M/S. AMAR ALCOHOLI LTD. A

v.

SICOM LTD. AND ANR.

NOVEMBER 8, 2005

[ASHOK BHAN AND ALTAMAS KABIR, JJ.] B

State Financial Corporation— Recovery of Debts—State Financial Corporation Act 1951, sections 29,46—Appellant taking loan from Respondent, a financial corporation with 100% share holding by State Government—Subsequently, share of state government reducing to 49%—Appellant failing to repay the loan—Respondent taking actual possession of mortgaged property for auction invoking its powers under section 29—Appellant filing writ petition contending that respondent ceased to be a financial corporation due to reduction in state's share to 49% and hence could not invoke section 29—High Court dismissing the writ petition—On appeal—Held, Respondent continued to be a financial corporation despite reduction in state's share to 49% since it has been established by State Government—Therefore entitled to invoke section 29 for recovery of debt. C D

Appellant company took a loan of Rs.90 lakhs in 1994 from Respondent, a financial corporation with 100% shares owned by the State Government. Subsequently, the state holding in respondent company was reduced to 49%. Appellant company started defaulting in payment right from July 1996. After giving several opportunities to the appellant to pay up the amount due and outstanding, Respondent took over the possession of the assets mortgaged with it invoking its power under section 29 of the State Financial Corporation Act 1951. Assets were later sold by public auction. Appellant field a writ petition in the High Court challenging taking over the possession and auction of his assets by the respondent pleading, *inter alia*, that provisions of section 29 of the Act were not applicable to the respondent as it ceases to be a financial corporation after the reduction of shares of the State Government to 49% only. The High Court dismissing the petition hold that respondent was a financial corporation. Hence this appeal. E F G

Dismissing the appeal, the court

HELD: 1. Under Section 46 of the Act the Central Government by a

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A **notification in the official Gazette is empowered to direct that all or any of the provisions of the Act shall, subject to such exceptions and restrictions as may be specified, apply to any institution established by a State Government which has for its object the financing of industrial concerns, and on the issuance of such notification the institution shall be deemed to be "a Financial Corporation" established by the Government within the meaning of the Act.**

B **[38-C-D]**

2. The first respondent was established by the State Government with the object of developing the industries and financing industrial concerns in the State. The Central Government had extended the provisions of Sections

C **29 of the Act to the first respondent. Thus, the first respondent would be covered by the expression "an institution established by a State Government" offering range of services including the object of financing industrial concerns in the State of Maharashtra. It would thus be a financial corporation covered under the Act. Section 29 enables the first respondent to take over the assets of the delinquent borrowers. As the appellant had failed to discharge its**

D **liability in spite of several opportunities afforded to it the first respondent was fully justified in taking over the assets of the appellant in exercise of its powers under Section 29 of the Act. [36-F; 38-B]**

3. By mere reduction in its stake to below 50%, SICOM would not cease to be a State Finance Corporation. The first respondent is a finance corporation

E **covered by the Act and reduction in the shareholdings of the State of Maharashtra below 50% shall not make any difference to the status of the first respondent, i.e. being a financial corporation. [39-C-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5502 of 2004.

F From the Judgment and Order dated 10.10.2003 of the Bombay High Court at Nagpur Bench in W.P. No. 153 of 2003.

Ashok A. Desai, Manish Pitale and Chandershekhar Ashri for the Appellant.

G Dushyant Dave, Jay Savla and Ms. Reena Bagga for the Respondent No. 1.

Shekhar Napahade and Shivaji M. Jadhav for the Respondent No. 2.

V.N. Raghupathy for State of Maharashtra.

H The Judgment of the Court was delivered by

BHAN, J. The final judgment and order dated 10th of October, 2003, passed by the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Writ Petition No. 153 of 12003 dismissing the writ petition filed by the appellant, is under challenge in the instant appeal. By the impugned order, the High Court has declined the prayer of the appellant to quash the auction of the properties including the plants and machinery of the appellant, which were mortgaged in favour of SICOM Limited (the first respondent herein).

The short question that arises for our consideration in this appeal is, whether SICOM (the first respondent) is a State Financial Corporation within the meaning of and governed by the State Financial Corporations Act, 1951 (for short "the Act")?

To appreciate the question, it would be necessary to state the facts giving rise to the present appeal, which are in brief, as follows:

The first respondent, formerly known as "The State Industrial Investment Corporation of Maharashtra Limited" (SIICOM), is a company established under the provisions of the Indian Companies Act, 1956, by the Government of Maharashtra in the year 1966, with 100 per cent shares being owned by the State Government, with an object of development of industries and financing the industrial undertakings in the State of Maharashtra.

