

M/S. EVEREST WOOLS PVT. LTD. AND ORS.

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v.

U.P. FINANCIAL CORPORATION AND ORS.

DECEMBER 14, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

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U.P. State Financial Corporation Act, 1951; Ss.29 and 31/U.P. Public Moneys (Recovery of Dues) Act, 1972:

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Recovery of loan—A company took loan from State Financial Corporation and later from another State Undertaking—Issuance of Notice to company by the Corporation to explain as to why it took loan from the State Undertaking and purchased second hand plant and machinery in breach of contract—In exercise of power u/s.29 of 1972 Act, assets of company taken over by the Corporation and the State Undertaking invoking guarantees executed by Managing Director of Company—Challenge to—Dismissed by High Court—On appeal, Held: Statutory power to realize dues conferred on Corporation, a statutory authority/State in terms of Article 12 of the Constitution—It has to act fairly and reasonably—Taking over possession of an ongoing concern without taking over the Management would be termed as sale of the Unit—Supreme Court is not aware as to whether any steps in regard to sale of the Unit had been taken by the Corporation—Hence, in the interest of justice, matter remitted to High Court for consideration afresh—Constitution of India, 1950—Articles 12 & 14—Indian Contract Act, 1872—Contract—Breach of.

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Corporation/State—Duty of—Contract—Terms—Breach of—Discussed.

Words and Phrases:

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'Fairness'—Meaning of in the context of Section 29 of the U.P. State Financial Corporation Act, 1951.

A Appellant-Company took loan from Respondent-Corporation. The Company also applied for grant of loan to respondent No.3, the Pradeshiya Industrial and Investment of U.P. Ltd. (PICUP). A notice was issued by the Corporation on the premise that the company had purchased second-hand plants and machinery worth Rs.6.75 lacs
 B from one of their financed units and obtained financial assistance from PICUP in breach of terms of loan. An explanation, pursuant thereto, was submitted by the company. However, entire loan was recalled by the Corporation on the premise that the company had committed defaults in paying the instalments. The Corporation, in
 C exercise of its powers under Section 29 of the U.P. State Financial Corporation Act, has taken over possession of the assets of the company. First Information Report was also lodged in respect of the purported purchase of second-hand plant and machinery by the company. On enquiry, the allegations against the company were not
 D found to be correct; whereafter a request was made by the company to the Corporation as also PICUP for handing over the possession of the unit to it as also for waiver of interest etc. PICUP, however, invoked the guarantees executed by the Directors of the company. A recovery proceeding was also initiated. The Company and its
 E Managing Director filed writ petitions for directions to the Corporation to quash the personal recovery certificates for recovery of loan and also for recovery of the Unit. The petitions were dismissed by the High Court. Hence the present appeals.

F Appellants contended that the provisions of Section 29 of the 1951 Act have been misused in the instant case; that the action, on the part of the respondents, in recalling the loan and in taking over possession of the running unit was neither fair nor reasonable; and that taking recourse to invocation of the personal guarantees of the Directors of the Company for recovery of the loan amount was totally
 G illegal.

H Respondents submitted that in terms of the provisions of the 1951 Act as also U.P. Public Moneys (Recovery of Dues) Act, they were not only entitled to take possession of the properties under Section 29 of the 1951 Act but were also entitled to invoke the

guarantees furnished by the Directors of the company; that possession of the respondents in relation to the plant and machinery was that of a 'bailee' and as it has not been alleged that proper care thereof had not been taken as envisaged under Section 151 of the Indian Contract Act, 1872, the respondents are not liable to reimburse the appellants for the loss of articles; and that even for the said purpose only a suit would be maintainable and not a writ application.

Allowing the appeals, the Court

HELD:1.1. The High Court was not correct in passing the impugned order. The Corporation, no doubt, is entitled to realize its dues, but it must be borne in mind that it had been conferred with a special statutory power in terms of Section 29 and 31 of the U.P. State Financial Corporation Act therefor. Such a power in the Corporation was conferred by an Act of Parliament, *inter alia*, keeping in view the fact that it being a statutory authority and, thus, being a 'State' within the meaning of Article 12 of the Constitution of India, will act fairly and reasonably. [Para 15] [865-G-H; 866-A]

1.2. Power under Section 29 of the 1951 Act empowers the Corporation to take recourse to either take over the possession of the plant and machinery; take over management of an on going concern; and sell the property pledged, mortgaged, hypothecated or assigned to it. When it takes over possession of the plant and machinery in exercise of its statutory power, apart from its obligation as a 'bailee', it also acts as a 'trustee'. Its action otherwise must be fair and reasonable. [Para 16] [866-C-E]

