

# THE STATE FINANCIAL CORPORATIONS ACT, 1951

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## **THE STATE FINANCIAL CORPORATIONS ACT, 1951**

### **INTRODUCTION**

A Central Industrial Finance Corporation was set up under the Industrial Finance Corporations Act, 1948 in order to provide medium and long term credit to industrial undertakings which fall outside the normal activities of Commercial Banks. The State Governments expressed their desire that similar Corporations be set up in States to supplement the work of the Industrial Finance Corporation. State Government also expressed that the State Corporations be established under special statute in order to make it possible to incorporate in the Constitution necessary provisions in regard to majority control by the Government, guaranteed by the State Government in regard to the payment of principal. In order to implement the views expressed by the State Governments the State Financial Corporation Bill was introduced in the Parliament.

### **STATEMENT OF OBJECTS AND REASONS**

In order to provide medium and long term credit to industrial undertakings, which fall outside the normal activities of Commercial Banks, a Central Industrial Finance Corporation was set up under the Industrial Finance Corporation Act, 1948 (XV of 1948). The State Governments wish that similar Corporations should also be set up in the States to supplement the work of the Industrial Finance Corporation. The intention is that the State Corporations will confine their activities to financing medium and small scale industrial and will, as far as possible, consider only such cases as are outside the scope of the Industrial Finance Corporation. The State Governments also consider that the State Corporations should be established under a special Statute in order to make it possible to incorporate in the Constitution necessary provisions in regard to majority control by Government, guaranteed by the State Government in regard to the repayment of principal, and payment of a minimum rate of dividend on the shares, restriction on distribution of profits and special powers for the enforcement of its claims and recovery of dues. Since the incorporation, regulation and winding up of such Corporations fall within the purview of Parliament *vide* Entry No.43 of the Union List—The State Governments have requested the Government of India to enact the necessary enabling legislation, which is sought to be effected by this Bill.

The main features of the Bill are as follows:—

- (i) The Bill provides that the State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State.
- (ii) The share capital shall be fixed by the State Government but shall not exceed Rs. 2 crores. The issue of the shares to the public will be limited to 25 per cent, of the share capital and the rest will be held by the State Government, the Reserve Bank, Scheduled Banks, Insurance Companies, Investment Trusts, Co-operative Banks and other Financial Institutions.
- (iii) Shares of the Corporation will be guaranteed by the State Government as to the re-payment of principal and the payment of a minimum dividend to be prescribed in consultation with the Central Government.

- (iv) The Corporation will be authorised to issue bonds and debentures for amounts which together with the contingent liabilities of the Corporation shall not exceed five-times the amount of the paid-up share capital and the reserve fund of the Corporation. These bonds and debentures will be guaranteed as to the payment of the principal and the payment of interest at such rate as may be fixed by the State Government.
- (v) The Corporation may accept deposits from the public repayable after not less than five years, subject to the maximum not exceeding the paid-up capital.
- (vi) The Corporation will be managed by a Board consisting of a majority of Directors nominated by the State Government, the Reserve Bank and the Industrial Finance Corporation of India.
- (vii) The Corporation will be authorised to make long-term loans to industrial concerns and to guarantee loans raised by industrial concerns which are repayable within a period of not exceeding 25 years. The Corporation will be further authorised to underwrite the issue of stocks, shares, bonds or debentures by industrial concerns, subject to the provision that the Corporation will be required to dispose of any shares, *etc.*, acquired by it in fulfilment of its underwriting liability within a period of 7 years.
- (viii) Until a reserve fund is created equal to the paid-up share capital of the Corporation and until the State Government has been repaid all amounts paid by them, if any, in fulfilment of the guarantee liability, the rate of dividend shall not exceed the rate guaranteed by the State Government. Under no circumstances shall the dividend exceed 5 per cent, per annum and surplus profits will be re-payable to the State Government.
- (ix) The Corporation will have special privileges in the matter of enforcement of its claims against borrowers.

### **ACT 63 OF 1951**

The State Financial Corporation Bill having been passed by both the Houses of Parliament received the assent of the President on 31st October, 1951. It came on the Statute Book as THE STATE FINANCIAL CORPORATIONS ACT, 1951 (63 OF 1951).

### **LIST OF AMENDING ACTS**

1. The Repealing and Amending Act, 1952 (48 of 1952).
2. The Industrial and State Financial Corporations (Amendment) Act, 1955 (28 of 1955).
3. The State Financial Corporations (Amendment) Act, 1956 (56 of 1956).
4. The Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956).
5. The State Financial Corporations (Amendment) Act, 1962 (6 of 1962).
6. The State Financial Corporations (Amendment) Act, 1972 (77 of 1972).

7. The Public Financial Institutions Laws (Amendment) Act, 1975 (52 of 1975).
8. The Public Financial Institutions (Obligation as to Fidelity and Secrecy) Act, 1983 (48 of 1983).
9. The State Financial Corporations (Amendment) Act, 1985 (43 of 1985).
10. The Delegated Legislation Provisions (Amendment) Act, 1985 (4 of 1986).
11. The State Financial Corporations (Amendment) Act, 2000 (39 of 2000).

**THE STATE FINANCIAL CORPORATIONS  
ACT, 1951<sup>1</sup>**

(63 of 1951)

[31st October, 1951]

*An Act to provide for the establishment of State Financial Corporations.*

BE it enacted by Parliament as follows:—

*CHAPTER I*

**PRELIMINARY**

**1. Short title, extent and commencement.**—(1) This Act may be called the State Financial Corporations Act, 1951.

(2) It extends to the whole of India <sup>2</sup>[\* \* \*].