The appellant company mainly engaged in the transport business, approached the first respondent to get a loan for setting up a unit to manufacture grain based alcohol with installed capacity of 5000 Kilo Litres annually. The appellant was sanctioned a term loan of Rs.90 lakhs in august, 1994 in consortium with IREDA (Rs. 65 lakhs) and Oriental Bank of Commerce (Rs. 35 lakhs). Commercial production of the appellant's unit which was scheduled to begin in April 1995 could commence only in July 1996. On account of such delay of over one year in commencing production, the appellant company started defaulting in payment right from July 1996 itself. Several opportunities were given to the appellant to pay up the amount due and outstanding. On the failure of the appellant to pay up the same, the first respondent sent a demand notice dated 23rd March, 1999 to the appellant stating that a sum of Rs.19,91,783 be paid by the 31st of March, 1999. Pursuant to the demand notice issued by the first respondent, certain payments were made by the appellant. However, the appellant again defaulted in payment of instalments and, as on 14th December, 2000, a sum of Rs.97,57,695 (principal amount + the interest accrued thereon) became due and payable. As many as 16 cheques issued by the appellant-company bearing different

A dates amounting to Rs.36.81 lakhs were dishonoured on presentation.

Owing to the continuous defaults and non-payment of instalments and interest on time, the first respondent issued a take over notice on 8th January, 2001 stating therein that in case the appellant fails to clear the outstanding dues of Rs.97,57,695 on or before the 25th of January, 2001, the first respondent B would take over the possession of the hypothecated and mortgaged assets on 31st of January, 2001 at 10.00 A.M. Subsequently due to negotiations between the parties, the first respondent, vide its letter dated 6th February, 2001, deferred the take over of the assets of the appellant company to 20th February, 2001. The appellant-Company was asked to pay Rs.19.81 lakhs by C the 15th of February, 2001, failing which the mortgaged assets will be taken over by the first respondent on 20th of February, 2001. The appellant issued 12 post-dated cheques amounting to 19.81 lakhs. On receipt of those cheques, the take over action was again deferred. Out of those 12 cheques issued in favour of the 1st respondent, four cheques were dishonoured on presentation. The appellant's limit was once again extended till 20th of August, 2001 to D enable it to make good the outstanding payments, failing which the assets were to be taken over by the first respondent. The arrears were not cleared and finally owing to continued defaults on the part of the appellant-company, the first respondent took over the possession of the assets mortgaged with it invoking its powers under Section 29 of the State Financial Corporation Act, E 1951 (for short "the Act") and took the actual possession thereof on 23rd of October, 2001.

In order to recover the arrears, it was decided to put the mortgaged property to auction. The advertisement for sale of the property was published on 23rd of November, 2001 in response to which the only offer of Rs.261 lakhs F was received which was rejected on the ground that the offer for purchase was below the disposal value estimated by the Government Approved Valuer. Soon thereafter, the appellant approached the first respondent in January, 2002 for One Time Settlement (OTS). The proposal put forth by the appellant was accepted by the first respondent vide its letter dated 6th February, 2002 for OTS at Rs.95 lakhs. The appellant issued a cheque of Rs.20 lakhs towards G OTS which was dishonoured on presentation. However, the said amount of Rs. 20 lakhs was subsequently paid by the appellant company. The balance sum of Rs.75 lakhs which was payable by the appellant on or before the 28th of February, 2002, as per the terms of the OTS, remained unpaid. To clear the balance payment, the last date for payment of the said amount of Rs.75 lakhs H was extended thrice by the first respondent, the last one being the 28th

March, 2002. Not being able to clear the dues, the appellant again requested for extension of time till 15th of April, 2002 for clearing the outstanding dues, which was not agreed to. The appellant was informed by the first respondent that it shall be taking steps to safeguard its interest including auctioning the assets in possession of the first respondent by identifying the interested buyers. As the appellant failed to make the payment as per the terms of the OTS within the stipulated period, the OTS was cancelled on 9th of April, 2002.

After cancellation of OTS, the unit of the appellant was advertised for sale for the second time on 8th of June, 2002. The highest offer of Rs.376 lakhs was received in the auction and the same was approved by the first respondent. The appellant vide its letter of 2nd of July, 2002 was given an opportunity to match the offer or give better offer to clear dues of Rs.100.94 lakhs existing as on 30th of June, 2002 on or before 18th of July, 2002. Needful was not done. On 6th of August, 2002, another opportunity was given to the appellant, as a special case, to make the aforesaid payment by the 18th of August, 2002. There being no better offer, the auction price of Rs.376 lakhs was accepted but, however the party who had given the offer of Rs.376 lakhs did not pay the balance purchase consideration.

