A SOUTHERN PETROCHEMICALS INDUSTRIES CORPORATION LTD.

v.

ADMINISTRATOR OF SPECIFIED UNDERTAKING OF UNIT TRUST OF INDIA AND ORS

DECEMBER 13, 2006

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[B.P.SINGH AND ALTAMAS KABIR, JJ.]

Recovery of Debts Due to Banks and Financial Institutions Act, 1993: Sections 2(g), (h), 17, 19(1), (2) and 34.

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Financial institutions—Under a common loan agreement executed between the UTI, IDBI, IFCI and ICICI and the company a sum of Rs. 10/- crores was advanced to the company for its project—UTI also advanced a sum of Rs. 25 crores against privately placed debentures—The company D *accumulated liabilities exceeding Rs. 1,000/- crore and defaulted in its obligation to the UTI under the common agreement—UTI filed a claim under the DRT Act—Company filed an objection alleging that the Administrator of Specified Undertaking of Unit Trust of India and UTI Trustee Company Private Limited ("specified company"), not being "financial institutions" within the meaning of the DRT Act, the Debt Recovery Tribunal (DRT) had* E *no jurisdiction to decide the claim—DRT dismissed the objection—The Appellate Tribunal held that they were "financial institutions" as defined by Section 2(h)(i) of the DRT Act—The High Court rejected the writ petition filed by the company—Correctness of—Held: The "Specified Company" and the "Administrator of the Specified Undertaking" are financial institutions—* F *Hence, both are entitled to sue as financial institutions—The DRT had, therefore, undoubted jurisdiction to entertain their claims—The Administrator and the Specified Company were not acting either as agents of the Central Government or as trustees—UTI (Transfer of Undertaking and Repeal) Act, 2002, S.18—Companies Act, 1956, S. 4-A.*

G *Words & Phrases:*

"Financial institutions"—Meaning of—In the context of Section 2(h)(i) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Under a common loan agreement executed between the Unit Trust

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of India (UTI), the Industrial Development Bank of India (IDBI), IFCI and ICICI Ltd. and the appellant, a sum of Rs. 10/- crore was advanced to the appellant for its project. The UTI also advanced a sum of Rs. 25 crores against privately placed debentures. The appellant-company accumulated liabilities exceeding Rs. 1,000/- crore and defaulted in its obligation to the UTI under the common agreement.

The UTI filed a claim under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT). The appellant filed an application for dismissal of the said claim on the ground that respondents Nos. 1 and 2, not being "financial institutions" within the meaning of the DRT Act, the Debts Recovery Tribunal had no jurisdiction to decide the claim. The Debts Recovery Tribunal dismissed the said application. The Appellate Tribunal held that respondents Nos. 2 and 3 were "financial institutions" as defined by Section 2(h)(i) of the DRT Act. The writ petition filed by the appellant was also rejected by the High Court. The High Court held that the action brought against the appellant-company by respondents Nos. 1 and 2 for recovery of debts due to them was rightly entertained by the Debts Recovery Tribunal constituted under the DRT Act. Hence the appeal.

The following questions arose before the Court:-

(1) Whether respondents Nos. 1 and 2, namely, the Administrator of Specified Undertaking of Unit Trust of India and UTI Trustee Company Private Limited are "financial institutions" within the meaning of that term in the Recovery of Debts due to Banks and Financial Institutions Act, 1993?

(2) If the answer is in the affirmative, whether the action brought by them before the Debts Recovery Tribunal is for recovery of debts due to them from the appellant and not due to any other person on whose behalf the aforesaid respondents are suing?

Dismissing the appeal, the Court

HELD: 1.1. By reason of the deemed amendment of Section 4-A of the Companies Act, 1956, the "Specified Company" and the "Administrator of the Specified Undertaking" come with the definition of "financial institutions" as defined under Section 2(h) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (DRT Act). [948-F, G]

1.2. By reason of section 18 of the UTI (Transfer of Undertaking and

A Repeal) Act, 2002, both respondents Nos. 1 and 2 stand substituted. Both are entitled to sue as financial institutions and the question whether they have an enforceable claim must be decided in the facts and circumstances of each case. There is no uncertainty because the assets possessed by these two identities are clearly enumerated in Schedules I and II of the UTI Act, 2002. Therefore, the use of the words "as the case may be" in Section 18 of the UTI Act, 2002 B does not introduce any element of uncertainty. [949-B-C]

Krishna Filaments Limited v. *Industrial Development Bank of India,* (2004) 118 Company Cases 356, *W.O. Holdsworth* v. *State of U.P.,* [1958] SCR 296, *Chhagan Lal Magan Lal (P) Ltd.* v. *Municipal Corporation of* C *Greater Bombay,* [1974] 2 SCC 402 and *Gujarat State Financial Corporation* v. *Natson Manufacturing Co. Pvt. Ltd.,* [1979] 1 SCC 193, referred to.