(3) It shall come into force in any State on such date<sup>3</sup> as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) "Board" means the Board of directors of the Financial Corporation;

<sup>4</sup>[(aa) "Development Bank" means the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);]

<sup>5</sup>[(b) "Financial Corporation" means a Financial Corporation established under section 3 and includes a Joint Financial Corporation established under section 3A;]

<sup>6</sup>[(c) "industrial concern" means any concern engaged or to be engaged in—

(i) the manufacture, preservation or processing of goods;

<sup>7</sup>[(ii) mining or development of mines;]

(iii) the hotel industry:

(iv) the transport of passengers or goods by road or by water or by air "[or by ropeway or by lift];

1. This Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and Sch. I; to Pondicherry by Reg. 7 of 1963, sec. 3 and Sch. I; to Goa, Daman and Diu by Reg. 11 of 1963, sec. 3 and Sch. and to the State of Sikkim on 24-10-1975, vide Notification No. S.O. 615(E), dated 23rd October, 1975.

2. The words "except the State of Jammu and Kashmir" omitted by Act 62 of 1956, sec. 2 and Sch. (w.e.f. 1-11-1956).

3. Came into force on 1-8-1952 (in the whole of India except the State of Jammu and Kashmir) see Notification No. S.R.O. 1317, dated the 28th July, 1952, Gazette of India, 1952, Pt. II, Sec. 3, p.1163.

4. Ins. by Act 77 of 1972, sec. 2 (w.e.f. 30-12-1972).

5. Subs. by Act 56 of 1956, sec. 2, for clause (b) (w.e.f. 1-10-1956).

6. Subs. by Act 77 of 1972, sec. 2, for clause (c) (w.e.f. 30-12-1972).

7. Subs. by Act 43 of 1985, sec. 2, for sub-clause (ii) (w.e.f. 21-8-1985).

8. Ins. by Act 43 of 1985, sec. 2 (w.e.f. 21-8-1985).

- (v) the generation or distribution of electricity or any other form of power;
- (vi) the maintenance, repair, testing or servicing of machinery of any description or vehicles or vessels or motor boats or trailers or tractors;
- (vii) assembling, repairing or packing any article with the aid of machinery or power;
- <sup>1</sup>[(viii) the setting up or development of an industrial area or industrial estate;]
- (ix) fishing or providing shore facilities for fishing or maintenance thereof;  
<sup>2</sup>[\* \* \*].
- <sup>3</sup>[(x) providing weight bridge facilities;
- <sup>4</sup>[(xi) providing engineering, technical, financial, management, marketing or other services or facilities for industry;
- (xii) providing medical, health or other allied, services;
- (xiii) providing software or hardware services relating to information technology, telecommunications or electronics including satellite linkage and audio or visual cable communication;]]
- <sup>3</sup>[(xiv) setting up or development of tourism related facilities including amusement parks, convention centres, restaurants, travel and transport (including those at airports), tourist service agencies and guidance and counselling services to the tourists;
- (xv) construction;
- (xvi) development, maintenance and construction of roads;
- (xvii) providing commercial complex facilities and community centres including conference halls;
- (xviii) floriculture;
- (xix) tissue culture, fish culture, poultry farming, breeding and hatcheries;
- (xx) Service industry, such as altering, ornamenting, polishing, finishing, oiling, washing, cleaning or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;
- (xxi) research and development of any concept, technology, design, process or product, whether in relation to any of the matters aforesaid, including any activities approved by the Small Industries Bank; or
- (xxii) such other activity as may be approved by the Small Industries Bank;]

*Explanation* .,—The expression "processing of goods" includes any art or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation.]

1. Subs, by Act 43 of 1985, sec. 2, for sub-clause (viii) (w.e.f. 21-8-1985).
2. The word "or" omitted by Act 43 of 1985, sec. 2 (w.e.f. 21-8-1985).
3. Subs, by Act 39 of 2000, sec. 2, for clauses (x) to (xiii) (w.e.f. 5-9-2000).
4. Clauses (xi) to (xiii) ins. by Act 43 of 1985, sec. 2 (w.e.f. 21-8-1985) and subs, by Act 39 of 2000. "sec. 2 (w.e.f. 5-9-2000).
5. *Explanation* renumbered as *Explanation 1* by Act 43 of 1985, sec. 2 (w.e.f. 21-8-1985).

<sup>1</sup>[*Explanation 2.* — *If any doubt arises as to whether a concern is an industrial concern or not, the same shall be referred to the* <sup>2</sup>[Small Industries Bank] *for its decision and the decision of the* <sup>2</sup>[Small Industries Bank] *thereon shall be final;*]

- (d) "prescribed" means prescribed by rules or regulations made under this Act;
- <sup>3</sup>[(da) Small the expression "public sector bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);]
- (e) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);
- <sup>3</sup>[(fa) "Small Industries Bank" means the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989);]
- <sup>4</sup>[(fb) "State Co-operative Bank" shall have the meaning assigned to it in clause (f) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);]
- <sup>4</sup>[(fc) "State Government", in relation to a Union Territory, means the Administrator thereof;]
- (g) "underwriting" means contract, with or without conditions, to subscribe for stocks, shares, bonds or debentures of an industrial concern with a view to the resale of the whole or any part thereof.

## *CHAPTER II*

### **INCORPORATION OF STATE FINANCIAL CORPORATIONS, THEIR CAPITAL AND MANAGEMENT**

**3. Establishment of State Financial Corporations.**—(1) The State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State under such name as may be specified in the notification.

