

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice SUJOY PAUL

&

The Hon'ble Justice PARTHA SARATHI SEN

MAT 7 OF 2026

With

I.A. NO. CAN 1 OF 2026

Hotel Shambala (P) Ltd. & Ors.

Vs.

West Bengal Finance Corporation & Ors.

With

MAT 11 OF 2026

Hotel Shambala (P) Ltd. & Anr.

Vs.

State of West Bengal & Ors.

With

MAT 12 OF 2026

With

I.A. NO. CAN 1 OF 2026

Hotel Shambala (P) Ltd. & Anr.

Vs.

State of West Bengal & Ors.

For the appellants:

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Sankar Nath Mukherjee, Adv.
Mr. Niraj Gupta, Adv.
Ms. Sunayana Parve, Adv.

For the West Bengal
Finance Corporation:

Mr. Saptansu Basu, Sr. Adv.
Mr. M. Paul, Adv.
Mr. Nabankur Paul, Adv.
Ms. Sutapa Sen Paul, Adv.
Ms. Sannidhya Datta, Adv.
Mr. Subham Das, Adv.
Mr. Bodhisatya Ghosh, Adv.

For the State:

Mr. Joyjit Choudhury, Ld. AAG
Mr. Sumit Kumar, Adv.

Hearing concluded on:

11.02.2026

Judgment on:

23.02.2026

PARTHA SARATHI SEN, J. :-

1. Since in these three sets of appeal the facts are interrelated, by an order dated 02.02.2026 as passed by a coordinate Bench the instant three appeals are tagged together for hearing analogously. Accordingly we propose to dispose of the instant three appeals by a common judgment.
2. In MAT 12 of 2026 the subject matter of challenge is the order dated 09.06.2025 as passed by the learned Single Bench in WPA 11220 of 2025 whereby and whereunder the said Single Bench declined to interfere with the E-auction Sale Notice dated 08.04.2025 as issued by the respondent Corporation herein.
3. In MAT 7 of 2026 the subject matter of challenge is the order dated 05.01.2026 whereby and whereunder the learned Single Bench while disposing WPA 2278 of 2025 directed the State to provide police assistance to the West Bengal Financial Corporation to take over physical possession of the property as involved in the said writ petition.
4. In MAT 11 of 2026 the subject matter of challenge is the order dated 10.06.2025 as passed by the learned Single Bench in WPA 28533 of 2024 whereby and whereunder the said learned Single Bench disposed of the said writ petition by holding the same as infructuous.
5. For effective adjudication of the instant three appeals the facts leading to filing of the instant three appeals are required to be dealt with in a nutshell and those are discussed hereunder in seriatim:
 - (i) On 04.10.1993 the appellant no. 2 purchased a piece of land measuring about 5 poles in plot no. 65 in Mouza Darjeeling by a registered deed of conveyance.

- (ii) On 23.11.1991 the appellant no. 1 Hotel was sanctioned a term loan by the West Bengal Finance Corporation (hereinafter referred to as the 'said Corporation' in short) amounting to Rs. 40 lakhs.
- (iii) On 27.11.1995 the appellant no. 2 executed a registered deed of release in respect of the aforementioned property in favour of the appellant no. 1 Hotel.
- (iv) On 13.12.1995 a loan agreement was executed between the appellant no. 1 Hotel and the appellant no. 2 as borrowers and the said Corporation with regard to disbursement of loan of Rs. 40 lakhs.
- (v) The said loan agreement dated 13.12.1995 postulates that the borrowers have to pay interest @ 18.5% per annum which is payable quarterly with penalty of 2% per annum for punctual payment of installment on principal and interest and in default of regular payment on due dates compound interests would payable by the borrower apart from 3% interest (gross per annum) towards Interest Tax.
- (vi) Pursuant to such agreement dated 13.12.1995, on 14.12.1995 a deed of guarantee was executed by the appellants in favour of the said Corporation.
- (vii) Since the appellants could not repay the loan in terms of the said agreement, the said Corporation issued a notice under Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as the 'said Act' in short) to the appellants of MAT 12 of 2026 and such notice was challenged by the appellants of MAT 12 of 2026 by filing

OC suit no. 70 of 1997 before the learned District Judge of Darjeeling, however, the appellants in MAT 12 of 2026 had withdrawn such suit subsequently.

