

## **IMPORTANT JUDGEMENTS**

### **(Brief Summary)**

- 1) **Uttar Pradesh Financial Corporation Vs. Gem Cap (I) Ltd. – AIR 1993 SC 1435** – The Hon'ble Supreme Court of India held that the Financial Corporation is an instrumentality of the State created under the State Financial Corporations Act, 1951. The said Act was made by the Parliament with a view to promote industrialisation of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayment within a period not exceeding 20 years from the date of loan. We agree that the Corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose – the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. “The relationship between the Corporation and the borrower is that of creditor and debtor. The Corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others.” The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this fact or cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved.”

In a matter between the Corporation and its debtor a writ court has no say except in two situations;

- a) there is a statutory violation on the part of the Corporation; or
- b) where the Corporation acts unfairly.

- 2) **A.P.State Financial Corporation Vs. M/s. GAR Re-Rolling Mills, AIR 1994 SC 2151** - The Hon'ble Supreme Court of India held that the Financial Corporation is entitled to take recourse to the remedy available to it under section 29 of the SFCs Act even after having obtained an order or a decree after invoking the provisions of Section 31 of the Act but without executing the decree/order.
- 3) **M/s. Vajra Chemicals (P.) Ltd. Vs. A.P.F.C. - I (1997) BC 115 (PB)** - Doctrine of Election between two remedies available to the Corporation u/s. 29 & 31 of SFC's Act, for some relief option to elect either of them. Doctrine not applicable where scope of two remedies different. The court has further held that the Doctrine of Election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and the scope of the two remedies is essentially different.
- 4) **Orissa State Financial Corporation and another Vs. Hotel Jogendra** - The Hon'ble Supreme Court of India held that the loanees defaulted in the repayment of loan and took indulgence of the court to delay the repayment of dues. Dilatory tactics defeat the public policy and the court process becomes an instrument of abuse. The court will not help such loanees.
- 5) **Karnataka State Financial Corporation Vs. Micro Cast Rubber & Allied Products (P) Ltd. & Others**

The Hon'ble Supreme Court of India held that the action of the State Financial Corporation in exercise of powers u/s 29 of the SFCs Act, 1951 not liable to be interfered with if it has acted broadly in consonance with the guidelines issued by the Supreme Court of India in the matter of **Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation & Others, J.T. 1992(2) SC 326 – AIR 1993 935.**

i) -judicial review is confined to two situations viz. there is a statutory violation on the part of the State Financial Corporation, or (ii) where the State Financial Corporation acts unfairly.

-while exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation. (Detailed decision has already been circulated vide litigation circular No. 8/96-97 dated 25.07.96).

- 6) **Maharashtra State Financial Corporation Vs. M/s. Surana Board Mills - ( JT 1994 (5) S.C. 280 )** - The Supreme Court in this case allowed the appeal and quashed the Maharashtra High Court order. The court held that it is well settled that natural justice can not be placed in a straight jacket. Its rules are not embodied and they do vary team to case and from one fact situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensure before one is put on notice that consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law.

The court further observed that an opportunity given by the High Court to defaulter for making the payment of Rs.50,000/- as against dues of more than Rs. 5.00 lacs can not be regarded as reasonable offer.

- 7) **M/s. Shivalik Agro Poly Products Ltd. Vs. Disco Electronics Ltd.**  
**AIR 2002 Delhi 10** - The appellant company aggrieved by the impugned order of company judge setting aside the sale of property made in its favour by DFC preferred an appeal to DB and the Bench observed that the Corporation was lawfully entitled u/s. 29 to take over possession of hypothecated assets and to sale out the same for recovery of

amount, after notice and observance of complete procedure. Sale of property by the Corporation becoming owner of property and confirming the sale in favour of the purchaser can not be restrained by order of company judge in subsequent winding up petition. Hence, appeal allowed and company judge order liable to be set aside.

**8) M/s. Fiber India Division Vs. RFC, Hon'ble Rajasthan High Court, Jaipur** - held in S.B.Civil Revision Petition No. 271/2000 that (a) The suit or any legal proceedings against the Rajasthan Financial Corporation can be initiated only where the mortgaged/hypothecated property is situated. (b) The party, who wants to have Temporary Injunction against the Corporation should pay court fees on the total disputed amount.

**9) Dogar Tools (P.) Ltd. & Others Vs. MPFC(AIR 2002 MP 53)** - An DB appeal was filed against SB Order dated 18.07.2000 in writ petition NO. 2717/2000. The Hon'ble DB of MP High Court has observed that the Corporation is entitled to withdraw the proceedings initiated u/s. 31 of SFC's Act and is not debarred from the proceeding u/s. 29. The Court has further observed that the scope of interference by the High Court in the proceeding u/s. 29 of SFC's Act in writ jurisdiction is not to suit over it as an appellate authority. The jurisdiction of the court is limited and can be exercised in two situations:

(1) Where there is statutory violation on the part of the Corporation

OR

(2) Where the Corporation acts unfairly.