2.1. The Scheme of the UTI Act, 2002 discloses that the Unit Trust of India created under the Unit Trust of India Act, 1963 ceased to exist and in its place the Specified Company and the Administrator of the specified D undertaking of the Trust were created which took charge of all the properties, business, assets, rights etc. of the erstwhile Unit Trust of India. The initial capital of the Trust stood transferred to and vested in the Central Government under Section 3(1) of the Act. Sub-section (2), however, mandated that the initial capital contributed by the named contributors shall be refunded by the Central Government to such extent as may be determined by it. [949-D-E] E

2.2. The UTI Act, 2002 by Section 4 thereof vested in the specified company the undertaking of the Trust (excluding the specified undertaking) for such consideration and on such terms and conditions as may be mutually agreed upon between the Central Government and the F subscribers to the capital and the specified company. The decision of the Central Government as to whether any business, assets, liabilities or properties represent or relate to the undertaking or specified undertaking is made final. If there remained any business, asset or property which was not represented or related to the undertaking or specified undertaking that vested in the Central Government. In this manner, the erstwhile Unit Trust of G India ceased to exist and in its place a specified company and an Administrator of the specified undertaking of the Trust came into existence. The transfer and vesting of assets, rights etc. in these two bodies is in the widest possible terms as would be obvious from a plain reading of Section 5 of the UTI Act, 2002. [949-F, G, H; 950-A]

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2.3. The fact that the management is carried on by the Administrator of the specified undertaking on behalf of the Central Government which is authorized to issue directions to the Administrator does not detract from the fact that the "specified undertaking" vests in the Administrator. The wide sweep of the language employed in Section 5 of the Act leaves no manner of doubt that the vesting in the Administrator or in the Specified Company is complete. The powers vested in the Administrator under Section 10 of the Act cover almost every power of management and administration.

[951-C, D, E]

2.4. The Administrator of the specified undertaking is, therefore, constituted as a statutory authority under the Act with wide powers and functions vested in him in relation to the specified undertaking which also stand vested in him. When he seeks to recover dues owing to the specified undertaking he exercises his own authority as Administrator and assumes powers which are vested in him by law. There is nothing in the Act which may justify the submission that the specified company acts as a trustee. It manages and executes the schemes contained in Schedule I of the Act in accordance with the provisions of the Act. [952-G, H; 953-A]

State Bank of India **v.** *Special Secretary, Land & Land Revenue & Reforms & Land & Land Utilisation Deptt. of W.B.,* **[1995] Supp. 4 SCC 40, referred to.**

3.1. The vesting in the Administrator or the Specified Company is complete. The concept of mere vesting of management cannot be imported into the scheme of the Act. The Administrator and the Specified Company were, therefore, fully authorized in law to recover the dues from the appellants as "financial institutions". The Debts Recovery Tribunal had, therefore, undoubted jurisdiction to entertain their claims. [953-F]

3.2. Respondents Nos. 1 and 2 were not acting either as agents of the Central Government or as trustees. It is, therefore, held that they have acted in the exercise of power vested in them by the UTI Act, 2002 and in their own right. [953-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No, 5782 of 2006.

From the Final Judgment and Order dated 10.8.2004 of the High Court of Judicature at Bombay in Writ Petition No. 5758 of 2004.

K.K. Venugopal, Santosh Paul, Rai Mehta, A.K. Rao, Rajeev Sharma,

A M.J. Paul for the Appellant.

Vikas Singh, ASG, R.F. Nariman, Rakesh Dwivedi, Lalit Mohan Tyagi, T.S. Doabia, Rajiv Kapur, Arti Singh, Abhishek Chaudhary, Vimla Sinha, Piyush Vats, Ajit Singh, Adarsh Upadhyay, Gaurav Librehan, Saad Shervani, Sanjay Kapur, T.A. Khan, V.K. Verma, Rajesh Srivasatava for the Respondents.

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The Judgment of the Court was delivered by

B.P. SINGH, J. Special Leave granted.

In this appeal by special leave, the appellant M/s. Southern C Petrochemicals Industries Corp. Ltd. has impugned the judgment and order of the High Court of Judicature at Bombay dated August 10, 2004 in Writ Petition No.5758 of 2004 upholding the order passed by the Chairperson of the Debts Recovery Appellate Tribunal in Misc. Appeal No.132 of 2004. The High Court held that the action brought against the appellant company by respondents 1 and 2 herein for recovery of debts due to them, was rightly D entertained by the Tribunal constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which had jurisdiction to entertain the claim. The objection to the jurisdiction of the Debts Recovery Tribunal was taken at the threshold and, therefore, in this appeal we are not concerned with the merit of the claims of respondents 1 and 2.

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The questions which arise for consideration in this appeal are whether respondents 1 and 2, namely, Administrator of Specified Undertaking of Unit Trust of India and UTI Trustee Company Private Limited are "financial institutions" within the meaning of that term in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the F 'DRT Act'). If the answer is in the affirmative, whether the action brought by them before the Debts Recovery Tribunal is for recovery of debts due to them from the appellant herein, and not due to any other person on whose behalf the aforesaid respondents are suing.

The factual background in which these questions arise is as follows:-

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Under a common loan agreement dated October 1, 1992 executed between the Unit Trust of India (for short 'UTI'), the Industrial Development Bank of India (for short 'IDBI') as the lead institution, IFCI, respondent No.4 herein, ICICI Ltd., respondent No.5 herein, and the appellant herein, a sum of Rs.10 crore was advanced to the appellant for its project on the terms and conditions H

contained therein. The UTI also advanced a sum of Rs.25 crores against privately placed debentures. The appellant Company accumulated liabilities exceeding Rs.1,000 crore and defaulted in its obligation to the UTI under the common loan agreement. The Reserve Bank of India was contemplating a restructure scheme pursuant to which all the creditors of the appellant company met in September, 2003 to consider proposals for reduction in the rate of interest and fresh scheduling of re-payment etc. There was a general consensus among the other creditors but the Unit Trust of India did not agree with the suggested scheme and instead filed a claim under the DRT Act being O.A. No.237 of 2003.