Due to failure of the second auction also, the first respondent decided to re-auction it for the third time and advertisement was published in the newspapers on 30th October, 2002. M/s. Karan Distilleries Pvt. Ltd., which offered the highest bid in response to the said advertisement, is the 2nd respondent in this appeal. It offered Rs.225 lakhs which, after negotiations, was finally increased to Rs.320 lakhs, which was accepted by the first respondent. The appellant and its promoter were given a chance to match/ improve upon the offer made by the 2nd respondent. As there was no counter-offer received from the appellant despite giving them chance, the first respondent proceeded with the sale of the assets to recover its dues. On receipt of the entire consideration, the first respondent handed over the physical possession of the assets of the appellant to the 2nd respondent and also executed Deed of conveyance in their favour.

Aggrieved by the order of auctioning, the appellant filed writ petition in the High Court seeking, *inter alia*, stay of the auction proceedings for sale of the unit by the first respondent. The High Court by way of interim relief, stayed the proceedings subject to the appellant's depositing a sum of Rs. 50 lakhs on or before 21st of March, 2003, failing which the stay was to stand vacated automatically without any further reference to the Court. The appellant

A could deposit only half of the amount ordered by the High Court and thus failed to comply with the direction. As the compliance with the order of the High Court was a condition precedent to the interim order, the stay stood vacated automatically. After filing of the writ petition, the appellant filed an additional affidavit before the High Court submitting that the provisions of Section 29 of the Act were not applicable to the first respondent as it ceases B to be a financial corporation after the reduction of shares of the Govt. of Maharashtra to 49% only.

The High Court dismissed the writ petition holding that the first respondent was a financial corporation and it had been notified as such by C the Central Government in exercise of its powers under Section 46 of the Act. It was further held that reduction of shareholdings below 50% of the Govt. of Maharashtra would not make any difference to the status of the first respondent being a financial corporation. The other two submissions, viz, (i) that the true and correct accounts of the outstanding dues were not furnished to the appellant and, therefore, the attachment and sale of the appellant's D property was not justified; and (ii) that it was sold at inadequate price, were rejected by the High Court, holding that no material has been placed before the Court to substantiate aforesaid contentions.

Aggrieved against the dismissal of its writ petition, the appellant has filed the present appeal by grant of special leave.

E

Counsel for the parties have been heard.

It is not in dispute that the first respondent was established by the State Government with the object of developing the industries and financing industrial concerns in the State. It is also not in dispute that the Central F Government had extended the provisions of Section 29 of the Act to the first respondent. Thus, the first respondent would be covered by the expression "*an institution established by a State Government*" offering range of services including the object of financing industrial concerns in the State of Maharashtra. It would thus be a financial corporation covered under the Act.

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Section 46 of the Act confers the power on the Central Government to extend the provisions of the Act "*to any institution established by a State Government*". Section 46 of the Act reads as under:

"46. *Power to apply Act to certain financial institutions in existence* H *at commencement of Act* -(1) The Central government may, by

notification in the official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to any institution established by a State Government which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a Financial Corporation established by the State Government for the State within the meaning of this Act and the provisions of this Act shall become applicable thereto according to the tenor of the notification.

Provided that no notification shall be issued under this sub-section in respect of any institution unless a request is made in that behalf by the State Government concerned.

(2) Any notification issued under sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification."

In the year 1986 a request was made to the Central Government by the Government of Maharashtra to extend the provisions of Sections 27, 29, 30, 31, 32A to 32F, 41, 41A, 42 and 44 of the Act to the first respondent. The Central Government accepted the request of the Government of Maharashtra and the provisions of the afore-mentioned sections were extended to the first respondent vide notification No. F.No.5(9)/86-IF-II dated 11th December, 1986.

Government of Maharashtra vide the Govt. Resolution bearing No. IDL/1093/(8928)/IND-8 dated 3rd October, 1994 decided:

(a) to have a public participation in the capital structure of the first respondent in accordance with the new industrial policy framed by the Government of Maharashtra in the year 1983;

(b) to hold only 49% of the share capital by the Government;

(c) to give by private placement 26% of the capital to the selected financial institutions and banks;

(d) to offer 2% capital out of the said 26%, to the employees of the said company in consonance with the policy framed by the Government of India; and

(e) to offer the balance 25% to the public through public issue.