The appeal was dismissed as having no merit.

**10) Karnataka State Industrial Investment & Development Corporation Ltd. Vs. Cavalet India Ltd. ( JT 2005 (3) SC 570)**

In the above case the following legal principles have been laid down :-

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over the administrative authorities.

(ii) In a matter between the corporation and its debtor, a writ court has no say except in two situations;

(a) there is a statutory violation on the part of the corporation or

(b) where the corporation acts unfairly i.e., unreasonably.

(iii) In commercial matters, the courts should not risk their judgements for the judgements of the bodies to which that task is assigned.

(iv) Unless the action of the financial corporation is malafide, even a wrong decision taken 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 businesslike it may be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adapted.

(vii) The financial corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

Having regard to the facts of the case and the legal principles above noted, the impugned judgement directing KSIIDC to redo the entire sale process cannot be sustained. Therefore, the impugned judgement is set aside and it is held that on failure of the borrower to comply with the directions of the single Judge, the action of KSIIDC to sell the unit in favour of Vinpack was valid and legal. The appeals are accordingly allowed.

**11) Hotel Ajaymeru (P.) Ltd. Vs. RFC - SBCWP No. 648/1985** - In this case Hon'ble Rajasthan High Court

determined the constituted validity of section 29 of SFC's Act. The court observed that taking into consideration the facts & circumstances of the case, it can not be said that the Financial Corporation in taking action against the petitioner company u/s. 29 of the SFC's Act has acted arbitrarily or unreasonably.

The court further observed that from a combined reading of the objects and reasons and section 8, 9, 10, 24, 25 & 27 we are of the opinion that there is a guiding policy and principle available from the State for the Corporation to act in this regard and accordingly we hold that section 29 is not violative of Article 14 of the Constitution.

- 12) **Haryana Financial Corporation & Anr. Vs. Jagdamba Oil Mills & Anr. reported in JT 2002 (SC 482)** - the Hon'ble Supreme Court has decided rights of the Corporation under the provisions of Section 29 of the SFCs Act. While discussing this case the guidelines issued in Mahesh Chandra Vs. U.P. Financial Corporation & Ors. (1993 (2) SCC 279) has been considered contrary to the letter and the intent of Section 29 of the SFCs Act, the Hon'ble Court expressed the view that the said observation in Mahesh Chandra's case do not lay down the correct law and the said decision is over-ruled.

It has also been reiterated by the Hon'ble Court in reference to the judgement of U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd., & Ors. (1993 (2) SCC (299) for the purpose of this case the power of the Court which is reviewing the administrative action is not that of an Appellate Court. The Corporation is an autonomous statutory body. The views it forms and decision it takes are on the basis of information in its possession and the advice it receives and according to its own prospective and calculations. Unless its action is malafide, 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.

- 13) **Gujarat State Financial Corporation Vs. Natson Manufacturing Company Pvt. Ltd. – AIR 1978 SC 1765** – The Hon’ble Supreme Court held that the substantive relief in an application u/s 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree.
- 14) **Everest Industrial Corporation Vs. Gujarat State Financial Corpn. -AIR 1987 Supreme Court, 1950** -The Supreme Court has held that the proceedings instituted u/s. 31 (1) of SFC’s Act is something akin to an application for attachment of the property in execution of a decree at a stage posterior to the passing of the decree, hence no question of passing any order u/s. 34 of CPC would therefore arise. Since section 34 of CPC would be applicable only at the stage of the passing of the decree and not to any stage posterior to the decree. The court has further held that the interest would be payable on the principal amount due in accordance with the terms of the agreement between the parties till the entire amount due was paid as per the order passed u/s. 32 of SFC’s Act.
- 15) **HP Financial Corporation Vs. Tourist Hotel (1989 (2) Bank CLR 199)** - HP High Court has held that the substantive relief in an application filed u/s. 31 of SFC’s Act, 1951 is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of a decree. There is no further stage of any execution of the order passed by the Distt. Judge U/S 32 itself is an order akin to an order for attachment of property in execution of a decree which is a stage which automatically comes after the passing of the decree.
- 16) **Delhi Financial Corporation Vs. B.B. Behal** – The Hon’ble Supreme Court held that the relationship between the borrower and the financial corporation is one of the Creditor and the Debtor and that the transaction of advancing loan is covered by the terms of the agreements.

The Creditor cannot be compelled to forgo part of its claim of interest on ground of hardship of a debtor. The Financial Corporation is a statutory institution and it carries of its activities by borrowing amounts. It is far beyond the powers of compel a creditor to forgo part of its claim of interest on the ground of hardship of a debtor. This will upset financial equilibrium and it will create financial crisis making the financial corporation non-viable.

