

possession or both of the industrial concerns], as well as the ¹[right to transfer by way of lease or sale] and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers ²[* * *] under sub-section (1), shall vest in the transferee all rights in or to the property transferred ³[as if the transfer] had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

⁴[(4) ⁵[Where any action has been taken against an industrial concern] under the provisions of sub-section (1), all costs, ⁶[charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it ⁷[as incidental thereto] shall be recoverable from the industrial concern and the money which is received by it ⁸[* * *] shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.]

(5) ⁵[Where the Financial Corporation has taken any action against an industrial concern] under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of ⁹[the concern].

COMMENTS

(i) A loanee industrial unit hypothecated its property to the Financial Corporation. On not being able to repay the whole amount of loan the property was put on sale. Loanee industrial unit was not given an opportunity before accepting offer of the prospective purchaser as to why such offer should not be accepted. Such a sale is vitiated. Loanee's offer to repay balance of loan in lump sum was rejected without giving any ground for rejection but the Corporation agreed to get its dues back from purchaser in instalments. This attitude of the Corporation is *mala fide* and against the normal conduct of the instrumentality of the State, *Ashvi Electric, Adityapur v. Bihar State Financial Corporation*, AIR 2000 Pat 27.

(ii) On default being made in payment of loan by the petitioner State Financial Corporation proceeded to seize the Unit of the petitioner and an advertisement was given for its sale. Sale offer was accepted and possession was handed over to the purchaser. The agreement for sale was challenged but no relief was granted. Subsequent challenge on the ground that no reasonable opportunity was granted is not tenable; *Smt. Sudha Tripathi v. State of Madhya Pradesh*, AIR 1999 MP 188.

1. Subs. by Act 56 of 1956, sec. 14, for "right to sell" (w.e.f. 1-10-1956).
2. The words "of sale and realisation" omitted by Act 56 of 1956, sec.14 (w.e.f. 1-10-1956).
3. Subs. by Act 56 of 1956, sec. 14, for "as if the sale" (w.e.f. 1-10-1956).
4. Subs. by Act 56 of 1956, sec. 14, for sub-section (4) (w.e.f. 1-10-1956).
5. Subs. by Act 77 of 1972, sec. 19, for certain words (w.e.f. 30-12-1972).
6. Subs. by Act 6 of 1962, sec. 14, for "charges and expenses properly incurred" (w.e.f. 16-4-1962).
7. Subs by Act 77 of 1972, sec. 19, for "as incidental to such management, or transfer and realisation".
8. The words "from such management, or transfer and realisation" omitted by Act 77 of 1972, sec. 19 (w.e.f. 30-12-1972).
9. Subs. by Act 6 of 1962, sec. 14, for "the owner of the concern" (w.e.f 16-4-1962).

(iii) Financial Corporation taking over the industrial concern is deemed to be an owner thereof and has absolute rights to sell the industrial concern as its unit or even sell its machinery and equipment in a single lot separately from the landed property if its subserves the interest of the corporation *i.e.* realisation of the amount due to it. Moreover, section 52A of the Companies Act, 1952 cannot be involved in contradiction of this section of the Act; *F.S. Chhajeri v. Kerala Financial Corporation*, (1995) 82 Com Cas Ker 1.

(iv) Even though this section does not provide as such, but in view of the principles of natural justice and fair play it is necessary for the corporation to issue notice to the guarantor regarding the intended auction lest in the absence of serving of such notice, the corporation cannot carry on with the intended auction. In other words, both borrower and guarantor are entitled to such prior notice of an intended auction; *Smt. Hiranyaprava Samantray v. Orissa State Financial Corporation*, AIR 1995 Ori 1.

(v) Where possession of factory premises of a company taken over by Financial Corporation was legal and valid action under this section, workers of debt company were held to be having no right of hearing in such circumstances. Writ Petition filed by workers challenging proceedings under this section is not maintainable; *Mahabir Prashad Sharma v. Collector Rewari at Narnawl*, AIR 1995 P&H 11.

(vi) Where after the rehabilitation package prescribed in respect of sick industry, the State Financial Bank and some other bank had agreed to give loan to the sick industry but there was inordinate delay in releasing the loan and that was the prime cause of non-revival of the industrial unit in question and the industry had deposited the amount prescribed by the court during the pendency of writ application, the State Financial Bank which had taken possession of the industry was directed to deliver possession of the unit to the entrepreneur and further directed both the banks to release the balance of the amount they had agreed to pay to industrial unit as the banks had not acted fairly; *M/s. Surendra Steel Industries (P.) Ltd. v. Orissa State Financial Corporation*, AIR 1995 Ori 48.

(vii) Seizure of an industrial unit can neither be said to be unfair for unreasonable if such action is resorted to by the State Financial Corporation concerned by reason of default in prepayment of loan by the former; *M.D. Mishra v. State of Orissa*, AIR 1995 Ori 52.

(viii) Under this section Financial Corporation can take possession of an industrial concern for realizing its debts from the borrower. It can further transfer it. To bring a case under this section Financial Corporation should have given the loan and the borrower should have been unable to pay the same; *U.P. Financial Corporation v. Gajendra Cold Storage (P) Ltd.*, 1992 (1) Bank CLR 769.

(ix) If a loanee is unable to pay the debt, the Corporation is entitled to take the possession of the property and can further transfer it; *Miss K.T. Sulochana Nair v. Managing Director, Orissa State Financial Corporation*, AIR 1992 Ori 157.

(x) State Financial Corporation can ask for its dues even if the industrial concern does not have working capital or power supply. The Industrial concern has no right to refuse the instalment due on the basis of above mentioned grounds; *Jeenu Plast India (Private) Ltd. v. Orissa State Financial Corporation*, AIR 1992 Ori 196.

30. Power to call for repayment before agreed period.—Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,—

- (a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or