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RAJASTHAN FINANCIAL CORPORATION
Udyog Bhawan, Tilak Marg, C-Scheme, Jaipur-302 005

Ref.No.RFC/F.Law-3/LPM(22)/4614 Dated:24-11-2005

CIRCULAR
(Lit. Cir No.125.)

Sub: Important Decision pronounced by Hon'ble Supreme Court in Civil Apeeal No.2062/2002 - Karnataka State Industrial Investment & Dev.Corp.Ltd.Vs.M/s.Cavalet India Ltd. & Ors., (JT 2005 (3) SC 570)

Enclosed is the landmark decision made by the Hon'ble Supreme Court considering therein the earlier decisions of the Hon'ble Supreme Court and had concluded the entire matter. Cases referred in the decision are mentioned hereunder:-

1. S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors. - JT 2004 (Suppl.2) SC 601 (Para 18)

2. Haryana Financial Corporation & Anr. Vs. Jagdamba Oil Mills & Anr. – JT 2002 (1) SC 482 (Para 17)

3. Karnataka State Financial Corporation Vs. Micro Cast Rubber & Allied Products (P) Ltd. & Ors. – JT 1996 (6) SC 37 (Para 16)

4. Chairman and Managing Director, SIPCOT, Madras & Ors. Vs. Contromix Pvt. Ltd. & Anr. – JT 1995 (6) SC 283 (Para 14)

5. U.P. Financial Corporation & Ors. Vs. Naini Oxygen & Acetylene Gas Ltd. & Anr. – JT 1994 (7) SC 551 (Para 13)

6. U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. & Ors. – JT 1993 (2) SC 226 (Para 12)

7. Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation & Ors. – JT 1992 (2) SC 326 (Para 5).

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While considering the judgement referred above in view of the provisions of the SFCs Act the Hon'ble Supreme Court decided and held as under:-

The legal principles that emerge are:

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations;

(a) there is a statutory violation on the pat of the corporation
or
(b) where the corporation acts unfairly i.e., unreasonably.

(iii) In commercial matters, the courts should not risk their judgements for the judgements of the bodies to which that task is assigned.

(iv) Unless the action of the financial corporation is mala fide, even a wrong decision taken 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 be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

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(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adapted.

(vii) The financial corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price (Para 19)

The examination of the facts, in the light of the aforenoted legal principles reveals that KSIIDC acted in a bona fide manner. The procedure followed by KSIIDC to dispose of the assets of the borrower to realize the dues cannot be held to be unreasonable or unfair. The sale was conducted by issuing advertisements in the newspapers. Steps were taken to secure the best price. The question before the High Court was only about the validity of sale to Vinpack and the plea of the borrower was that the unit was sold at ridiculously low price. The learned single Judge gave reasonable opportunity to the borrow to pay the same amount as payable by Vinpack failing which unit was directed to be sold to Vinpack after specified date. The borrower failed to comply with the order of the learned single Judge or seek extension of time and also did not challenge it in writ appeal within time specified in the order of learned single Judge. Under these circumstances, the unit was sold to Vinpack and the

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possession handed over to it. The Division Bench, after holding that the procedure adapted was no in conformity with the guidelines enumerated in Mahesh Chandra's case JT 1992 (2) SC 326- did not examine the effect of offer given to the borrower and not availed by him resulting the sale in favour of Vinpack. In this view, the approach of the Division Bench cannot be sustained. Further, the subsequent line of cases distinguishing Mahesh Chandra and the decision in the case of Jagdamba Oil Mills - JT 2002 (1) SC 482 – which overruled Mahesh Chandra have already been noticed hereinbefore. (Para 21)

Having regard to the facts of the case and the legal principles above noted, the impugned judgement directing KSIIDC to redo the entire sale process cannot be sustained. Therefore, the impugned judgement is set aside and it is held hat on failure of the borrower to comply with the directions of the single Judge, the action of KSIIDC to sell the unit in favour of Vinpack was valid and legal. The appeals are accordingly allowed. (Para 23)

All concerned are advised to make a note of it and ensure that this judgement is brought to the notice of our Advocates for taking of use in the cases being contesting by the Corporation or against the Corporation.

(Karni Singh Rathore)
Chairman and Managing Director

Encl: a/a

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JT 2005 (3) SC 570 578

Karnataka State Industrial Investment and Development Corporation Ltd. v. M/s. Cavalet India Ltd. and Ors.