At this stage, it may be noted that under the UTI (Transfer of Undertaking and Repeal) Act, 2002 (hereinafter referred to as 'UTI Act, 2002'), respondent No.1, the Administrator of Specified Undertaking of Unit Trust of India, and respondent No.2 UTI Trustee Company Private Limited, were created. The Unit Trust of India Act, 1963 was repealed and the Board of Trustees referred to in Section 10 of the said Act stood dissolved.

In O.A. No.237 of 2003, the appellant filed a Misc. Application on December 12, 2003 praying for dismissal of the O.A. on the ground that respondents 1 and 2 not being "financial institutions" within the meaning of that term in the DRT Act, the Tribunal under the Act had no jurisdiction to entertain and decide the application filed by respondents 1 and 2 for alleged recovery of debts due to them. The Debts Recovery Tribunal by its order of February 12, 2004 dismissed the said application. The appellant challenged the order of the Tribunal before the Debt Recovery Appellate Tribunal but the appeal was also dismissed on May 5, 2004. The Appellate Tribunal held that respondents 1 and 2 were "financial institutions" as defined by Section 2 (h) (i) of the DRT Act and, therefore, the application by them for recovery of debts due from the appellant was maintainable under Section 19 of the DRT Act.

The Appellate Order was challenged before the High Court of Bombay in writ petition No.5758 of 2004 which was also rejected on August 10, 2004. The appellant has preferred this appeal by special leave impugning the judgment and order of the High Court.

We may very briefly notice the findings recorded by the High Court. The High Court held that the provisions of Section 18 of the UTI Act, 2002 has the effect of substituting in every Act, Rule, Regulation *enacted by the*

A Parliament and/or Notification issued thereunder by the Central Government, the names of respondents 1 or 2 in place of the words "Unit Trust of India", as the case may be. In view of the provisions of Section 18, no further amendment was required to be effected separately and independently in every Act, Rule, Regulation enacted by the Parliament. The whole purpose of Section 18 was to bring about this effect so that it became unnecessary to B make numerous amendments in the various Acts, Rules and Regulations etc. The Parliament had the legislative competence to enact such a provision which it has done. Referring to the Companies Act it held that by virtue of the provisions of Section 18 of the UTI Act, 2002, the provisions of Section 4A of the Companies Act also stood amended. As a result, instead of words C "Unit Trust of India" found in Clause (v) of sub-section (1) of Section 4A of the Companies Act, the names of respondent 1 or 2, as the case may be, stand substituted. As a necessary consequence respondents 1 and 2 are deemed to be "financial institutions" under Section 4A of the Companies Act. Such being the legal effect respondents 1 and 2 shall also be deemed to be "financial institutions" under Section 2(h) (i) of the DRT Act. D Consequently, the application filed by respondents 1 and 2 was maintainable, they being "financial institutions" suing for the recovery of debts due to them.

The High Court also negatived the contention urged on behalf of the E appellant that even if respondents 1 and 2 were financial institutions, they could not maintain the Original Application before the Debts Recovery Tribunal since they were suing in the capacity of debenture trustee holders or as agent of the Central Government, and not claiming recovery of amount due to them. The judgment of the Bombay High Court in *Krishna Filaments Limited* v. *Industrial Development Bank of India & Ors.*, (2004) 118 Company F Cases 356 was distinguished on facts.

Shri K.K. Venugopal, senior advocate, appearing on behalf of the appellant advanced four main submissions before us. Firstly, he submitted that the use of the words "as the case may be" in Section 18 of UTI Act, 2002 introduced an element of uncertainty. Section 18 seeks to substitute in the place of the G Unit Trust of India, the names of respondents 1 and 2 herein in all Acts, Rules or Regulations etc. This provision does not lay down with any certainty as to which of the two respondents shall be deemed to be a financial institution in a particular Act, Rule or Regulation. The use of the words "as the case may be" could not be included in a definition clause. It is not permissible H to say in a definition clause that in each case it must be discovered which

