

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 1371 of 2021

**Trirani Industries Private Limited and others
Vs.**

West Bengal Financial Corporation

For the petitioners : Mr. Saptangsu Basu,
Mr. Rupak Ghosh,
Mr. Chayan Gupta,
Mr. S.M. Obaidullah,
Mr. Nikhil Kumar Roy,
Mr. N. Bhattacharya

For the respondent : Mr. Jishnu Chowdhury,
Mr. Aritra Basu,
Mr. Abhijit Sarkar,
Mr. Abhikchitta Kundu

Hearing concluded on : 25.01.2021

Judgment on : 28.01.2021

Sabyasachi Bhattacharyya, J:-

1. Petitioner No. 1-company is engaged in rice mill business. Petitioner No.2 is a promoter director and petitioner no. 3 an incoming director and shareholder of the company. The respondent, a statutory financial corporation, granted a term loan of Rs. 300 lakh and working capital term loan of Rs. 245.10 lakh to the petitioner no. 1-company on certain conditions, as per a sanction letter dated April 22, 2015.
2. Petitioner no. 1 set up a rice mill, but subsequently failed to repay periodical instalments of the loan, prompting the respondent to issue

a notice under Section 29(1), read with Section 30, of the State Financial Corporation Act, 1951 (hereinafter referred to as “the 1951 Act”) for recovery of the loan. As evinced from the minutes of a meeting held at the factory premises on February 12, 2020 (Annexure P-8 at page 51 of the writ petition), officials of the respondent-corporation, upon taking an inventory, took over possession of the fixed assets of the unit of petitioner no.1 on as-is-where-is basis, without management and liabilities. Since the unit was found in running condition, physical possession was not taken by affixing padlocks. Officials of petitioner no. 1 were appointed as custodians of the mortgaged/hypothecated assets till any alternative arrangement was made.

3. Meanwhile, petitioner no. 1, by a letter dated February 7, 2020, agreed to pay Rs. 25 lakh within February 10, 2020, a further sum of Rs. 25 lakh within March 15, 2020 and another Rs. 25 lakh within March 31, 2020, totalling Rs. 75 lakh. It was also indicated that petitioner no. 3 would come in as a director of the petitioner no.1-company and will hold 60 per cent share, while the other existing directors will hold the rest 40 per cent shares. Acceptance by the respondent of such induction of petitioner no. 3 was also sought in the letter.
4. However, the payment schedule, as per the letter dated February 7, 2020, could not be adhered to by petitioner no. 1, which paid only Rs. 60 lakh out of the promised Rs. 75 lakh, in the following staggered

manner: Rs. 20 lakh on February 11, 2020, Rs. 10 lakh on February 29, 2020 and Rs. 30 lakh on March 31, 2020.

5. On January 7, 2021, e-auction sale notice was published, in respect of various units including the petitioners', by the respondent in newspapers, out of which a Bengali daily having circulation in Kolkata and West Bengal caught the notice of the petitioners. The auction was to be held from January 27, 2021 till January 29, 2021. The specific auction for the unit of petitioner no. 1, which appeared as Lot No. 33 in the list of units to be sold, was to be held on January 29, 2021 (11 am to 3 pm).
6. Being thus aggrieved, the petitioners have challenged the e-auction sale notice by way of the instant writ petition.
7. Learned senior counsel for the petitioners contends that the 1951 Act is a beneficial piece of legislation and ought to be construed leniently in favour of the borrower. Placing reliance on *Kerala Financial Corporation v. Vincent Paul and Another* [(2011) 4 SCC 171], counsel submits that, in the said case, the Supreme Court issued certain guidelines for sale of properties in the absence of executive instructions of the State in that regard. Those guidelines, it is argued, ought to be adhered to by the present respondent too, in the absence of similar guidelines being issued by the State of West Bengal.
8. Particular reliance is placed on directions (ii), (iii) and (viii), as appearing in paragraph no. 20 of the report. Those are as follows:
 - (ii) *Before conducting sale of immovable property, the authority concerned shall obtain valuation of the property from an approved*

valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:

- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets;*
- or*
- (b) by inviting tenders from the public; or*
- (c) by holding public auction; or*
- (d) by private treaty.*

Among the above modes, inviting tenders from the public or holding public auction is the best method for disposal of the properties belonging to the State.

