Before V.K. Bali & M.L. Singhal, JJ

ARAVALI PIPES LTD.,—*Petitioner*

versus

HARYANA FINANCIAL CORPORATION,—*Respondent*

C.W.P. 17622 of 1997

24th August, 1998

Constitution of India, 1950—Arts. 226/227—State Financial Corporation Act, 1951—Ss. 29 and 30—Possession of unit taken without giving any notice—Challenge thereto—Petitioner ready and willing to pay all outstanding dues—Amout of Rs. 10 lacs paid and possession given back to the petitioner—Certain amount still due—Amount disputed—Corporation has regular remedy u/s 30 to recover amount from defaulting party—Corporation should not resort to proceedings u/s 30 at first instance.

Held that it is not a case were the action at this stage can be taken against the petitioner under Section 29 of the Act. The amount on which there is a dispute between the parties is certainly debatable. Even the auditors say that it is a case where the Court should give its verdict as to whether the amount is payable by the petitioner or not. If in a case of this kind also the respondent-Corporation is permitted to have resort to proceedings under Section 29 of the Act and that too in the very first instance, that would be in direct violation of the law laid down by the Supreme Court. Further, there is Section 30 in the State Financial Corporation Act which provides for a regular remedy to the respondent Corporation to recover the amount that may be due to it from a defaulting party. Insofar as section 29 is concerned, the same provides a summary procedure to the respondent Corporation wiithout recourse to the proceedings before a court. Insofar as Section 30 is concerned, a regular remedy is available to the Corporation to recover the amount and if the same is not paid, to sell the unit . The Court is once again convinced that the facts of this case are such where Corporation should be left to have resort to section 30 of the Act aforesaid.

(Para 7)

Ashok Aggarwal, Sr. Advocate with R.K. Jain, Adovocate. for the Petitioner.

R.S.Chahar, Advocate with Kamal Sehgal , Adovocate for the Respondent.

JUDGMENT

V.K. Bali, J. (Oral)

(1) M/s Aravali Pipes Ltd., a Company is corporated under the Companies Act, 1956 had field Civil Writ Petition No. 17622 of 1997 under Article 226 of the Constitution of India seeking writ in the nature of mandamus directing the respondent-Corporation to hand-over possession of the unit which was taken on October 6, 1997 under Section 29 of the State Financial Corporation Act without giving any notice.

(2) The case of the petitioner through out has been that it was prepared to pay all outstanding dues and despite that action had been taken against it under Section 29 of the Act.

(3) This Court issued notice of motion to the respondent Corporation and after hearing learned counsel for the parties, following order was passed on January 8, 1998 :—

> "During the course of arguments, a consensus has been arrived at between the learned counsel for the parties. Mr. Mohan Jain, representing the petitioner states that if the possession of the unit is handed over to the petitioner within a week from today , the outstanding amount, i.e.principal *plus* interest towards instalments shall be cleared in a way that Rs. 10 lacs will be paid within two weeks from the date the possession is taken over and the remaining amount up to 31st March, 1998, The statement made by Mr. Mohan Jain is acceptable to Mr. R.S. Chahar representing the respondent. In view of the consensus arrived at between the parties, we order that the respondent Corporation would hand over the possession of the unit to the petitioner within a week from today, The petitioner shall pay the amount of Rs. 10 lacs within two weeks from the said date to the Corporation and the remaining amount up to 31st March, 1998. It is clarified that the amount payable by the petitioner in instalments up to 31st March, 1998 *plus* interest which in other words

is called the amount which the petitioner has defaulted to pay. In case the amount promised by the petitioner is not, paid this petition shall stand dismissed and it shall be open for the respondent to take possession of the premises forthwith.

The petition stands disposed of."

