoured. The Corporation, in exercise of its powers under section 29 of the Act issued a Recall-cum-sale notice dated 9.9.1993 for Rs. 10,70,45695 for payment before 20.9.1993 and on default, seized the unit on 11.11.1993.

3. The Ist respondent's Managing Director, made a fresh representation in person on 27.12.1993 for lifting the seizure and for making a one time settlement. According to the Corporation, a meeting of the officers of the Corporation headed by its executive Director and of the Managing Director of the Ist respondent (Mr. Vijaya Kumar) and Branch Manager of the Corporation (R.R. Dist) took place on 27.12.1993 and the Corporation decided to give one more opportunity. The Managing Director of the Corporation made an endorsement on the file agreeing to lift the seizure on condition of the 1st respondent making a payment of Rs. 30,000 by a demand draft and giving a post-dated cheque for Rs. 50,000 and the

A 1st respondent was to make a one time settlement in 6 months. It is the further case of the Corporation that this arrangement was entered into in the presence of Shri Vijaya Kumar (Managing Director of the Company) and that in spite of the above concessions, no payment was made by the 1st respondent. Thereafter, the Corporation issued an advertisement on B 9.3.1994 in Endu and Deccan Chronicle newspaper for sale of the unit. Only three offers were received, the highest being Rs. 13.50 lakhs. As the offers were low, they were rejected by the Corporation. A second advertisement dated 9.6.94 in the two newspapers produced an offer of Rs.10.50 as the highest offer which was again not accepted. A third advertisement was issued in the same two newspapers on 8.8.1994 and the highest offer C received this time was Rs. 23.50 given by one Mr. M.S. Shyam, who was none other than the brother-in-law of Shri Vijay Kumar, Managing Director of the 1st respondent Company. As the offer of Rs. 23.50 was treated as low, the Corporation rejected the same. A further advertisement was issued on 2.3.1995 in the same two newspapers. Five offers were received, D one for Rs. 24 lakhs by Mr. Shyam above mentioned. The Corporation negotiated with the bidders and one of them M/s. Vasant Organics (appellant in CA No. arising out of S.L.P. (C) No. 15260/1998) increase its offer for Rs. 26 lakhs during meetings on 9.3.1995, 11.3.1995 and 13.3.1995. At that stage, Mr. M.S. Shyam, withdrew from further negotiation and took E back his deposit. So did another bidder Mr. Narasimha. Ultimately only M/s. Vasant Organics remained in the field with the highest offer at Rs. 26 lakhs and there was further negotiations with that party and the offer was increased to Rs. 20 lakhs finally.

F 4. On 13.5.1995, the Board of the Corporation approved the sale to M/s. Vasant Organism on condition of making 100% down payment of sale consideration out of which 35% was to go towards the loan straightaway and the balance consideration was to be treated as term-loan repayable within 3 years. Instead of availing the instalments, the said purchaser paid G away the full consideration on 21.6.1993 and took possession of the unit.

5. It is also the case of the Corporation that it was on request of the debtor (the 1st respondent), that out of the excess amount (after adjusting the loan of the Corporation) remaining with the Corporation, an amount H of Rs.1,58,047 due by the 1st respondent to the Vysya Bank, was paid by

the Corporation to the said Bank. A

6. At that stage, litigation in Courts started. Initially, a writ petition bearing No. 16282/1995 was filed by Mr. M.S. Shyam (brother-in-law of the Managing Director of the 1st respondent) in the High Court of Andhra Pradesh questioning the negotiations and the finalisation of the sale. The writ petition was dismissed on 17.8.1995 on various grounds including the ground that on 11.3.1995, the said Mr. Shyam had withdrawn from the competition and had taken back his deposit. B

7. On the same day, i.e. 17.8.1995, writ petition No. 18585/1995 filed by the 1st respondent (M/s. Vajra Chemicals) came up for "admission" before the same learned Judge who dismissed the writ petition No. 18283/95 filed by his brother-in-law Mr. Shyam. C

8. This writ petition filed by the Ist respondent was dismissed by the learned single Judge holding that the 1st respondent, had knowledge of the sale because it was at the instance of the Ist respondent that the Vysya Bank claimed its dues out of the balance, lying with the Corporation and therefore the Ist respondent cannot be allowed to plead that the factum of the sale was not known to it till 19.7.1995. The learned Judge also held that the offer of the Ist respondent at the stage of the writ petition to pay up the amount due by it could not be accepted. The learned judge also observed that the writ petition was filed only to delay the matters. D E