of the two names is more appropriate. According to him, the language of Section 18 does not at all give effect to the purpose for which it was enacted. Secondly, he submitted that under the DRT Act, the debt sought to be recovered must be due to the financial institution. A financial institution acting as an agent cannot claim on behalf of its principal which is not a financial institution. The claim must be in its own right and not on behalf of its principal which is not a financial institution. Relying on the provisions of the Act he contended that the Administrator acts as an agent of the Central Government. The legislative scheme of the UTI Act, 2002 disclosed the existence of principal agent relationship and, therefore, as such agent the Administrator could not maintain a claim under the DRT Act. Similarly, a trustee also could not invoke the provisions of the DRT Act. He submitted that the term "vested" may have different meanings depending upon the context, the language, and the object of the statute. It may mean vesting of the assets or it may mean only vesting of the management. The statute must be construed having regard to its purpose with a view to find in whom the assets vests. According to him, the autonomy of the two entities under the scheme envisaged by UTI Act, 2002, has been maintained only for the purpose of accounting so that their performance may be objectively judged. While making payments, the value, assets and the liabilities of the Trust must be taken into account. Section 7 of the UTI Act, 2002 when it uses the words "for and on behalf of" import the concept of agency under Section 182 of the Contract Act. He emphasised the distinction between trustee and agent enunciated in *W.O. Holdsworth & Ors.* v. *The State of U.P.*, [1958] SCR 296 and submitted that the words used do not signify vesting of ownership, but only vesting of management on behalf of the Central Government. The power to appoint the Administrator and his/its advisors, as also the power to give directions vests in the Central Government. In any event, a financial institution could not recover dues under the DRT Act acting as a trustee. Far reaching and adverse consequences may follow if banks are allowed to sue under the DRT Act in such or similar capacity that is agent, trustee etc.

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Thirdly, he submitted that there was no plea raised on behalf of respondents 1 and 2 that the funds invested came out of the assets and schemes entrusted to them.

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Lastly, it was submitted that under Section 19 B of the Unit Trust of India Act, 1963 special provision for enforcement of claim by the Trust have been made which were quite effective and sufficient. The stringent provisions contained therein were sufficient to protect the interest of the Unit Trust of

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A India. On the other hand, Section 19 of the DRT Act provides for another procedure for recovery of debts due to banks and financial institutions. Relying upon the judgment of this Court in *Chhagan Lal Magan Lal (P) Ltd. etc. etc.* v. *Municipal Corporation of Greater Bombay and Ors. etc. etc.*, [1974] 2 SCC 402, he submitted that the two procedures laid down under two different acts for recovery of dues violated Article 14 of the Constitution of India.

After submissions were made by the respondents herein, Shri Venugopal did not press the last two submissions noted above. The submission based on Section 5(4) of the UTI Act, 2002 was not pressed since it touched the merit of the claim of respondents 1 and 2, which could not be gone into at this stage. Similarly, the submission based on Section 19 B of the Unit Trust of India, 1963 and Section 19 of the DRT Act was not pressed in view of the principles laid down by this Court in its judgment in *Gujarat State Financial Corporation* v. *Natson Manufacturing Co. Pvt. Ltd. and Ors.*, [1979] 1 SCC 193. We shall not therefore, notice the submissions urged by the respondents in response to the aforesaid two submissions not pressed by Shri Venugopal.

Shri R.F.Nariman, senior counsel appearing on behalf of the Administrator, respondent No.1, submitted that Section 7 of the UTI Act, 2002 gives effect only to a part of the scheme which must be understood in the background of the larger scheme envisaged by the Act read as a whole. Under Section 3 of the Act the statutory successor is the Central Government and the share capital vests in the Central Government. Refund of the share capital is to be made by the Central Government to the contributors named therein. It is for this reason that the Central Government steps in. Under Section 4, the undertaking (excluding the specified undertaking) vests in the Specified Company. The specified undertaking vests in the Administrator under Section 5. This is the scheme of transfer and, therefore, Sections 7 and 18 of the Act must be read harmoniously. He further submitted that even if it is assumed for the sake of argument that the Administrator acts as an agent of the Central Government, that is immaterial because the Administrator and the Specified Company are deemed to be "financial institutions" by reason of Section 18 of the Act read with Section 4A of the Companies Act. In any event, in this case, the facts are quite clear and respondents 1 and 2 have sued for recovery of amounts due to them, and they have not acted as an agent or as a debenture trustee.

Shri Rakesh Dwivedi, senior advocate appearing on behalf of the UTI

Trustee Company - respondent No.2 herein drew our attention to Section 3 of the Unit Trust of India Act, 2002 and submitted that the aforesaid provision refers to "the initial capital of the Trust". To understand that term one must refer to Section 4 of the Unit Trust of India Act, 1963 which provided for the initial capital of the Trust. Section 4 aforesaid provided that the initial capital of the Trust shall be five crores of rupees divided in the form of certificates each of which shall be of such face value as may be prescribed and contributed in the manner hereinafter referred. Sub-section (2) refers to the contribution to be made by the Reserve Bank of India, the Life Insurance Corporation, the State Bank and the subsidiary banks and other institutions. Section 22 of the 1963 Act provided that the capital of the Trust in relation to the first unit scheme shall consist of the initial capital, the unit capital of the said scheme, any reserves created for that scheme etc. etc. Thus when Section 3(2) of 2002 Act refers to "the initial capital", it refers to the initial capital created under Section 4 of the Unit Trust of India Act, 1963.

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He submitted that under the UTI Act, 2002 the initial capital has to be refunded by the Central Government. Thereafter Sections 4 and 5 of the UTI Act, 2002 Act deal with the Undertaking of the Trust and the Specified Undertaking of the Trust which vest in the Specified Company and the Administrator respectively. The Undertaking as well as the Specified Undertaking represent the assets, schemes etc. which were created under various Schemes under the Unit Trust of India Act, 1963. Each of the Schedules represent the business and liabilities etc. Under Section 3 the initial capital is refunded in the manner prescribed and the other assets are divided in the manner provided. Under the proviso to Section 4 if any business, asset or property is not represented or related to the Undertaking or Specified Undertaking, it shall vest in the Central Government. Thus under Section 3 the initial capital is refunded. Under Sections 4 and 5 the business, assets and properties are divided and while the Specified Undertaking of the Trust vests in the Administrator, the Undertaking vests in the Specified Company. Whatever remains vests in the Central Government. This represents a complete scheme under which the entire assets and liabilities are distributed and stand refunded or vested as the case may be, in accordance with the provisions of Sections 3, 4 and 5.