1. Ins. by Act 43 of 1985, sec. 2 (w.e.f. 21-8-1985).

2. Subs. by Act 39 of 2000, sec. 2, for "Development Bank" (w.e.f. 5-9-2000).

3. Ins. by Act 39 of 2000, sec. 2 (w.e.f. 5-9-2000).

4. Clauses (ff) and (fff) subs, by Act 6 of 1962, sec. 2, for clause (f) (w.e.f. 16-4-1962) and relettered as clauses (ft) and (fc) by Act 39 of 2000, sec. 2 (w.e.f. 5-9-2000).

(2) The Financial Corporation shall be a body corporate by the name notified under sub-section U), having perpetual succession and a common seal, with power, subject to the provisions of this Act, to '[acquire, hold and dispose of] property and shall by the said name sue and be sued.

<sup>2</sup>[3A. **Establishment of Joint Financial Corporations.** — (1) Notwithstanding anything contained in section 3, two or more States may, after consultation with the <sup>3</sup>[Small Industries Bank], enter into an agreement that there shall be one Financial Corporation for the group of States participating in the agreement and if the agreement is published in the Official Gazette of each of those States, the Central Government may, by notification in the Official Gazette, establish a Joint Financial Corporation to serve the needs of those States under such name as may be specified in the notification.

(2) An inter-State agreement under sub-section (1) among the participating States may—

- (a) provide for the fixation of the authorised capital of the Joint Financial Corporation, the number of fully paid-up shares into which it shall be divided and the allocation among the participating States of the shares to be distributed under clause (a) of sub-section (3) of section 4;
- (b) provide for the sharing of the liability for the guarantee under section 6 or section 7 <sup>4</sup>[or section 8];
- (c) provide for the number of directors to be nominated to the Board by each participating State Government;
- (d) provide for the apportionment among the participating States of expenditure in connection with the Joint Financial Corporation;

<sup>5</sup>[\* \* \*]

- (f) determine which of the participating State Governments shall exercise the several functions of the State Government under this Act, and references in this Act to the State Government, in relation to the Joint Financial Corporation, shall, save as otherwise expressly provided, be construed accordingly;
- (g) provide for consultation among the participating States either generally or with reference to particular matters arising under this Act;
- (h) make such incidental and consequential provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement.

(3) The Joint Financial Corporation shall be a body corporate by the name notified under sub-section (1), having perpetual succession and a common seal, with power,

1. Subs, by Act 56 of 1956, sec. 3. for "acquire and to hold" (w.e.f. 1-10-1956).

2. Ins. by Act 56 of 1956, sec. 4 (w.e.f. 1-10-1956).

3. Subs, by Act 52 of 1975, sec. 24, for "Reserve Bank" (w.e.f. 16-2-1976) and again subs, by Act 39 of 2000, sec. 3, for "Development Bank" (w.e.f. 5-9-2000).

4. Ins. by Act 6 of 1962, sec. 3 (w.e.f. 16-4-1962).

5. Clause (e) omitted by Act 43 of 1985, sec. 3 (w.e.f. 21-8-1985).

subject to the provisions of this Act, to acquire, hold and dispose of property and shall, by the said name sue and be sued.

(4) Any reference in this Act to "State" in relation to a Joint Financial Corporation established for two or more States, shall be construed as a reference to each such State.]

**4. Share capital and share-holders.**—[(1) The authorised capital of the Financial Corporation shall be such sum as may be fixed by the State Government in this behalf, but it shall not, be less than fifty lakhs of rupees, or exceed five hundred crores of rupees:

Provided that the State Government may, on the recommendation of the Small Industries Bank, by notification in the Official Gazette, increase the authorised capital up to one thousand crores of rupees.

(2) Subject to the provisions of section 4D, the authorised capital shall be divided into such number of fully paid-up shares of the same face value and such number of fully paid-up redeemable preference shares of the same face value and shall be issued to the parties mentioned in clauses (a), (b) and (c) of sub-section (3) and in the case of parties referred to in clause (d) of that sub-section, such shares shall be issued at such times and in such manner as the State Government may, by notification in the Official Gazette, determine.

(3) Subject to the approval of the State Government and the Small Industries Bank, the Board shall determine the number of shares which may, respectively, be distributed among—

- (a) the State Government;
- (b) the Small Industries Bank;
- (c) public sector banks, the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), other insurance companies owned or controlled by the Central Government, other institutions owned or controlled by the Central Government or the State Government, as the case may be; and
- (d) parties other than those referred to in clause (a), or clause (b) or clause (c):

Provided that the number of shares which may be allocated to parties referred to in clause (d) shall in no case exceed forty-nine per cent, of the total number of issued equity shares:

Provided further that no increase in the issued equity capital shall be made in such a manner that the parties referred to in clause (a) or clause (b) or clause (c) hold, in aggregate, at any time less than fifty-one per cent, of the issued equity capital of the Financial Corporation.]

1. Subs, by Act 39 of 2000, sec. 4, for sub-sections (1), (2) and (3) (w.e.f. 5-9-2000).

(4) Subject to the other provisions contained in this section, the allocation of shares among the parties referred to in clauses (c) and (d) of sub-section (3) and the allotment of such shares shall be made by the Financial Corporation in such manner as may be prescribed.

<sup>1</sup>[(5) If any shares allocated to any of the parties referred to in clauses (c) and (d) of sub-section (3) remain unsubscribed, they shall be subscribed for equally by the State Government and the <sup>2</sup>[Small Industries Bank].]

<sup>3</sup>**[4A. Special class of shares.]**—<sup>4</sup>[(1) The State Government may, in consultation with the <sup>5</sup>[Small Industries Bank], specify from time to time such part of the unissued capital of the Financial Corporation as shall be allocated for the issue of a special class of shares.]