9. Against the said judgment dated 17.8.1995 in writ petition No. 18585/1995 W.A. No. 946/1995 was preferred by the 1st respondent. A Division Bench of the Andhra Pradesh High Court allowed the appeal by judgment dated 8.5.1996 and the writ petition was allowed subject to the debtor-company paying the entire dues with interest within 6 weeks and it was further directed that in case this was done, the Corporation would refund the amount paid by it with interest at the same rate to Vasant Organics and the Corporation shall then out back the 1st respondent in possession of the seized properties. F G

10. The reasons given by the Division Bench for allowing the appeal of the 1st respondent-Company can be summarised as follows : H

A (i) There are two stages, on the facts of this case, at which the Corporation had to explain its conduct. Though initially, at the first stage it gave a notice proposing seizure on future default, there are certain subsequent negotiations for a one time settlement and i.e. at that stage, i.e. the second stage there was "no independent" notice except the one by B which the Corporation conveyed its decision for sale, which was not sufficient in view of the ruling of this Court in *Maharashtra Financial Corporation* v. *M/s. S. Board Mills*, AIR (1994) SC 2657.

(ii) Further on the representation submitted by the 1st respondent dated 27.12.1993, "no communication" of the concession granted was made C by the Corporation to the Company and this precluded the Company from complying with the conditions noted in the Corporation's file and from bringing any other purchaser who could have offered something more. The decision of the Executive Director on the representation dated 27.12.1993 to give 6 months time to the 1st respondent-company being "not communi- D cated" to the 1st respondent-company, the endorsement of the Executive Director of the Corporation on the representation dated 27.12.1993 remained in the file.

The Division Bench said "

E "Had the above endorsement been communicated and the petitioner defaulted, no blame could be put upon the Corporation that it acted arbitrarily and so unreasonably".

(iii) The mere statement of the Corporation that the decision was F "communicated" was not sufficient. There must be "some more material" to show or suggest that reasonable opportunity was afforded and that there was no option but to sell the unit. Hence the Corporation must be deemed to have acted unreasonably within the Wednesbary Principles. Vide *Associates Provincial Ltd.* v. *Wednesbary Corporation*, [1948] 1 KB 223, G referred to in *U.P. Financial Corporation* v. *M/s. Gem. Cap. (India) Pvt. Ltd.*, AIR (1993) SC 1435.

11. For the above reasons, the High Court said that even though the purchaser (the appellant in CA No. arising out of S.L.P. (C) No. 15260/1996) had deposited Rs. 28 lakhs with the Corporation and posses- H sion was delivered to the purchaser, equity required interest to be paid to

the purchaser by the Financial Corporation and that the appellant should pay to the Corporation the entire dues with interest in 6 weeks and the Corporation should refund the sale consideration to the purchaser with interest and possession be restored to the Ist respondent-company : The writ Appeal of the Ist respondent was allowed accordingly.

12. In these appeals before us, arguments have been advanced by the learned counsel for the Corporation and counsel for the purchaser submitting that enough opportunities were given to the Company and that there was enough material before the Court to hold that the endorsement of the Executive Director of the corporation on the representation dated 27.12.1993 made by the 1st respondent company was "communicated" to the Managing Director of the Ist respondent-company Mr. Vijaya Kumar then and there itself and that these facts were not rebutted by the 1st respondent-company by filing any affidavit in the Writ Appeal. Further the fact that, at the instance of the 1st respondent- company the Vysya bank represented that certain amounts due to it from the Ist respondent-company could be cleared out of the balance remaining with the Corporation (after adjusting the Corporation's dues) showed that the 1st respondent accepted the sale. It was argued that the learned single judge was right in relying on this fact.

13. So far as the first reason is concerned. We shall show presently that even at the second stage, at the stage when the Ist respondent Company proposed a one-time settlement on 27.12.93, sufficient opportunity was given to the Ist respondent Company. We shall therefore examine whether the 1st respondent has pleaded and proved that upon its representation dated 27.12.1993 no fresh opportunity was given and no communication was made to it about the endorsement of the Executive Director of the Corporation.

