

M/S. MICRO HOTEL P. LTD.

A

v.

M/S. HOTEL TORRENTO LIMITED & ORS.

(Civil Appeal No. 6347 of 2012 etc.)

SEPTEMBER 6, 2012

B

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

State Financial Corporation Act, 1951 – s. 29 – Hotel project financed by State Financial Corporation and State Industrial Promotion and Investment Corporation – Loan agreement – Default – Demand Notice – Various offers by the Corporations to the borrower for One Time Settlement Scheme – Borrower failing to comply with the terms and conditions of the Scheme – Order of Division Bench of High Court giving benefit of One Time Settlement to the borrower failing which court giving liberty to the Financial Corporation to take action under the Act – Failure on the part of the borrower to comply with the order – Proceedings under s. 29 – Auction of the borrower's property – Sale of the property to auction-purchaser – Borrower approaching court – Division Bench of High Court offering afresh One Time Settlement Benefit to borrower and ordering dispossession of the auction-purchaser – On appeal, held: High Court by impugned judgment wrongly reopened a lis and issued illegal directions, overlooking the facts of the case and the binding judgment of co-ordinate Bench – The manner in which the Division Bench of High Court sat in judgment over the judgment of co-ordinate Bench is disapproved – Judicial Propriety.

C

D

E

F

Respondent No. 2 (State Financial Corporation) and respondent No. 5 (Industrial Promotion and Investment Corporation) jointly financed a hotel project launched by respondent No. 1. The parties entered into loan agreement. As there was default in payment of the loan, respondent No. 2 made demand. In 2006 respondents

G

H

A introduced One Time Settlement (OTS) Scheme. The benefit of the Scheme was extended to respondent No. 1 waiving certain loan amount, subject to certain terms and conditions. Since respondent No. 1 did not comply with the terms and conditions, respondent Nos. 2 and 5
 B withdrew the OTS offer. In 2007, again another OTS Scheme was launched by respondent No. 2 and offer was made to avail the benefit thereof. As respondent No. 1 did not comply with the request, respondent No. 2 withdrew the offer and demanded the entire dues.

C Respondent No. 1 filed writ petition before High Court seeking quashing of the demand notice and for direction to consider its claim under the OTS Scheme. The High Court disposed of the petition directing
 D respondent No. 1 to deposit Rs. 50,00,000 each to each of the two Corporations (respondent Nos. 2 and 5) failing which, the Corporations were given liberty to take action under State Financial Corporation Act. As respondent No. 1 did not comply with the direction of the High Court,
 E respondent No. 2 made a demand for the entire outstanding loan amount.

Respondent No. 2 issued seizure order of the property and the same was executed and possession thereof was taken over. Set-off price of the unit was fixed
 F on the basis of valuation report. Thereafter sale notice was published in local as well as National newspapers. Even after that respondent No.2 made a demand of outstanding dues from respondent No. 1 so as to get the assets released. Respondent No. 1 instead of clearing the
 G outstanding dues, preferred Review Petition and the same was dismissed by High Court. Thereafter the property was auctioned and the appellant, being the successful bidder was given possession of the property.

H Thereupon, respondent No. 1 again filed writ petition seeking to quash the cancellation of OTS Scheme of 2007

and the sale to the auction-purchaser (appellant). High Court allowed the writ petition holding that the respondent No. 2 – Corporation did not follow the guidelines laid down in *Kerala Financial Corporation vs. Vincent Paul and Anr.* (2011) 4 SCC 171; and that the off-set price of property was not valued before the conduct of auction; and that there was no due publication of auction. Hence the present appeals. A B

Allowing the appeals, the Court

HELD: 1.1. The manner in which the Division Bench of the High Court has virtually sat in judgment over the judgment of another co-ordinate Bench is strongly disapproved. The Division Bench of the High Court overlooked some vital facts which have considerable bearing on the outcome of this dispute, consequently, reopened a *lis* which has attained finality, due to non-compliance of the various directions issued by the co-ordinate Bench of the High Court. Failure to comply with the various directions issued by the co-ordinate Bench in Writ Petition and the order passed in Review Petition was completely overlooked by the Division Bench. [Para 19] [247-B-D] C D E