- (viii) On 12.11.2024 the said Corporation published an E-auction notice in respect of the property of the appellants which was challenged by the appellants by filing WPA 28533 of 2024.
- (ix) On 08.04.2025 the said Corporation published second auction notice.
- (x) On 15.05.2025 the appellants filed WPA 11220 of 2025 challenging the said second auction notice dated 08.04.2025 which was disposed of by the learned Single bench by its order dated 09.06.2025 giving rise intra-Court appeal being MAT 12 of 2026.
- (xi) In connection with WPA 28533 of 2024 the learned Single Bench vide its order dated 10.06.2025 came to a finding that on account of publication of second auction notice dated 08.04.2025 by the said Corporation and also on account of filing of WPA 11220 of 2025 challenging the said auction notice dated 08.04.2025, the said WPA 28533 of 2024 became infructuous and with such finding the said writ petition was dismissed giving rise to filing of MAT 11 of 2025.
- (xii) In WPA 2278 of 2025, the said Corporation alleged inaction/ non-action on the part of the respondent State in giving necessary assistance to the said Corporation in taking over possession of the mortgaged property of the appellants and the learned Single Bench by its order dated 05.01.2026 directed the respondent State therein to render police assistance to the said Corporation while taking

possession of the mortgaged property of the appellants giving rise to the filing of MAT 7 of 2026.

6. At the time of hearing Mr. Mitra, learned Senior Advocate appearing on behalf of the appellants in all the captioned mentioned appeals in his usual fairness submits before this Court that in the event the appellants does not get a favourable order in connection with MAT 12 of 2026, MAT 11 of 2026 and MAT 7 of 2026 would become infructuous.

7. Mr. Mitra draws our attention to page nos. 227 and 230 of CAN 1 of 2025 as filed in connection with MAT 12 of 2026 being copies of two notices dated 23.05.2025 and 27.05.2025 respectively. It is submitted that on perusal of the copies of the said two notices as have been served upon the appellant no. 2 Hotel, it would reveal that the said Corporation being the respondent herein for no reason whatsoever demanded Rs. 87,86,29,009.54/- towards principal, interest, further interest, cost and charges/expenses under different heads. It is further submitted that from the copies of the said two notices it would reveal further that such notices have been issued under Section 30 read with Section 29 (1) of the said Act.

8. At this juncture, Mr. Mitra again draws our attention to page nos. 70 and 71 of the affidavit-in-opposition of the respondent Corporation against CAN 1 of 2025 being a print out of the calculation of the interest and penalty with effect from 01.01.2007 to 31.03.2025 allegedly payable by the appellant no. 2 Hotel. It is submitted by Mr. Mitra that the calculation of interest and penalty as allegedly payable by the said Corporation has got no basis at all. It is further submitted that from the copy of the notice dated 27.05.2025 the said Corporation asked the appellant no. 2 Hotel to fetch an

offer equivalent to or better than the offer of Rs. 268 lakhs as has been mentioned in the e-auction sale notice dated 08.04.2025 wherein the mortgaged property of the appellants were put to e-auction sale notice at a reserved price of Rs. 268 lakhs.

9. It is thus submitted by Mr. Mitra that since the e-auction sale notice dated 08.04.2025 as issued by the said Corporation has got no basis at all and in view of the fact that the said Corporation under cover of its two notices dated 23.05.2025 and 27.05.2025 demanded an exorbitant amount, the legality, validity and correctness of the said e-auction notice dated 08.04.2025 was challenged in WPA 11220 of 2025. It is further submitted by Mr. Mitra that the learned Single Bench while passing the impugned order dated 09.06.2025 has failed to visualize the illegality on the part of the said Corporation in issuing e-auction notice dated 08.04.2025 at a reserved price of Rs. 268 lakhs.

10. It is further contended by Mr. Mitra that the alleged action of the said Corporation while issuing the e-auction notice dated 08.04.2025 is completely arbitrary inasmuch as the said e-auction sale notice dated 08.04.2025 as has been issued by the said Corporation violates the statutory provision of the said Act. It is further argued by Mr. Mitra that the calculation of interest, penalty and other charges, a copy of which has been annexed with page nos. 70 and 71 of the affidavit-in-opposition of the said Corporation, has been done in an unfair manner violating the terms of the agreement dated 13.12.1995. Drawing attention to page no. 99 of CAN 1 of 2025 as filed in MAT 12 of 2026 being a copy of earlier e-auction sale notice dated 12.11.2024 it is submitted by Mr. Mitra that while passing the

impugned order dated 09.06.2025 the learned Single Bench also failed to visualize that in respect of the mortgaged property of the present appellants the previous notice dated 12.11.2024 indicated that bids are invited from tribal persons only whereas in the subsequent e-auction sale notice dated 08.04.2025 which is impugned in WPA 11220 of 2025 such restriction has been withdrawn. It is further submitted by Mr. Mitra that since the property of the appellants belongs to a person of tribal community, the said property cannot be put into auction for transfer to any person other than tribal community.