- 17) **Kalpatharu Solvents Pvt.Ltd., Vs. K.S.F Corporation, Bangalore- AIR 2003 KARNATAKA 221-** Karnataka High Court in this case has held that Section 29 of SFCs Act enable recovery of money due and also contemplates the procedure to be followed without intervention of the Court, whereas Section 31 is in the nature of a provision for attachment before judgement and the said provision is without prejudice to the provisions of Section 29 and it is open to the Corporation U/S 29 of the Act to realize its dues in the manner prescribed therein notwithstanding any order obtained by it U/S 31. The Court has further observed that it is not desirable to pursue both the remedies simultaneously by the Corporation.
- 18) **Abdul Gani S/o Allah Noor Vs. RFC & Ors.- Civil Misc. Appeal No. 826/2001 -** the Hon'ble Court has dismissed the appeal in favour of the Corporation making it clear that the proceeding pending before the Lower Court U/S 31 of the SFCs Act are in the nature of post decreetal proceedings and required to be dealt accordingly and not to be dealt as a suit under C.P.C.
- 19) **M.S.F.C Vs. M/s. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. (1991) 1 JT (SC) 524-** The Hon'ble Supreme Court of India has held that the object underlying Section 31 and 32 of the SFCs Act appears to be that parliament intended to place the surety on the same footing as the principal debtor in the matter of enforcement of the claims of the Financial Corporation so as to enable the

Financial Corporation to obtain relief against the property of the principal debtor as well as surety.

- 20) **Syndicate Bank Vs. Channa Veerappa Belery & Others JT 2006 (4) SC 579** -The Hon'ble Supreme Court in this case has held that a guarantor's liability depends upon the terms of the contract. A continuing guarantee is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor and a guarantee which does not contain such a condition the liability of guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise on the principal debtor and guarantor at the same time or at different points of time. The parties may agree that a liability of a guarantor shall arise at a later point of time, then that of the principal debtor. The Supreme Court allowed the appeal filed by the bank and set aside the judgements and decree of the High Court of Karnataka and Trial Court and also held that the time began to run not when the operations ceased but on the expiry of 15 days from 12.10.1987 when the demand was made by the bank and the guarantors refused to pay the amount and therefore, the suit filed by the bank was not barred by the limitation. Hence, suit accordingly decreed with cost.
- 21) **Abdul Mobin Ansari Vs. Maharashtra State Financial Corporation (AIR 1993 Bombay 48)** – It has been held by the Hon'ble Supreme Court that Section 32 of SFCs Act is nothing but an execution proceedings.
- 22) **RFC Vs. Shri Babu Lal & Others SBCMA No. 479/1994 decided on 24.07.2006** - In this case an appeal was filed by the Corporation against the order dated 09.02.1994 passed by ADJ-3, Jaipur(City), Jaipur in Civil Suit No.13/1992 whereby the application of the appellant filed under section

31 of SFC's Act was dismissed on the ground that the application has been filed beyond the period of limitation as prescribed under Article 137 of Limitation Act, 1993.

The Hon'ble Court by allowing the appeal and setting aside the Trial Court order dated 09.02.1994 has held that it is a settled position of law that an application u/s. 31 (1) of SFC's Act 1951 is not a plaint for recovery of money but the substantive relief in an application u/s. 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of decree, hence the period of limitation as prescribed under Article 137 of Limitation Act is not applicable to such an application whereas the provisions of Article 136 of Limitation Act are applicable.

- 23) **M/s. N.L.P Organics (P.) Ltd. & Others Vs. RFC - SBCMA No. 208/2005 decided on 21.08.2006** - In this case an appeal u/s. 32(9) of SFC's Act, 1951 was filed before the Rajasthan High Court, Jaipur against the order dated 23.11.2004 passed by ADJ-1, Alwar in CMA No. 01/2001 whereby the Trial Court passed a decree for a sum of Rs. 1,36,04,491/- alongwith interest @ 15% per annum. The appellate court by setting aside the impugned judgement dated 23.11.2004 and allowing the appeal has held that the learned Trial Court has mis-appreciated the entire nature of the proceedings u/s. 31(1) of SFC's Act. He has framed the issues incorrectly and consequently issued directions beyond his jurisdiction. The court has further held that the respondent is free to re-initiate the proceeding u/s. 31(1) of SFC's Act, 1951. In case it does so, then the Trial court is directed to decide the case within a period of six month from the date of filing application u/s. 31(1) of SFC's Act. While deciding the case the Trial Court is directed to keep in mind the principles laid down by the court.
- 24) **Orissa State Financial Corporation vs. Ramesh Chandra Behra- AIR 2003 Orissa 30** - In this case the Orissa High Court has held that the liability of a surety is co-extensive

with that of the principal debtor and a decree can be executed either against the principal debtor or the surety at the discretion of the creditor. In the application filed by the SFC u/s. 31 of SFC's Act the loanee can not be held personally liable for payment of outstanding dues but the mortgaged and the hypothecated assets can be attached and sold. The Court has further observed that the Corporation can seek appropriate relief u/s. 32(G) against the surety by following the procedure prescribed there under.