Civil Appeal No. 2062 of 2002
With Civil Appeal No. 2063 of 2002
(From the Judgment and Order dated 11.4.2000 of the Karnataka High Court in W.A. No. 1746 of 1999)

Y.K. SABHARWAL & TARUN CHATTERJEE, JJ.

Dt. 30.3.2005

Appearances

Mr. L.N. Rao, Senior Advocate, Ms. Hetu Arora, Mr. Sharan Dev Singh Thakur, Mr. I. Veen R. Nath, Advocates with him for the Appellant in C.A. No. 2062/02 and Respondent No. 2 in C.A. No.2063/2002.

Mr. V.R. Reddy, Senior Advocate, Mr. E.C. Vidya Sagar, Mr. K. Lingaraja, Mr. B.K. Choudhary, Advocates with him for the Appellant in C.A.No. 2063/2002.

Mr. Krishnan Venugopal, Mr. Amit Dhingra, Mr. N. Khetty, Mr. Prasad Vijayakumar, Mr. Rahul Prasanna Dave, Advocates for the Respondent Nos. 1-2 in C.A.No. 2062/02 and Respondent Nos. 3-4 in C.A.No. 2063/2002.

Mr. Anil K. Mishra, Mr. A. Rohen Singh, Sanjay R. Hegde, Advocates for the State of Karnataka and Respondent No. 4 in C.A.No. 2062/2002.

DEBTS RECOVERY

State Financial Corporation Act, 1951

Section 29 - State Financial Corporation - Recovery of debts - Sale of properties of borrower - Scope of the rights under Section 29 - Respondent company borrowing huge amounts from the appellant Corporation but committing default in the repayment - In March 1995 appellant passing an order under Section 29 but not implementing the same - Opportunity given to the respondent to repay the dues by negotiating with third parties for purchase of the properties - Since respondent did not pay the amounts, Appellant issuing sale advertisements thrice during the year 1997 - Ultimately offer made by Vinpack accepted by the appellant - Respondent filing writ for declaring the sale to be void, illegal and contrary to Section 29 - Single Judge holding that since there was non-compliances with the guidelines laid down in Mahesh Chandra v. U.P. Financial Corporation's case [JT 1992 (2) SC 326] the respondent should be given an opportunity to make an offer on the same terms on which the appellant had finalized the sale with Vinpack - Respondent accordingly directed to deposit the first instalment on or before 20-2-1999 - Respondent given liberty to bring a third party making a better offer - Since the respondent failed to comply with the terms set by the Single Judge, appellant selling the unit to Vinpack in 1999 - Respondent filing appeal against decision of Single Judge - Division Bench directing the appellant to undertake the entire process of sale once again by following the guidelines laid down in Mahesh Chandra's case - Validity. Allowing the appeal of the Corporation and setting aside the directions of the Division Bench *held* that the respondent having failed to comply with the directions of the Single Judge, the action of the appellant to sell the unit to Vinpack was valid and legal and the Division Bench therefore erred in direct-

ing the Corporation to redo the entire sale process.

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The legal principles that emerge are :

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the corporation and its debtor, a writ court has no say except in two situations;

(a) there is a statutory violation on the part of the corporation or

(b) where the corporation acts unfairly i.e., unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the financial corporation is mala fide, even a wrong decision taken 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 be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adapted.

(vii) The financial corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price. (Para 19)

The examination of the facts, in the light of

the aforenoted legal principles reveals that KSIIDC acted in a bona fide manner. The procedure followed by KSIIDC to dispose of the assets of the borrower to realize the dues cannot be held to be unreasonable or unfair. The sale was conducted by issuing advertisements in the newspapers. Steps were taken to secure the best price. The question before the High Court was only about the validity of sale to Vinpack and the plea of the borrower was that the unit was sold at ridiculously low price. The learned single Judge gave reasonable opportunity to the borrower to pay the same amount as payable by Vinpack failing which unit was directed to be sold to Vinpack after specified date. The borrower failed to comply with the order of the learned single Judge or seek extension of time and also did not challenge it in writ appeal within time specified in the order of learned single Judge. Under these circumstances, the unit was sold to Vinpack and the possession handed over to it. The Division Bench, after holding that the procedure adapted was not in conformity with the guidelines enumerated in ***Mahesh Chandra's*** *case [JT 1992 (2) SC 326] did not examine the effect of offer given to the borrower and not availed by him resulting the sale in favour of Vinpack. In this view, the approach of the Division Bench cannot be sustained. Further, the subsequent line of cases distinguishing* ***Mahesh Chandra*** *and the decision in the case of* ***Jagdamba Oil Mills*** *[JT 2002 (1) SC 482] which overruled* ***Mahesh Chandra*** *have already been noticed hereinbefore. (Para 21)*