1.3. It is true that fairness cannot be a one way street, but then whereas the Corporation indisputably has a right to realize its dues, it must act strictly in terms of the statutory and constitutional Scheme. If it acts unfairly, it fails the system. While it exercised its enormous statutory power, it is expected perform its duties also. Such a duty is envisaged not only under the law but also under Article 14 of the Constitution of India. [Para 16] [866-E-F]

A 2.1. The entire loan was recalled by the Corporation not only because the appellants were defaulters but also on the allegation that they had purchased second hand plant and machinery from another financial institution in breach of the contract, which having been found to be wholly incorrect, it must be held that it had acted on extraneous consideration. So far as the PICUP is concerned, it was bound to act in terms of the provisions of the U.P. Public Moneys (Recovery of Dues) Act. Whether it did so, is a question which should have been gone into by the High Court. [Para 15] [866-B-C]

C 2.2. A person aggrieved by the action of the State must have an effective remedy. The purpose of taking over possession and that too of an on-going concern, without taking over the Management, would be to sell the unit. [Para 16] [866-F-G]

D 2.3. For taking recourse to sale of the unit and in a case of this nature where the possession of the plant and machinery had been taken of an on-going concern, an extra care on the part of the authorities of the Financial Corporation was expected. This Court does not know whether immediate steps for sale of the properties had been taken or not. [Para 17] [866-H; 867-A]

E 2.4. This Court is also not aware whether PICUP invoked personal guarantees of the Directors in contravention of the 1972 Act. The controversy between the parties in regard to the theft of the properties and the valuation thereof also noticed. This Court does not know if any step had been taken by the Corporation against the officials or the security guards who were found to be responsible therefor, and also even not aware as to whether a criminal case had been initiated in that behalf or not. Therefore, keeping in view the aforementioned factual matrix, this Court is of the opinion that interest of justice would be met if the matters are remitted to the High Court for its consideration afresh. As technicalities may come in the way of the High Court for grant of proper reliefs in favour of the appellants, in the event they are found entitled thereto, the liberty is granted to them to amend writ petitions suitably. Parties may also bring on records subsequent events by filing additional affidavits.

H In the peculiar facts and circumstances of the case, the High Court

is requested to consider all aspects of the matter and pass appropriate order(s) as it may seem fit and proper. A

[Paras 18, 19 and 20] [867-B-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2707-2708 of 2003. B

From the Judgment and final Order dated 29.9.1999 of the High Court of Judicature at Allahabad in C.M.W.P. Nos. 34059/1999 and 41848/1999.

S.K. Verma for the Appellants. C

Shrish Kumar Misra, Aarohi Bhalla, Sunil Kumar Singh and Sujata Kurdukar for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Application of Section 29 of the State Financial Corporations Act, 1951 ('the 1951 Act') vis-à-vis the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 ('the 1972 Act') is in question in these appeals which arise out of a common judgment and order dated 29th September, 1999 passed by a Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition Nos. 41848 and 34059 of 1999. D E

2. Before embarking on the questions raised at the bar, we may notice the basic fact of the matter.

3. M/s. Everest Wools Pvt. Ltd. of which Pradeep Kumar Agrawal is a Managing Director took loan from the U.P. State Financial Corporation (Corporation). The company applied for re-scheduling of the loan and the same was granted. Appellant company intended to expand their unit. It applied for grant of loan to the respondent No.3, the Pradeshiya Industrial and Investment of U.P. Ltd. (PICUP). Rs. 47 lacs was sanctioned by it. A sum of Rs. 41.60 lakhs was disbursed to it by March, 1992. Some other amount was also disbursed by way of State Capital Investment Subsidy by the Government. F G

4. *Inter alia* on the premise that the appellant-company had H

A purchased some plants and machinery worth Rs.6.75 lacs from one of their financed units namely M/s. Uttrakhand Woolen Yarn Udyog Pvt. Ltd. and obtained financial assistance from PICUP, a notice was issued by U.P. State Financial Corporation to the appellant asking for its response thereto failing which it was threatened that action under Section 29 of the 1951 Act would be taken. An explanation, pursuant thereto, was submitted. However, entire loan was recalled *inter alia* on the premise that the company had committed defaults in paying the instalments. Some letters were exchanged between the parties. However, it appears that PICUP authorized U.P. State Financial Corporation to act as its agent as both of them are premium financial institutions of the State of U.P. A representation was again made by the appellants before the Financial Corporation for adjusting the over-due amount which was not acceded to. In exercise of its powers under Section 29 of the 1951 Act possession of the assets of the appellant company was taken over by the U.P. State Financial Corporation. A First Information Report was also lodged in respect of the purported purchase of plant and machinery by the appellant company from M/s. Uttrakhand Woolen Yarn Udyog Pvt. Ltd. On enquiry, the allegations against the appellant company were not found to be correct; whereafter a request was made by the appellant company to the Financial Corporation as also PICUP for handing over the possession of the unit to it as also for waiver of interest etc. PICUP, however, invoked the guarantees executed by the Directors of the appellant company. A recovery citation was also issued.