(2) The special class of shares so allocated under sub-section (1), shall be,—

- (a) divided into such number of shares of the same face value as the State Government may, in consultation with the <sup>6</sup>[Small Industries Bank], determine;
- (b) subscribed by the State Government and the <sup>7</sup>[Small Industries Bank] and they may do so in such proportion as may be agreed upon by and between them and the Financial Corporation shall make allotment of such shares accordingly.

(3) The funds representing the capital subscribed as aforesaid shall be used only for such purposes, in such manner and for rendering assistance to such class or category of industrial concerns, as the <sup>8</sup>[Small Industries Bank] may, in consultation with and after obtaining the advice of the State Government, specify in this behalf from time to time and nothing contained in <sup>9</sup>[\*\*\*] section 48 shall apply thereto.

(4) The rate of dividend declared on the special class of shares in respect of any accounting year of a Financial Corporation shall not exceed the rate of dividend in respect of its other shares.

(5) Nothing contained in sub-sections (2) to (5) of section 4, section 5, and <sup>10</sup>[sub-sections (1) to (4) of section 6], shall apply to the special class of shares.]

<sup>11</sup>**[4B. Transfer of share capital to Development Bank.]**—On such date as the Central Government may, by notification in the Official Gazette, specify (hereinafter referred to as the specified date), all the shares of every Financial Corporation subscribed by the Reserve Bank as on the date immediately preceding the specified date, shall, stand transferred to, and vested in, the Development Bank.

1. Subs, by Act 43 of 1985, sec. 4, for sub-section (5) (w.e.f. 21-8-1985).

2. Subs, by Act 39 of 2000, sec. 4 for "Development Bank" (w.e.f. 5-9-2000).

3. Ins. by Act 77 of 1972, sec. 4 (w.e.f. 30-12-1972).

4. Subs, by Act 52 of 1975, sec. 26, for sub-section (1) (w.e.f. 16-2-1976).

5. Subs, by Act 39 of 2000, sec. 5, for "Development Bank" (w.e.f. 5-9-2000).

6. Subs, by Act 52 of 1975, sec. 26, for "Reserve Bank" (w.e.f. 16-2-1976) and again subs, by Act 39 of 2000, sec. 5, for "Development Bank" (w.e.f. 5-9-2000).

7. The words "section 47 or" omitted by Act 39 of 2000, sec. 5 (w.e.f. 5-9-2000).

8. Subs, by Act, 39 of 2000, sec. 5, for "sub-section (1) of section 6" (w.e.f. 5-9-2000).

9. Ins. by Act 52 of 1975, sec. 27 (w.e.f. 16-2-1976).

**4C. Payment of amount.**—The Reserve Bank shall be given by the Development Bank, in cash, for the transfer to, and vesting in, the Development Bank of the shares of every Financial Corporation which have been subscribed by the Reserve Bank, an amount equal to the face value of the shares of the Financial Corporation so subscribed.]

**'[4D. Issue of redeemable preference shares.**—(1) On and after the commencement of the State Financial Corporations (Amendment) Act, 2000, the Financial Corporation may—

- (a) issue redeemable preference shares on such terms and in such manner as the Board may decide; and
- (b) convert, such number of equity shares as it may decide into redeemable preference shares, with the prior approval of the State Government and the Small Industries Bank, by a resolution passed in the general meeting

Provided that such conversion shall in no case reduce the equity shares held by the parties referred to in clauses (a), (b) and (c) of sub-section (3) of section 4 to less than fifty-one per cent, of the issued equity capital of the Financial Corporation.

(2) The redeemable preference shares referred to in sub-section (1) shall—

- (a) carry such fixed rate of dividend as the Financial Corporation may specify at the time of such issue or conversion; and
- (b) neither be transferable nor carry any voting rights.

(3) The redeemable preference shares referred to in sub-section (1) shall be redeemed by the Financial Corporation in such instalments and in such manner as the Board may determine.

**4E. Reduction of share capital.**—(1) The Financial Corporation, with the prior approval of the State Government and the Small Industries Bank, may, by resolution passed in a general meeting of the shareholders, reduce its share capital in any way.

(2) Without prejudice to the generality of the foregoing power, the share capital may be reduced by—

- (a) extinguishing or reducing the liability on any of its equity shares in respect of share capital not paid-up; or
- (b) either with or without extinguishing or reducing liability on any of its equity shares, cancelling any paid-up share capital which is lost or is unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its equity shares, paying off any paid-up share capital which is in excess of the wants of the Financial Corporation.

**4F. Restriction on exercising of voting right.**—Every shareholder of the Financial Corporation' holding equity shares shall have a right to vote in respect of such shares on every resolution and his voting right on a poll shall be in proportion to his share of the paid-up equity capital of the Financial Corporation:

1. Ins. by Act 39 of 2000, sec. 6 (w.e.f. 5-9-2000).

" Provided, however, that no shareholder, other than a shareholder referred to in clauses (a), (b) and (c) of sub-section (3) of section 4, shall be entitled to exercise voting rights in respect of any equity share held by him in excess of ten per cent, of the issued equity capital.

**4G. Proxy voting.**—In a general meeting referred to in clause (b) of subsection (1) of section 4D and sub-section (1) of section 4E, the resolution for conversion or reduction of share capital shall be passed by shareholders entitled to vote, voting in person, or, where proxies are allowed, by proxy, and the votes cast in favour of the resolution are not less than three times the number of votes, if any, cast against the resolution by shareholders so entitled and voting.

