* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 5th April, 2016.**

\+ **<u>W.P.(C) No.14176/2009 & CMs No.11624/2016 (for stay) & 12665/2016 (of respondent for exemption from personal presence)</u>**

KUMAR ELECTRONICS ..... **Petitioner**

Through: Mr. Jagdev Singh, Adv.

Versus

DELHI FINANCIAL CORPORATION ....**Respondent**

Through: Mr. Sanjay Poddar, Sr. Adv. with Ms. Saahila Lamba, Mr. Govind Kumar and Ms. Pavni Poddar, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition under Article 226 of the Constitution of India impugns the orders / notices dated 22nd February, 2008 / 3rd March, 2008, 29th July, 2008 / 31st July, 2008 and 22nd October, 2009 / 23rd October, 2009 of the respondent Delhi Financial Corporation (DFC) under Sections 29 and 32G of the State Financial Corporations Act, 1951 (SFC Act).

2. Vide notice dated 22nd February, 2008 / 3rd March, 2008, the respondent DFC invoked Sections 29 and 30 of the SFC Act and called upon the petitioner to repay the outstanding loan of Rs.31,68,841/- (exclusive of interest from 1st February, 2008) and informed the petitioner that upon the

failure of the petitioner, the respondent DFC will take over possession of all the assets of the petitioner namely land, building, machinery situated at Block No.7, Plot No.493, FIE Estate, Partpar Ganj, Delhi mortgaged with the respondent DFC and dispose of the same at the costs and risk of the petitioner.

3. Vide notice dated 29th / 31st July, 2008 to the petitioner, the respondent DFC informed the petitioner of having taken over possession of the aforesaid property of the petitioner on 24th July, 2008 by serving a notice on M/s Brookley Engineering India Pvt. Ltd., tenant of the petitioner in occupation of the said property and yet again called upon the petitioner to pay the total outstanding loan within thirty days, failing which the property shall be disposed of.

4. Vide notice dated 22nd / 23rd October, 2009, the respondent DFC informed Sh. Jagdish Kumar and Sh. Himender Kumar, partners of the petitioner, of having taken over possession of the property aforesaid and of having invited sealed tenders for sale thereof and informed them that the tender would be opened on 30th October, 2009 and asked them to be present at the said time and to bring a buyer, if they so desired.

5. The petition came up first before this Court on 23rd December, 2009, when while posting the same to 29th January, 2010, opportunity was given to the petitioner to make a representation to the respondent DFC and respondent DFC was directed to consider the said representation, if any. The statement of the counsel for the respondent DFC that proceedings under Section 32G of the SFC Act were also pending and no coercive action was thus being contemplated against the petitioner till the next date of hearing was also recorded. Thereafter the proceedings were adjourned from time to time on the ground of the representation made by the petitioner being under consideration by the respondent DFC. In this circumstance, in the order dated 4th October, 2010 it was observed that the respondent DFC did not appear to be in hurry in recovering its dues which were public monies and a copy of the order was ordered to be sent to the Chairman-cum-Managing Director of the respondent DFC for necessary action. However, the said order also did not have any effect and the proceedings continued to be adjourned. Though no notice of the petition had been issued but the respondent DFC filed its counter affidavit and to which a rejoinder was filed by the petitioner. The petitioner filed an additional affidavit dated 26th September, 2011 to place some documents on record and when the matter

was listed on 27th September 2011, the counsel for the respondent DFC sought time to respond thereto. On 12th July, 2012, it was informed that the representation made by the petitioner had been disposed of vide letter dated 28th June, 2010 and that the petitioner vis-à-vis the same cause of action had earlier filed a) CS No.260/2005 in the Karkardooma Courts which was dismissed on 12th October, 2009; b) CM(M) No.705/1998 which was dismissed vide order dated 23rd November, 1998; and, c) W.P.(C) No.6668/1998 which was dismissed on 31st July, 2007 and that as on 1st February, 2012, a sum of Rs.60,42,910/- was due to the respondent DFC from the petitioner. CM No.128/2014 was filed by the petitioner seeking stay of the tender invited by the respondent DFC of the property aforesaid. Vide order dated 6th January, 2014 the decision of the respondent DFC with respect to the tender was made subject to the outcome of the present petition. However, on 9th January, 2014 it was informed that no offer / tender were received. On 9th January, 2014, the parties were referred to mediation but which remained unsuccessful.

6. Finding the conduct of the respondent DFC in defending the present petition to be extremely casual, lackadaisical and at the cost of the public money, vide order dated 29th March, 2016 again, personal presence of the

Chairman-cum-Managing Director of the respondent DFC was directed on 1st April, 2016. While seeking exemption of personal appearance of the Chairman-cum-Managing Director, Mr. S.K. Jha, Executive Director of the respondent DFC appeared and assured that steps would be taken for ensuring proper representation of the respondent DFC before the Courts.

7. The counsel for the petitioner and the senior counsel for the respondent DFC have been heard.

8. The counsel for the petitioner of course at the outset contended that the petitioner is ready to settle with the respondent DFC and to pay the just dues of the respondent DFC and an opportunity therefor be given. However the said contention was rejected, finding that the loan against mortgage was granted by the respondent DFC to the petitioner as far back as in the year 1993-1994 and upon defaults by the petitioner, the recall notice was given by the respondent DFC as far back as on 20th March, 1996 and the first notice under Section 29 of the SFC Act issued on 10th April, 1996 and attempts for auctioning the property are being made since 26th July, 1996. If the petitioner in more than 20 years since has not settled, the hearing of the petition cannot be derailed today for the said reason.