(4) On the petitioners having paid an amount of Rs. ten lacs within two weeks, the respondent Corporation had handed-over the possession of the unit to the petitioner. The petitioner, however, filed the present application for clarifying order dated 8.1.1998. That application, after notice to the respodent Corporation, came up for hearing before this Court on April 1, 1998 when following order was passed :—

We have heard the learned counsel representing the parties in this civil misc. application. The prayer in this application is for clarifying our order dated 8.1.1998. We are of the view that the order dated 8.1.1998 is clear and no clarification is required. However, the learned counsel representing the parties hotly dispute as to what is the amount that may be due by 31.3.1998. i.e., instalments due upto 31.3.1998 *plus* interest. Whereas, it is the case of the petitioner that an amount of Rs. 4.78 lacs is due which has since been paid in addition to Rs. ten lacs paid by vitue of our order referred to above. It is equally positive case of the respondents that out of total amount of Rs. 3.69 crores, an amount of Rs. 2.20 crores is due to the petitioner on 31.3.1998. The default is, thus, stated to be Rs.2.89 crores which the petitioner would have otherwise paid upto 31.3.1998. In view of the conflicting stands and to the extent as referred to above, we appoint Sharda & Company the auditors of the respondent Corporation to go into the accounts. The auditors would give a report as to what amount the petitioner would have paid as per the original agreement arrived at between the parties by 31.3.1998 with interest. The report shall be submitted by the auditors after hearing the parties. Till such time the report is filed the respondent Corporation will not take possession of the factory in dispute. Adjourned to 17.4.1998.

(5) Pursuant to orders, referred to above, Sharda & Company, Auditors of the respondent Corporation have submitted the report.

As per the report of the auditors, an amount of Rs. 5,52,211is due towards the Corporation which the petitioner had to pay upto 31st March, 1998. As by now, it is quite certain that some other instalment with interest might have also become due. The report of the auditors on certain heads has mentioned that the same can be determined by the Court. Paras 5, 10 and 11 of the said report of the Auditors read as follows :—

"5. M/s Aravali Pipes Ltd. has claimed that the unit remained in illegal possession of the Haryana Financial Corporation from 6th October, 1997 to 15th January, 1998. Accordingly, no interest is payable for this period. The repayment of all future instalments be deferred by this period. Haryana Financial Corporation has replied that the Unit was not in illegal possession of Haryana Financial Corporation and necessary registered notices were issued to the Company before taking over the possession.

In our opinion, only the High Court is competent to decide whether the possession was legal or illegal. In case the possession is considered to be illegal, then as per the contention of the petitioner the quantum of interest which was not to be charged by HFC during the period for which the unit remained in the illegal possession, i.e., from 6th October, 1997 to 15th January, 1998, comes to Rs. 14,17,633. Further, it was contended by the Company that all the future instalments be deferred for this period of 3 months and 10 days. The affect of the same has been separately depicted in our statement of account, as to be decided by the Hon'ble High Court.

10. M/s Aravali Pipes Ltd. has claimed that out of Bridge loan of Rs. 180 lacs availed by them, Rs. 25 lacs were diverted towards subscription in equity issue of Haryana Financial Corporation on 20th May, 1995. Accordingly, M/s Aravali Pipes Ltd. has demanded an adjustment of Rs. 47,34,850 being the amount including interest as applicable on Bridge loans and working captial loans from its loan accounts.

We have gone through the statement of account of Bridge loan of Rs. 180 lacs. As per the statement, the amount was disbursed on 19th May, 1995. The Company has claimed that out of Rs. 180 lacs disbursed by HFC, a sum of Rs. 25 lacs was got invested in the shares of HFC under duress immediately thereafter in May, 1995.

In our opinion the matter has far reaching implication and within the domain of Hon'ble High Court. However, if the claim of Aravali Pipes Ltd., is accepted by the Hon'ble High Court, a sum of Rs. 43,41,127 (as on 1st March, 1998) is to be accounted for in the Bridge loan account by giving credit from the date of investment in the shares and applying interest at the rates applicable on Bridge Loans and WCTL etc.

11. The Company in their lease equipment account has claimed that they are not liable to pay any lease rental as on 31st March, 1998 as the HFC has already terminated the contract with effect from 14th November, 1997 and the Company has also offered HFC to take possession of the equipment *vide* their letter dated 14th November, 1997.

The HFC have already claimed lease rental amounting to Rs. 65.80 lacs w.e.f. July, 1996 as at 31.3.1998. In our opinion, the lease assistance does not fall under the loan accounts and it is a matter within the domain of Hon'ble High Court to decide whether the termination of lease contract is legal or not and whether the company is liable to pay lease rental after termination of lease agreement. We, therefore, have not commented upon the amount in report."