**4H. Transfer of share capital to Small Industries Bank.**—On such date as the Central Government may, by notification in the Official Gazette, notify (hereinafter referred to as the notified date) all the shares of every Financial Corporation subscribed by the Development Bank and the amount outstanding in respect of loans in lieu of capital provided by the Development Bank as on the date immediately preceding the notified date, shall stand transferred to, and vested in, the Small Industries Bank, such transfer shall be at such rate and be paid in cash or such other manner as may be mutually agreed upon between the Development Bank and the Small Industries Bank.]

**[5. Transfer of shares.**—(1) Save as otherwise provided in sub-section (2), the shares of the Financial Corporation shall be freely transferable.

(2) Nothing contained in sub-section (1) shall entitle the parties referred to in clauses (a) (b) and (c) of sub-section (3) of section 4 to transfer any of the shares held by them in the Financial Corporation if such transfer will result in reducing the aggregate value of shares held by them to less than fifty-one per cent, of the issued equity capital of the Financial Corporation.

(3) The Board may refuse to register the transfer of any shares in the name of the transferee on any one or more of the following grounds, and on no other ground, namely:—

- (a) the transfer of the shares is in contravention of the provisions of the Act or regulations made thereunder or any other law;
- (b) the transfer of the shares, in the opinion of the Board, is prejudicial to the interests of the Financial Corporation or to the public interest;
- (c) the transfer of shares is prohibited by an order of a court, tribunal or any other authority under any law for the time being in force.

4. The Board shall, before the expiry of two months from the date on which the instrument of transfer of shares of the Financial Corporation is lodged with it for the purpose of registration of such transfer, not only form, in good faith, its opinion as to whether such registration ought not or ought to be refused on any of the grounds referred to in sub-section (3) but also,—

- (a) if it has formed the opinion that such registration ought not to be so refused, effect such registration; and

- (b) if it has formed the opinion that such registration ought to be refused on any of the grounds mentioned in sub-section (3), intimate the transferor and the transferee by notice in writing.

(5) An appeal against the order of refusal of the Board under sub-section (4) shall lie to the Central Government and the procedure for filing and hearing of such appeal shall be in accordance with the rules made by the Central Government in this behalf.]

**[6. Conversion of shares guaranteed by State Government.—(1)** On the commencement of the State Financial Corporations (Amendment) Act, 2000, every shareholder shall be given by the Financial Corporation an option to require the Financial Corporation to convert the shares held by him into shares of the same nominal value without the State Government guarantee and issue fresh share certificate or to pay the amount paid in respect of such shares not exceeding the face value of the shares held by him.

(2) The option referred to in sub-section (1) shall be given by the Financial Corporation to every existing shareholder before the expiry of three months from the commencement of the State Financial Corporations (Amendment) Act, 2000 and shall be exercised by the shareholder within three months from the date of receipt of such option.

(3) The option exercised under sub-section (2) shall be final and shall not be altered or rescinded after it has been exercised.

(4) If, a shareholder exercises option for receiving the payment within the stipulated time, the Financial Corporation shall on surrender of the share certificate held by him, pay him the amount paid in respect of such shares not exceeding the face value thereof:

Provided that if any shareholder fails to exercise the option given to him under sub-section (1), within the time stipulated in sub-section (2), he shall be deemed to have exercised the first option.

(5) Nothing contained in sub-section (4) shall be deemed to result in reduction of the share capital and the Financial Corporation may, subject to the provisions of subsection (3) of section 4, allot the shares surrendered by any shareholder, to any other person.

(6) The Financial Corporation shall keep at its head office a register, in one or more books, of shareholders and shall enter therein the following particulars so far as they may be available, namely:—

- (i) the names, addresses and occupations if any, of the shareholders and a statement of the shares held by each shareholder, distinguishing each share by its denoting number;
- (ii) the date on which each person is so entered as a shareholder;
- (iii) the date on which any person ceases to be a shareholder; and
- (iv) such other particulars as may be prescribed:

Provided that nothing in this sub-section shall apply to the shares held with a depository under the Depositories Act, 1996 (22 of 1996).

(7) Notwithstanding anything contained in sub-section (6), it shall be lawful for the Financial Corporation to keep the register of the shareholders in computer floppies or diskettes, compact disk or any other electronic form subject to such safeguards as may be prescribed.

(8) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), a copy of, or extract from, the register of shareholders, certified to be a true copy under the hand of an officer of the Financial Corporation authorised in this behalf, shall, in all legal proceedings, be admissible in evidence.

(9) The register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 (22 of 1996) shall be deemed to be a register of shareholders for the purposes of this Act.

(10) Notwithstanding anything contained in sub-sections (6), (7) and (8), no notice of any trust, express, implied or constructive, shall be entered on the register of shareholders or be receivable by the Financial Corporation:

Provided that nothing in this sub-section shall apply to a depository in respect of shares held by it as a registered owner on behalf of a beneficial owner.

*Explanation.*—For the purposes of sub-sections (6), (9) and this sub-section, the expressions "beneficial owner", "depository" and "registered owner" shall have the meanings respectively assigned to them in clauses (a), (e) and (j) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996).

(11) Notwithstanding anything contained in the Indian Trusts Act, 1882 (2 of 1882), the shares of the Financial Corporation shall be deemed to be included among the securities enumerated in section 20 of that Act.]

**'[7. Additional capital of Financial Corporation and its borrowing powers.—**

(1) The Financial Corporation may issue and sell bonds and debentures for the purpose of increasing its working capital.

(2) The State Government may, on a request being made to it by the Financial Corporation, guarantee the bonds and debentures issued by the Financial Corporation as to the repayment of principal and the payment of interest at such rate as may be fixed by that Government.