A It would be seen from the above that provisions of Section 29 and other provisions of the Act were made applicable to the first respondent by the Central Government by virtue of the powers vested in it under Section 46 of the Act. Section 29 enables the first respondent to take over the assets of the delinquent borrowers. As the appellant had failed to discharge its liability in spite of several opportunities afforded to it, as has been enumerated in the B foregoing paragraphs, in our view, the first respondent was fully justified in taking over the assets of the appellant in exercise of its powers under Section 29 of the Act.

Under Section 46 of the Act the Central Government by a notification C in the official Gazette is empowered to direct that all or any of the provisions of the Act shall, subject to such exceptions and restrictions as may be specified, apply to any institution established by a State Government which has for its object the financing of industrial concerns, and on the issuance of such notification the institution shall be deemed to be "a Financial Corporation" established by the Government within the meaning of the Act. D It is not disputed that Respondent No. 1 had been established by the State Government with the object of financing industries and the Central Government had issued the notification under Section 46 confering the powers to be exercised under various sections of the Act including Section 29. As a matter of fact, Annexure A, annexed with the additional affidavit filed by the appellant E on 9.10.03 itself suggests beyond doubt that respondent no.1 was established in the year 1996 by the Government of Maharashtra as a 100% Government owned company with the objective of industrialising of backward areas of the State of Maharashtra. Thus, respondent no.1 would be covered by the expression "any institution established by a State Government" offering range of services. This apart the Central Government in the year 2003, i.e., even F subsequent to the disinvestment of equity up to 51 per cent held by the Government of Maharashtra, at the request of the Government of Maharashtra by virtue of its power under Section 46 (1) of the Act, has made the provisions of Section 32 G of the Act, applicable to the first respondent vide notification dated 16th of September, 2003. This also shows that Respondent No. 1 is G being treated by the State of Maharashtra as well as Central Government as the financial Corporation within the meaning of the Act.

The principal contention advanced by Mr. Ashok A. Desai, the learned senior counsel appearing on behalf of the appellant, is that consequent to the reduction of stakes of the Govt. of Maharashtra in the first respondent and H consequent to the change in its nomenclature, the first respondent had

ceased to have the status of a State Financial Corporation under the Act. We are unable to accept this contention. A

In the facts and circumstances enumerated herein above, it is crystal clear that the first respondent was originally established as, and even as of date continues to be, a company established by the Government of Maharashtra. It may be mentioned that the State of Maharashtra being the single largest shareholder has retained the overall control over the management of the first respondent by retaining the right to nominate its Directors by virtue of the Amended Article 18(a) of the Articles of Association of the Companies. B

By mere reduction in its stakes to below 50 per cent, SICOM (the first respondent) would not cease to be a State Finance Corporation in view of the fact that it has been established by the State of Maharashtra for financing industrial concerns and that it had been so notified by the Central Government in exercise of its powers under Section 46 of the Act. The first respondent is a finance corporation covered by the Act and reduction in the shareholdings of the State of Maharashtra below 50 per cent shall not make any difference to the status of the first respondent, i.e, being a financial corporation. C D

The other two points which had been raised in the writ petition regarding the non-supply of details of the outstanding amount due and the inadequacy of the sale consideration were rejected by the High Court by observing that no material had been placed before the Court to substantiate them. The learned counsel sought to contend before us too, that the auction proceedings are liable to be set aside because the details of outstanding amount was not furnished to the appellant and that the mortgaged property had been sold for inadequate consideration. There is no material placed before us to substantiate these two contentions. The allegations made are vague, particularly when the appellant was afforded suitable opportunities to match the bid/offer and it did not turn up, and cannot be ascertained from any admitted data. The same are rejected. E F

It was admitted before the High Court that outstanding amount had been recovered from the sale of the appellant's property. In view of this, the High Court had permitted the appellant to withdraw the sum of Rs.25 lakhs deposited by the appellant in pursuance to the interim order of the High Court. This direction of the High Court holds good and does not call for any interference. G

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A Lastly, the counsel for the appellant contended that the first respondent be directed to return the balance amount, if any, after adjusting the outstanding amount due from the appellant.

The counsel for respondents, in all fairness, concedes that if there is any balance amount, the same shall be paid back to the appellant. The B appellant would be at liberty to move appropriate application before the first respondent. If such an application is filed, the first respondent shall take a decision thereon within a period of two months from the date of the receipt of such application and, in case there is any excess amount after adjusting the amount due from the appellant out of the sale proceeds of the mortgaged C property of the appellant-company, the same shall be returned to the appellant forthwith.

For the foregoing reasons, the appeal stands dismissed. However, there shall be no order as to costs.

D K.G. Appeal dismissed.