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He submitted that Section 7 no doubt refers to the appointment of Administrator of the Specified Undertaking for the purpose of taking over the administration thereof and to carry on the management for and on behalf of the Central Government. The Central Government has been given powers to

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A issue directions. He submitted that such control is exercised over every Government Corporation. The provisions of the Act vest the power to administer in the Administrator, reserving to the Central Government the right to regulate the exercise of its powers and functions. This does not prevent the Administrator from acting on his own. As an Administrator he has power to recover dues owing to the Specified Undertaking. The very wide powers B vested in the Administrator have been enumerated in Section 10 of the Act. He also submitted that in the instant case the Administrator had acted to recover the amount due to the Specified Undertaking and similarly the Specified Company had taken action to recover dues owing to it. In the instant case there is no dispute that the amounts sought to be recovered were paid by C the Unit Trust of India and those amounts are now sought to be recovered by respondents 1 and 2 in whom the rights vest to recover the amounts due.

The Learned Additional Solicitor General appearing on behalf of the Union of India drew our attention to the definition of "public financial D institution" under Section 2(fa) of the Unit Trust of India Act, 1963 and submitted that it includes every financial institution other than the Trust specified by or under Section 4-A of Companies Act, 1956. Section 2(e) of the UTI Act, 2002 defines the "financial institution" as having the same meaning assigned to it in clause (h) of Section 2 of the DRT Act, 1993. Section 2(h) of the DRT Act, 1993 defines the "financial institution" to mean E a public financial institution within the meaning of Section 4-A of the Companies Act, 1956 and such other institution as the Central Government may by Notification specify. He, therefore, submitted that High Court was right in holding that Section 18 effected an amendment in Section 4-A of the Companies Act with the result that instead of "Unit Trust of India" the "Specified F Company" and the "Administrator" stood substituted. They being financial institutions have every right to invoke the provisions of the DRT Act.

Before considering the submissions advanced on behalf of the parties, it may be useful to notice some of the provisions of the UTI Act, 2002. The definitions of "financial institution", "Specified Company", the "Specified G Undertaking" and "Undertaking" are relevant and they define as follows :-

> "(e) "financial institution" shall have the meaning assigned to it in clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

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(h) "specified company" means a company to be formed and registered under the Companies Act, 1956 (1 of 1956) and whose entire capital is subscribed by such financial institutions or banks as may be specified by the Central Government, by notification in the Official Gazette, for the purpose of transfer and vesting of the undertaking; A

(i) "specified undertaking" includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes and Development Reserve Fund specified in the Schedule I; B

(l) "undertaking" includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes and plans specified in the Schedule II;" C

Sections 3 and 4 provide as follows -

"3. *Transfer of initial capital.—*

(1) On the appointed day, the initial capital of the Trust, contributed by the Development Bank, the Life Insurance Corporation, the State Bank and the subsidiary banks and other institutions under sections 4 and 4A of the Unit Trust of India Act, 1963, as it stood immediately before the commencement of this Act, shall stand transferred to, and vest in, the Central Government D

(2) The initial capital contributed by the Development Bank, the Life Insurance Corporation, the State Bank and the subsidiary banks and other institutions shall be refunded, by the Central Government, to such extent as may be determined by it, having regard to the book value, the assets and liabilities of the Trust E

4. *Undertaking of Trust to vest in specified company and specified undertaking of Trust to vest in Administrator.—* F

(1) On such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be transferred to, and vest in,- G

(a) the specified company, the undertaking (excluding the specified undertaking) of the Trust for such consideration and on such terms and conditions as may be mutually agreed upon between the Central Government and the subscribers to the capital of the specified company; H

A (b) the Administrator, the specified undertaking of the Trust

(2) The decision of the Central Government, as to whether any business, assets, liabilities or properties represent or relate to the undertaking or specified undertaking, shall be final:

B Provided that any business, asset or property which is not represented or related to the undertaking or specified undertaking, shall vest in the Central Government."

Sub-section (1) of Section 5 must also be noticed which provides:-

C "5. *General effect of vesting of undertaking or specified undertaking in specified company or Administrator.*—

(1) The undertaking of the Trust which is transferred to, and which vest in, the specified company or the specified undertaking of the Trust, which is transferred to, and which vest in, the Administrator, as the case may be, under section 4, shall be deemed to include all D business, assets, rights, powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and E undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments, shares, bonds, debentures, security, management of any industrial concern, loans, advances and guarantees given to industrial concerns, tenancies, leases and book-debts and all other rights and interests arising out of such property as were immediately before the appointed day in the F ownership, possession or power of the Trust in relation to the undertaking or the specified undertaking, as the case may be, within or without India, all books of account, registers, records and documents relating thereto and shall also be deemed to include all borrowings, liabilities, units issued and obligations of whatever kind within or G without India then subsisting of the Trust in relation to such undertaking or the specified undertaking, as the case may be."