1.2. Duty is cast on all the parties who appear in a court of law to place the correct facts so that the court can draw correct inferences which enable it reach a logical, reasonable and just conclusion. Wrong facts lead a court to wrong reasoning and wrong conclusions. Duty is also cast on the court to take note of the facts which are correctly placed. Wrong appreciation of facts leads to wrong reasoning and wrong conclusions and justice will be the casualty. Deciding disputes involves, knowing the facts, knowing the law applicable to those facts and knowing the just way of applying the law to them. If any of the above mentioned ingredients is not satisfied, one gets a wrong verdict. A Judge has to reason out truth F G H

A from falsehood, good from evil which enables him to
 deduce inferences from facts or propositions. Facts are
 correctly stated in the instant case but the Division Bench
 wrongly understood those facts and wrongly applied the
 law, consequently, wrong inferences were drawn and
 B ultimately reached wrong conclusions. [Para 20] [247-E-
 H]

2.1. The Division Bench, in the impugned judgment
 taking the view that the Corporations had not followed
 the guidelines laid down by this Court in *Vincent Paul*
 C case is factually incorrect. The Corporation had issued
 the recall notice with a request to pay the entire
 outstanding dues within 30 days otherwise, failing which,
 it was stated that action u/s. 29 of State Financial
 Corporation Act would be initiated against the 1st
 D respondent. Seizure order was issued by the Corporation
 and the entire assets of the unit were taken over under
 Section 29 of the Act after the expiry of 30 days from the
 date of notice. Even otherwise, the guidelines issued by
 this Court in *Vincent Paul* case would operate only
 E prospectively and that too depends upon the facts and
 circumstances of each case. [Para 26] [252-G-H; 253-A-
 C]

F *Haryana Financial Corporation and Anr. v. Jagdamba Oil
 Mills and Anr. (2002) 3 SCC 496; 2002 (1) SCR 621 – relied
 on.*

G *Mahesh Chandra v. Regional Manager, U.P. Financial
 Corporation and Ors. (1993) 2 SCC 279; 1992 (1) SCR 616 ;
 *Kerala Financial Corporation v. Vincent Paul and Anr.
 (2011) 4 SCC 171; 2011 (3) SCR 862 – referred to.*

2.2. The High Court has committed an error in holding
 that off-set price of property was not valued before the
 conduct of auction and that there was no due publication
 H of auction. Sale notice, it is seen, was published in a

vernacular paper and also in a widely circulated English newspaper and the Corporation had received nine offers and after protracting negotiations with all the bidders, the offer of the appellant was accepted being the highest. The Corporation before putting the appellant in possession again issued a notice to 1st respondent enquiring whether he would match the offer. 1st Respondent did not avail of that opportunity as well. It is under such circumstances that sale letter was issued to the appellant with a copy to all the Directors/Promoters/Guarantors of 1st respondent company. The appellant paid the balance consideration and the Sale Memo was extended on that date and the property was also delivered. [Para 27] [253-E-H; 254-A]

2.3. There is no illegality in the procedure adopted by the Corporation, since 1st respondent had failed to comply with the directions issued by the co-ordinate Bench of the High Court in writ petition which gave liberty to the Corporations to proceed in accordance with Section 29 of the Act. The Division Bench of the High Court had overlooked those vital facts as well as the binding judgment of a co-ordinate Bench in writ petition and had wrongly reopened a *lis* and issued wrong and illegal directions. [Para 28] [254-B-C]

Case Law Reference:

2002 (1) SCR 621 Relied on Para 23

1992 (1) SCR 616 Referred to Para 25

2011 (3) SCR 862 Referred to Para 26

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6347 of 2012.

From the Judgment & Order dated 25.10.2011 of the High

A Court of Orissa at Cuttack in Writ Petition (Civil)No. 17711 of 2010.

B C.A.Sundaram, S. Aggarwal, Rohini Musa, Yogesh, V.K., Zafar Inayat, Suruchii Aggarwal, Shubhranshu Padhi, Nirnimesh Dube, Ashok Panigrahi, Surjit Bhaduri for the Appearing parties.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

C 2. Common questions arise for consideration in both these appeals and hence we are disposing of both the appeals by a common judgment.

