

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 9155 of 2006

Reserved on: September 21, 2010

Decision on: October 26, 2010

MOHAN KOHLI

..... Petitioner in-person.

versus

THE STATE NCT OF DELHI & ORS

..... Respondents

Through: Mr. Amiet Andley with

Mr. Arun K. Sharma, Advocate for GNCTD.

Mr. U. Srivastava, Advocate for DFC.

Mr. Rakesh Malhotra, Advocate for R-3/GFPL.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

26.10.2010

1. Aggrieved by the sale of the unit at C-392, DSIDC, Narela, Delhi-110040 (hereinafter 'the unit in question') by the Respondent No. 2 Delhi Finance Corporation ('DFC') to Respondent No. 3 M/s. Ganesh Footwear Private Limited ('GFPL'), the Petitioner has filed the present writ petition seeking to set aside the sale and restore the unit in question to him. The Petitioner also seeks a mandamus to initiate measures to rehabilitate the Petitioner's unit in accordance with the recommendations of Haryana-Delhi Industrial Consultants Limited ('HARDICON') submitted in February 2002.

2. The Petitioner is the proprietor of M/s. NBG Industries engaged in the

business of manufacturing of adhesive tapes and injection moulded items. The Petitioner was allotted a plot admeasuring 350 sq.m by DSIDC at C-392, Industrial Park, Narela, Delhi on 14th July 1990.

3. The Petitioner applied for and was sanctioned a loan by the DFC in the sum of Rs. 42.50 lakhs for fixed capital/fixed assets and Rs. 28.25 lakhs towards working capital amounting to Rs. 70.75 lakhs. In terms of the loan agreement, a mortgage deed dated 5th March 1997 was executed by the Petitioner in favour of the DFC. The Petitioner states that although the loan amount had to be disbursed within a period of three months, only a sum of Rs. 62 lakhs was disbursed to the Petitioner over a period of 15 months by the DFC. According to the Petitioner, this itself led to the Petitioner's unit entering into 'incipient sickness.' It is alleged that repayment usually starts after a period of two to three years but in the instant case repayment schedule was made to begin with effect from 1st November 1997 itself.

4. The first show cause notice was sent to the Petitioner by the DFC on 21st/25th August 1998 asking him to clear the default amount of Rs. 5,70,411.95 failing which action would be initiated against the Petitioner under Section 29 of the State Financial Corporations Act, 1951 ('SFC Act'). The Petitioner could not obviously make the payment as demanded. On 3rd November 1999 the second notice under Section 29 SFC Act asking the Petitioner to clear the default amount of Rs. 73,66,484.60 by 25th November 1999 was issued by the DFC. This was also not complied with. A third show cause notice dated 9th/15th December 1999 was issued by the DFC under

Section 29 SFC Act in which the payment of Rs. 2,50,000/- was acknowledged and he was asked to clear the entire interest in arrear of Rs. 8,47,687.10 by 31st December 1999 failing which the possession of the unit would be taken over by sealing the unit in question on 3rd January 2000. The Petitioner could not pay this amount as well.

5. On 11th February 2000, a notice was sent by the DFC under Section 29 SFC Act referring to the Petitioner's letter dated 3rd January 2000 whereby he had promised to make a payment of Rs. 40,000/- besides a sum of Rs. 1.60 lakhs already remitted by him. He also promised to send post-dated cheques for Rs. 2 lakhs payable in February and Rs. 2.50 lakhs payable in March 2000 within a week. However, the Petitioner was unable to fulfill this assurance. The Petitioner was called upon to pay the arrears of Rs. 31,10,745.30 by 28th February 2000 failing which the possession would be taken by sealing the unit in question on 1st March 2000. The Petitioner continued with the default which led to the DFC taking over possession of the unit in question on 26th April 2000.

