

- (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 advance; 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.

### 31. Special provisions for enforcement of claims by Financial Corporation.—

(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof <sup>1</sup>[or 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 or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, <sup>2</sup>[then, without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act, 1882 (4 of 1882)] any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:—

- (a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the <sup>3</sup>[Financial Corporation] as security for the loan or advance; or
- <sup>4</sup>[(aa) for enforcing the liability of any surety; or
- (b) for transferring the management of the industrial concern to the Financial Corporation; or
- (c) for an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

1. Ins. by Act 77 of 1972, sec. 20 (w.e.f. 30-12-1972).

2. Ins. by Act 56 of 1956, sec. 15 (w.e.f. 1-10-1956).

3. Subs. by Act 56 of 1956, sec. 15, for "Corporation" (w.e.f. 1-10-1956).

4. Ins. by Act 43 of 1985, sec. 19 (w.e.f. 21-8-1985).

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

### COMMENTS

(i) Partnership firm received the loan on agreeing the terms and conditions and to pay interest at the rate of 16% and 18.25%. Partners are jointly and severally liable to pay the sum. The plea by them that rate of interest is excessive is not tenable; *Tamil Nadu Industries Investment Corporation Ltd. v. M/s. Kaleeswari Industries*, AIR 2000 Mad 205.

(ii) In the order for recovery of amount with future interest at certain rates passed in proceedings under section 31, the amount due and payable by debtor and rate at which interest is payable cannot be changed by the court disposing of revision against order staying sale of mortgaged properties of debtor; *Delhi Financial Corporation v. B.B. Behel*, AIR 1999 SC 2358.

(iii) Section 29 provides a remedy to recover loan in a speedy manner. Section 31 can be applied when a similar situation arises but it can be used only when the Board allows it to be used; *S.K. Kamiruddin v. Union of India*, AIR 1993 Ori 238.

(iv) In a petition by the Corporation to recover dues from its constituent, it has been held that the court has powers to grant more relief than what is sought, in the sense that the interest at the agreed rate for period subsequent to the petition could not be ignored and must be included in the relief to be granted *in toto*; *M/s. Gulab Ram Subash Chander v. Kharaiti Lal*, AIR 1988 P&H 45.

(v) By virtue of this section, the only mode of recovery of money due is by attachment and sale of properties hypothecated, pledged, mortgaged or assigned to the bank (financial corporation) and it shall prevail notwithstanding any other inconsistent provision of law for the time being in force, and also the inherent powers of the court to order a different mode of recovery; *Gujarat State Financial Corporation, Ahmedabad v. M/s. Jayshree Industries, Rajkot*, AIR 1986 Guj 29.

### 32. Procedure of district judge in respect of applications under section 31.—

(1) When the application is for the reliefs mentioned in clauses (a) and (c) of sub-section (1) of section 31, the district judge shall pass an *ad interim* order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

<sup>1</sup>[(1A) When the application is for the relief mentioned in clause (aa) of sub-section (1) of section 31, the district judge shall issue a notice calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced.]

(2) When the application is for the relief mentioned in clause (b) of sub-section (1) of section 31, the district judge shall grant an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

1. Ins. by Act 43 of 1985, sec. 20 (w.e.f. 21-8-1985).