D 3. We are, in these appeals, called upon to consider the question whether the Division Bench of the Orissa High Court was justified in directing Orissa State Financial Corporation (OSFC) and Industrial Promotion and Investment Corporation of Odisha Ltd. (IPICOL) to offer afresh the benefit of One-Time Settlement Scheme (OTS) to M/s Hotel Torrento Limited, 1st
E respondent herein, which had earlier been offered vide communications' dated 18.3.2006 and 3.4.2006, but was not
F availed off by complying with the terms and conditions stipulated therein. The further question is whether the High Court was right in ordering dispossession of the appellant (auction purchaser) and put 1st respondent back in possession.

G 4. This case has a chequered history, therefore, it is necessary to examine the facts at some length to appreciate the real controversy between the parties and to reach a proper and just decision, on facts as well as on law. OSFC, 2nd
H respondent herein, disbursed a term loan of Rs.51,27,200/- and loan in lieu of subsidy of Rs.23.30 lakhs to 1st respondent for establishing a hotel project at Janugarji, Balasore in the State of Odisha. The project was jointly financed by OSFC and IPICOL, for which 1st respondent had entered into a loan

agreement and mortgaged the title deeds and extended a registered lease deed dated 8.2.1988. Lease was valid for a period of 25 years with a renewable clause. There was default in repayment of the loan amount, which led OSFC issuing a demand notice to 1st respondent on 7.2.1991, followed by a recall notice dated 30.11.1991. The respondent was also served with a show cause notice dated 16.12.1994 followed by recall notices dated 4.1.1995 and 13.3.1996. A B

5. 1st respondent then filed a Writ Application No. 2513 of 1996 on 20.3.1996 before the High Court of Orissa to quash the recall notice dated 13.3.1996 and for rehabilitation. The High Court disposed of that writ application with a direction to respondents 2 and 5 (OSFC & IPICOL) to consider the request of 1st respondent for rehabilitation package. On 9.3.2006, an OTS scheme was introduced by OSFC and 1st respondent applied for settlement of its loan account under that scheme. On 18.3.2006, the benefit of the scheme was extended to 1st respondent by OSFC and agreed in principle to settle the term loan account on payment of Rs.1,16,21,200/- on or before 18.4.2006, subject to certain terms and conditions which were as follows: C D E

1. The settlement amount shall either be paid in one lump sum on or before Dt. 18.04.06 (within 30 days of this settlement order) with 3% discount on the settlement amount. F

OR

Installments as per the sequence mentioned below:

- (a) Up front payment of Rs.23,61,400.00 (Rupees twenty three lakh sixty one thousand four hundred only) (i.e.25% of settlement amount less initial deposit) shall be paid along with the acceptance letter (format G H

A enclosed herewith) on or before Dt. 16.04.06,
within 30 days.

(b) The balance settlement amount of
Rs.87,15,900.00 (75%) shall be paid on or
B before Dt. 15.06.06.

2. Any other expenses chargeable/incurred/debited in
the loan accounts towards misc. expenses on L/A
with effect from Dt. 11.07.05 (date of application)
till the final settlement of loan accounts shall be paid
C by you along with the settlement amount.

3. It may be noted that (NDC) can only be issued in
your favour after liquidation of all the loans availed.

4. You shall have to submit the consent/decreed/
D permission/withdrawal order (wherever applicable)
before issue of No Due Certificate (NDC).

In case of failure on payment of the aforesaid amount
within the stipulated dates, the one time settlement of dues
E considered in your favour including relief and concession
thereon shall be withdrawn without further reference to
you.”

6. IPICOL also approved the request for OTS at Rs.45 lacs
with waiver of Rs.1,88,21,099 subject to certain terms and
F conditions, which were as follows:

“(a) The OTS amount is Rs.45 lacs (Rupees forty-five
lacs only) and the resultant sacrifice(s) by way of
waiver is Rs.1,88,21,099 (Rupees one crore twelve
G lakhs seventeen thousand five hundred twenty nine
only on account of funded interest and
Rs.76,03,570/- (Rupees seventy six lakhs three
thousand five hundred seventy only) on account of
overdue interest.