6. On 25th August 2000 the Petitioner wrote to the DFC requesting for de-sealing of the unit in question and for rescheduling the loan amount. In response thereto on 30th August 2000 the DFC informed the Petitioner that the following decisions had been taken by the DFC:

“1. That you will deposit Rs. 2 lakhs as down payment immediately before the possession of the unit is given to you by the Corporation.

2. That you will make payment of Rs. 1 lakh per month from 1st October 2000 till rehabilitation package is finalized by the Corporation.

3. That the Corporation will get the diagnostic study of your unit through M/s. HARDICON. The study report received from M/s. HARDICON will be examined on merits strictly within the framework of guidelines of IDBI/SIDBI for rehabilitation of the sick units. The fees being paid to M/s. HARDICON will be debited to you loan account.

4. That this administrative settlement is purely an interim arrangement, pending the decision for rehabilitation of your unit and without prejudice to the rights of the Corporation for recovering its dues in accordance with the terms and conditions of the mortgage deed. In the event of committing any breach/default of this interim settlement, the Corporation will be at liberty to take an action in accordance with law.”

7. On 6th November 2000 the possession of the unit in question was restored to the Petitioner. The Petitioner alleges that when the possession was restored he found some machines and certain stocks missing from the premises which fact was brought to the notice of the DFC. However, the Petitioner alleges that the DFC threatened him that his case for rehabilitation would not be considered if he pursued the matter. No document has been place to substantiate this submission. However, the DFC denies this allegation. It is stated by the Petitioner that although HARDICON had submitted their report recommending a rehabilitation package for the Petitioner in February 2002, a copy thereof was not supplied to the Petitioner. According to the Petitioner, the report was ignored by the DFC and no rehabilitation package was offered to the Petitioner as suggested by HARDICON. The response of the DFC to this is that the Petitioner had failed to adhere to the commitment of depositing

Rs. 1 lakh every month with the DFC which was a condition subject to which the Petitioner's proposal for rehabilitation was referred to HARDICON. It is further pointed out that one of the conditionalities for the rehabilitation package was that the Petitioner would have additional funds of Rs. 9.03 lakhs as his contribution for the revival of the unit in question. The stand of the DFC is that this condition obviously could not have been complied with by the Petitioner at that stage.

8. On 19th March 2002 the DFC sent a further notice under Section 29 SFC Act to the Petitioner stating that despite reminders the Petitioner had failed to deposit the monthly instalment of Rs. 1 lakh regularly and committed default of Rs. 4 lakhs till March 2002. The outstanding balance in terms of the loan agreement was Rs. 1,03,90,412.10 (exclusive of interest from 1st February 2002). The Petitioner was informed that the DFC would take physical possession of the mortgaged property/machinery on 3rd April 2002 and required him to be available at the premises on the date of possession or deposit the outstanding amount as indicated. The Petitioner was further informed:

“Please note that in case of any theft during possession of unit by DFC, the Corporation will not be responsible, you are therefore, advised in your own interest to deploy your security guard for safety of your assets. DFC will however, be within its rights to deploy a security guard if felt necessary (though not obligatory on its part) and expenditure so incurred will be debited to your loan account.”

9. The Petitioner was not present when the unit in question was taken over by

the DFC on 3rd April 2002. The DFC did not entertain the request made by the Petitioner's brother to permit him to remove some machinery which he claimed was leased to the Petitioner.

10. A separate report was commissioned by the DFC and was submitted by Shri A.K. Khanna to it on 25th May 2002. In terms of the report of Shri A.K. Khanna (hereinafter referred to as 'the Khanna Report') the cost of the land was valued at Rs. 29,75,000/- at the rate of Rs. 8,500/- per sq.m., the cost of the building at Rs. 14,37,000/- and the plant and machinery at Rs. 40,12,450/-. The total value of the entire unit in question was estimated to be Rs. 84,24,450/-. On the strength of the Khanna Report, the DFC advertised in the 'Times of India' (Delhi Edition) on 7th March 2003 as well as in 'Punjab Kesari' offering the unit in question for sale on "as is where is basis". In response thereto, the DFC received only one offer for the plant and machinery for Rs. 4,50,000/- which was rejected as being inadequate.