Having regard to the facts of the case and the legal princi[illegible]s above noted, the impugned judgment directing KSIIDC to redo the entire sale process cannot be sustained. Therefore, the impugned judgment is set aside and it is held that on failure of the borrower to comply with the directions of the single Judge, the action of KSIIDC to sell the unit in favour of Vinpack was valid and legal. The appeals are accordingly allowed. (Para 23)

Cases Referred:

1. S.J.S Business Enterprises (P) LTD. v State of Bihar & Ors. [JT 2004 (Suppl.2) SC 601] (Para 18)
2. Haryana Financial Corporation & Anr. v. Jagdamba Oil Mills & Anr. [JT 2002 (1) SC 482] (Para 17)
3. Karnataka State Financial Corporation V. Micro Cast Rubber & Allied Products (P) Ltd. & Ors. [JT 1996 (6) SC 37] (Para 16)
4. Chairman and Managing Director, SIPCOT, Madras & Ors. v. Contromix Pvt. Ltd. & Anr. [JT 1995 (6) SC 283] (Para 14)
5. U. P. Financial Corporation & Ors. v. Naini Oxygen & Acetylene Gas Ltd. & Anr. [JT 1994 (7) SC 551] (Para 13)
6. U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. & Ors. [JT 1993 (2) SC 226] (Para 12)
7. Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors. [JT 1992 (2) SC 326] (Para 5)

Y.K. SABHARWAL, J.

1. The question that arises for consideration in these matters is whether Karnataka State Industrial Investment and Development Corporation (for short, 'KSIIDC') acted in a *bona fide* manner in sale of the prop-

erties of the borrower exercising its right under Section 29 of State Financial Corporation Act, 1951 (for short, 'the Act').

2. The appeals have been preferred by KSIIDC as well as M/S Vinpack Investments Pvt Ltd., the purchaser (for short 'Vinpack') against the judgment and order of the Division Bench of the Karnataka High Court directing KSIIDC to undertake the entire sale process once again and give opportunity to respondent no.1 to bring better offer for the properties.

3. Respondent no.1, M/S Cavalet Industries Ltd. (for short, 'the borrower') borrowed a sum of Rs.116.30 lacs from KSIIDC as per the sanction letter dated 22nd April, 1991. The borrower committed defaults in payment of the installments and, therefore, KSIIDC on 30th March, 1995 passed an order under Section 29 of the Act for taking over the unit of the borrower for recovery of its dues. However, KSIIDC did not implement that order. There was considerable correspondence between KSIIDC and the borrower, in regard to the offers of some third parties, who were proposing either to purchase the unit or enter into some working arrangement with the borrower to run the unit. The efforts of the borrower to enter into arrangement with third parties to work the unit did not yield any result. The borrower also did not clear the dues and, therefore, KSIIDC passed another order dated 30th October, 1996 under Section 29 of the Act for taking over the unit to recover a sum of Rs.98. 6,636 which was due as on 24th May, 1996 and in pursuance of the order, possession of the unit was taken over on 14th November, 1996.

4. KSIIDC between January and December, 1997, viz., a period of about one year issued three advertisements for sale of the unit. Suffice it to note that out of all offers, ultimately Vinpack, after negotiating increased its offer to Rs.171 lacs which was accepted by KSIIDC by its letter dated 8th October, 1998.