H

(b) The OTS amount shall be paid within a period of 1 year from the date of this letter as per the schedule given below: A

Rs.6,75,000 towards 25% of upfront payment (including initial payment made by you) within 30 days and balance 75% amounting to Rs.33,75,000/- within a period of 1 year in 4 quarterly installments, carrying simple interest @ 14% p.a. on reducing balance. B

(c) The above OTS is subject to cancellation, if it is found that you have provided incorrect details and information or suppression of any material facts for getting the sanction of OTS. The decision of IPICOL is final in this regard. C

(d) In case of non payment, IPICOL shall have the right of requital." D

7. We notice that despite of waiver of Rs.2,26,85,800 and Rs.1,88,21,099 by OSFC and IPICOL respectively, 1st respondent did not comply with the terms and conditions of the OTS scheme, consequently, OSFC and IPICOL informed 1st respondent that they had withdrawn OTS offer. E

8. We find, on 31.3.2007, yet another OTS scheme of 2007 was launched by OSFC and, again, an offer was made to 1st respondent to avail of the benefit of that scheme. OSFC, on 4.10.2007, requested 1st respondent to pay the settlement amount of Rs.1,16,21,200 with delayed payment of interest within 10 days. 1st respondent did not comply with that request as well, consequently, OSFC, on 28.12.2007, withdrew the offer and advised 1st respondent to pay the entire dues as per the agreement, failing which 1st respondent was informed that recovery proceedings would be initiated for realization of the dues. Later, OSFC sent a demand notice dated 22.8.2008 stating that the total loan outstanding as on 31.12.2007 was F
G
H

A Rs.4,52,94,691 and 1st respondent was called upon to pay the amount, failing which it was informed that recovery proceedings would be initiated.

B 9. 1st respondent then, on 10.09.2008, filed a Writ Petition No. 13376 of 2008 before the Orissa High Court to quash the demand notice dated 22.08.2008 and for a direction to consider its claim under the OTS scheme. On 31.10.2008, OSFC had, however, issued a notice recalling the entire amount along with interest and informed 1st respondent that in case of failure to make payment, further action would be taken under Section 29 of the State Financial Corporation Act (SFC Act). Writ Petition C came up for hearing before the Orissa High Court on 4.12.2008, and the Court directed OSFC to maintain status-quo and on 7.4.2010, the Court passed an ad-interim order directing 1st respondent to inform as to whether they were D willing to deposit the amount or Rs.1 Crore for consideration of their claim under OTS. On 26.11.2008, IPICOL also made a request to OSFC to initiate proceedings under Section 29 of SFC Act and to take over the assets of the unit.

E 10. Writ Petition No. 13376 of 2008 came up for final hearing on 21.4.2010, and the Court enquired whether 1st respondent was willing to pay Rs.1 Crore, as suggested by the Court on 4.12.2008. The Court was informed that a petition had F been filed on 21.4.2010 along with a bank draft of Rs.17,50,000 drawn in favour of the Registrar, Orissa High Court. 1st respondent had also made a request to the Court for time up to 26.2.1010 so as to pay the amount of Rs.1 Crore. The Court ordered the return of the draft to the 1st respondent since the amount was due to both OSFC and IPICOL. The Court was G informed by OSFC that 1st respondent had not availed of the earlier proposal for OTS and no new OTS scheme was available, still the Court passed the following order:

H “The learned counsel for the Corporations submits that the earlier proposal for one-time settlement had been considered by both the Corporations and the matter had

been settled. But the petitioner did not pay the amount for which it had to be cancelled and, at present there is no scheme for one-time settlement. A

Be that as it may, the Petitioner having defaulted in payment of huge amount we dispose of the writ petition directing that the petitioner may deposit a sum of Rs.50,00,000/- (Rupees fifty lakhs) each before each of the two Corporations by 20.6.2010 and applications shall be filed before both the Corporation for settlement of the dues. If any such application is filed the same shall be considered on its own merit by both the Corporations either separately or jointly *provided there is any scheme available for such settlement by the Corporations.* B C

In the event, the Petitioner fails to deposit the aforesaid amount by 20.6.2010, both the Corporations shall be at liberty to take such action as permissible under law under the State Financial Corporation Act." D

(emphasis added)

