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M/S. A.P.T. ISPAT PVT. LTD.

V.

U.P. SMALL INDUSTRIES CORPORATION LTD. & ANR.
(Civil Appeal No. 663 of 2003)

APRIL 23, 2010

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[AFTAB ALAM AND SWATANTER KUMAR, JJ.]

Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 – ss. 2 and 3 – Non-payment of dues, for the goods purchased from the financial Corporation – Corporation issuing recovery certificates u/s. 3 and also filing FIR alleging offences under IPC – Challenge to recovery certificate, dismissed by High Court – On appeal, held: The recovery certificates are illegal – Such certificates should be based on tangible agreement – Sale of good is not ‘financial assistance’, hence s. 3 not applicable – In view of FIR, goods were taken away in the course of criminal action – The Act is not intended to recover value of goods taken away in the course of criminal action – After coming into force of Debt Recovery Act, recourse cannot be taken to the U.P. Act – Recovery of Debts due to Financial Institutions Act, 1993 – s. 34 (2).

Managing Director of respondent-Corporation issued two recovery certificate in exercise of power u/s. 3 of U.P. Public Moneys (Recovery of Dues) Act, 1972, alleging therein that the directors of the appellant-company had not made payments for the goods purchased from one of the Depots of the Corporation. It also lodged FIR in this regard giving rise to a substantial criminal case, under various Sections of the Penal Code, 1860.

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Appellant challenged the recovery certificates by filing a writ petition, which was dismissed by High Court. Hence the present appeal.

Allowing the appeal, the Court

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HELD: 1.1. The High Court has stretched the meaning of "financial assistance" as defined in Section 2 and the scope of Section 3 of U.P. Public Moneys (Recovery of Dues) Act, 1972 beyond reasonable limits. From a bare reading of Section 3 it is evident that the dues must arise from an agreement to which the person from whom recovery is to be made is a party. In the scheme of the Act, there is no provision for any adjudication. Once there is any default under an agreement, the designated authority is authorized to issue a recovery certificate and send it to the Collector who is obliged to recover the certificate amount together with interest from the certificate debtor as arrears of land revenue. At no stage, the certificate debtor is given an opportunity to put up his case. Such being the legal position, the recovery certificate must be based on a tangible agreement and it should even *prima facie* appear that the dues arise from a breach of the terms of the agreement. A proceeding u/s. 3 of the Act cannot be sustained by piling up assumptions in favour of the certificate-holder and against the judgment-debtor. [Para 14] [161-F-H; 162-A]

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1.2. The appellant-company was purchasing wire rods as raw material from the Corporation. The sale of the goods would not become financial assistance rendered to the appellant unless it is shown that the supply of the goods was as a loan or grant or by way of hire purchase in terms of some agreement. [Para 13] [161-A-B]

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1.3. In the facts of this case the two impugned recovery certificates are quite illegal and untenable. It is evident that the dues of which recovery is sought by the impugned certificates do not pertain to any loan, advance or grant given to the appellant or to any credit concerning any hire purchase of goods sold to the appellant by the

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A Corporation under any agreement, express or implied. The dues do not relate to any financial assistance. [Paras 15 and 17] [162-E-F; B]

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1.4. In the present case, the so called supplies were not even made in the normal course of business. A reference to the FIR makes it clear that according to the Corporation the goods were taken away by the appellant in a criminal action constituting a number of offences under the Penal Code. The U.P. Public Moneys (Recovery of Dues) Act, 1972 was clearly not intended to recover the goods or the monetary value of goods taken away in course of theft or dacoity or lost as a result of dishonest appropriation or any other alleged criminal action. [Paras 16] [162-C-D]

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2. After the coming into force of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, recourse cannot be taken for recovery of dues to the provisions of U.P. Public Moneys (Recovery of Dues) Act, 1972 because the U.P. Act does not find mention in Section 34(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. [Para 18] [162-G-H; 163-A]

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Unique Butyle Tube Industries (P) Ltd. vs. U.P. Financial Corporation and Ors. (2003) 2 SCC 455, relied on.