- (iii) The authority concerned shall serve to the borrower a notice of 30 days for sale of immovable secured assets.*
- (viii) The debtor should be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence thereof the sale would suffer from material irregularity where the debtor suffers substantial injury by the sale.*

- 9.** Learned senior counsel for the petitioners submits that none of the above directions were complied with by the respondent in the present case.
- 10.** The petitioners rely on the statement of accounts of petitioner no. 3, the proposed incoming director of the petitioner no. 1-company, and receipts issued by the respondent, copies of which have been annexed collectively to the writ petition as Annexure P-9, to show the total payment of Rs. 60 lakh made on behalf of the company by the third petitioner.

- 11.** Over and above the aforementioned payments, the petitioners rely on Annexure P-12 to the writ petition, which are copies of extracts of the accounts of the petitioner nos. 1 and 2 and Keya Bhattacharjee, another director of the petitioner no.1-company. Such extracts indicate cheque withdrawals in favour of the respondent from the said accounts. Learned senior counsel submits that in view of such withdrawals being made by the respondent from the accounts of the petitioner no.1-company and its directors without intimation to the account-holders, those should be taken into account as payments made by the petitioners, taking the aggregate of such payments much above the agreed payment schedule. Thus, it is argued, the respondent acted illegally and in contravention of its agreement with the petitioners in putting up the unit of petitioner no. 1 for auction sale.
- 12.** In reply, learned counsel for the respondent submits that, even as per paragraph no. 26 of the writ petition, the payments made by the petitioners were inadequate and late in the context of the letter dated February 7, 2020 given by petitioner no. 1. Not only were the amounts of payment deficient in quantum as per the schedule given in the said letter, those were beyond the fixed time schedule as well.
- 13.** Learned counsel further argues that the letter dated February 7, 2020 did not comprise a concluded agreement at all, being only the petitioners' version of the decisions taken at the meeting referred to there. In this context, counsel refers to the transcriptions of

communications annexed at pages 4 to 6 of the Supplementary Affidavit affirmed on behalf by the petitioners.

- 14.** The first one, an email sent on behalf of the respondent on January 13, 2021, mentioned that the petitioners' proposal for induction of new directors would be considered by the appropriate authority of the respondent-corporation on merit basis, subject to making the full committed payment first and submission of a concrete repayment programme for the rest amount of loan dues from the petitioners' end, as discussed on February 7, 2020.
- 15.** The next letter dated January 14, 2021, sent via speed post by the respondent to the advocate of petitioner no. 1, reiterated that it was agreed upon in the meeting held on February 7, 2020 that at first the unit would clear the entire defaulted amount within a stipulated time (March, 2020) and then induction of new director might be allowed by the respondent-corporation on merit basis. The unit subsequently made a part payment of the committed amount but not the full defaulted amount, for which the corporation did not extend its permission for induction of new director, which decision was already informed to the unit at the meeting and recently through e-mail, it was further mentioned. Since, even after several months elapsed from the date of commitment, the full committed amount, that is, the defaulted amount in the loan accounts was not paid, the corporation, it was stated, had no other alternative but to publish the sale notice.
- 16.** A further e-mail from the respondent dated January 14, 2021 clarified that the previous e-mail dated January 13, 2021 was sent

inadvertently and the same stood cancelled and withdrawn on the grounds given therein. Such grounds included the failure on the part of petitioner no. 1 to keep its commitment given at the meeting held on February 7, 2020.

17. Learned counsel for the respondents submits that the withdrawal entries of the extracts of bank accounts, annexed at pages 64 to 68 of the writ petition, were merely adjustments of security deposits on the failure of petitioner no. 1 to clear off its dues, and cannot be construed as any payment being made by the petitioners in terms of the meeting dated February 7, 2020. In fact, it is submitted, the petitioners have not repaid any amount to the respondent for almost a year since.
18. Dealing with *Kerala Financial Corporation (supra)*, learned counsel submits that direction (ii) incorporated in paragraph 20 of the report has been adhered to in the present case, since the respondent obtained appropriate valuation of the property from an approved valuer and consulted with the secured creditor before fixing the reserve price. Public auction, which is one of the best modes stipulated in the direction, is being resorted to by the respondent in the present case.
19. Directions (iii) and (viii), it is contended, would only come into play after the e-auction was complete and the highest bid came in. Only then would the respondent-authority be required to serve to the borrower a notice of 30 days for sale. Reasonable opportunity in regard to the valuation of the property can only be given once the

highest bid is made, and not on the reserve price, since the sale, and consequent valuation for such purpose, would depend entirely on the actual best bid received. Thus, the petitioners' arguments on such score are premature, the respondent argues.