11. 1st respondent did not comply with even the above mentioned order. OSFC then issued a registered notice dated 8.7.2010 to 1st respondent pointing that since it had failed to comply with the above mentioned order of the Court, OSFC would be at liability to initiate proceeding under the SFC Act. The 1st respondent was, therefore, asked to liquidate the entire outstanding amount as on 30.6.2010, failing which 1st respondent was informed that OSFC would be initiating action under Section 29 of SFC Act. Later, OSFC issued a seizure order dated 2.8.2010 of the property and that order was executed on 15.9.2010 and the possession of the unit was taken over "as is where is" basis. E F G

12. OSFC, during seizure, got prepared a valuation report dated 17.09.2010 from its panel valuer. Based upon that valuation report, off-set price of the unit was fixed at H

A Rs.1,75,45,000. Later, the sale notice was published in the
 Daily newspapers, Samaj and the New Indian Express on
 18.9.2010. On 21.9.2010, again, OSFC issued a notice to 1st
 respondent to clear the outstanding dues with up to date interest
 of Rs.6,18,62,238/- collected up to 30.6.2010 before Default-
 cum-Disposal Advisory Committee (DDAC) on 29.9.2010 so
 B also to get the assets released. 1st respondent was informed
 of the sale notice published in the daily newspapers requesting
 to clear up the dues before the DDAC meeting scheduled to
 be held on 29.9.2010. 1st respondent was also informed that
 C in the event of non-payment of dues, it could still match or better
 the highest bid price. 1st respondent, however, did not take any
 steps to clear the outstanding dues, but preferred a Review
 Petition No. 99 of 2010 for reviewing the order passed by the
 Orissa High Court on 21.4.2010 in Writ Petition No. 13376 of
 2008. The Court rejected the review petition on 22.9.2010. The
 D Court, after noticing that 1st respondent had not deposited any
 amount in pursuance to its order dated 21.4.2010, held as
 follows:

E “Apart from the above, from the conduct of the petitioner,
 we find that the petitioner did not pay any amount when
 the account was settled under the scheme earlier and
 waited for another demand notice. Even in the writ petition
 though the petitioner was directed to deposit
 Rs.50,00,000/- (Rupees fifty lakhs) each with the two
 F Corporations, the same was not complied with. In course
 of hearing of this review petition, the petitioner has offered
 only Rs.40,00,000/- (Rupees forty lakhs) to be deposited
 with the two Corporations against the outstanding dues of
 more than seven crore. *We are, therefore, of the view that*
 G *the petitioner has no intention to clear the dues of the two*
Corporations which had financed for establishing a hotel.
In the meantime possession of the said hotel has been
taken by OSFC under section 29 of the State Financial
Corporation Act and the same has been advertised for
 H *sale.* The sale notice, a copy whereof was produced

before us shows that the loanee can appear before the DDAC on the date fixed i.e. 29th of September, 2010 for the purpose of getting release the seized asset.” A

(emphasis added)

13. 1st respondent then submitted a proposal to DDAC, which was considered by DDAC on 29.9.2010 and the order was communicated to the 1st respondent. B

14. DDAC, in pursuance to the auction notification in the newspapers, received altogether 9 bids and, after negotiations with the auctioneers, the offer of the appellant was found to be the highest at Rs.774 lacs, which was accordingly accepted OSFC delivered the possession of the land, building and machinery/furniture and fixtures to the appellant vide possession letter dated 11.10.2010. C
D

15. 1st respondent, as already stated, then approached the Orissa High Court and filed the present writ petition No. 17711 of 2010 to quash the cancellation of the OTS dated 28.12.2007, sale letter dated 1.10.2010 and also for other consequential reliefs, which were granted by the Division Bench of the Orissa High Court, the operative portion of which reads as follows: E

“For the reasons stated supra the writ petition is allowed. Rule issued. The letters dated 28.12.2007 and 1.10.2010 (Annexure-5 & Annexure-8 series) cancelling the proposal for OTS and rejecting the representation dated 29.9.2010, the public sale notice dated 19.9.2010 (Annexure-6), the sale letter dated 1.10.2010 (Annexure-8 series), the sale agreement dated 11.10.2010 (Annexure-A/5) and the alleged delivery of possession are hereby quashed. The Orissa State Financial Corporation and IPICOL are directed to place fresh demand with the petitioner, within four weeks from the date of receipt of this order, with regard to the amount of OTS offered in the communications F
G
H

A dated 18.3.2006 and 3.4.2006 of the OSFC and IPICOL
 along with interest at the rate of 9% on the said amount
 from that date till the date of payment or at the rate of
 interest, stipulated under the OTS Scheme, 2007 in case
 of similarly placed persons. The petitioner is directed to
 B make payment within six weeks thereof. Thereafter the
 possession of the property shall be delivered to the
 petitioner within a reasonable time. If the petitioner fails to
 deposit the amount, as directed, the OSFC and IPICOL
 are at liberty to proceed in the matter in accordance with
 C law."