- 25) **Kerala Fisheries Corporation Limited Vs. P.S. John & Others Company cases 1996 Kerala 104** - Kerala High Court in this case has held that the Government Corporations notified u/s. 71 of the Kerala Revenue Recovery Act, 1968, entitled to recover monies due to them under the Act, would be entitled to do so whether or not the sums could be recovered through a court in view of section 3 of the Limitation Act, 1963. These institutions have been given the right of recovering the moneys due to them without approaching the civil court and that is clearly with the object of enabling them to recover the amounts due to them from their debtors so that public interest could be served and the public purpose for which these institutions have been created further carried forward. This right continues notwithstanding the fact that his right of recovery through a civil court stands barred by limitation.

The Court has further observed that the contention of the petitioner that the recovery under the Revenue Recovery Act is barred by limitation, is not sustainable. By virtue of section 46 B of SFC's Act, that act would override the provisions of the Limitation Act which is the general law.

- 26) **Kailash Nath Agarwal & Ors. Vs. Pradeshia Industrial & Investment Corporation of U.P. Ltd. & Anr. JT 2003 (1) SC 115-Sick Industrial Companies (Special Provisions) Act, 1985**- In this case, a question raised for consideration before the Supreme Court as to whether

Section 22(1) of SICA bars enforcement of demand by the Public Financial Corporations against the guarantors. It has been held by the Supreme Court that Section 22(1) only prohibits recovery against the Industrial Company and there is no protection afforded to the guarantor against recovery 'Proceedings'. The words 'Suit and Proceedings' have not been used inter-changeably in SICA and there is apparent distinction between these two and the legislative intention to make a distinction between the two should be given.

**27) Delhi Financial Corporation & Another Vs. Rajiv Anand & Ors. (2004) 11 SCC 625-** In this appeal following questions were raised before the Supreme Court:-

(1) Whether the requisition certificate being issued by the officers of Corporation U/S. 32-G is violative of the doctrine of "no man can be a judge in his own cause"?

Held:

(a) MD of the Corporation can be appointed as an authority u/s. 32(G).

(2) Whether it is permissible under the practice and procedure that the respondents supporting impugned order under challenge in the Supreme Court in an appeal filed by the financial corporations through its court below.

Held:

It is permissible on all available points.

(1) Whether the provisions of Section 32(G) are also applicable to the sureties.

Held:

The provisions of Section 32(G) can also be enforced against the sureties, guarantor and mortgagor-guarantor.

(4) It has also been come to be decided as to whether the proceedings u/s. 32(G) is of the nature of execution proceedings.

Held:

That the provisions in the nature of execution proceedings but it is not a recovery proceedings pursuant to a decree of Court.

(5) Whether the provisions of 32-G, 31 and 32 are arbitrary.

- 28) Hanuman Prasad Vs. RFC & Ors.- SBCWP No. 4592/01-** in this case the Hon'ble Rajasthan High Court has held that it is open to the Corporation to opt any remedy available to it under SFCs Act for recovery of its dues. The Corporation is entitled to initiate legal recourse provided U/S 32-G of SFCs Act after complying the due procedure and guidelines as prescribed by the State Govt.
- 29) Shiv Vinay Singhal Vs.State of Rajasthan,RFC,Tehsildar and Ors. SBCWP No.4583 of 2002 -** A question raised before the Rajasthan High Court at Jodhpur in the above captioned writ petition as to whether the person who has purchased the unit from the Corporation in auction in exercise of powers conferred to the Corporation u/s. 29 can be covered under the purview and Section 32(G). It has been held court that the party who purchased the unit from the Corporation u/s. 29 of SFC's Act is an industrial unit and, therefore, it is liable to be enforced by initiating the action u/s. 32(G) of SFC's Act.
- 30) Sitani Textiles and Fabrics (P) Ltd. Vs. Asstt. Collector of Customs and Central Excise and Another – 1(1999) BD 209 (DB) -** It has been held by the Andhra Pradesh High Court that in the case of secured debt, the rights of secured creditor prevail over the excise dues of the Excise

Department. The secured creditor will have preferential claim even against the demand of Central Excise duty by the Government.

A mortgage is a transfer of an interest in immovable property. The owner of the bundle of rights transfers some of those rights to the mortgagor (sic mortgagee) and the remainder of them still with him. The transfer of interest under mortgage is less than ownership which continues with the mortgagor. The characteristic of a mortgage is that it transfers an interest in immovable property. Therefore, the mortgagee has an interest which is less than ownership and therefore a mortgage has a preferential right over other unsecured creditors.

In view of a transfer of an interest in immovable property the mortgagee has a special interest in the property and so long as his claim is not satisfied no other creditor of the mortgagor has a right to take away the property or its price.