14. We shall initially refer to the pleadings of the parties. In the writ petition filed by the 1st respondent, it is stated that the unit was brought to sale in December, 1993, February and March 1994 and that when in 1995 sale notices were published and the purchaser offered Rs. 26 lakhs, the 1st respondent was not aware of any of the sale notice proceedings, it is merely stated that the appellant-Corporation ought to have given a final opportunity to the loanee who "has to be informed about the sale price and he

A must be given sufficient time to enable him to get a higher price than what has been offered in the public auction". The procedure adopted was, according to the 1st respondent, contrary to the guidelines issued by the Supreme Court in various cases. Further no reference was made to the representation dated 27.12.1993 nor to the absence of any communication B there on. Even in the grounds of writ appeal, no point was raised regarding lack of communication of any decision of the representation dated 27.12.93.

15. Coming to the pleading of the Corporation, it may be noticed that the writ petition of the 1st respondent was dismissed at the stage of admission on 17.8.1995. The Corporation had therefore no opportunity to C file a counter-affidavit at the stage of the writ petition before the learned single Judge. It therefore, filed a counter-affidavit in the Writ Appeal filed by the 1st respondent-Company. In the said counter-affidavit dated 3.9.1995 filed on behalf of the Corporation, it was clearly stated that repeated opportunities (as per notices referred to above) were given and D were not availed of by the Company, that several cheques given by the Company at various points of time stood dishonoured (list given above), that a recall-cum-sale notice was given on 9.9.1993, followed by seizure on 11.11.1993, and that the Managing Director of the Company gave a letter dated 27.12.1993 seeking release of the unit. Adverting to what happened E in the chambers of the Executive Director of the Corporation on 27.12.1993, it was stated in the affidavit as follows :

> "The Executive Director of the respondent-Corporation discussed the matter with the petitioner company and this respondent accepted a payment of Rs. 30,000 for lifting the seizure subject to F the petitioner making a further payment of a sum of Rs. 30,000 in March, 1994. It was also understood by and between the parties that the loan account shall be settled on one time settlement basis within a period of 8 months from the date of handing over the unit. Notwithstanding the concessions offered and the reliefs afforded G to the petitioner, the petitioner company was supinely indifferent."

16. In addition, a further supplementary affidavit dated 10.9.1995 was filed in the Writ Appeal by Sri V. Ramachandra, by the then Branch Manager of the Corporation at Ranga Reddy Branch (before its bifurca- H tion) stating that he was personally present on 27.12.1993 when the Manag-

ing Director of the Company Shri Vijaya Kumar met the Executive Director of the Corporation and presented the representation. It is stated in this supplementary affidavit as follows :

> "I am filing this additional counter affidavit to bring to the notice of the Hon'ble Court the action taken by the Corporation pursuant to the representation made by the Managing Director Sri Vijaya Kumar of M/s. Vajra Chemicals Pvt. Ltd. on 27.12.1993, which was duly considered by the Executive Director of this respondent Corporation. I stated and submit that I was personally present in the chambers of the Executive Director of this respondent-Corporation on 27.12.1993. I submit that the Managing Director of Vajra Chemicals Sri Vijaya Kumar, personally handed over the representation to the Executive Director, who has perused the same and after discussing the matter with me and the Managing Director of M/s. Vajra Chemicals, has taken a decision for lifting the seizure, subject to down payment of Rs. 30,000 and further subject to a payment of Rs. 50,000 in March 1994, for which the Managing Director of Vajra Chemicals, was asked to give post dated cheques. The decision taken by the Executive Director on 27.12.1993 was taken after the matter was discussed and a consensus was arrived at. Pursuant to the decision taken by the Executive Director the representation of the petitioner was communicated to the Zonal Manager Sri P.V.B. Lakshminath, who had also concurred with the decision arrived at and made an endorsement to that effect on the said representation. The said representation was also sent to the concerned recovery area officer who had also signed on the said representation *on the same date.*"
>
> .....
>
> "I further state and submit that the decision taken by the Executive Director of this respondent-Corporation on 27.12.1993 was in the presence of Managing Director of Vajra Chemicals amounts to due-communication of the decision to the M.D. of Vajra Chemicals".

A 17. It is therefore on record that fresh opportunity was given on 27.12.93 to the Ist respondent Company and there was "communication" of the decision arrived at, to the Managing Director of the Company on 27.12.93 itself. It is most significant that the above facts stated in affidavits filed on behalf of the Corporation stood wholly unrebutted and no B rejoinder was filed by the Company contradicting or denying the above facts.