16. Shri C.A. Sundram, learned senior counsel appearing
 for the appellant (auction purchaser) submitted that the High
 Court has completely misread and misunderstood the facts of
 the case which resulted in incorrect reasoning, leading to wrong
 D conclusions. Learned senior counsel also submitted that the
 judgment in writ petition No. 13376 of 2008 as well as the order
 in Review Petition No. 99 of 2010 had attained finality and,
 consequently, the orders dated 28.12.2007 and 01.10.2010
 cancelling the proposal for OTS cannot be questioned. Learned
 E senior counsel also pointed out that the conditions stipulated
 in the above mentioned orders were also not complied with by
 1st respondent, consequently, the only course open to 1st
 respondent was to pay the entire amount demanded by OSFC
 and IPICOL. The 1st respondent did not pay the amount
 F demanded, hence, Section 29 of SFC Act was rightly invoked.

17. Ms. Shubhranshu Padhi, learned counsel appearing
 for the appellant in SLP(C) No. 1125 of 2012 fully supported
 the arguments advanced by the learned senior counsel Shri
 C.A. Sundaram and explained the various steps taken by
 G OSFC which resulted in invoking Section 29 of SFC Act.

18. Shri Ashok Panigrahi, learned counsel appearing on
 behalf of the respondent, however, supported the judgment of
 the Hon'ble Court and submitted that there is no justification in
 H interfering with the judgment of the Hon'ble Court, since the

conditions laid down in OTS Scheme were onerous and that procedures were not followed for the sale of the mortgaged properties. A

19. We express our strong disapproval of the manner in which the Division Bench of the High Court has virtually sat in judgment over the judgment of another co-ordinate Bench. We are of the view that the Division Bench of the High Court overlooked some vital facts which have considerable bearing on the outcome of this dispute, consequently, reopened a lis which has attained finality, due to non-compliance of the various directions issued by the co-ordinate Bench of the High Court. Failure to comply with the various directions issued by the co-ordinate Bench in Writ Petition No. 13376 of 2008 and the order passed in Review Petition No. 99 of 2010 was completely overlooked by the Division Bench. B C D

Appreciation of Facts

20. Litigations in courts are won or lost mainly on facts more on law. Duty is cast on all the parties who appear in a court of law to place the correct facts so that the court can draw correct inferences which enable it reach a logical, reasonable and just conclusion. Wrong facts lead a Court to wrong reasoning and wrong conclusions. Duty is also cast on the Court to take note of the facts which are correctly placed. Wrong appreciation of facts leads to wrong reasoning and wrong conclusions and justice will be the casualty. Deciding disputes involves, according to Dias on Jurisprudence, knowing the facts, knowing the law applicable to those facts and knowing the just way of applying the law to them. If any of the above mentioned ingredients is not satisfied, one gets a wrong verdict. A Judge has to reason out truth from falsehood, good from evil which enables him to deduce inferences from facts or propositions. Facts are correctly stated in the instant case but the Division Bench wrongly understood those facts and wrongly applied the law, consequently, wrong inferences were drawn and ultimately reached wrong conclusions. E F G H

A 21. Following are the facts and conclusions overlooked by the Division Bench:

B (1) OSFC introduced an OTS scheme in the year 2006 and 1st respondent had applied for settlement of its loan account under that scheme. On 18.03.2006, the benefit of the scheme was extended to 1st respondent and OSFC agreed in principle to settle the term loan account on payment of Rs.1,16,21,200/-, subject to certain conditions. C IPICOL also approved the request of 1st respondent for OTS at Rs.45 lacs with waiver of Rs.1,88,21,099/-, subject to certain conditions.

D (2) OSFC and IPICOL, therefore, waived an amount of Rs.2,26,85,800/- and Rs.1,88,21,099 and gave the benefit of the OTS scheme to 1st respondent, subject to few other conditions like period of payment, interest etc.