9. The counsel for the petitioner then contended that it is the respondent DFC which is to blame in not disbursing the entire loan amount. However, it was again immediately asked as to how it was open to the petitioner to contend the same today i.e. after 23 years. If the petitioner had any grievance in this respect and considered itself entitled to a mandamus to the respondent DFC to disburse the entire loan, ought to have approached the Court in the year 1995 and cannot make a defence thereof in this petition.

10. The counsel for the petitioner then drew attention to (I) order dated 28th July, 1996 disposing of CW No.3134/1996 filed by the petitioner, on the statement of the counsel for the petitioner that the petitioner should be permitted to raise the question of application of the subsidy scheme to the loan taken by the petitioner "in the civil suit" and granting such liberty to the petitioner; (II) order dated 31st July, 2007 of dismissal of W.P.(C) No.6668/1996 filed by the petitioner on the ground of the petitioner having filed Civil Suit No.260/2005 which was pending in the Karkardooma Courts; and, (III) order dated 12th October, 2009 of the Court of the Civil Judge, Karkardooma Courts of dismissal of the suit filed by the petitioner for permanent injunction restraining the respondent DFC from dispossessing the petitioner from the property and for a direction to the respondent DFC to

de-seal the property on the ground of a suit for permanent injunction simplicitor, without a claim for declaration being not maintainable, and has argued that the disputes of the petitioner with the respondent DFC as to the quantum of the loan amount due have never been adjudicated on merits. It is also informed that the respondent DFC has initiated proceedings under Section 32G of the SFC Act and which are pending consideration and are informed to be listed today also.

11. Per contra, the senior counsel for the respondent DFC has argued that though the symbolic possession of the property was taken over by the respondent DFC under Section 29 of the Act as far back as on 24th July, 2008 but the petitioner, notwithstanding the same has let out the same to 'Cipla'. Attention in this regard was invited to Clause 5(xxiii) of the Mortgage Deed whereunder the petitioner as mortgager had agreed not to lease out mortgaged property or any part thereof, without prior approval of the respondent DFC. It was argued that no permission for letting out had been obtained. It was further informed that the proceedings under Section 32G of the SFC Act were initiated as far back as on 29th April, 2009 and this petition was intended to frustrate those proceedings. It was further contended that the dispute raised by the petitioner, of being entitled to

interest subsidy under the scheme floated vide office order dated 12th April, 1994 is also a sham, as the loan was sanctioned to the petitioner on 24th December, 1993 under the General Scheme and without any provision for application of subsidy and in any case the office order dated 12th April, 1994 stands superseded vide office order dated 24th April, 1996, as per which the interest subsidy was / is applicable to small borrowers of SC/ST category and that too for units having a sanctioned loan upto Rs.1 lakh only, while the sanction loan of the petitioner is of Rs.12 lakhs. Reliance is also placed on my judgment dated 9th August, 2010 in W.P.(C) No.10026/2009 titled ***M/s Gaurav Saurav Plast (India) Vs. Delhi Financial Corporation***, LPA No.699/2010 preferred whereagainst was dismissed by the Division Bench on 26th May, 2014 and SLP(C) No.22940/2014 preferred whereagaisnt was dismissed as withdrawn on 5th September, 2014.

12. I have considered the rival contentions.

13. The petitioner herein also, as the petitioner ***M/s Gaurav Saurav Plast (India)*** supra, has successfully held up payment of dues of the respondent DFC for the last over twenty years and has dragged the respondent DFC to all possible foras. Not only so, the petitioner is found to have in violation of the terms of the Mortgage Deed let out the property creating further

impediment to the respondent DFC taking over possession thereof. Such a borrower cannot expect discretionary relief under Article 226 of the Constitution from the Court. As observed in ***M/s Gaurav Saurav Plast (India)*** supra, the respondent DFC has been set up to encourage industrialization and offer assistance by giving financial assistance in the shape of loans and advances etc. repayable in easy installments and if its dues remain held up as the petitioner has succeeded in doing and if it is embroiled in litigations before different courts, it would be prevented from doing the laudable task for which it has been set-up. The petitioner is disentitled from invoking the equitable jurisdiction of this Court and / or from any equitable relief on this ground alone.

14. Not only so, the counsel for the petitioner has also not been able to make any dent on the demands of the respondent DFC in the notices impugned in the petition. The contention, of the respondent DFC having not disbursed the entire loan and so having prejudiced the petitioner, as aforesaid, is a stale one and the petitioner without having invoked its remedies thereagainst is not entitled to use it to defeat the claims of the respondent DFC. Similarly, the other ground urged, of the petitioner being entitled to interest subsidy and the same having not been given to the

petitioner while computing the dues from the petitioner, is also not found to be having any substance. Even otherwise, the petitioner having withdrawn the CW No.3134/1996 in this respect with liberty to raise the said question in the suit and having suffered dismissal of W.P.(C) No.6668/1998 also in this respect, cannot now maintain a third petition on the same cause of action and it matters not that the suit filed by the petitioner was dismissed on a preliminary issue of maintainability. The petitioner having withdrawn the earlier writ petition with the same grievance as made in this petition with liberty to raise the said question in a suit and having suffered dismissal of another petition also with the same grievance, on the ground of pendency of suit, ought to have taken care to institute a suit in accordance with law and after dismissal of the said suit cannot file a third petition. If the petitioner was aggrieved from the order of dismissal of the suit, the petitioner ought to have challenged the same but which order the petitioner allowed to attain finality.

15. Thus, whichever way looked at, the petitioner is not entitled to any relief. Rather, the petition is found to be by way of re-litigation and in abuse of the process of the Court and is dismissed with costs of Rs50,000/- to the respondent DFC payable within six weeks of release of this judgment and if

not paid shall be recovered as part of the other dues of the petitioner to the respondent DFC.

RAJIV SAHAI ENDLAW, J.

APRIL 05, 2016
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(corrected and released on 16th June, 2016)