5. The borrower filed the writ petition on 4th November, 1998 for declaring the sale as void, illegal and contrary to Section 29 of the Act. On 18th November, 1998, the borrower filed an application for directions to keep the premises open as some prospective purchasers desired to inspect the unit. The application was allowed and KSIIDC was directed to keep the premises open during the period directed by the High Court. The borrower did not bring any concrete better offer. An affidavit was, however, filed by the borrower offering to purchase the unit on the same terms on which KSIIDC had agreed to sell the unit to Vinpack. Though KSIIDC did not accept the offer, but the learned single Judge by judgment dated 29th January, 1999, on consideration of factual and legal position, held that since there was noncompliance of the guidelines laid down in **Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors.**[1], the borrower was entitled to an opportunity to make an offer on the same terms on which KSIIDC had finalized the same with Vinpack. The learned single Judge issued directions fixing the sale price at Rs.171 lacs. The first

[1] JT 1992 (2) SC 326; (1993) 2 SCC 279

installment of Rs.30.50 lacs was to be paid on or before 20th February, 1999. The borrower was also given liberty to bring a third party making a better offer. It was further held that if the borrower failed to bring a better offer or agree to buy the unit or if the first installment is not made to KSIIDC on or before 20th February, 1999, KSIIDC would be at liberty to proceed with the sale in favour of Vinpack. The borrower failed to avail the opportunity granted in the judgment of the learned single Judge. Therefore, KSIIDC sold the unit to Vinpack on 25th February, 1999.

6. Subsequently, on 26th February, 1999, the borrower filed the writ appeal challenging the order of the learned single Judge. The Division Bench by judgment under appeal, *inter alia*, held that the learned single Judge, after coming to the conclusion that the guidelines provided in **Mahesh Chandra's** case were not followed, was not right in directing KSIIDC to make an offer on the same terms on which it had finalized the sale of the property to Vinpack and, therefore, KSIIDC was directed to undertake the entire process of selling of the unit again by following the guidelines enumerated in **Mahesh Chandra** and by giving an opportunity to the borrower to bring better offer.

7. Learned counsel appearing for KSIIDC submits that a fair chance was given to the borrower to either bring a better offer or a one time settlement, but the borrower failed to do so; the KSIIDC was considerate and sympathetic towards the borrower and having passed an order on 30th March, 1995 under Section 29 of the Act, it was not implemented, in view of the fact that the borrower was negotiating with third parties to enter into arrangements to work the unit; the guide lines laid down in **Mahesh Chandra** have been overruled and in any case, the borrower was given by learned single Judge same offer on which unit was sold to Vinpack, further directing that on borrower's failure to pay in the stipulated period, KSIIDC could sell the unit to Vinpack. The borrower neither complied with the directions of learned single Judge nor obtained any stay or extension of time and, in fact, filed the appeal after expiry of the period granted by learned single Judge and, thus, by its conduct the buyer could not challenge the sale made to Vinpack which was made as a result of failure of the borrower.

8. Learned counsel appearing for Vinpack-the purchaser also submits that since the borrower failed to comply with the order of the learned single Judge, KSIIDC rightly sold the unit to it and, thus, third party interest was created even before the filing of the writ appeal. No interim order was granted by the Court during the pendency of the writ appeal preventing the confirmation of sale in favour of Vinpack. The counsel also submits that substantial investments have been made after purchase of the unit by the purchaser and hundreds of workers are working in the unit. It is submitted that the order of the learned single Judge was passed on the undertaking filed by the borrower to purchase the unit on the same terms as offered by Vinpack and having failed to comply with the order, sale was confirmed in favour of Vinpack.

9. Supporting the impugned judgment,

learned counsel appearing for the borrower submits that KSIIDC is under an obligation to consider the reasons for default and when there are genuine reasons for default, it should cooperate with the borrower by rescheduling the repayment of loan. It has been further submitted that the manner of disposing the unit shows that there was no transparency or fairness and efforts were not made to secure the best price and that the terms and conditions for borrower to purchase were more onerous.

10. The sale of the unit has been effected by KSIIDC in favour of Vinpack under directions of learned single Judge, having regard to its right of sale under Section 29 of the Act. Section 29 gives a right to Financial Corporation *inter alia* to sell the assets of the industrial concern and realize the property pledged, mortgaged, hypothecated or assigned to Financial Corporation. This right accrues when the industrial concern, which is under a liability to Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any installment thereof or in meeting its obligations as envisaged in Section 29 of the Act. Section 29(1) gives Financial Corporation in the event of default the right to take over the management or possession or both and thereafter deal with the property.

11. The sale was set aside by the High Court relying upon the interpretation placed on Section 29 by this Court in **Mahesh Chandra's** case (supra). The subsequent line of cases have distinguished the decision in **Mahesh Chandra's** case.