11. It is thus submitted by Mr. Mitra that the learned Trial Court while passing the impugned order dated 09.06.2025 in WPA 11220 of 2025 also over looked such restriction and thus a serious miscarriage of justice occurred which needs to be rectified in judicial review by setting aside the said impugned order dated 09.06.2025.

12. It is further submitted by Mr. Mitra that in the event MAT 12 of 2026 is allowed by this Court, the order dated 25.01.2026 as passed by the learned Single Bench in WPA 2278 of 2025 directing the State to grant police help to the said Corporation needs to be set aside since in WPA 2278 of 2025 the said Corporation being the writ petitioner has sought assistance of police for handing over the physical possession of the mortgaged property of the present appellants to the alleged successful bidder.

13. It is further argued by Mr. Mitra that in the event the impugned order dated 09.06.2025 is set aside, the order dated 10.06.2025 as passed by the learned Single Bench in WPA 28533 of 2024 is required to be restored wherein the challenge was with regard to the validity, legality and

correctness of the first e-auction notice dated 12.11.2024. In support of his contention Mr. Mitra places his reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Punjab Financial Corporation v. Surya Auto Industries*** reported in ***(2010) 1 SCC 297***.

14. Per contra, Mr. Basu, learned Senior Advocate appearing on behalf of the said Corporation in course of his submission at the very outset places his reliance upon the loan agreement dated 13.12.1995, a copy of which has been annexed with the affidavit-in-opposition as filed by the said Corporation against CAN 1 of 2025. Drawing attention to internal page no. 2 of the said agreement dated 13.12.1995 it is submitted by Mr. Basu that in terms of the said agreement the borrower that is the appellant no. 2 Hotel is liable to pay interest @ 18.5% per annum quarterly together with penalty of 2% per annum for punctual payment of principal and interest and in case of default the borrower is equally liable to pay Interest Tax @ 3% per annum. It is further submitted by Mr. Basu that the calculation of interest and penalty as has been annexed at page nos. 70 and 71 as well as the demand made by the said Corporation under cover of their notices dated 23.05.2025 and 27.05.2025 cannot be called as unjustified inasmuch as the writ petitioners/ appellants have miserably failed to show that in terms of the said loan agreement the appellant no. 2 has repaid the principal as well as the interest.

15. It is further submitted by Mr. Basu that pursuant to the e-auction notice dated 08.04.2025, the e-auction has been completed and, therefore, the said Corporation is duty bound to hand over the physical possession of the mortgaged property of the appellants in favour of the successful bidder

and for that reason the said Corporation approached the learned Trial Court in filing WPA 2278 of 2025 for grant of police help since the appellant no. 2 Hotel was reluctant to hand over the possession of the mortgaged property in favour of the said Corporation peacefully.

16. In course of his submission Mr. Basu draws attention of this Court to Sections 29 and 30 of the said Act. It is submitted by Mr. Basu that on conjoint perusal of Sections 29 and 30 of the said Act it would reveal that the said Act gives right to the said Corporation to take over the management and possession of the mortgaged property as well as the right to transfer by way of sale and in the event such sale is executed, the transferee gets all the rights in or to the property transferred as if the transfer has been made by the owner of the property.

17. It is thus submitted by Mr. Basu that the impugned e-auction sale notice dated 08.04.2025 has been issued in terms of the provision of Section 29 read with Section 30 of the said Act and thus, by no stretch of imagination it can be said that the action of the said Corporation is unjust and/or violative of the statutory provision of the said Act.

18. In his next limb of submission Mr. Basu strongly contended that the property mortgaged is not a tribal property and thus, no such indication has been given in the notice dated 12.11.2024. It is submitted that in the notice dated 12.11.2024 mistakenly it was indicated that bids are invited from tribal persons only which is however rectified in the subsequent e-auction sale notice dated 08.04.2025.

19. It is further submitted by Mr. Basu that there cannot be any occasion to allow the instant three appeals.

20. Mr. Choudhury, learned Additional Advocate General appearing on behalf of the Respondent State submits before us that the State is agreeable to grant police help to the said Corporation at the time of handing over possession of the hypothecated property of the appellant no. 2 by the said Corporation in favour of the successful bidder.