11. The Board of Directors of the DFC at the meeting on 4th November 2003 decided to discontinue the practice of valuation being done from an approved valuer since it was felt that this valuation was on the higher side due to the fact that the payment to the approved valuer was linked with the amount assessed/amount of the valuation given by such approved valuer. Therefore, it was decided to constitute two committees for valuation of realizable value of the immovable property and plant and machinery.

12. The said committees valued the unit in question and recommended that the

reserve price for land and building should be Rs. 37.12 lakhs and for the plant and machinery, Rs. 17.50 lakhs. On the basis of the above valuation, a public notice was issued by the DFC on 4th January 2004 in national dailies in Hindi and English to hold the auction of the unit in question at site through a government auctioneer. Two Committees were constituted by the DFC to supervise the auction and also to record its proceedings by the auctioneers and the General Manager (Administration) of the DFC was appointed as Observer. It is stated that the public auction of the property took place on 19th January 2004 but it was not successful due to cartel formation. The DFC received an offer for Rs. 21,11,000/- on 20th January 2004 from Mr. Gulati. The said offer was rejected by the DFC for the reason that he did not participate in the public auction.

13. Thereafter on 21st February 2004 the DFC issued a notice in a national daily in Hindi inviting sealed tenders for the unit in question. According to the DFC, it received an offer from Respondent No. 3 M/s. GFPL for a sum of Rs. 38 lakhs for the land and building and Rs. 10.25 lakhs for the plant and machinery, totaling Rs. 48.25 lakhs.

14. Along with the affidavit dated 9th September 2010 filed by the DFC in this Court some of the relevant documents and the records have been enclosed. It shows that the offer dated 4th March 2004 was made by Mr. Mohinder Pupneja. Since the sum of Rs. 10 lakhs was less than the reserve price Mr. Mohinder Pupneja was called for further negotiation. Considering the previous offer of the plant and machinery Mr. Pupneja revised his offer to Rs.

10.25 lakhs. It was also noticed that “further bidder has informed that he being director in M/s. Ganesh Footwear (P) Limited would request that the offer be accepted in the name of the company. Request of the Company in this regard may be accepted after satisfying about his bonafide as a director in the said company.” That is how the unit in question came to be sold for the sum of Rs. 48.25 lakhs in all to M/s. GFPL, Respondent No. 3 herein.

15. In addition to this, DFC has informed this Court that they had to take account of the fact that there were additional dues amounting to almost Rs. 30 lakh which were required to be paid by the buyer. These were of electricity, ground rent, transfer charges, water bills, house tax and income tax. The records of the DFC have been perused which show the outstanding electricity charges to be Rs. 9,68,280, transfer charges Rs. 9,78,210 up to 31st March 2004 and ground rent and maintenance charges Rs. 85,312.50 as on 31st December 2004. As regards the property tax, the total outstanding dues were Rs. 5,99,157. The income tax dues were Rs. 4,39,340 plus interest under Section 225 (2).

16. An additional factor against the Petitioner that has been mentioned by the DFC is that when they took the possession of the unit once again on 3rd April 2002, they found some of the mortgaged machineries to be missing. On 18th November 2003 the DFC lodged an FIR bearing No. 608 of 2003 at Police Station Connaught Place, New Delhi under Section 406 IPC. According to the DFC, the Petitioner has been absconding and avoiding arrest during the entire period thereafter.

17. One of the grounds on which the Petitioner has assailed the sale of the unit in question to Respondent No. 3 is that the property was undervalued even at the time of fixing the reserve price in the notice for sale advertised by the DFC. According to him, the total valuation for the land and building as well as plant and machinery ought to have been at least Rs. 80 lakhs. The Petitioner has placed reliance on the HARDICON Report as well as the Khanna Report in support of this submission.