Sub-sections (1) to (3) of Section 7 read as under :-

"7. *Appointment of Administrator to manage specified undertaking.*—

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(1) The Central Government shall, on and from the appointed day, appoint a person or a body of persons, as the "Administrator of the specified undertaking of the Unit Trust of India" for the purpose of taking over the administration thereof and the Administrator shall carry on the management of the specified undertaking of the Trust for and on behalf of the Central Government

(2) The Central Government may issue such directions (including directions as to initiating, defending or continuing any legal proceedings before any court, tribunal or other authority) to the Administrator as to his powers and functions as that Government may deem desirable and the Administrator may apply to the Central Government at any time for instructions as to the manner in which he shall conduct the management of the specified undertaking or in relation to any matter arising in the course of such management

(3) Subject to the other provisions of this Act and the Schemes made thereunder and the control of the Central Government, the Administrator shall be entitled, notwithstanding anything contained in any other law for the time being in force, to exercise, in relation to the management of the specified undertaking, the powers specified under section 10 including powers to dispose of any property or assets of such specified undertaking whether such powers are derived under any law for the time being in force."

Section 18 which is of considerable significance in this appeal is reproduced below :-

"*18. Substitution in Acts; rule or regulation or notification by specified company or Administrator in place of Trust.* -

In every Act, rule, regulation or notification in force on the appointed day, for the words "Unit Trust of India", wherever they occur, the words, brackets and figures "specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002" or "Administrator of the specified undertaking of the Unit Trust of India referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002", as the case may be, shall be substituted"

It is also necessary to notice the relevant provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Section 2 (g)

A defines "debt" as follows :-"

> "[(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution
B or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;]"

C A "financial institution" under the said Act is defined by Section 2(h) in the following words :-

> (i) a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956);
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> D (ii) Such other institution as the Central Government may, having regard to its business activity and the area of its operation in India by notification, specify ;

Section 17 deals with the jurisdiction, powers and authority of the Tribunals constituted under the Act. It reads as under :-

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> "17. *Jurisdiction, powers and authority of Tribunals.*—(1) A Tribunal shall exeroise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and Financial institutions for recovery of debts due to such banks and financial institutions.
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> (2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act."

G Sub-sections (1) and (2) of Section 19 are also relevant. They read as under :-

> "19. *Application to the Tribunal.*—(1) Where a bank is a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-
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(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain, or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain, or

(c) the cause of action, wholly or in part, arise.

(2) Where a bank or a financial institution, which has to recover the debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has claim to recover its debt, then, the later bank or financial institution may join the applicant bank, or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal."

Section 34 gives to the Act over-riding effect by providing as follows:-

"34. *Act to have over-riding effect.*—(1) Save as otherwise provided in sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent (herewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

(2) The provisions of (his Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the Stale Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), "the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

Before the High Court the main submission urged on behalf of the appellant was that respondents 1 and 2 herein are not 'financial institutions' within the meaning of DRT Act, 1993. The respondents, however, relied on Section 11 of the UTI Act, 2002 and Section 2(h)(ii)(ii) of the DRT Act to contend that the aforesaid respondents are 'financial institutions' within the meaning of the term in the DRT Act. The High Court upheld the contention

A of the respondents. Section 18 of the UTI Act, 2002 in terms provide that for the words "Unit Trust of India", wherever they occur in any Act, rule, regulation, or notification, the words " Specified Company" and "Administrator of the Specified Undertaking of the Unit Trust of India" shall be substituted. The effect of this provision is that in every Act, rule, regulation or notification the words "Unit Trust of India" are substituted by the "Specified Company" B and the "Administrator of the Specified Undertaking" referred to in the UTI Act, 2002. It is, therefore, not necessary to pass a separate amending Act or to amend all the rules, regulations or notifications by adopting an amending procedure. Section 18 of the UTI Act, 2002 operates by its own force to bring about the substitution. Legislative policy adopted by the Parliament to C enact a legislation which effects an amendment in other Acts, rules, regulations, notifications etc. is permissible subject to its legislative competence. If the enactment brings about such amendments as is within the legislative competence of the Parliament and the statutes, notifications, etc. in which such amendment is affected are also within the legislative competence of the Parliament, the method adopted by thc Parliament cannot be assailed. Rather D than enacting several statutes and numerous amendments of rules, regulations, notifications etc., the Parliament achieved this purpose by a single enactment.

Section 4-A of the Companies Act provides that each of the financial institutions specified in sub-section (1) shall be regarded for the purpose of E this Act, as a public financial institution. The financial institutions specified included the "Unit Trust of India" established under Section 3 of the UTI Act, 1973. By operation of Section 18 of the UTI Act, 2002, "Unit Trust of India" is substituted by the "Specified Company" or "Administrator of the Specified Undertaking", as the case may be. Thus, the "Specified Company" and the "Administrator of the Specified Undertaking" must be deemed to be financial F institutions specified in sub-section (1) of Section 4-A of the Companies Act.

This takes us to the definition of 'financial institution' under the DRT Act, Section 2(h) whereof defines a "financial institution" to mean a public financial institution within the meaning of Section 4-A of the Companies Act. Consequently by reason of deemed amendment of Section 4-A of the G Companies Act, the "Specified Company" and the "Administrator of the Specified Undertaking" come within the definition of financial institutions as defined under Section 2(h) of the DRT Act.