The Government cannot claim preferential right for recovery of its excise duty as no charge lies on the property for recovery of the duty. In other words, excise duty is not a secured debt, as for recovery of which no charge lies on the property.

The Industrial Development Corporation being a secured creditor has preferential claim even against demand of Central Excise duty of the Government.

The State Financial Corporation Act, 1951 is a special enactment whereas the Central Excises and Salt Act is a general enactment. However, in view of Sec. 46-B, the State Financial Corporations Act prevails over the other enactments.

- 31) **M/s. Rishab Deo Tax Print Vs. Chairman, RFC & Ors. – WP No.325/2005** - In the matter the Hon'ble High Court, Jodhpur has quashed the demand raised by the Central

Excise Department on the ground that Central Excise Department was not authorised to recover the dues of the petitioner unit in wake of fact that when the petitioner had purchased the land and building of the earlier unit namely M/s. J.M.S.P.Ltd., there was no statutory charge of Central Excise Department. (Copy of the Judgement has been circulated vide Lit. Cir. No. 129 dated 25.01.2006).

- 32) **SICOM Ltd. Vs. Union of India & Ors. – AIR 2007 Bombay 1** - The Hon'ble Bombay High Court has held that in the matter of recovery of debt, the State Financial Corporations was secured creditor holding mortgage property of borrow in its favour. The Customs authority claiming priority preferential charge on property of borrower for recovery of Excise Duty was later in point of time cannot claim priority on basis of Crown's preferential right. The Crown's preferential right to recover dues is confined only to ordinary or unsecured creditors. The dues claimed by the Corporation will have priority over Custom Dues.
- 33) **State of Karnataka Vs. Shreyas Papers (P) Ltd., JT 2006 (1) SC 180-** The Hon'ble Supreme Court has held that Section 15(1) of Karnataka Sales Tax Act 1957 is intended to operate only when there is complete transfer of 'ownership of business' so as to render the transferee as a successor-in-interest of the transferor. The mere transfer of one or more species of assets does not necessarily bring about the transfer of the 'ownership of business'.
- 34) **Isha Marbles Vs. Bihar State Electricity Board JT 1995 (2) SC 626-** In this case the Supreme Court has held that the liability of arrears of old consumer U/S 24(1) of Indian Electricity Act 1910 cannot be put on the auction purchaser U/S 29 (1) of SFCs Act because there is no charge over the sold property. It is impossible to impose on auction purchaser a liability which was not incurred by them. The Court has also held that dishonest consumers cannot be allowed to play with public property and where the purchaser is not a new entity he is liable to pay arrears.

- 35) **S.B.I. Vs. Vasangi Venkateswara Rao reported in JT 1999 (1) SC 145** – the Hon’ble Supreme Court has held that where the Bank loan has been obtained against mortgaging the security and parties have been entered into the contract under the Contract Act, 1872, the court cannot interfere and reduce the interest, as that is a matter of contract between parties. The mortgaging of a property is with a view to secure the loan and has no relation with the quantum of interest to be charged.
- 36) **M/s. Hotel Seaking & Others Vs. Kerala Financial Corporation reported in JT 1999 (9) SC 440** – The Hon’ble Supreme Court decided an important question of Law with regard to applicability of provision of Section 34 of Civil Procedure Code in the proceedings initiated by Financial Corporations U/S 31 of SFCs Act, 1951. The Hon’ble Court has held that District Judge has no power to reduce the contractual rate of interest during pendency of proceedings u/s 31 of the SFCs Act. It has been decided by the Hon’ble Court that the loanee unit will have to pay the interest as per agreement executed with financial corporation.
- 37) **Soldier India Ltd. Vs. Fairgrowth Financial Services Ltd. – II(2001) SC 781** – The Hon’ble Supreme Court has held in this appeal matter that where there are two special statutes, which contain non obstante clauses, the later statute most prevail.
- 38) **RFC Vs. Man Industrial Corporation Ltd.- Civil Appeal No. 16814/1996** - the Hon’ble Court has allowed the appeal and set aside the order of the High Court and held that the Executing Court cannot go beyond the terms of the compromise decree provided for calculation of interest half yearly objection regarding calculation of interest and directing execution of decree. It has also been reiterated by the Hon’ble Court that “in this view of the matter we are unable to sustain the impugned judgement (Judgement of High Court). It is accordingly set-aside and the order of the

Executing Court is restored". The Judgement is also reported in JT 2003 (7) SC 486.