Case Law Reference:

(2003) 2 SCC 455 Relied on. Para 18

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 663 of 2003.

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From the Judgment & Order dated 26.4.2001 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 20 (MB) of 2001.

A.P.T. ISPAT PVT.LTD. v. U.P. SMALL INDUSTRIES CORPORATION LTD. & ANR. 153

Shrish Kumar Misra, Amit Srivastava, Rajesh Goel for the Appellant.

Nikunj Dayal (for Pramod Dayal) for the Respondents.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. The appellant is a private limited company incorporated and registered under the Companies Act. It seeks to challenge two recovery certificates issued by the Managing Director of the U.P. Small Industries Corporation Ltd. (a government corporation) in purported exercise of power under section 3 of the U. P. Public Moneys (Recovery of Dues) Act, 1972: Challenging the two recovery certificates, the appellant filed a writ petition (Civil Misc.20 of 2001) before the Allahabad High Court which was dismissed by a division bench of the Court by judgment and order dated April 26, 2001. Against the High Court judgment, the appellant has come in appeal by grant of special leave.

2. The Managing Director of the Corporation drew up the two identical recovery certificates and sent them to the District Magistrate, Lucknow, stating that the Directors of the appellant company had received from the Corporation's Dadanagar depot 1027.15 MT wire rods (iron and steel) worth Rs.1,54,93,421/- (Rupees one crore fifty four lakhs ninety three thousand four hundred twenty one only). But the payment of the goods had not been made to the Corporation and it was to be recovered from the persons (named in the recovery certificates as the company's Directors) together with interest. Paragraphs 1 and 3 of the recovery certificate are relevant for the present and are reproduced below:

"1. Till 30.11.2000 a sum with interest of Rs.1,79,03,848=00 (Rupees one crore seventy nine lakhs three thousand eight hundred and forty eight only) has been due to the defaulter M/s A.P.T. Ispat Pvt. Ltd. and the said sum has to be recovered from the defaulter.

A ^ 3. 'In accordance with the Government Order No. 12/3/7704/Revenue-7 dated 13.11.75 send the amount recovered from the defaulter by a bank draft drawn in favour of the Corporation (U.P. Small Industries Corporation Limited, Kanpur) to his office. "

B 3. It is significant to note that on the same day the Regional Manager of the Corporation, Kanpur region, submitted a written report to the Senior Police Officer, Kanpur Nagar, Kanpur. On the basis of the written report, a First Information Report was instituted giving rise to a substantive criminal case under various sections of the Penal Code against the persons named in it. In the written report it was stated that since the year 1994-95 M/s Anuj Steels whose proprietor was Anuj Tandon s/o Shri Durga Prasad Tandon was appointed by the Corporation as its Sales Coordinator for the purposes of selling iron and steel from the Corporation's Dadanagar godown at Kanpur as a raw material to small scale industries. According to the Memorandum of Understanding, the Coordinator booked the demand for iron and steel as might be required by the small scale industrial units with the Steel Authority of India Ltd. (SAIL).
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 E The SAIL would then dispatch the booked quantity of iron and steel either from its stockyard or by railway either on unsecured credit or on the deposit of money by the Coordinator. The Coordinator lifted the goods, through its Handling Contractor, either from the SAIL stockyard or from the railway siding and
 F brought it to the UPSIDC godown at Dadanagar. The Coordinator was also responsible for selling the iron and steel bought from the SAIL to the small scale industrial units after depositing its value in the depot or in the regional office of Corporation.

G 4. The written report further stated that Anuj Tandon's brother Arun Tandon, the proprietor of M/s Pranay Sales was appointed as the Transporter of the Corporation for lifting the iron and steel from the railway siding and the SAIL stock yard and bringing the stock to the Dadanagar depot. Arun Tandon
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extended cooperation to Anuj Tandon in the sale and purchase of the raw materials. He also participated in the meetings of the Corporation and performed several important jobs connected with the purchase and sale of iron and steel procured from the SAIL.