12. In **U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. & Ors.**[1], it was held the High Court while exercising its jurisdiction under Article 226 of the Constitution cannot sit as an appellate authority over the acts and deeds of the corporation and seek to correct them and that the Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. On the facts of the case it was held that the borrower had no intention of repaying any part of the debt and was merely putting forward one or other reason to keep the corporation at bay. While striking down the directions issued by the High Court, this Court held that the High Court had not kept in mind the well recognised limitations of their jurisdiction under Article 226 of the Constitution and acted as an appellate authority over the actions of the financial corporation, in a matter where not a single provision of law was violated. The Court observed that the "financial corporations were not sitting on King Solomon's mines, but they too borrow monies from Government or other financial corporations and they also have to pay interest thereon". The Court observed that "fairness is not a one way street and the fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the corporation alone cannot be shackled hand and foot in the name of fairness". The Court pointed out that in a matter between the corporation and its debtor, a writ court has

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1. JT 1993 (2) SC 226; (1993) 2 SCC 299

no say except in two situations : (1) there is a statutory violation on the part of the corporation or (2) where the corporation acts unfairly i.e., unreasonably. **Mahesh Chandra** was distinguished noticing that it was a case where the debtor was anxious to pay off the debt and had been taking several steps to discharge his obligation and on the facts of that particular case it was found that the corporation was acting unreasonably.

13. In **U. P. Financial Corporation & Ors. v. Naini Oxygen & Acetylene Gas Ltd. & Anr.**[1], this Court held that it was not a matter for the courts to decide as to whether the financial corporation should invest in the defaulting unit, to revive or to rehabilitate it and whether even after such investment the unit would be viable or whether the financial corporation should realise its loan from the sale of the assets of the company. The Court observed that a corporation being an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge, in the discharge of its functions, it is free to act according to its own right. The views it forms and the decisions it takes would be on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. In such a situation, more so in commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned. The Court further held that, "Unless its action is *mala fide*, even a wrong decision taken 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 be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable."

14. In **Chairman and Managing Director, SIPCOT, Madras & Ors. v. Contromix Pvt. Ltd. & Anr.**[2], the financial corporation after taking over the unit of the defaulting borrower under Section 29 of the Act issued advertisement inviting offers for sale of the mortgaged assets. An intending purchaser made a offer, and after further negotiations the offer was revised. The revised offer was accepted by the financial corporation and the sale was finalized. A writ petition was filed by the borrower challenging the sale, on the ground that the market value of the assets was more than the sale price and the guidelines laid down **Mahesh Chandra** have not been followed. The writ petition was allowed and it was held that the said sale was not conducted in accordance with the guidelines laid down in **Mahesh Chandra** inasmuch as (i) the sale was not held by auction and was held by inviting tenders followed by negotiations; (ii) the price for which the properties were sold was low; and (iii) before accepting the offer, no intimation was given to the borrower so as to enable it to make a higher offer. Directions were issued to the effect that the sale effected by the financial corporation shall stand set aside if the borrower deposits, in installments, the sale

1. JT 1994 (7) SC 551; (1995) 2 SCC 754

2. JT 1995 (6) SC 283; (1995) 4 SCC 595

price as agreed between the financial corporation and the intending purchaser. It was further directed that in the event of the non-payment of any one of the amounts on or before the specified dates the said sale shall stand validated. However, the borrower did not comply with the directions and preferred a writ appeal against the judgment of the learned single Judge. In the said appeal it was held that instead of imposing conditions on the borrower for setting aside the sale by tender even though the said sale was found illegal and opposed to the judgment in **Mahesh Chandra**, the learned single Judge ought to have set aside the sale straight away without imposing any conditions. The court directed the appellants to put up the unit for sale afresh by giving reasonable time to the borrower to repay the amount which had become due. Feeling aggrieved, the financial corporation approached the Supreme Court by preferring an appeal.

15. Allowing the appeal this Court held that in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. It was further held that public auction is not the only mode to obtain the best price and it could be done by inviting tenders, by giving wide publicity so as to get the maximum price. On facts, it was held that through negotiations, the financial corporation was able to secure a revised offer which was more than the price at which the unit had been valued and the borrower had sufficient opportunity, to secure an offer higher, but was not able to bring any higher offer. As regards the valuation of the unit the Court observed that, the value of the plant and machinery could have fallen on account of its being used or due to the same getting outdated and if the value of the unit was higher than the sale price it would have been possible for the borrower to obtain a better offer and his failure to do so negatives the inference that the sale price was low. The court also observed that, the failure on the part of the financial corporation to give intimation to the borrower before accepting the offer made by the purchaser was of little consequence in the facts of the case because the borrower had sufficient opportunity to obtain a higher offer, but he has failed to do so.