- 20.** The cardinal question which arises in the instant case is whether the respondent acted illegally and without jurisdiction in publishing the impugned e-auction notice.
- 21.** Section 29 of the 1951 Act empowers the State Financial Corporation, in case of default in repayment of any loan or advance or any instalment by an industrial concern, to take over the management or possession or both of the industrial concern, as well as to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. 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. Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1) of Section 29, the corporation shall be deemed to be the owner of such concern, for the purpose of suits by or against the concern, and shall sue and be sued in the name of the concern.
- 22.** Additionally, Section 30 of the 1951 Act empowers the Financial Corporation to require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation, inter alia if the industrial concern has failed to

comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance or if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof, or even if for any reason it is necessary to protect the interests of the Financial Corporation.

- 23.** In the case at hand, the respondent acted fully within its authority, as conferred by Sections 29 and 30 of the 1951 Act, to issue the notice under Section 29 (1), read with Section 30, of the 1951 Act. The impugned publication of e-auction notice was a mere follow-up action.
- 24.** It is admitted by the petitioners that they failed to repay the loan instalments in time, thereby exposing them to action under Section 29 of the 1951 Act.
- 25.** The petitioners argue that there was an 'agreement' between the parties in the meeting dated February 7, 2020. However, the version of the 'agreement', as projected by the petitioners, is contradicted by the respondent in its communications, via e-mail and speed post, dated January 13 and January 14, 2021. The said communications categorically iterate that even the petitioners' request for permission to induct additional director was to be considered on merit basis, that too after full payment of the committed amount by the petitioners. Such full payment, in the respondent's narrative, was to be payment of the entire 'defaulted amount'.
- 26.** Even if it is assumed that the petitioners' letter dated February 7, 2020 correctly depicted the agreement reached between the parties,

the admitted break-up of payments made by the petitioner no. 1, as reflected in paragraph no. 26 of the writ petition, was in contravention of the 'agreement' mentioned in the said letter dated February 7, 2020, both in terms of quantum and time. Whereas the petitioner paid three instalments of Rs. 20 lakh (on February 11, 2020), Rs. 10 lakh (on February 29, 2020) and Rs. 30 lakh (on March 31, 2020), the petitioners' own letter indicated that petitioner no. 1 had to pay three instalments of Rs. 25 lakh each within February 10, March 15 and March 31 of the year 2020 respectively. In view of such admitted default, the respondent cannot be faulted for proceeding with the e-auction.

- 27.** Let us now consider the petitioners' argument that the withdrawals made by the respondent from the bank accounts of the petitioner no. 1 and its directors amounted to compliance of the 'agreement' as mentioned in the letter dated February 7, 2020. Photocopies of the relevant extracts of accounts have been annexed at pages 64 to 68, being Annexure P-12, collectively, to the writ petition. The relevant pleadings in respect of Annexure P-12 are found in paragraph nos. 43 and 44 of the writ petitioner.
- 28.** Paragraph no. 43 contends that the respondent had also encashed the security deposits pledged by the petitioners in terms of the loan sanction letter dated April 22, 2015, amounting to Rs. 59,13,630 /- without caring to take recourse to Section 31 of the 1951 Act.
- 29.** Paragraph no. 44 of the writ petition states that the pledged fixed deposits were encashed on or about March, 2020 without informing

the petitioners. In that regard, account statements of the petitioner no. 1 showing encashment of the fixed deposits and due credit being given to the respondent are said to be annexed and collectively marked as Annexure “P-12”.