Mr. Venugopal submitted that under Section 18 of the UTI Act, 2002 the substitution is of "Specified Company" or "Administrator of the Specified H

Undertaking", "as the case may be". According to him this brings about an uncertainty and in each case it has to be discovered as to whether one or the other is substituted. According to him Section 18 which in a sense is a definition clause should not permit such uncertainty. We find no merit in this submission. By reason of Section 18 of the UTI Act, 2002, in place of Unit Trust of India, both respondents 1 and 2 stand substituted. Both are entitled to sue as financial institutions and the question whether they have an enforceable claim must be decided in the facts and circumstances of each case. There is no uncertainty because the assets possessed by these two identities are clearly enumerated in Schedules I and II of the UTI Act, 2002. We, therefore, do not find that the use of the words "as the case may be" introduces any element of uncertainty.

The next question is whether respondents 1 and 2 are seeking to recover the debts owing to them or whether they are acting as agent on behalf of their principals, or as trustees.

The Scheme of the Act discloses that the Unit Trust of India created under the Unit Trust of India Act, 1963 ceased to exist and in its place the Specified Company and the Administrator of the specified undertaking of the Trust were created which took charge of all the properties, business assets, rights etc. of the erstwhile Unit Trust of India. The initial capital of the Trust stood transferred to and vested in the Central Government under Section 3(1) of the Act. Sub-section (2) however, mandated that the initial capital contributed by the named contributors shall be refunded by the Central Government to such extent as may be determined by it. Section 21 provides for the repeal of the Unit Trust of India Act, 1963 and the dissolution of its Board of Trustees.

Having done so UTI Act of 2002 by Section 4 thereof vested in the specified company the undertaking of the Trust (excluding the specified undertaking) for such consideration and on such terms and conditions as may be mutually agreed upon between the Central Government and the subscribers to the capital and the specified company. The decision of the Central Government as to whether any business, assets, liabilities or properties represent or relate to the undertaking or specified undertaking is made final. If there remained any business, asset or property which was not represented or related to the undertaking or specified undertaking, that vested in the Central Government. In this manner, the erstwhile Unit Trust of India ceased to exist and in its place a specified company and an Administrator of the

A specified undertaking of the Trust came into existence. The transfer and vesting of assets, rights etc. in these two bodies is in the widest possible terms as would be obvious from a plain reading of Section 5 of the UTI Act, 2002. It provides that what is transferred and vested in the specified company or the Administrator of the specified undertaking, shall be deemed to include:-

B

> "all business, assets, rights powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and
C undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments shares, bonds debentures, security, management of any industrial concern, loans advances and guarantees given to industrial concerns, tenancies, leases and book-debts and all other rights and interests arising out of such
D property as were immediately before the appointed day in the ownership, possession or power of the Trust in relation to the undertaking or the specified undertaking, as the case may be".

Thus the transfer and vesting is complete. All contracts, deeds bonds, guarantees, other instruments and working arrangements subsisting
E immediately before the appointed day cease to be enforceable against the erstwhile Trust but shall be of as full force and effect against or in favour of the Specified Company or the Administrator, as the case may be, in which the undertaking or specified undertaking has vested, and enforceable as fully and effectually as if instead of the Trust, the Specified Company or the
F Administrator, as the case may be, had been named therein or had been a party thereto. Similarly, all unit schemes taken by the Board of the erstwhile Trust are deemed to have been taken by the Specified Company or the Administrator as the case may be.

Having vested the undertaking of the Trust in the Administrator, Section
G 7 of the Act provides for the appointment of the Administrator of the specified undertaking who is entrusted with the task of taking over the administration thereof and to carry on the management of the specified undertaking of the Trust for and on behalf of the Central Government. sub-section (2) of Section 7 empowers the Central Government to issue such directions to the Administrator as to his powers and functions as the Government may deem
H desirable. The Administrator may also seek directions from the Central

Government as to the manner in which he shall conduct the management of the specified undertaking or in relation to any matter arising in the course of such management. A

Much was sought to be made of the use of the words "carry on the management of the specified undertaking of the Trust for and on behalf of the Central Government" in Section 7 of the UTI Act, 2002. It was also B emphasized that under sub-section (2) of Section 7 the Central Government has been authorized to issue directions to the Administrator as to his powers and functions and similarly permitted the Administrator to seek directions of the Central Government as to the manner in which he shall conduct the management of the specified undertaking or in relation to any matter arising C in the course of such management. The power to issue directions of this nature are to be found in several other statutes which create a Government cooperation or other legal entity. The power to issue directions vested in the Central Government is with a view to provide policy guidance to the Administrator. The fact that the management is carried on by the Administrator of the specified undertaking on behalf of the Central Government which is D authorized to issue directions to the Administrator does not detract from the fact that the "specified undertaking" vests in the Administrator. The wide sweep of the language employed in Section 5 of the Act leaves no manner of doubt that the vesting in the Administrator or in the Specified Company is complete. The powers vested in the Administrator under Section 10 of the E Act cover almost every power of management and administration. Section 10 (1) (b) in particular authorizes him on the advice of the Board of Advisors to invest, acquire, hold or dispose of securities and to exercise and enforce all powers and rights incidental thereto including protection or realization of such investment etc. Thus, it is a part of the power of management vested in the Administrator to invest as well as to realize such investments. F Apparently therefore, if any amount is owing to the specified undertaking, the Administrator has the authority to take all necessary steps to realize any amount due to the specified undertaking. The statute vests this power in the Administrator. It cannot therefore by any stretch of imagination be assumed that the Administrator does not possess the power to make recoveries in G course of management of the specified undertaking. The mere fact that the Central Government may give him directions or he may seek instructions from the Central Government of the nature contemplated by sub-section (2) of Section 7, does not mean that the power exercised by the Administrator are not the powers vested in him by law. Subject to such directions as may be given under the aforesaid sub-section, it is the Administrator who must H