E (3) The 1st respondent had failed to comply with those conditions imposed, consequently, OSFC and IPICOL had to withdraw the benefits extended under the OTS scheme.

F (4) OSFC lodged another OTS scheme in the year 2007. Opportunity was given to 1st respondent again to avail of the benefit of that scheme. OSFC on 04.10.2007 requested 1st respondent to pay the settlement amount of Rs.1,16,21,200/- with delayed payment of interest within 10 days. The benefit of the said scheme was not availed of by 1st G respondent, consequently OSFC on 28.12.2007 withdrew that offer as well and advised 1st respondent to pay the entire dues as per the agreement, failing which it was informed that recovery proceedings would be initiated.

H

- (5) 1st respondent filed a Writ Petition No.13376 of 2008 to quash the demand notice dated 22.08.2008 where it was pointed out by OSFC that 1st respondent had not availed of all the benefits of the OTS scheme extended by the Corporation, consequently they had to cancel the said scheme. Further, it was also stated that in spite of public notification and their intimation and frequent requests, 1st respondent did not apply for the OTS 2007 Scheme. A B
- (6) When Writ Petition came up for hearing on 07.04.2010, the Court had enquired whether 1st respondent would be still willing to deposit the amount of Rs. 1 crore for consideration of their claim under OTS. The matter again came up for hearing before the Division Bench on 21.04.2010 on which the Court disposed of the writ petition directing 1st respondent to deposit Rs.50,00,000/- each before each of the two Corporations by 20.6.2010, failing which it was ordered that the Corporations would be at liberty to take such action as permissible under law under the State Financial Corporation Act. C D E
- (7) OSFC issued a loan recall notice to 1st respondent on 8.7.2011, since it did not comply with the directions in WP No. 13376 of 2008 with a request to pay the entire outstanding amounts within 30 days, failing which the 1st respondent was informed that action would be taken under Section 29 of SFC Act. F G
- (8) OSFC issued a seizure order on 02.08.2010 and during seizure, a valuation report dated 17.09.2010 was prepared. Based upon the valuation report, off-set price of the unit was fixed at Rs.1,75,45,000/-. Sale notice was published in the Daily newspapers H

- A "Samaj" and the "New Indian Express" on 18.09.2010. On 21.09.2010, again OSFC issued a notice to 1st respondent to clear the outstanding dues with up-to-date interest of Rs.6,18,62,238/-.
- B (9) Review Petition No. 99 of 2010 filed by 1st respondent in writ petition No. 13376 of 2008 came up for hearing before the Division Bench on 22.9.2010. While dismissing the Review Petition, the Bench found that 1st respondent had no intention to clear the dues of the Corporations which had financed for establishing a hotel. The court also noticed that the mortgaged properties were taken over by OSFC invoking Section 29 of SFC Act and advertised for sale.
- C
- D (10) 1st Respondent filed a representation before DDAC on 29.9.2010 which was rejected and the order of rejection was communicated vide letter dated 1.10.2010 and 1st respondent was informed that the assets were already taken over under
- E Section 29 of SFC Act on 15.9.2010 and was put to public auction, with due intimation.
- F (11) Auction was concluded as per rules and ultimately, the appellant was found to be the highest bidder at Rs.774,00,000 which was accepted and sale letter dated 1.10.2010 was issued to the appellant, who had paid the entire amount by 11.10.2010.
- G (12) Sale Memo, Agreement to Sale was executed with the appellant on 11.10.2010 and possession was handed over to the appellant on that date.
- (13) 1st respondent then on 11.10.2010 filed the present WRIT Petition No. 17711 of 2010.

H 22. We are of the view that the above mentioned facts had considerable bearing for rendering a just and proper judgment

in writ petition No. 17711 of 2010, but those vital facts were completely overlooked by the Division Bench and it had also ignored the binding judgment of the co-ordinate Bench rendered in writ petition No. 13376 of 2008 and the order passed in Review Petition No. 99 of 2010 and the steps taken by the Corporations as permitted by the Division Bench.