(6) When the report of the Auditors came on records of the case, learned counsel representing the respondent-Corporation wanted to file objections against the said report. The Court had orally observed that this was not a civil suit where such objections can be entertained and that arguments raised for and against the report would be taken into consideration. Despite the observations, as referred to above, objections have been filed by a covering note made to the Registrar that the respondent Corporation may be allowed to file the objections to the report submitted by the Auditors. No formal application was filed for permission to bring on record these objections nor a copy of the same was given to the counsel opposite.

(7) We have heard learned counsel for the parties and gone through the records of the case as also the report of the Auditors. Before we might proceed any further in the matter, it may be mentioned that the Apex Court in recent judgments has held that

the Corporation can take action under Section 29 of the Act as a last resort. So much so that even if the unit of the defaulting party is taken possession of and sold, the first offer has to be made to the proprietor of the unit to purchase the same on the highest price offered to the Corporation. From the report of the Auditors, who are none other than the Auditors of the respondent-Corporation, an amount of Rs. 5,52,211 is found due to be paid by the petitioner by 31st March, 1998. We order the petitioner Company to pay this amount within a week from today as also other amount that might have become due with interest within a month from today. At this stage, Mr. Ashok Aggarwal, learned counsel for the petitioner states that a cheque in the sum of Rs. 4.78 lacs out of an amount of Rs. 5,52,211, as held payable by the Auditors, was tendered to the Corporation on 30th March, 1998. He further states that if the cheque might have not been encashed by the respondent Corporation, the amount of Rs. 5,52,211 alongwith interest shall be paid in the manner indicated above.

(8) This Court is of the view that it is not a case where the action at this stage can be taken against the petitioner under Section 29 of the Act. The amount on which there is a dispute between the parties is certainly debatable. Even the auditors say that it is a case where the Court should give its verdict as to whether the amount is payable by the petitioner or not. If in a case of this kind also the respondent Croporation is permitted to have resort to proceedings under Section 29 of the Act that too in the very first instance. that would be in direct violation of the law laid down by the Supreme Court. Further, there is Section 30 in the State Financial Corporation Act which provides for a regular remedy to the respondent Corporation to recover the amount that may be due to it from a defaulting party. Insofar as Section 29 is concerned, the same provides a summary procedure to the respondent-Corporation without recourse to the proceedings before a Court. Insofar as section 30 is concerned, a regular remedy is available to the Corporation to recover the amount and if the same is not paid, to sell the unit. The Court is once again convinced that the facts of this case are such where Corporation should be left to have resort to Section 30 of the Act aforesaid.

(9) In view of what has been said above, we direct that the respondent Corporation at this stage would not take action under section 29 of the Act against the petitioner. As referred to above, it is permitted to have recourse to Section 30 of the said Act. We

further direct that in case application under Section 30 of the Act is filed which lies before the District Judge, the same shall be disposed of as expeditiously as possible and preferably within six months from the date petitioner puts in appearance or is served. It shall be open to the respondent Corporation to move an application under Order 38 Rule 5 C.P.C. and obtain an order of attachment before judgment. The petitioner Company would not sell/mortgage or dispose of in any manner the land, plant and machinery till such time application under order 38 Rule 5 C.P.C. is filed by the respondent. Thereafter, it shall be in the discretion of the learned District Judge to pass orders so as to protect the interest of the Corporation. Disposed of accordingly.

J.S.T.

Before H.S. Bedi, J

SANJAY,—*Petitioner*

versus

MAHARISHI DAYANAND UNIVERSITY & OTHERS,—*Respondents*

C.W.P. No. 2707 of 1998

24th August, 1998

Constitution of India, 1950—Arts. 226/227—Admission—Common Entrance Test conducted for five medical institutions—Prospectus provided that candidates higher in merit to be offered seat for M.B.B.S. course and others in B.D.S. course—Candidates higher in merit to offer admission against 50% free seats—Petitioner got admission in one college in B.D.S. course against payment seat—Advertisement issued by respondent—College on its own level for filling vacant seat in M.B.B.S. course—Unable to attend interview—Notice issued to fill vacant seats in all 5 colleges—Petitioner denied admission on the ground he failed to attend counselling session in Maharaja Agarsen Institute of Medical Research and Education—Challenge thereto—Held, admission to be made by the Admission Committee—Admission made by any other authority would have no legal sanction—Intimation to attend a counselling by such authority could be ignored without peril—Direction issued to admit petitioner & create additional seat to admit respondent.