21. We have meticulously gone through the entire materials as placed before us. We have given our due consideration over the submissions of the learned Advocates appearing on behalf of the contending parties. For effective adjudication of the instant three appeals we at the very outset propose to look to the provision of Section 29 and Section 30 of the said Act which are quoted hereinbelow in verbatim:

"29. Rights of Financial Corporation in case of default

(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof for in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern well as the right to transfer by way of lease or sale and realise the property pledged mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) 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.

(4) Where any action has been taken against an industrial concern under the provisions of sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern.”

“30. Power to call for repayment before agreed period

Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation

(a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan of advance; or

(b) 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 advances; or

(c) 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

(d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or

(e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or

(f) if for any reason it is necessary to protect the interests of the Financial Corporation.”

22. Since in course of his argument Mr. Mitra places his reliance upon the reported decision of **Punjab Financial Corporation (Supra)** we propose to deal with some relevant paragraphs of the said reported decision wherein the Hon’ble Apex Court held thus:

“21. 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 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.”

“22. 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.”

[Emphasis Supplied by us.]

23. Keeping in mind the aforementioned statutory provisions as well as the proposition of law as enunciated by the Hon’ble Supreme Court, if we look to the factual aspects as involved in the instant three appeals, it

appears that the aforementioned property of the appellant no. 1 which has been subsequently relinquished in favour of the appellant no. 2 Hotel was placed on mortgage while securing a loan of Rs. 40 lakhs by the appellants towards security while executing the loan agreement dated 13.12.1995. As rightly pointed out by Mr. Basu that the said loan agreement dated 13.12.1995 bears a clause regarding payment of interest, penalty and Interest Tax on account of default in payment of interest on a regular interval as agreed.

24. No material could be placed before this Court that the appellant no. 2 Hotel has paid the said interest and the penalty in due time and thus, finding no other alternative the said Corporation issued a notice under Section 30 of the said Act upon the appellant no. 2 Hotel since the appellant no. 2 has failed to comply with the terms of the contract with the said Corporation. In view of such this Court finds no illegality and irregularity on the part of the Corporation while issuing the two successive notices dated 23.05.2025 and 27.05.2025.

25. At this juncture, if we once again look to the impugned e-auction sale notice dated 12.11.2024 as issued by the said Corporation, it reveals that the said Corporation has done so to enforce its right under Section 29 of the said Act and under cover of notice dated 27.05.2025 the said Corporation gave liberty to the appellant no. 2 Hotel to fetch an offer equivalent to or better than the reserved price of Rs. 268 lakhs.

26. No material could be placed before this Court that the appellant no. 2 Hotel has duly complied with the requisition of the said notice and thus, in our considered view there cannot be any occasion to interfere with the

impugned e-auction notice dated 12.11.2024 unless it is shown that the action of the Corporation is in violation of the statutory provision or wholly arbitrary, unreasonable and unfair as has been held by the Hon'ble Supreme Court in the case of ***Punjab Financial Corporation (Supra)*** .

27. This Court thus finds that the learned Single Bench is perfectly justified in not interfering with the e-auction sale notice dated 12.11.2024 in respect of the mortgaged property of the appellant no. 2 keeping in mind the statutory provision of Section 29 of the said Act which gives right to Financial Corporation to take possession and to transfer the mortgaged/hypothecated property as has been assigned to the Corporation while securing loan and on account of failure to comply with the terms and conditions of the said loan agreement.

28. In view of the discussion made hereinabove the appeal being MAT 12 of 2026 fails and is hereby dismissed.

29. Consequently, the other two appeals being MAT 7 of 2026 and MAT 11 of 2026 are also dismissed since this Court finds no reason to interfere with the order dated 25.01.2026 as passed by the learned Single Bench in WPA 2278 of 2025 whereby the learned Single Bench directed the respondent State to grant police assistance while handing over possession of the hypothecated property of the appellant no. 2 in favour of the successful bidder since such an order is also in consonance with the provision of Section 29 of the said Act.

30. With the aforementioned observation the instant three appeals are disposed of.

31. With the disposal of the instant three appeals all pending interlocutory applications as filed in connection with the instant three appeals are also disposed of.

32. Interim order of stay, if there be any, stands hereby vacated.

33. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree

(Sujoy Paul, CJ.)

(Partha Sarathi Sen, J.)

Later:

34. After pronouncement of the judgment, learned advocate appearing on behalf of the appellants prays for limited stay of operation of the judgment as passed by this court today.

35. Such prayer is considered and declined.

(Sujoy Paul, CJ.)

(Partha Sarathi Sen, J.)