16. In **Karnataka State Financial Corporation V. Micro Cast Rubber & Allied Products (P) Ltd. & Ors.**[1], the issue was whether the financial corporation was wrong in rejecting the offer given by the borrower which, after proper evaluation, was considered lower than the offer made by the purchasers. This Court, while upholding the action of the financial corporation, held that the guidelines contained in **Mahesh Chandra** are in the nature of guidelines for the exercise of the power under Section 29 of the Act and the *action of the State Financial Corporation should not be interfered with if it has acted broadly in consonance with those guidelines.* The Court reiterated the law laid down in **Gem Cap** as regards the scope of judicial review in matters of sale by the State Financial

1. JT 1996 (6) SC 37; (1996) 5 SCC 65

Corporation in exercise of the power conferred on it under Section 29 of the Act.

17. In **Haryana Financial Corporation & Anr. v. Jagdamba Oil Mills & Anr.**[1], a Three Judge Bench, while over ruling the decision in **Mahesh Chandra** held that it was contrary to the letter and intent of Section 29 of the Act and observed that the views expressed in that case were too wide and did not take note of the ground realities and the intended objects of the statute and if the guidelines as indicated were to be strictly followed, it would be giving premium to a dishonest borrower. The views would not further the interest of any corporation and consequently of the industrial undertakings intending to avail financial assistance and would only provide an unwarranted opportunity to the defaulter, in most cases chronic and deliberate, to stall recovery proceedings. Further, the Court observed that "it is one thing to assist the borrower who has intention to repay, but is prevented by insurmountable difficulties in meeting the commitments. That has to be established by adducing material". The Court found that the guidelines issued in **Mahesh Chandra** placed unnecessary restrictions on the exercise of power by financial corporation contained in Section 29 of the Act by requiring the defaulting unitholder to be associated or consulted at every stage in the sale of the property. The Court felt that the procedure indicated in **Mahesh Chandra** would lead to further delay in realization of the dues by the financial corporation by sale of assets. The Court held that it was always expected that the corporation would try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out. The Court approved the view expressed in **Gem Cap** and found it to be more in line with the legislative intent behind enacting the Act.

18. Recently in **S.J.S Business Enterprises (P) LTD. v State of Bihar & Ors.**[2], while reiterating the aforestated legal position, it was held that reasonableness of the action of financial corporation under Section 29 of the Act should be tested against the dominant consideration to secure the best price.

19. From the aforesaid, the legal principles that emerge are :

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the corporation and its debtor, a writ court has no say except in

1. JT 2002 (1) SC 482; (2002) 3 SCC 496

2. JT 2004 (Suppl.2) SC 601; (2004) 7 SCC 166

two situations;

(a) there is a statutory violation on the part of the corporation or

(b) where the corporation acts unfairly i.e., unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the financial corporation is *mala fide*, even a wrong decision taken 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 be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adapted.

(vii) The financial corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

20. True, the exercise of the right by a financial corporation under Section 29 of the Act should be fair and reasonable. Ultimately, whether the action of the financial corporation is *bona fide* or not would depend on the facts and circumstances of each case.

21. The examination of the facts, in the light of the aforenoted legal principles reveals that KSIIDC acted in a *bona fide* manner. The procedure followed by KSIIDC to dispose of the assets of the borrower to realize the dues cannot be held to be unreasonable or unfair. The sale was conducted by issuing advertisements in the newspa-

pers. Steps were taken to secure the best price. The question before the High Court was only about the validity of sale to Vinpack and the plea of the borrower was that the unit was sold at ridiculously low price. The learned single Judge gave reasonable opportunity to the borrower to pay the same amount as payable by Vinpack failing which unit was directed to be sold to Vinpack after specified date. The borrower failed to comply with the order of the learned single Judge or seek extension of time and also did not challenge it in writ appeal within time specified in the order of learned single Judge. Under these circumstances, the unit was sold to Vinpack and the possession handed over to it. The Division Bench, after holding that the procedure adapted was not in conformity with the guidelines enumerated in **Mahesh Chandra's** case did not examine the effect of offer given to the borrower and not availed by him resulting the sale in favour of Vinpack. In this view, the approach of the Division Bench cannot be sustained. Further, the subsequent line of cases distinguishing **Mahesh Chandra** and the decision in the case of **Jagdamba Oil Mills** (supra) which overruled **Mahesh Chandra** have already been noticed hereinbefore.