- 39) **S.K. Muthuswamy Vs. Tamil Nadu Industrial Investment Corporation – AIR 2003 Madras 197** – In this case the SFC was given permission to held auction of hypothecated assets of the debtor on the undertaking given by the Corporation that it will deposit surplus amount in court. Auction was held but the Corporation failed to deposit the surplus amount in court. No valid reason shown by the corporation for not depositing the surplus amount in the court, hence the corporation was directed to pay the interest @ 9% p.a. on the surplus amount w.e.f. the date of receipt of sale proceeds till the date of deposition in the court to serve the end of justice within two months from the date of receipt of order.
- 40) **M/s. Ambika Powerloom Factory, Vs. RFC** - Hon'ble Rajasthan High Court, Jaipur held in S.B.Civil Revision Petition No. 752/1999 that the developing tendency of the loanee not to repay the loan deserves to be depreciated. The Corporation was correct in its approach to take appropriate steps for recovery of outstanding amount against the petitioner. In the matter of the dispute of the category to which this case belongs seldom, the Court should come to rescue or give any interim relief to the defaulters, it is money of the Corporation which is to be used for the purpose of development of the industries in the state and that way it is blocked, it will not rotate and entrepreneurs in the filed of establishment of industries will suffer. Grant of T.I. if the matter is looked into from this aspect and angle will result in causing irreparable injury to the public at large. The Courts should take all the care not to pass any order which may adversely affect the public at large.
- 41) **Bihar State Financial Corporation Vs. Santu Lal Gupta – AIR 2003 Jharkhand 44** – Clause substituted in auction notice that if no tender is received on the date of sale so fixed, the corporation has a right to receive tender against the

same notice has been held by Jharkhand High Court as arbitrary. The sale of the unit made after three years from the date fixed for auction sale without issuing fresh notice was also held liable to be set aside.

- 42) **Mahesh Chandra Vs. Regional Manger, UPFC – AIR 1993 SC 935** – In this case the Hon’ble Supreme Court has laid down certain guidelines/direction to be observed by the SFCs by exercising the powers conferred u/s 29 of the SFCs Act and also held that every endeavour should be made to make the unit in default to be viable and to be put on working condition.
- 43) **Magan Lal Vs. Jaiswal Industries (AIR 1989 SC 2113)**  
The Hon’ble Supreme Court observed that application u/s 31(1) of the SFCs Act cannot be treated as a plaint for the purposes of payment of court fee.
- 44) **International Coach Builders Ltd. Vs. KSFC – JT 2003(2) SC 395** – In the matter the Hon’ble Supreme Court has held that the right unilaterally exercisable u/s 29 of the SFC’s Act, 1951 is available against a debtor, if a company, only so long as there is no order of winding up. The SFCs cannot act unilaterally to realize the mortgaged property without the consent of the O.L. representing the workmen for the pari-pasu charge in their favour under the proviso to Sec. 529 of the Companies Act. If the O.L. does not consent, the SFC has to move to the Company court for appropriate directions to the O.L., who is the pari-pasu charge holder on behalf of the workmen. The O.L. cannot act without seeking direction from the company court and under its supervision.

The statutory right of the SFCs to sell the mortgaged properties u/s 29 of the SFCs Act is subject to the provisions of sec. 529 & 529 A of the Companies Act.

- 45) **RFC Vs. O.L. of M/s. Baldev Minerals - Company Petition No. 14 of 1996** – An application filed by the Corporation u/s 446 (2) of Companies Act, 1956 for

allowing the applicant Corporation to remain out of the winding up proceeding and to realize its dues from the Company in liquidation under statutory powers given to it u/s 29 of SFCs Act.

The Company Court allowed the application and granted permission to remain out of the winding up proceedings subject to following certain conditions.

- 46) **Kailash Nath Agarwal & Ors. Vs. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. – JT 2003(1) SC 115** – Liability of surety – Power to proceed against the guarantors upon the failure of the borrower to repay the debt, whether sec. 22(1) of SICA bars enforcement of demands. The Supreme Court dismissing the appeals held that there was nothing in the contract which could be construed as contrary to the joint and several liability created under sec. 128 of the Contract Act.
- 47) **Maharashtra State Financial Corporation & M/s. Balapuri India Ltd. Vs. the O.L. Bombay High Court – AIR 1993 Bombay 392** – Hon'ble Bombay High Court in this matter has held that the rights conferred on a financial corporation as a mortgagee u/s 29 of SFCs Act, 1951 are not obliterated with the Company is in winding up. The statutory right u/s 29 has to be exercised with the rights of a pari-pasu charge holder u/s 529 & 529 (A) of the Companies Act when the Company is in liquidation. Therefore such a power can be exercised only with the concurrence of the O.L. and the O.L. is to take the permission of the court.
- 48) **M/s. Agrawal Dying Industries Vs. RFC & Others-** the National Consumer Disputes Redressal Commission, New Delhi has categorically observed that the relationship between RFC and the loanee is that of borrower and debtor, as such the Consumer Forums do not have any jurisdiction over the affairs of Corporation.
- 49) **Shree Kanka Durga Hatcheries Pvt. Ltd. Vs. State Bank of India decided on 22.05.2002** - The Hon'ble National

Consumer Disputes Redressal Commission, New Delhi in the case of Shree Kanaka Durga Hatcheries Pvt.Ltd., Vs. State Bank of India in Original Petition No. 264 of 1994 has dismissed the complaint on 22.05.2002 and held that refusal to rehabilitate or failure to provide credit or refusal to finance have been consistently held to be not amounting to deficiency in service.