5. It is further stated that the appellant company is a small industrial unit whose directors were Ashok Tandon (another brother of Anuj and Arun), Prateak Tandon (son of Ashok Tandon) and Anuj Tandon. The appellant company was a purchaser of wire rods from Dadanagar depot of the Corporation.

6. From the statements made in the written statement, it is evident that the running of the day to day affairs of the Corporation was practically handed over to the members of the Tandon family. One does not know whether the arrangement, as stated in the written report, was made consciously, in collusion with the officers of the Corporation, or it came into being mindlessly and without any proper consideration of the Corporation's interests. Be that as it may, an arrangement of this kind was fraught with the risk of grave financial losses to the Corporation. And, as is further alleged in the written report, the Corporation actually came in for heavy losses. In the written report it is further alleged as follows:

"On stock verification of Dadanagar Depot, it has come to the light that M/s A.P.T. Ispat Pvt. Ltd., Amausi, Lucknow, has taken away 1027.15 metric tonne wire rod worth Rs.1,54,93,421=00 (iron and steel raw material) from Dadanagar Depot which raw material was purchased by U.P.S.I.D.C. from Steel Authority of India on unsecured credit for supplying to the small industrial units at the instance of M/s Anuj Steels and the price of the said goods have not been deposited in the Depot or the bank account of the Corporation. The bills of the aforesaid raw material prepared by the employees of the Depot were found while

A no entry thereof has been made in the account books of the bills. In this manner, Arun Tandon, Anuj Tandon, Ashok Tandon, Prateak Tandon, R.N. Sharma, Depot Manager, Raw Materials Depot, Dadanagar, Kanpur, Jagdhari Yadav, Excise clerk, Lalji Yadav, Depot *Illegible*, Raw Material Depot, Dadanagar, Kanpur under a conspiracy to cause loss to the Corporation and to get for themselves unlawful gain have taken away iron and steel raw materials worth Rs.1,54,93,421=00 (Rupees one crore fifty four lakhs ninety three thousand four hundred twenty one only) and the Corporation has suffered a loss of Rs.1,54,93,421=00 and has been suffering loss of interest @ 21% per annum thereon. "

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7. A bare reading of the FIR makes it manifest and clear that according to the Corporation the accused persons including the Directors of the appellant company entered into a conspiracy amongst themselves and with the staff of the Corporation and committed various offences, e.g. dishonest misappropriation of property, criminal breach of trust, cheating, theft, etc.

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E 8. In fairness to the appellant it may be stated here that it has its own story to counter the allegations made in the FIR. According to the appellant, the Corporation owed it a sum of Rs.3,83,894 (Rupees three lakhs eighty three thousand and eight hundred ninety four only) and on December 7, 2000 the

F appellant had instituted Original Suit No.1245 of 2000 for injunction against the Corporation. The injunction suit was filed, when the officers of the Corporation started harassing the Directors of the appellant company and tried to subject them to undue pressure of government authorities, including the

G police. Mr. Shirish Kumar Mishra, learned counsel appearing for the appellant also invited our attention to the bills raised by the Corporation against the appellant company in support of its case. Mr. Mishra submitted that a bare glance at the bills would show that those were not drawn in the normal course of

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business but were manufactured later as a prop to support the allegations made by the Corporation's officers. A

9. The allegations made in the FIR against the appellant company and the counter allegations made by the appellant against the Corporation are of no concern to us for the present. We may assume for the purpose of the present case that the appellant company "received" from the Corporation the quantity of wire rods as stated in the two recovery certificates for which it has not made payment to the Corporation. But the question for consideration is whether the provisions of the U.P. Public Moneys (Recovery of Dues) Act, 1972 can be pressed into service for realization of the dues of the kind indicated above. B C

10. Let us now take a look at the various provisions of the Act. Section 2(a) of the Act defines "Corporation" to include any corporation owned or controlled by the Central government or the state government or notified by the state government in the official gazette. Section 2(b) defines financial assistance as follows: D