22. The submission about the genuine reason of the borrower for default and about non-cooperation of KSIIDC is not rescheduling loan, are not relevant at this stage as the main issue urged before the High Court was about validity of sale. That apart, it does appear from the facts that KSIIDC had been considerate and sympathetic towards the borrower and gave it ample opportunities. KSIIDC after passing an order under Section 29 of the Act, did not implement it for the considerable time. The correspondence that followed between KSIIDC and the borrower shows that sufficient opportunity was given to the borrower to enter into arrangement with third parties to work the unit. It was only when the borrower failed to enter into arrangements with the third parties or repay the amount, steps were taken to realize the dues. In this regard, the object enacting Section 29 of the Act has to be kept in mind. As was observed in **Gem Cap** and **Jagdamba Oil Mills,** the legislative intent in enacting the statute was to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a stipulated period. Though the corporation is not like an ordinary moneylender or a bank which lends money, there is purpose in its lending i.e. to promote small and medium industries. The relationship between the corporation and the borrower is that of a creditor and debtor. That basic feature cannot be lost sight of. A corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. It has to recover the amounts due so that fresh loans can be given. In that way industrialization, which is the intended object, can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money. As observed in **Gem Cap** promoting industrialization does not serve public interest if it is at the cost of public funds. It may amount to transferring public money to pri-

vate account. Further, financial corporation cannot wait indefinitely to recover its dues.

23. Having regard to the facts of the case and the legal principles above noted, the impugned judgment directing KSIIDC to redo the entire sale process cannot be sustained. Therefore, the impugned judgment is set aside and it is held that on failure of the borrower to comply with the directions of the single Judge, the action of KSIIDC to sell the unit in favour of Vinpack was valid and legal. The appeals are accordingly allowed.

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JT 2005 (3) SC 582

M/s Tata Iron and Steel Co. Ltd. v. State of Jharkhand and Ors.

Civil Appeal No. 1912 of 2004
Civil Appeal No. 2269 of 2005
(Arising out of SLP (C) No. 15419 of 2004)
(From the Judgment and Order dated 12.8.2003 of the Jharkhand High Court at Ranchi in W.P.(T). No. 2003 of 2003)

B.P. SINGH & S.B. SINHA, JJ.
Dt. 30.3.2005
Appearances

Mr. Gaurav Banerjee, Senior Advocate, Mr. Saurav Agrawal and Mr. M.K. Dua, Advocates with him for the Appellant in C.A. No. 1912/2004

Mr. Punit Dutt Tyagi and Mr. S.B. Dixit, Advocates for the Appellant in C.A. No. 2269/2005

Mr. Sunil Gupta, Senior Advocate, Mr. Gopal Prasad, Mr. Pratap Kalra and Mr. Vivek Vishnoi, Advocates with him for the Respondent.

SALES TAX

Central Sales Tax Act, 1956

Section 14 - Bihar Finance Act, 1981 - Sections 13(1)(b), 22 and 23 - Bihar Industrial Policy, 1995 - Jharkhand Industrial Policy, 2001 - Sales Tax - Special rate of tax on certain sales or purchases - Entitlement to the benefit of set off and / or adjustment from tax paid on purchase of raw materials - Appellant company engaged in steel manufacture - Integrated steel plant located in Jamshedpur in undivided State of Bihar - In respect of its cold rolled products, appellant obtaining the benefit of adjustment of tax paid on raw materials in terms of the Notifications issued under Bihar Industrial Policy, 1995 - Consequent to reorganization of the State of Bihar, Jamshedpur falling under the territory of the newly created State of Jharkhand - Subsequently Jharkhand announcing its Industrial Policy in 2001 - State of Jharkhand accordingly issuing certain Notifications granting benefit of adjustment of sales tax paid on raw materials - Appellant company seeking the benefit of set off adjustment of tax paid on raw materials in terms of the Industrial Policy, 2001 in respect of its units other than the cold rolling mills - Commissioner of Sales tax rejecting the case although the Joint Commissioner had granted the benefit in terms of the Notifications - High Court on a writ filed by the appellant setting aside the order of the Commissioner of Sales Tax and directing the appellant to make a fresh