30. The above argument is neither here nor there. If Section 31 of the 1951 Act is looked into, the action taken by any officer of the Financial Corporation thereunder, the section stipulates, is “without prejudice to the provisions of Section 29” of the Act. Hence the powers given to Financial Corporations under Section 31 are in addition to, and not in the alternative for, the rights conferred by Section 29 of the 1951 Act. Hence, even if the respondent has taken any action under Section 31 (sufficient material is absent on record, though, to establish such proposition), the same is independent and irrespective of the e-auction sale pursuant to the notice under Section 29. The former exercise of power cannot vitiate the latter, since the two provisions operate separately and independently of each other.
31. That apart, by no stretch of imagination can the encashment of security, pledged by the petitioners, by the respondents be equated with payments being made by the petitioners in terms of their own letter dated February 7, 2020. The encashment of security was in view of the default committed in repayment of loan on the part of the petitioners from the respondent’s end, and could not be construed as a ‘payment’ from the end of the petitioners.
32. On a more basic level, even if the petitioners had satisfied the payment scheme as reflected in their letter dated February 7, 2020,

the same would not tantamount to clearing off the entire dues on the loan and hence, could not have precluded the respondent from proceeding with the e-auction and ensuing sale in any event. The entire scope of the said letter was that the petitioners requested an opportunity to induct additional directors and asked the respondent not to take any adverse action against the factory of petitioner no. 1 as per the notice under Section 29. The respondent had reiterated that, for it even to consider the request of induction of new directors, the petitioner had to clear the entire defaulted amount. In the absence of any full and final settlement (one time or otherwise) between the parties with regard to the liabilities of the petitioners on the repayment of loan, the respondent was free to invoke the provisions of Sections 29 and 30 of the 1951 Act at any point of time, which they did.

- 33.** The total amount due and payable by petitioner no.1 was Rs. 7,29,13,648.98 p. as on January 22, 2020, as per the notice issued on even date by the respondent to petitioner no. 1 under Section 29 (1) read with Section 30 of the 1951 Act. Possession of the unit of petitioner no. 1 was duly taken by the respondent under Section 29 on February 12, 2020 in the presence of officials of the petitioner no. 1-company, who were appointed as custodians of the mortgaged/hypothecated assets “till any other alternative arrangement is made”. Putting up the said assets for sale to realise the property pledged, mortgaged, hypothecated or assigned, as a logical conclusion of the process of taking possession, was well within

the rights of the respondent-corporation, as conferred under Section 29 (1) of the 1951 Act itself. After having defaulted in repayment of the entire loan amount as well as the amount of Rs. 75 lakh, allegedly agreed by the petitioners to be paid by them, and in view of petitioner no. 1, through its officials, having participated in the taking over of possession of the unit-in-question, it does not now lie in the mouth of the petitioners to challenge the ensuing sale, which is but a logical corollary of such action of the respondent.

34. As far as the directions issued by the Supreme Court in *Kerala Financial Corporation (supra)*, the petitioners have no locus standi to allege violation of direction (ii), which could only be challenged by the secured creditors, if any. Moreover, no materials have been placed before court by the petitioners to show contravention of the said direction.
35. In so far as direction (iii) is concerned, the contemplation of a notice to the borrower can only happen 30 days prior to the actual sale of immovable secured assets, and not at the premature stage of conducting an e-auction. Likewise, direction (viii) of the said report can only be attracted when the highest bid comes in and the sale is sought to be made. Such “reasonable opportunity in regard to the valuation of the property” cannot take place unless the successful bidder is chosen as a prospective purchaser on a particular valuation. The reserve price fixed in the sale notice cannot be an indicator of the actual valuation on which the property will be sold ultimately. The absence of such an opportunity would vitiate the actual sale, that too

only if the debtor can establish to have suffered substantial injury by the sale. Hence, the said objection to the sale notice at the e-auction stage is rather premature.

- 36.** In any event, the petitioners have proved themselves to be habitual defaulters by resorting to multiple correspondences without disbursal of any substantial amount even after the alleged agreement dated February 7, 2020, apart from Rs. 60 lakh, which was paid in three instalments, the last of which was on March 31, 2020. Thus, the petitioners cannot qualify for sympathy from the respondent, particularly since the latter is dealing with public money and misplaced commiseration on the respondent's part would dent the public exchequer for an undeserving cause.
- 37.** It can, thus, be safely concluded that there was no illegality or lack of jurisdiction on the part of the respondent in publishing the impugned e-auction sale notice dated January 7, 2021.
- 38.** Accordingly, WPA No. 1371 of 2021 is dismissed on contest without, however, any order as to costs.
- 39.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)