**50) RFC Vs. Banwari Lal & Ors. SBCMA No. 349/94-** The Rajasthan High Court in this appeal matter has held that application filed U/S 31(1) of SFCs Act is not a plaint but one like seeking relief in execution application, hence Article 137 of Limitation Act is not applicable to such application.

**51) Orissa State Financial Corporation Vs. DESARI ADI NARAYAN II (1995) BC-366** - Orissa High Court in Civil Revision petition No.167/1990 has held that an application u/s. 31 (1) of SFC's Act is not a plaint as contemplated by article 7 of the Court Fees Act, 1870. The special procedure contained in section 31(1) is not even some thing akin to a suit of a mortgagee to recover mortgaged money by sale of mortgaged property. The corporation can not pray for a preliminary decree for accounts or final decree for payment of money. Proceedings u/s. 31 is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree and such relief can not be valued in terms of monetary gain or prevention of monetary loss.

**52) M/s. Tony Conductors (P.) Ltd. Vs. RFC SBC Revision Petition No.273 of 1997** - The Hon'ble Rajasthan high Court has held that in the matter of application filed u/s. 31(1) of SFC's Act 1951 the Limitation period of three years as prescribed under article 137 of Limitation Act shall not apply but in these cases limitation period of 12 years as prescribed under article 136 of the Limitation Act shall be applicable to such applications because the applications u/s. 31 are akin to an application for attachment of the property in

execution of a decree at a stage posterior to the passing of the decree.

- 53) **Jitendra Sankhla Vs. RFC (Labour Court, Jodhpur) (Chowkidar Case) in D.B.Special Appeal No. 170/2002** - dismissing the appeal of Jitendra Sankhala, Chowkidar against the order of Single Judge dated 12.02.2002 in S.B.C.W.P. No. 3604/2001 has observed that once the unit taken into possession by the Corporation U/S 29 of the SFCs Act is sold out, the work for which the appellant was employee came to an end. In the circumstances, the appellant cannot claim to have any right in the post. The Learned Single Judge and the Labour Court were entirely right in coming to the conclusion that provisions of Section 25-F of the Industrial Dispute Act were not attracted.
- 54) **Secretary, State of Karnataka and others Vs. Umadevi and Others – JT 2006 (4) SC 420** - The Hon'ble Supreme Court has held that where the employees appointed on daily wages and such employees is continued in employment for long years they have not rights for absorption and regularization. Those appointed is irregularly and not in terms of the prescribed procedure in accordance with the relevant rules and regulations or in adherence to article 14 and 16 have no legal right to be made permanent.
- 55) **Branch Manager State Bank of Hyderabad Vs. Abdul Raheem and Another – (2201 10 Supreme Court Cases 615** – In the matter Hon'ble Supreme Court has held that in any watchman posted by the loanees for taking care of the goods hypothecated by the banks would not become employee of the bank merely because the Bank Manager had in a letter recommended the Regional Manager to provide him with permanent employment.
- 56) **Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others – 1997 LAB.I.C. 2075** – In the matter Hon'ble Supreme Court has held that where the daily wage

employees appointed on the basis of need of work, their services can be terminated on completion of the work. Termination of their services cannot be treated as retrenchment.

- 57) **M/s. Ashok Paper Mills Kamgar Union Vs. Union of India & Ors. JT 1997 (5) SC 458-** The Hon'ble Supreme Court of India has held that Financial Institutions are under duty to ensure industrial growth and are directed to participate in implementation of the scheme so that Mill is rehabilitate only technicalities should not be allowed to stand in the view of the scheme. It has further observed that if any one stands in the way by surreptitious technicalities in the implementation of the scheme, such technicalities would not stand in the way of implementation of the scheme and same will be seriously dealt with.
- 58) **M/s. Fiber India Division Vs. RFC, Hon'ble Rajasthan High Court, Jaipur** - held in S.B.Civil Revision Petition No. 271/2000 that (a) The suit or any legal proceedings against the Rajasthan Financial Corporation can be initiated only where the mortgaged/hypothecated property is situated. (b) The party, who wants to have Temporary Injunction against the Corporation should pay court fees on the total disputed amount.
- 59) **Akshaydeep Mathur Vs. RFC- S.B.Civil Revision Petition No. 410/2000** - filed by the petitioner u/s 115 of C.P.C. against the order of ADJ, Jaipur City, Jaipur for returning the application as being with the purview of the DRT only as the application was for recovery of dues over Rs. 10.00 lac. The Hon'ble Court, Jaipur Bench dismissed the revision stating that "it is an application filed with oblique motive and purpose to delay the recovery of due amount of public money" and the court also imposed penalty of Rs. 2,000/- on the petitioner-defendant.
- 60) **RFV Vs. Raj Kumar Prop. of M/s. Suratgarh Departmental Store Hanumangarh Criminal case No. 110/03 U/S 138(b) of N.I.Act-** The CJM, Hanumangarh

vide order dated 16.09.05 imprisoned to Sh. Raj Kumar Prop. of M/s. Suratgarh Departmental Store Hanumangarh by ordinary imprisonment or two years alongwith penalty of Rs. 1.00 lac U/S 138(b) of N.I.Act for dishonour of cheque of Rs. 72,344/-.

