IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 98 OF 2018

1. M/s. Accurate Pipes & Fittings Pvt. Ltd.;
C/o M/s. S. L. Singbal & Associates,
Singbal Building, near bus stand,
Ponda, Goa.

2. Shri Dalichand Hastimal Oswal,
Son of Shri Hastimal Oswal,
85 years of age, married, Indian National,
r/o 5, Housing Society,
Sadhu Nagar, Jalgaon,
Maharashtra – 425 001.

3. Shri Shirish Dalcihand Oswal,
Son of Shri Dalichand Oswal,
Major of age, married, Indian National,
resident of B-8, Sarvodya Housing Society,
LBS Marg, Ghatkopar East,
Mumbai, Maharashtra …. Petitioners

Petitioner No.1, 2 and 3 through duly
Constituted Power of Attorney Mr. Vinayak,
Choudhari, son of Mr. Devram Choudhari,
72 years age, Married, Indian National,
resident of 2, Nirmal Park, Gajanand
Maharaj Nagar, Vhujawal, Jalgaon
Maharashtra.

V e r s u s

The EDC Limited,
Having its Office in EDC House,
1st floor, Dr. Atmaram Borkar road,
P. B. No.275, Panaji, Goa,
Through its authorized Officer
Shri P. P. Borkar, Deputy General Manager,
Panaji, major of age, Service,
Residing at Betim, Goa. …. Respondent.

Mr. R. J. Pinto, Advocate for the Petitioners.
Mr. Ashwin D. Bhobe, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.
Date:- 21st February 2018.

Oral Order:

The challenge in this petition is to the order dated 6/11/2017 below Exhibit 99 passed by the learned District Judge in Civil Misc. Application No.43/2007. By the impugned order, the learned District Judge has answered the issue as to want of jurisdiction, in the negative.

2. The brief facts are that; the respondent has initiated recovery proceedings against the petitioner under sections 29, 30 and 31 of the State Financial Corporation Act, 1951 (Act, for short) somewhere in the year 2007. This was preceded by a notice dated 20/5/1993 whereby the respondent had invoked the provisions of sections 29, 30 and 31 of the Act and had recalled the entire loan.

3. The petitioner filed an application (Exhibit 99) before the learned District Judge claiming that the provisions of sections 29, 30 and 31 of the Act have been made applicable to the petitioner/Corporation by virtue of a Notification dated 4/1/1993 published on 8/6/1993 which is a notification issued under section 46 of the Act, by which the Central Government has made the provisions of sections 29, 30 and 31 of the Act, applicable to the

respondent/corporation. The short contention is that the said notification cannot operate retrospectively. In other words, it was contended that the loan having been advanced in the year 1988 and the Deed of Guarantee as well as the Mortgage Deed being of the year 1988, the respondent/corporation cannot take recourse to the provisions of sections 29, 30 and 31 of the Act for recovery of the loan, as the notification making applicable these provisions to the respondent came subsequently.

4. The learned District Judge has found that the notification does not indicate that it applies prospectively. It has further been found that the loan was a live loan on the date on which the notification was issued and as such, has answered the issue of want of the jurisdiction in the negative.

5. I have heard Shri Pinto, the learned counsel for the petitioner and Shri Bhobe, the learned counsel for the respondent. With the assistance of the learned counsel for the parties I have gone through the record.

6. It is submitted by Shri Pinto, the learned counsel for the petitioner that the loan having been sanctioned prior to the issuance of the notification under section 46 of the Act, it would not be open to the respondent to take recourse to the provisions of sections 29, 30 and 31 of the Act, for recovery of the

loan. It is submitted that normally every Act and legislation is presumed to operate prospectively, unless the Act, indicates expressly or by necessary implication that it has a retrospective operation. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Commissioner of Income Tax 5 Mumbai Vs. M/s. Essar Teleholdings Ltd. Civil Appeal No.2165 of 2012**. It is also submitted that the notice recalling the loan was issued in May 1993, whereas the notification came into force in June 1993 on its publication. Lastly it is submitted that remedy, if any, of the respondent would be to enforce the Deed of Mortgage and Deed of Guarantee under the contract and not under sections 29, 30 and 31 of the said Act.