5. However, in the meantime some machinery parts were found to be missing, although security guards had been posted in the said factory. Valuation thereof was made and a sum of Rs.45,000/- was credited to the account of the appellant-company. Again some theft took place.

6. Two writ petitions were filed, one by the company and three others, including Vinod Kumar Agrawal, (CMWP No. 34059 of 1999) and the other by Vinod Kumar Agrawal (CMWP No. 41849 of 1999). In the said writ petitions following reliefs were prayed for :-

"IN CMWP No. 34059/1999.

a. to issue a writ, order or direction in the nature of certiorari

- quashing the impugned personal recovery certificate dated 31.07.1999 (Annexure 12) passed by respondent No.1. A
- b. to issue a writ, order or direction in the nature of mandamus restraining the respondents from recovering the loan from the petitioners in pursuance of impugned personal recovery certificates dated 31.07.1999 (Annexure 12). B
- c. to issue a writ, order or direction in nature of ad interim mandamus staying operation of the impugned recovery citation dated 31.07.1999 (Annexure 12) issued by respondent no.5 against the petitioners. C
- d. to issue a writ, order or direction in the nature of mandamus directing the respondent not to take any coercive methods against the petitioners such as arrest, attachment/sale of their moveable and immoveable properties. D
- e. to issue any other suitable order or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case. D
- f. to award cost of this petition." E
- IN CMWP No. 41848/1999* E
- (i) issue a writ, order or direction in the nature of certiorari quashing the impugned recovery citation dated 31.07.99 (Annexure No.14) passed by the respondent no.1. F
- (ii) issue a writ, order, direction in the nature of *mandamus* restraining the respondent from recovering the loan from the petitioner in pursuance of impugned personal recovery citation dated 31.07.99 (Annexure 14). F
- (iii) issue a writ, order or direction in nature of ad interim *mandamus* staying operation of the impugned recovery citation dated 31.07.99 issued by the respondent no.4 against the petitioner. G
- (iv) issue a writ, order or direction in the nature of *mandamus* directing the respondent not to take any coercive method H

A against the petitioner such as arrest, attachment/sale of their moveable and immoveable properties.

(v) issue any other suitable writ, order or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case.

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(vi) issue writ, order or direction in the nature of *mandamus* directing the respondents Nos. 1 and 2 to hand over the physical possession of the unit as per the conditions of 30.11.98.

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(vii) Award cost of this petition to the petitioner against the respondents.”

7. Whereas in the former only direction for stay of recovery proceedings was prayed for but in the writ petition filed by Vinod Kumar

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Agrawal recovery of possession of the unit was also prayed for.

8. By reason of the impugned judgment, a Division Bench of the High Court, without going into the questions involved therein, *inter alia*, on a finding that the appellants had been trying to evade payment of the amounts under the personal guarantee bonds, which had been invoked by the PICUP, the recovery proceedings initiated by it cannot be stopped, dismissed the writ petition.

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9. During the pendency of the appeals before this Court, an advertisement for sale of the unit was issued by the U.P. State Financial Corporation. An order of stay was passed on 15th November, 2002 by this Court restraining the respondent for finalizing the sale. By an order dated 31st March, 2003, on an oral prayer made on behalf of the appellants, this Court directed the respondents to permit the to have inspection of the plant and machinery and take photographs thereof, pursuant whereto an inspection was made and it was found as of fact that not only some plants and machinery were missing but the plant and machinery were also not being maintained.

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10. In its order dated 23rd April, 2007, this Court noticed that an inventory of the plants and machinery had been prepared at the time when possession of properties belonging to the appellants had been taken over.