A exercise his power of management and administration. Apparently therefore in recovering dues owing to the specified undertaking, the Administrator exercises the powers vested in him under the Act in his own right since the undertaking vests in him, and the Act vests in him wide powers of management and administration which include the power to recover dues owing to the specified undertaking. It is, therefore, futile to contend that the Administrator B acts as an agent of the Central Government. He acts in exercise of the powers vested in him by the statute and in the manner prescribed by the statute.

Even assuming that the Administrator manages the specified undertaking on behalf of the Central Government, that will not make any difference. The C amounts sought to be recovered are allegedly owing to the Specified Company and the Administrator, who as we have found are "financial institutions" within the meaning of that term in the DRT Act, 1993. Thus, the Specified Company and the Administrator of the Specified Company are not seeking to recover any dues owing to the Central Government, and therefore, they cannot be held to be acting on behalf of the Central Government. In their D own right they are seeking to recover the amounts due to them in exercise of status and power conferred upon them by statute. So viewed, the nature of control of the Central Government over them is wholly irrelevant in considering the question of jurisdiction of the Debts Recovery Tribunal to entertain such a claim.

E Similarly, the vesting of the undertaking (excluding the specified undertaking) in the Specified Company is also complete in terms of Section 5 of the Act. Being a company, it is a distinct legal entity and, therefore, must exercise its authority in accordance with law. Advisedly, the legislature did not vest the specified undertaking in a company as it has done in the case F of undertaking other than specified undertaking, because in so far as the specified undertaking of the Trust is concerned, the Act contemplates the redemption of all the schemes and the payment of entire amount to investors. After this is achieved, the Administrator in terms of Section 8 of the Act shall vacate his office and forthwith deliver to the Central Government, or any institution or officer specified by it, possession of all assets and properties G representing and relatable to the specified undertaking which are in his possession, custody and control. The Administrator of specified undertaking is, therefore, constituted as a statutory authority under the Act with wide powers and functions vests in him in relation to the specified undertaking which also stand vested in him. When he seeks to recover dues owing to H the specified undertaking he exercises his own authority as Administrator and

assumes powers which vests in him by law. There is nothing in the Act which may justify the submission that the specified company acts as a trustee. It manages and executes the schemes contained in Schedule I of the Act in accordance with the provisions of the Act.

Learned counsel for the appellant submitted that under the Banking Regulation Act, 1949 Section 6 authorises a banking company to engage in business even as an executor. According to him, an executor cannot recover dues under the provisions of the DRT Act. He placed reliance on the judgment of the Supreme Court in *State Bank of India* v. *Special Secretary Land & Land Revenue & Reforms & Land & Land Utilisation Deptt. of W.B. and Ors.*, [1995] Supp 4 SCC 30 particularly paragraph 5 thereof. This Court considered its earlier decision in *Holdsworth* (Supra). The question which arose for consideration of this Court was whether Section 19 of the Urban Land (Ceiling and Regulation) Act, 1976 was attracted to vacant land of a Trust created by a private individual, if a Bank accepted administration of such Trust and became a trustee in the course of carrying on its permitted commercial activity. The decision in that case turned on the meaning of the words "to hold" under Section 2(l) of the Act and interpreting the said term, this Court held that the vacant land owned or possessed as owner or in certain other capacities by Central Government or others as specified in sub-section (1) of the Section were exempted from the applicability of the provisions in Chapter III of the Act. Clause (iii) of sub-section (1) mentioned banks falling within the meaning of the explanation given thereto as those which fell in exempted categories. The decision therefore, rested on the meaning given to the term "to hold" in Section 19 of the Act.

Having examined the provisions of the UTI Act, 2002 we have no doubt that vesting in the Administrator or the Specified Company is complete. The concept of mere vesting of management cannot be imported into the scheme of the Act. The Administrator and the Specified Company were therefore, fully authorized in law to recover the dues from the appellants as "financial institutions". The Debts Recovery Tribunal had therefore undoubted jurisdiction to entertain their claims.

On the basis of the materials placed before us there is nothing to suggest that they were acting either as agents of the Central Government or as trustees. We therefore, hold that they have acted in the exercise of power vested in them by the UTI Act, 2002 and in their own right.

A The High Court was, therefore, right in dismissing the writ petition preferred by the appellants challenging the jurisdiction of the Debts Recovery Tribunal. We find no merit in this appeal and the same is, therefore, dismissed but without any order as to costs.

V.S.S. Appeal dismissed.

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