- 61) **State Vs. Ram Chandra & Ors. Criminal Case No. 334/96-** In this case for an offence of cheating U/S 420 of IPC the accused was awarded three years imprisonment.
- 62) **Suo Moto Vs. State of Rajasthan & Ors. SBCWP No. 4635/2005-** The Rajasthan High Court in this matter of PIL has held that after having considered the submissions made on behalf of the State as well as RFC, it is alternative redressal by way of OTS and the RFC can launch alternative redressal. In the interest of public at large I find to understand as to how OTS policy creates any endanger future and survival of RFC Staff & Employees. Hence, Writ Petition stands dismissed as having no merit.
- 63) **M/s. Shiv Shakti Co-operative Housing Socierty Vs. M/s. Swaraj Developers- JT 2003 (4) SC 255-** The Supreme Court has held that the legislative intent behind amended Section 115 of General Clauses Act, 1897 was clear in as much as those orders which are interim in nature cannot be the subject matter of revision U/S 115. Therefore, where the order is interim in nature or does not finally decide the lis, the Revision will not be maintainable. When the order in favour of the party applying for Revision would have given finality to suit or other proceeding, then the Revision U/S 115 is maintainable.
- 64) **(Late) Ram Narain & Others Vs. Radha Kishan Moti Lal Chamaria AIR 1930 Privy Council 66-** The Privy Council in this appeal matter has observed that Section 109 of Companies Act does not avoid the mortgage which is not registered but only so far as any security is given thereby on the company's property or undertaking. The effect, therefore is that if a mortgage is not registered, it is valid as an admission of debt but as against a creditor or liquidator it

cannot be said that a valid change on the company's property has been created.

Proceedings Sec. 22(1) of SICA only prohibits recovery against Industrial Company. There is no protection afforded to the guarantors against recovery proceedings under the U.P. Act.

- 65) **K.T.Sulechana Nair Vs. M.D. Orissa Financial Corporation AIR 1992 Orissa 157-** The Orissa High Court in this matter has held that U/S 29 of SFCs Act, the Corporation has the right to take over the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged hypothecated or assigned to the Financial Corporation. There is nothing in the provision to indicate that the right U/S 29 of SFCs Act is only in respect of property of the loanee mortgaged with the Corporation. On the other hand, all properties mortgaged with the Corporation by way of prime security by the loanee as well as by way of collateral security by the guarantor.
- 66) **Haryana Financial Corporation Vs. M/s. Depro Foods Ltd. 1982 TAX. L.R.2537-** In this case Punjab & Haryana High Court has held that when liquidation proceedings against a company have commenced before filing of an application by the Corporation U/S 31(1) of SFCs Act, the Financial Corporation can claim preference over other creditors, in case it has filed the particular of the charge alongwith the instrument creating it with the concerned Registrar of Companies for registration U/S 125 of the Companies Act within the prescribed period. Actual registration of charge by the Registrar is not necessary.

Sec. 46-B of SFCs Act inter alia provides that the provisions of the Act shall have effect notwithstanding inconsistent therewith contend in any other law for the time being in-force.

- 67) **Kerala Financial Corporation, Trivandrum Vs.C.K. Sivasankara Panicker & Ors. 1978 TAX.LR 1850-** In this case Kerala High Court has held that Sec. 46-B of SFCs Act, 1951 provides that the provisions of SFCs Act shall have effect notwithstanding anything contained in any other law for the time being in force but Section 125 of the Companies Act declares that the charge so created by the company will be invalid as against the liquidator and any creditor if it is not registered with the Registrar of Companies. This is inconsistent with the provisions of SFCs Act and therefore, U/S 46-B of the latter Act which is a special Act the legal effect of the order passed will be binding on the liquidator of the company also.
68. **Kumari Archana Chauhan Vs. State Bank of India, Jabalpur- AIR-2007 Madhya Pradesh 45 -** In this case M.P.High Court, Jabalpur has held that with respect to the publication of photographs of the defaulting borrower in the newspaper, in the opinion of this Court publication of the photographs of the borrowers cannot be said to be impermissible mode. Action cannot be said to be arbitrary or illegal in any manner. It cannot be said to be defamatory publication made, hence I find no ground to quash the publication and accordingly writ petition stand dismissed.