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Having regard to the interest of the parties, a fresh inventory was directed to be made by a judicial officer, who was to be nominated by the District Judge, Dehradun. One Mr. Manish Mishra, 1st Additional Civil Judge (Senior Division), Dehradun was nominated for the said purpose, He submitted his report which speaks for itself. A

11. The Corporation, however, contended that value of the machinery missing would be of not much significance. B

12. Submission of Mr. S.K. Verma, learned counsel appearing on behalf of the appellants, is that the provisions of Section 29 of the 1951 Act have been misused in the instant case. It was contended that the action, on the part of the respondents, in recalling the loan and in taking over possession of the running unit was neither fair nor reasonable. Taking recourse to invocation of the personal guarantees of the Directors of the Company for recovery of the loan amount was, it was urged, totally illegal. C

13. Mr. Shrish Kumar Misra, learned counsel appearing on behalf of the Corporation and Mr. Aarohi Bhalla, learned counsel appearing for PICUP, on the other hand, would submit that in terms of the provisions of the 1951 Act as also 1972 Act, they were not only entitled to take possession of the properties under Section 29 of the 1951 Act but were also entitled to invoke the guarantees furnished by the Directors of the company. It was submitted that possession of the respondents in relation to the plant and machinery was that of a 'bailee' and as it has not been alleged that proper care thereof had not been taken as envisaged under Section 151 of the Indian Contract Act, 1872, the respondents are not liable to reimburse the appellants for the loss of articles. According to the learned counsel, even for the said purpose only a suit would be maintainable and not a writ application. D E F

14. In view of the order proposed to be passed by us, we do not intend to deal with all the rival contentions of the parties. G

15. The High Court, in our opinion, was not correct in passing the impugned order. The Corporation, no doubt, is entitled to realize its dues, but it must be borne in mind that it had been conferred with a special statutory power in terms of Section 29 and 31 of the Act of 1951 therefor. H

- A Such a power in the Corporation was conferred by an Act of Parliament, *inter alia*, keeping in view the fact that it being a statutory authority and, thus, being a 'State' within the meaning of Article 12 of the Constitution of India, will act fairly and reasonably. The entire loan was recalled not only because the appellants were defaulters but also on the allegation that
- B they had purchased second hand plant and machinery from another financial institution in breach of the contract, which having been found to be wholly incorrect, it must be held that it had acted on extraneous consideration. So far as the PICUP is concerned, it was bound to act in terms of the provisions of the 1972 Act. Whether it did so, is a question which should
- C have been gone into by the High Court.

16. Power under Section 29 of the 1951 Act empowers the Corporation to take recourse to either :-

- (1) take over the possession of the plant and machinery ;
- D (2) take over management of an on going concern ; and
- (3) sell the property pledged, mortgaged, hypothecated or assigned to it.

- E When it takes over possession of the plant and machinery in exercise of its statutory power, apart from its obligation as a 'bailee', it also acts as a 'trustee'. Its action otherwise must be fair and reasonable. It is true that fairness cannot be a one way street, but then whereas the Corporation indisputably has a right to realize its dues, it must act strictly in terms of the statutory and constitutional Scheme. If it acts unfairly, it fails the system.
- F While it exercised its enormous statutory power, it is expected perform its duties also. Such a duty is envisaged not only under the law but also under Article 14 of the Constitution of India. A person aggrieved by the action of the State must have an effective remedy. The purpose of taking over possession and that too of an on-going concern, without taking over
- G the Management, would be to sell the unit. A buyer may like to purchase the on-going concern. If the plant and machinery are kept in order and in a working condition they would fetch one price but if the machinery are stolen or allowed to rust, the same would not.

- H 17. For taking recourse to sale of the unit and in a case of this nature

where the possession of the plant and machinery had been taken of an on-going concern, an extra care on the part of the authorities of the Financial Corporation was expected. We do not know whether immediate steps for sale of the properties had been taken or not. It is stated that some advertisements were issued, but why a running concern could not be sold is a matter which requires a deeper scrutiny.

18. We are also not aware whether PICUP invoked personal guarantees of the Directors in contravention of the 1972 Act. We have noticed the controversy between the parties in regard to the theft of the properties and the valuation thereof. We do not know if any step had been taken by the Corporation against the officials or the security guards who were found to be responsible therefor. We are even not aware as to whether a criminal case had been initiated in that behalf or not.

19. We, therefore, keeping in view the aforementioned factual matrix, are of the opinion that interest of justice would be met if the impugned judgment is set aside and the matters are remitted to the High Court for its consideration afresh. As technicalities may come in the way of the High Court for grant of proper reliefs in favour of the appellants, in the event they are found entitled thereto, we grant liberty to them to amend writ petitions suitably. Parties may bring on records subsequent events also by filing additional affidavits.

20. In the peculiar facts and circumstances of the case, the High Court is requested to consider all aspects of the matter and pass appropriate order(s) as it may seem fit and proper.

21. For the aforementioned purpose subsequent events should also be taken into consideration including the report of the learned Civil Judge and the replies filed thereagainst. As the matter is pending for a long time, the High Court may consider the desirability of the disposal of the same as expeditiously as possible.

22. The appeals are allowed on the aforesaid terms. However, keeping in view the facts and circumstances of the case, there shall be no order as to costs.