(3) Notwithstanding anything contained in the Acts hereinafter mentioned in this sub-section, such of the bonds and debentures issued by the Financial Corporation as are guaranteed by the State Government as to the repayment of the principal and payment of interest and receipts issued by it for such of deposits as are guaranteed by the State Government as to the repayment of the principal and payment of interest shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882 (2 of 1882) and also to be approved securities for the purpose of the Insurance Act, 1938 (4 of 1938) and the Banking Regulation Act, 1949 (10 of 1949).

1. Section 7 subs, by Act 6 of 1962, sec. 5 (w.e.f. 16-4-1962) and again subs, by Act. 39 of 2000, sec. 7 (w.e.f. 5-9-2000).

(4) The Financial Corporation may, for the purposes of carrying out its functions under this Act, borrow money from the Reserve Bank— ,

- (a) repayable on demand or on the expiry of a fixed period not exceeding ninety days from the date on which the money is so borrowed against the security of—
  - (i) stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India, or
  - (ii) such bills of exchange and promissory notes as are eligible for purchase or re-discount by the Reserve Bank or as are fully guaranteed as to the repayment of the principal and payment of interest by a State Government;
- (b) repayable on the expiry of a fixed period not exceeding eighteen months from the date on which the money is so borrowed, against securities of the Central Government or of any State Government of the maturity, or subject to the previous approval of the State Government, against bonds and debentures issued by the Financial Corporation and maturing within a period not exceeding eighteen months from the date on which the money is so borrowed and every such bond and debenture shall be guaranteed by the State Government:

Provided that the amount borrowed by the Financial Corporation under clause (b) shall not at any time exceed in the aggregate twice the paid-up share capital thereof.

(5) The Financial Corporation may, for the purpose of carrying out its functions under this Act, borrow money from the State Government, any financial institution, scheduled bank, insurance company or any other person approved by the Board on such terms and conditions as may be agreed upon.

(6) The total amount of bonds and debentures issued and outstanding, the amounts borrowed by the Financial Corporation under clause (b) of sub-section (4) and subsection (5) and of the contingent liabilities of the Financial Corporation in the form of guarantees given by it or underwriting agreements entered into by it, shall not exceed ten times the amount of the paid-up share capital and reserve fund of the Financial Corporation:

Provided that the Financial Corporation may, with the prior approval of the Small Industries Bank, exceed the aforesaid limit up to thirty times the amount of the paid-up share capital and reserve fund of the Financial Corporation.]

**\*[8. Deposits with Financial Corporation.]—**(1) The Financial Corporation may accept from the State Government, or with the prior approval of the Reserve Bank from a local authority or any other person deposits repayable after the expiry of period which shall not be less than twelve months from the date of the making of the deposit and on such other terms as the Board thinks fit:

1. Section 8 subs, by Act 6 of 1962, sec. 5 (w.e.f. 16-4-1962) and again subs, by Act 39 of 2000, 7 (w.e.f. 5-9-2000).

Provided that the total amount of such deposits shall not exceed twice the paid-up share capital of the Financial Corporation:

Provided further that the State Government may permit the Financial Corporation to accept deposits up to a higher limit not exceeding ten times the paid-up share capital of the Financial Corporation.

(2) Any deposit accepted under sub-section (1), other than a deposit from the State Government may, if so required by the Financial Corporation, be guaranteed by the State Government as to the repayment of the principal and payment of interest.]

<sup>1</sup>[9. **Managements.**—(1) The general superintendence, direction and management of affairs and business of the Financial Corporation shall vest in a Board of Directors which may exercise all powers and do all such acts and things, as may be exercised or done by the Financial Corporation and are not by this Act expressly directed or required to be done by the Financial Corporation in general meeting.

(2) The Board may direct that any power exercisable by it under this Act shall also be exercisable in such cases and subject to such conditions, if any, as may be specified by it, by the chairman, managing director or the whole-time director.

<sup>2</sup>[10. **Board of directors.**—The Board of directors shall consist of the following, namely:—

- (a) a director to be nominated as chairman under sub-section (1) of section 15;
- (b) two directors nominated by the State Government of whom one director shall be a person who has special knowledge of or experience in small-scale industries:

Provided that in the case of a Joint Financial Corporation, the number of directors shall be such as the State Governments of the participating States may, by agreement among themselves, think fit to nominate each participating State Government nominating not more than two directors:

Provided further that in the case of a Joint Financial Corporation, the director, who shall have special knowledge of, or experience in, small-scale industries, shall be nominated by that participating State which, according to the terms of agreement between the participating States, is entitled to make such nomination;

- (c) two directors nominated by the Small Industries Bank;
- (d) two directors nominated in the prescribed manner by the parties mentioned in clause (c) of sub-section (3) of section 4;
- (e) such number of directors elected, in the prescribed manner, by shareholders, other than those mentioned in clauses (a), (b) and (c) of sub-section (3) of section 4, whose names are entered on the register of

1. Subs, by Act 39 of 2000, sec. 7, for section 9 (w.e.f. 5-9-2000).

2. Subs, by Act 39 of 2000, sec. 7, for section 10 (w.e.f. 5-9-2000).

shareholders of the Financial Corporation, ninety days before the date of the meeting in which such election takes place on the following basis, namely:—

- (i) where the total amount of issued equity share capital held by such shareholders is ten per cent, or less of the total issued equity capital, two directors;
  - (ii) where the total amount of issued equity share capital held by such shareholders is more than ten per cent, but less than twenty-five percent of total issued equity capital, three directors;
  - (iii) where the total amount of issued equity share capital held by such shareholders is twenty-five per cent, or more of total issued equity capital, four directors; and
  - (iv) where the total amount of issued equity share capital held by equity shareholders referred to in this clause does not permit election of all the four directors, the Board shall co-opt such number of directors as is required to make up the said number who shall retire in equal number on the assumption of charge by the elected directors in the order of their co-option;
- (f) a managing director appointed in accordance with the provisions of sub-section (1) of section 17:

Provided that on the first constitution of the Board, the directors referred to in clause (d) shall be nominated by the State Government and directors so nominated shall, for the purpose of this Act, be deemed to be elected directors:

Provided further that all the directors of the Board first constituted, other than the managing director, shall retire at the end of the first year.]