18. Apart from the absence of a denial of the facts stated by the Corporation, there is in our view, internal evidence in the endorsement of the Executive Director of the Corporation on the representation dated C 27.12.1993, that the decision taken at the meeting was, reduced to writing after discussion and that concurrence of the managing Director of the 1st respondent, Mr. Vijaya Kumar, was orally given. This can be easily inferred from the language employed in the said endorsement. We shall extract the same. It reads :

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> "*Discussed with the party*. Please accept Rs. 0.30 lakhs as OTP for lifting the seizure subject to party making a further payment of Rs. 0.50 lakhs in March 1991 for which PAD cheques may be collected. This is with a *clear understanding* that the loan account shall be settled on OTS (one time settlement) within 6 months E from the date of handing over the unit."

19. The use of the words *'Discussed with the party'* and *'clear understanding'* used in the endorsement are, in our opinion, sufficient material on record corroborating the two affidavits filed on behalf of the Corpora- F tion in the Writ Appeal. The Division Bench of the High Court was therefore in error in observing that there was no material to infer that the decision contained in the endorsement dated 27.12.93 was communicated to the Company.

20. Summarising the position, we are of the view that the Division G Bench of the High Court while allowing the Writ Appeal overlooked the fact that there was no pleading in the writ petition regarding the representation dated 27.12.1993 or the non communication of any decision thereon. No rejoinder was filed by the 1st respondent to contradict the specific averments made in the Corporation's affidavit as to What hap- H pened on 27.12.1993 in the Chambers of the Executive Director of the

Corporation. There is internal evidence in the endorsement of the Executive Director of the Corporation which shows that the matter was discussed and an arrangement was arrived at in the presence of Mr. Vijaya Kumar and was reduced to writing and communicated to him and consequential directions were issued to the office of the Corporation to receive Rs. 30,000 as out right payment and release the unit, and to receive Rs. 50,000 by March 1994, receive post dated cheques and it was also agreed that the 1st respondent was to make a one time settlement (OTS). The learned Judges therefore erred in entertaining and accepting a plea put forward by the 1st respondent-Company for the first time in the Writ Appeal for which there was no foundation in the pleadings or affidavits of the Ist respondent Company.

20(a) : It is true that this Court does not normally interfere with findings of fact arrived at by the High Court. But where there is no pleading and where a factual issue is permitted to be raised for the first time in Writ Appeal and findings are given contrary to the affidavits filed by the opposite party and where no reference is made to the contents of the only crucial document in the case, (the endorsement dated 27.12.93 on the representation), this Court can and will interfere.

21. We may also refer to the conduct of the Ist respondent which, in fact, estops it from approaching the court. The certificate issued by the Vysya Bank, after the sale was made, shows that the Ist respondent-Company accepted the factum of the sale of the unit. In the additional affidavit of Sr. V. Ramachandra dated 10.9.1995 filed before the Division Bench it was stated that the certificate dated 3.7.1995 issued by the Vysya Bank showed that the Ist respondent was aware of the sale finally made by the Corporation and had accepted the sale. The certificate dated 3.7.1995 by the Bank read as follows :

> "This is to certify that a demand loan availed by M/s. Vajra Chemicals Pvt. Ltd. is outstanding with us where in the balance amount together with interest accrued thereon upto 30th June, 1995 at Rs. 1,58,047.00 (Rs. One Lakh fifty eight thousand and forty seven only). This certificate is *issued at the request of the Company*".

A 22. From the above certificate of the Bank it is clear that the Ist respondent Company wanted that the balance amount remaining after adjusting the dues to the Corporation, should go in discharge of the Company's dues to the Vysya Bank. The Ist respondent Company was not able to explain what was the occasion for the Company to ask the Vysya B Bank to move the Corporation. The sale of the unit was on 13.3.1995, the same was approved by the Board of the Corporation on 13.5.1995 and the purchaser had deposited the entire sale consideration on 21.6.1995. It is not in dispute that the Corporation has paid the Vysya Bank the amount covered by the certificate out of the balance of the sale proceeds that C remained with the Corporation. This conduct of the company precludes it from questioning the sale.

23. For all the aforesaid reasons, we allow both the civil appeals, set aside the judgment of the Division Bench and dismiss the Writ Petition filed by the 1st respondent with costs. The costs are quantified at Rs. 10,000 D and are to be shared equally by the appellants in these appeals.

I.M.A. Appeals allowed.