23. A 3-Judge Bench of this Court in *Haryana Financial Corporation and Another v. Jagdamba Oil Mills and Another*, (2002) 3 SCC 496 while dealing with the scope of Section 29 of SFC Act held as follows:

“6. The Corporation as an instrumentality of the State deals with public money. There can be no doubt that the approach has to be public oriented. It can operate effectively if there is regular realization of the instalments. While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by unsurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand on the way of a deserving borrower getting financial assistance.”

24. The Court again reminded of the fact that the fairness required of the Corporations could not be carried to the extent of disabling them from recovering what is due to them and held as follows:

“13.The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As

A such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is
 B mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or
 . businesslike it may, for the decision of the Corporation.....”

C 25. The Court while explaining and over-ruling *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation and Others*, (1993) 2 SCC 279 held as follows:

D “Indulgence shown to chronic defaulter would amount to flogging a dead horse without any conceivable result being expected. As the facts in the present case show not even a minimal portion of the principal amount has been repaid. That is a factor which should not have been lost sight by the courts below. It is one thing to assist the borrower who
 E has intention to repay, but is prevented by insurmountable difficulties in meeting the commitments. That has to be established by adducing material. In the case at hand factual aspects have not even been dealt with, and solely relying on the decision in *Mahesh Chandra’s* cases (supra),
 F the matter has been decided.”

26. We are of the view that the principles laid down by this Court in the above judgments apply to the case on hand, if the facts are properly appreciated. The Division Bench, in the impugned judgment, took the view that the Corporations had
 G not followed the guidelines laid down by this Court in *Kerala Financial Corporation v. Vincent Paul and Another*, (2011) 4 SCC 171. In our view, this is factually incorrect. This Court, in the above judgment, indicated that the authority concerned should serve to the borrower a notice of 30 days for sale of
 H immovable assets. In this case, Corporation had issued the

recall notice dated 08.07.2010 with a request to pay the entire outstanding dues within 30 days otherwise, failing which, it was stated that action under section 29 of SFC Act would be initiated against the 1st respondent. Seizure order was issued by the Corporation and the entire assets of the unit were taken over under Section 29 of the Act on 15.09.2010 which was after the expiry of 30 days from the date of notice dated 08.07.2010. Therefore the guidelines laid down in the above referred judgment have also been complied with. Even otherwise, the guidelines issued by this Court in *Vincent Paul* case would operate only prospectively and that too depends upon the facts and circumstances of each case.

27. We have found that the procedure laid down under Section 29 of SFC Act has been followed by the Corporations. The independent valuer submitted his report on 17.09.2010 and the off-set price of the unit was fixed after getting it valued by an independent valuer. It was based upon the valuation report that the off-set price of the unit was fixed at Rs.1,77,45,000/- on 17.09.2010. Sale notice was published in the News Papers on 18.09.2010 and the auction was conducted on 29.09.2010. In our view, the High Court has committed an error in holding that off-set price of property was not valued before the conduct of auction and that there was no due publication of auction. Sale notice, it is seen, was published in the "Samaj" a vernacular paper and also in the "New India Express" a widely circulated English newspaper on 18.09.2010 and the Corporation had received nine offers and after protracting negotiations with all the bidders, the offer of the appellant was accepted being the highest. The Corporation before putting the appellant in possession again issued a notice dated 21.9.2010 to 1st respondent enquiring whether he would match the offer. 1st Respondent did not avail of that opportunity as well. It is under such circumstances that sale letter dated 1.10.2010 was issued to the appellant with a copy to all the Directors/Promoters/ Guarantors of 1st respondent company. The appellant paid the balance consideration of Rs.5,65,20,000 on 11.10.2010 and

A the Sale Memo was extended on that date and the property was also delivered.

B 28. We find no illegality in the procedure adopted by the Corporation, since 1st respondent had failed to comply with the directions issued by the co-ordinate Bench of the Orissa High Court in writ petition No. 13376 of 2008, which gave liberty to the Corporations to proceed in accordance with Section 29 of SFC Act. We are of the view that the Division Bench of the High Court had overlooked those vital facts as well as the binding judgment of a co-ordinate Bench in writ petition No. 13376 of C 2008 and had wrongly reopened a lis and issued wrong and illegal directions.

D 29. In the said circumstances, we are inclined to allow both the appeals and set aside the judgment of the Division Bench of the Orissa High Court. However, in the facts and circumstances of the case, there will be no order as to costs.

K.K.T.

Appeals allowed.