['\*\*\*]

<sup>2</sup>**[11. Term of office and retirement of directors.]**—(1) A nominated director shall hold office during the pleasure of the authority nominating him.

(2) Subject to the provisions of sub-section (1), a nominated director shall hold office for such term not exceeding three years and shall also be eligible for re-nomination:

Provided that no such director shall hold office continuously for a period exceeding six years.

(3) An elected director other than a director deemed to be elected under the first proviso to clause (d) of section 10 shall hold office for three years and shall also be eligible for re-election:

Provided that no such director shall hold office continuously for a period exceeding six years.

1. Section 11A ins by Act 43 of 1985, sec. 10 (w.e.f. 21-8-1985), and omitted by Act 39 of 2000, sec. 8 (w.e.f. 5-9-2000).

2. Subs. by Act 39 of 2000, sec. 9, for sections 11 and 12 (w.e.f. 5-9-2000).

**12. Disqualifications for being a director.**—No person shall be a director, if he—

- (a) has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force; or
- (b) is or at any time has been, adjudicated as insolvent or has suspended payment of his debts or has compounded with his creditors; or
- (c) has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment of not less than six months and a period of five years has not elapsed from the date of expiry of the sentence; or
- (d) is elected by the persons referred to in clause (d) of sub-section (3) of section 4 but not registered as shareholder in his own right of unencumbered shares of a nominal value of not less than ten thousand rupees in the Financial Corporation; or
- (e) has not paid any call in respect of shares of the Financial Corporation held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call.]

**13. Removal of director from office.**—<sup>1</sup>[(1)] The State Government may remove from office any director who—

- (a) is, or has become, subject to any of the disqualifications mentioned in Section 12; or
- (b) without excuse sufficient in the opinion of the State Government to exonerate it, is absent without leave of the Board from more than three consecutive meetings of the Board.

<sup>2</sup>[(2) The shareholders, other than those mentioned in clauses (a), (b) and (c) of sub-section (3) of section 4, whose names are entered on the register of shareholders, may, after giving to the director a reasonable opportunity of being heard in the manner as may be prescribed, by resolution passed by majority of the votes of such shareholders holding in the aggregate not less than one-half of the total issued equity share capital held by all such shareholders, remove any director elected under clause (d) of section 10 and elect in his place another person to fill the vacancy so caused.]

**14. Resignation of office by director and filling up of casual vacancies.**—<sup>3</sup>[(1) Any director elected under clause (d) of section 10 may, by giving notice in writing to the Chairman of the Board, resign from his office and on such resignation being accepted, shall be deemed to have vacated his office.]

(2) A casual vacancy in the office of an elected director shall be filled by election and a director so elected shall hold office for the unexpired portion of the term of his predecessor.

1. Section 13 renumbered as sub-section (1) thereof by Act 39 of 2000, sec. 10 (w.e.f. 5-9-2000).

2. Ins. by Act 39 of 2000, sec. 10 (w.e.f. 5-9-2000).

3. Subs. by Act 39 of 2000, sec. 11, for sub-sections (1) and (1A) (w.e.f. 5-9-2000). Sub-section (1A) was ins. by Act 56 of 1956, sec. 8 (w.e.f. 1-10-1956).

(3) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Board.

**'[15. Chairman of Board.]—**(1) The Small Industries Bank shall, in consultation with the State Government nominate a director as a Chairman of the Board for such period not exceeding three years and "on such terms and conditions as the Small Industries Bank may specify:

Provided that the Chairman shall not be a whole-time director unless he is also appointed to function as the managing director:

Provided further that the Chairman shall so long as he remains a director be eligible for re-appointment as Chairman.

(2) The Chairman shall preside over the meetings of the Board and the general meetings of the Financial Corporation.]

<sup>2</sup>**[16. Remuneration of directors.]—**The directors other than the managing director and not being servants of the Government shall be paid such fees as may be prescribed for attending meetings of the Board and, if they are members of the Executive Committee, or any other committee appointed by the Financial Corporation, for attending meetings of such committee.]

17. **Managing director.]—**<sup>3</sup>(1) The managing director shall—

- (a) be appointed, in consultation with the Small Industries Bank, by the State Government;
- (b) be a whole-time officer of the Financial Corporation;
- (c) perform such duties as the Board, by regulations, entrust or delegate to him;
- (d) hold office for such term not exceeding three years as the State Government may specify and shall be eligible for re-appointment;
- (e) receive such salary and allowances and be subject to other terms and conditions of service as the Board may, with the previous approval of the State Government, determine.]

<sup>4</sup>f(2) The State Government may, after consulting the Board, remove the managing director from office:

Provided that no managing director shall be so removed unless he has been given an opportunity of showing cause against his removal.]