18. The DFC has pointed out that the Petitioner himself wrote to the DFC on 18th February 2004 stating that “we have a proposed buyer who has agreed to pay approx Rs. 55 lakhs for land, building and machinery/stocks/tools etc.” It is further pointed out that the Petitioner placed the value of the unit in question as on 18th February 2004 at Rs. 55 lakhs. He further wrote a letter on 7th May 2004 by way of a reminder stating that “we hereby put on record that we have already taken stock of the valuation of our industrial unit and there is a ready buyer willing to purchase our unit for a sum in the range of Rs.55 lakhs.” The Petitioner has not denied having written the above letters or having himself valued the entire unit at Rs. 55 lakhs. It may be recalled that the actual date of advertisement of the sale notice by the DFC was 21st February 2004 but the offer by GFPL was made on 19th April 2004 for Rs. 48.25 lakhs. The Petitioner was writing on 18th February 2004 and 12th May 2004 placing the valuation of the unit in question was at Rs. 55 lakhs. The difference between the two amounts is not very substantial as has sought to be made out by the Petitioner.

19. The scope of the jurisdiction of this Court to interfere with the decision of

the DFC to sell the unit in question by inviting tenders in exercise of its powers under Section 29 SFC Act has been subject matter of several decisions of the Supreme Court. In *Ram & Shyam Co. v State of Haryana (1985) 3 SCC 267* the Supreme Court emphasised that “the State is under an obligation to secure the best market price available in a market economy”. The Court held that a welfare State as the owner of public property must make every attempt “to obtain the best available price while disposing of its property.”

20. In *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation AIR 1993 SC 935*, the Supreme Court laid down certain guidelines for the exercise of the powers by State Financial Corporations (‘SFCs’) under Section 29 of the SFC Act. The decision in *Mahesh Chandra* was subsequently overruled by a three-Judge Bench of the Supreme Court in *State Financial Corporation v. Jagdamba Oil Mills AIR 2002 SC 834*. In the facts of that case it was observed that where the repayment of loan was twice rescheduled by the SFC on the request of the debtor industrial unit, but not even a minimal portion of the principal amount was repaid and the debtor was a chronic defaulter, he could not make a grievance that the SFC was not acting fairly, even if the requisite procedures had not been followed. The fairness required of an SFC could not be carried to the extent of disabling it from recovering what was due to it. It was further explained in para 10 as under:

“10. The obligation to act fairly on the part of the administrative authorities was involved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this

Court as far back as 1970 in *A.K. Kraipak v. Union of India* 1969 (2) SCC 262. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have “a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred.” [As per Lord Diplock in *Secretary of State for Education and Science v. Metropolitan Borough Council of Tameside* (1977 AC 1014)]. The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene.”

21. It was further explained in para 13 as under:

“The fairness required of the Corporation cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As 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 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 business like it may, for the decision of the Corporation. As was

observed by this Court in *U.P. Financial Corporation and Others v. Naini Oxygen & Acetylene Gas Limited* 1995 (2) SCC 754, in commercial matters the Courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in *Karnataka State Financial Corporation v. Micro Cast Rubber & Allied Products (P) Limited* JT 1996 (6) SC 37, in the matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act, the scope of the judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of the State Financial Corporation, or (b) where the State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short ‘the Constitution’), the High Court does not sit as an appellate authority over the acts and deeds of the Corporation. Similarly, the Courts other than the High Courts are not to interfere with action under Section 29 of the Act unless the aforesaid two situations exist.”

22. The above decision in *Jagdamba Oil Mills* has been constantly followed in the subsequent decisions in *S.J.S. Business Enterprises (P) Limited v. State of Bihar* AIR 2004 SC 2421 and *Punjab Financial Corporation v. Surya Auto Industries* AIR 2010 SC 266. In the last mentioned decision after noticing the earlier judgments on the point, it was observed in para 14 as under:

“14. The proposition of law which can be culled out from the decisions noted above is that even though the primary function of a corporation established under Section 3 of the Act is to promote small and medium industries in the State, but it is not obliged to revive and resurrect every sick industrial unit de hors the financial implications of such exercise. The corporation is not supposed to give loans and refrain from taking action for recovery thereof.