"2(b) "financial assistance" means any financial assistance- E

(i) for establishing, expanding, modernizing, renovating or running any industrial undertaking; or

(ii) for purposes of vocational training; or

(iii) for the development of agriculture, horticulture, animal husbandry of agro-industry; or F

(iv) for purposes of any other kind of planned development; or

(v) for relief against distress; " G

Section 3 deals with recovery of *certain* dues as arrears of land revenue and insofar as relevant it is reproduced below:

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- A "3. Recovery of certain dues as arrears of land revenue-(
- 1) Where any person is party-
- (a) to any agreement relating to a loan, advance or grant
B given to him or relating to credit in respect of, or relating
to hire purchase of, goods, sold to him by the State
Government or the Corporation, by way of financial
assistance;
- (b) to any agreement.....
- C (c) to any agreement.....
- (d) to any agreement.....
- (i) makes any default in repayment of the loan or
D advance or any installment thereof; or
- (ii) having become liable under the conditions of the
grant to refund the grant or any portion thereof,
makes any default in the refund of such grant or
E portion or any installment thereof; or
- (iii) otherwise fails to comply with the terms of the
agreement;
- then, in the case of the State Government, such officers
F as may be authorized in that behalf by the State
Government by notification in the official Gazette, and in
the case of the Corporation or a Government company the
Managing Director or where there is no Managing Director
then the Chairman of the Corporation, or by whatever
G name called or such officers of the Corporation or
Government company as may be authorized in that behalf
by the Managing Director or the Chairman thereof, and in
the case of a banking company, the local agent thereof,
by whatever name called, may send a certificate to the
H Collector, mentioning the sum due from such person and

requesting such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue; A

(2).....

(3)..... B

(4).....

(5).....”

11. Mr. Mishra submitted that the appellant company was neither receiving any financial assistance from the Corporation nor it was party to any agreement with the Corporation relating to any loan, advance or grant to it or relating to credit in respect of or relating to hire purchase of goods to it by the Corporation by way of financial assistance. Hence the provisions of section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972 could not be invoked for recovery of the alleged dues of the Corporation. C D

12. The same contentions were raised before the High Court, but the High Court rejected the objection raised on behalf of the appellant observing, in the judgment coming under appeal, as follows: E

“The term financial assistance thus, means any financial assistance provided for running any industrial undertaking. If the term financial assistance is read along with section 3 of the Act then it would mean a party to any agreement relating to goods sold to him by the Corporation as financial assistance for running any industrial unit. F

Admittedly, in the instant case, the petitioner had been purchasing wire rods materials from the respondent company for carrying on its business. *Thus the raw materials, that is, wire rods, were sold, to the petitioner by the respondent company by way of financial* G H

A assistance. Learned counsel for the petitioner has
contended that in view of section 3 there should be an
agreement for sale of goods by the corporation by way of
financial assistance to any person and only then the case
would be covered under section 3 of the Act. As there is
B no agreement between the petitioner and the respondent
company for sale of goods by way of financial assistance
and, therefore, the provisions of section 3 of the Act are
not applicable.

C There is no dispute about the fact that there is no
written agreement between the petitioner and respondent
Company for supply of raw materials to the petitioner. *It*
is, however, admitted that respondent company had been
supplying raw materials to the petitioner-company for
carrying all its business. In writ petition no.Nil of 1987, in
D re: R.K. & Sons, Bhadoi vs. The Collector, Varanasi and
Others, decided on 12.3.1987, it has been held by a
Division Bench of this Court that *although there was no*
agreement executed in writing as such, an agreement
may be said to have come into being as a result of
E *mutual contact of the parties accompanied with delivery*
of goods which were admittedly on credit and this was
to enable the petitioner to run the industrial unit held by
him. In this manner his case is covered under Section
F *3(1) (a) read with Section 2(b) of the Act.* In the instant case
also as a result of mutual contract between the parties
delivery of goods were made to the petitioner by
respondent company. The petitioner obtained huge quantity
of raw materials without making payment and thus, the
respondent company is claiming the price of the goods
G sold to the petitioner by way of financial assistance. The
case of the petitioner is therefore, also covered under
Section 3(1)(a) read with Section 2(b) of the Act."