7. Shri Bhobe, the learned counsel for the respondent submits that by virtue of the provisions of section 29 to 31 of the Act as having been made applicable to the respondent, a remedy for recovery of the loan is provided, and it does not affect the substantive rights of the parties. It is pointed out that even otherwise as per the terms and conditions of the loan, it was open for the respondent corporation to recall the loan. It is submitted that the normal rule is that procedural laws which provide for new remedy would be retrospective unless there is an indication otherwise.

8. I have carefully considered the rival circumstances and the

submissions made and I do not not find that any case for interference is made out.

9. Section 46 of the Act reads thus:

Power to apply Act to certain financial institutions in existence at commencement of Act-

> (1) The Central Government may by notification in the Official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to [any institution established by a State Government] which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a Financial Corporation established by the State Government for the State within the meaning of this Act, and the provisions of this Act shall become applicable thereto according to the tenor of the notification.
>
> [Provided that no notification shall be issued under this sub-section in respect of any institution unless a request is made in that behalf by the State Government concerned].
>
> (2) Any notification issued under sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification. "

It can thus be seen that the provisions of section 46 are wide enough, authorizing the Central Government to apply all or any of the provisions of the Act to any institution established by the State Government, which has for its object the financing of industrial concerns. It further indicates that on issuance of such a notification, the provisions of the Act shall then become applicable to such corporation “according to the tenor of the notification”. Sub section 2 of section 46 would make the position further explicit. Under sub section 2 of section 46 any such notification issued, under sub section 1 may suspend the operation of any enactment applicable to any such institution immediately before the issuance of such notification.

10. The Notification dated 4/1/1993 (published on 10/6/1993) issued under section 46 of the Act reads thus:

> Whereas the State Government of Goa have requested that he provisions of section 29, 30 and 31 of the State Financial Corporation Act, 1951 (63 of 1951) may be made applicable to the Economic Development Corporation of Goa, Daman and Diu Limited, being an institution established by the State Government which has for its object the financing of industrial concerns:
>
> Now, therefore, in exercise of the powers conferred by sub-section (1) of section 46 of the State Financial Corporation Act, 1951 (63 of 1951), the Central Government hereby directs that the provisions

> of sections 20, 30 and 31 of the said Act shall apply to the Economic Development Corporation of Goa, Daman and Diu Limited."

It can thus clearly be seen that the Central Government in exercise of the powers under sub section 1 of section 46 of the Act has made the provisions of section 29 to 31 of the said Act applicable to the respondent/corporation. Although it was submitted on behalf of the petitioner that the notification is made applicable from the date of its publication, there is nothing in the notification to show that the notification was to operate prospectively. It would further be significant to note that section 29 to 31 of the Act essentially provide for a situation where there is breach in repayment of the loan and the consequent remedy for its recovery. As submitted by Shri Bhobe, even under the existing terms and conditions of the loan the respondent was entitled to recall the same. Thus all that has been done by virtue of the notification is to provide for a remedy for recovery of the loan by way of an application before the District Judge. It is thus not possible to accept that the notification will not apply or that the respondent would not be entitled to take recourse to the provisions of section 2 to 31 of the Act in respect of loans advanced prior to the publication of the notification.

11. The reliance placed on the decision of the Supreme Court in the case of

Commissioner of Income Tax (supra) is to my mind misplaced. That was a case where the question was whether sub section 2 and sub section 3 of section 14A inserted w.e.f 1.4.2007 of the Income Tax Act would apply to all pending assessment and whether Rule 8D was retrospective in its application. In my considered view the case clearly turned on its own facts. I have carefully gone through the impugned order and I find that it does not suffer from any infirmity so as to require interference. The petition is without merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-