Being an instrumentality of the State, the corporation is expected to act fairly and reasonably qua its borrowers/debtors, but it is not expected to flounder public money for promoting private interests. The relationship between the corporation and borrower is that of creditor and debtor. The corporation is expected to recover the loans already given so that it can give fresh loans/financial assistance to others. The proceedings initiated by the corporation and action taken for recovery of the outstanding dues cannot be nullified by the courts except when such action is found to be in violation of any statutory provision resulting in prejudice to the borrower or where such proceeding/action is shown to be wholly arbitrary, unreasonable and unfair. The court cannot sit as an appellate authority over the action of the corporation and substitute its decision for the one taken by the corporation.”

23. In the background of the settled position of law, when the facts of the present case are examined, it appears that the decision of the DFC to sell the unit in question to Respondent No. 3 was not taken in a hasty and rash manner. In the first place a valuation was got done by the DFC through Mr. A.K. Khanna. The Khanna Report valued the total cost of the unit in question (i.e., the land, the building and the plant and machinery) at Rs. 84.24 lakhs whereas the in-house Committees placed it at around Rs. 54.62 lakhs. The Petitioner valued it at Rs. 55 lakhs. So the Petitioner’s own valuation was nearly identical to the value of the in-house Committee rather than the Khanna Report or even the HARDICON Report. The reasons given by the Committees of the DFC for the valuation arrived at by them have been adequately explained by the DFC in its affidavit dated 14th February 2007. Those reasons seem to be plausible. In the circumstances, it is not possible for this Court to conclude that by not accepting the Khanna Report and in asking for a further valuation by the two in-house Committees, the DFC acted in either a *mala fide*

or an arbitrary manner. Given the facts taken into account by the Report of the Committee chaired by Mr. K.K. Jain of which Mr. A.K. Sehgal was a Member, it cannot be said that the above valuation was arbitrary or unreasonable. The methodology adopted by the said Committee is evident from the said report, a copy of which has been filed along with affidavit dated 21st September 2010 by the DFC.

24. At this stage it must be mentioned that the Petitioner raised an objection that the said report was not signed by Mr. Jain at the time of preparation of its draft but was signed subsequently on 31st May 2009. This lapse has been explained by the DFC as an inadvertence. This Court does not consider this failure of Mr. Jain to sign on the very date that the report was prepared to be a very serious one in view of the explanation offered.

25. As regards the difference in the valuation of the in-house Committee and that of the Khanna Report as regards the plant and machinery, it appears that the offers received on at least two occasions by the DFC were not anywhere near the valuation of the plant and machinery as determined by either. It is only on the third attempt that an offer was made by M/s. GFPL initially of Rs. 10 lakhs which was then revised to Rs. 10.25 lakhs. It is not possible for this Court, under Article 226 of the Constitution, to determine what should be the correct valuation of the plant and machinery sold to Respondent No. 3. Unless the decision is shown to be perverse or *mala fide*, which it is not, it is not possible for this Court to interfere with the decision of the DFC to sell the plant and machinery to Respondent No. 3 for Rs. 10.25 lakhs. The Petitioner's

own valuation of the unit in question at Rs. 55 lakhs is not substantially higher than Rs. 48.25 lakhs at which it was ultimately sold.

26. In the above circumstances, this Court is of the view that no interference with the decision of the DFC to sell the unit in question to Respondent No. 3 GFPL is called for. It is not possible for this Court to grant any reliefs as prayed for by the Petitioner in this petition. The petition is dismissed, but in the facts and circumstances, with no order as to costs.

S. MURALIDHAR, J.

OCTOBER 26, 2010
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