(emphasis added)

H 13. We are completely unable to accept the view taken by

the High Court. If the appellant company was *purchasing* wire rods as raw material from the Corporation we fail to see how the sale of the goods would become financial assistance rendered to the appellant unless it is shown that the supply of the goods was as a loan or grant or by way of hire purchase in terms of some agreement. We are, therefore, unable to follow the observation by the High court that "Thus the raw materials, that is, wire rods, were sold, to the petitioner by the respondent company by way of financial assistance". We also find no basis for the observation made by the High Court that "it is, however, **admitted** that respondent company (sic Corporation) had been supplying raw materials to the petitioner-company for carrying all its business" and further that the goods supplied "were *admittedly* on credit". There is no such admission by the appellant. On the contrary the case of the appellant is that it used to purchase wire rods from the Corporation on payment of price and it made payment for all the purchases from the Corporation.

14. We think that the High Court has stretched the meaning of "financial assistance" as defined in section 2 and the scope of section 3 of the Act beyond reasonable limits. From a bare reading of section 3 it is evident that the dues must arise from an agreement to which the person from whom recovery is to be made is a party. Sub clause (a) of sub-section 1 then enumerates the kinds of agreement under which the transaction should have taken place. It needs also to be borne in mind that in the scheme of the Act there is no provision for any adjudication. Once there is any default under an agreement, the designated authority is authorized to issue a recovery certificate and send it to the Collector who is obliged to recover the certificate amount together with interest from the certificate debtor as arrears of land revenue. At no stage the certificate debtor is given an opportunity to put up his case. Such being the legal position, the recovery certificate must be based on a tangible agreement and it should even *prima facie* appear that the dues arise from a breach of the terms of the agreement.

- A proceeding under section 3 of the Act cannot be sustained by piling up assumptions in favour of the certificate holder and against the judgment debtor.

- B 15. In the present case it is evident that the dues of which recovery is sought by the impugned certificates do not pertain to any loan, advance or grant given to the appellant or to any credit concerning any hire purchase of goods sold to the appellant by the Corporation under any agreement, express or implied. The dues do not relate to any financial assistance.

- C 16. We also cannot overlook the fact that in this case the so called supplies were not even made in the normal course of business. A reference to the FIR makes it clear that according to the Corporation the goods were taken away by the appellant in a criminal action constituting a number of offences under the Penal Code. The U.P. Public Moneys (Recovery of Dues) Act, 1972 was clearly not intended to recover the goods or the monetary value of goods taken away in course of theft or dacoity or lost as a result of dishonest appropriation or any other alleged criminal action.

- E 17. For the reasons discussed above, we are of the view that in the facts of this case the two impugned recovery certificates are quite illegal and untenable and we are unable to sustain the High Court order coming under appeal.

- F 18. There is another point and though it was not raised before the High Court, we think proper to mention it since it is crucial to the proceeding under section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972. In a decision by this court in *Unique Butyle Tube Industries (P) Ltd. vs. U.P. Financial Corporation and Others*, (2003) 2 SCC 455, it was held that after the coming into force of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, recourse cannot be taken for recovery of dues to the provisions of U.P. Public Moneys (Recovery of Dues) Act, 1972 because the U.P. Act does not find mention in section 34(2) of the Recovery of
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Debts Due to Banks and Financial Institutions Act, 1993. A

19. For all these reasons the order of the High Court is set aside and the impugned recovery certificates are quashed.

20. It is made clear that this judgment shall not in any way affect the criminal case instituted against the Directors of the appellant company and it will proceed on its own merits and in accordance with law. This judgment shall also not stand in the way of the respondent Corporation in seeking recovery of its claims from the appellant by any other means duly sanctioned by law. B C

21. In the result the appeal is allowed but with no order as to costs.

K.K.T. Appeal allowed.