<sup>5</sup>[(3) Notwithstanding anything contained in sub-section (1), the State Government, with prior consultation of the Small Industries Bank, shall have the right to terminate the term of office of the managing director at any time, before the expiry of the term

1. Subs. by Act 39 of 2000, sec. 12, for section 15 (w.e.f. 5-9-2000).

2. Subs. by Act 6 of 1962, sec. 7, for section 16 (w.e.f. 16-4-1962).

3. Section 17 renumbered as sub-section (1) of that section by Act 56 of 1956, sec. 9 (w.e.f. 1-10-1956) and subs. by Act 39 of 2000, sec. 13 (w.e.f. 5-9-2000).

4. Ins. by Act 56 of 1956, sec. 9 (w.e.f. 1-10-1956).

5. Ins. by Act 39 of 2000, sec. 13 (w.e.f. 5-9-2000).

specified under clause (d) of sub-section (1) by giving him notice of not less than three months in writing or three months salary and allowances in lieu of such notice . and the managing director shall also have right to relinquish his office at any time before the expiry of term specified under clause (d) of sub-section (1) by giving to. the State Government notice of not less than three months in writing.]

**'[18. Executive Committee.** — (1) The Board shall constitute an Executive Committee consisting of the chairman and managing director, the whole-time directors and such other directors as it may deem fit:

Provided that in- the case of a Joint Financial Corporation, if the directors nominated under clause (b) of section 10 represent different State Governments then, all of them shall be members of the Executive Committee.

(2) The Executive Committee shall discharge such functions as may be prescribed or as may be delegated to it by the Board.

(3) The Board may constitute such other committees whether consisting wholly of directors or wholly of other persons or partly of directors and partly of other persons for such purpose or purposes as it may think fit.]

**19. Meetings of the Board and Committee.** — (1) The Board and the Executive Committee shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings as may be provided by regulation made under this Act.

(2) All questions at a meeting shall be decided by a majority of votes of the members present, and, in the case of equality of Votes, the Chairman or in his absence, any other person presiding, shall have a second or casting vote.

(3) No director shall vote on any matter in which he is interested.

<sup>2</sup>[\* \* \*]

<sup>3</sup>[\* \* \*]

<sup>4</sup>[(5) If for any reason the Chairman of the Board or the Chairman of the Executive Committee is unable to attend any meeting of the Board or, as the case may be, of the Executive Committee, —

(a) in the case of the meeting of the Board, a director <sup>5</sup>[\* \* \*] authorised by the Chairman of the Board in writing shall preside at such meeting, but if the director so authorised is absent or if no such authorisation has been made, the Board may elect a director to preside at that meeting; and

(b) in the case of the meeting of the Executive Committee, a member authorised in writing by the Chairman of that Committee shall preside at

1. Subs, by Act 39 of 2000, sec. 14, for section 18 (w.e.f. 5-9-2000).

2. Sub-section (3A) ins. by Act 56 of 1956, sec. 11 (w.e.f. 1-10-1956) and omitted by Act 39 of 2000, sec. 15 (w.e.f. 5-9-2000).

3. Sub-section (4) subs, by Act 6 of 1962, sec. 9 (w.e.f. 16-4-1962) and omitted by Act 39 of 2000, sec. 15 (w.e.f. 5-9-2000).

4. Ins. by Act 6 of 1962, sec. 9 (w.e.f. 16-4-1962).

5. The words ", not being the managing director" omitted by Act 43 of 1985, sec. 12 (w.e.f. 21-8-1985).

that meeting, but if the member so authorised is absent or if no such authorisation has been made, the Committee may elect any of its members to preside at that meeting.]

**20. Powers of Executive Committee.**—(1) Subject to such general or special directions as the Board may from time to time give, the Executive Committee may deal with any matter within the competence of the Board.

(2) The minutes of every meeting of the Executive Committee '[shall, after confirmation thereof at the next meeting of the Executive Committee, be laid] before the Board at the next following meeting of the Board.

**21. Advisory Committee.**—The Financial Corporation may appoint <sup>2</sup>[one or more committee or committees consisting wholly of directors or wholly of other persons or partly of directors and partly of other persons] for the purpose of assisting the Financial Corporation in the efficient discharge of its functions and, in particular, for the purpose of securing that those functions are exercised with due regard to the circumstances and conditions prevailing in, and the requirements of, particular areas or industries.

<sup>3</sup>**22. Offices and agencies.**—The Financial Corporation shall establish its head office and other offices and agencies at such places as the State Government may, from time to time specify and save as aforesaid, the Financial Corporation may establish additional offices or agencies in such other places within the State as it may consider necessary.]

**23. Officers and other employees of the Financial Corporation.**—The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them:

<sup>4</sup>[\* \* \*]

### CHAPTER III

#### POWERS AND DUTIES OF THE BOARD

**24. General duty of the Board.**—The Board in discharging its functions under this Act shall act on business principles due regard being had by it to the interests of industry, commerce and the general public.

<sup>5</sup>**25. Business which Financial Corporation may transact.**—<sup>fi</sup>[(1) The Financial Corporation may, subject to the provisions of this Act, carry on and transact any of the following kinds of business, namely:—

1. Subs, by Act 43 of 1985, sec. 13, for "shall be laid" (w.e.f. 21-8-1985).
2. Subs, by Act 43 of 1985, sec. 14, for "one or more advisory committee or committees" (w.e.f. 21-8-1985).
3. Subs, by Act 77 of 1972, sec. 13, for section 22 (w.e.f. 30-12-1972).
4. Proviso added by Act 77 of 1972, sec. 14 (w.e.f. 30-12-1972) and omitted by Act 39 of 2000, sec. 16 (w.e.f. 5-9-2000).
5. Subs, by Act 6 of 1962, sec. 10, for section 25 (w.e.f. 16-4-1962).
6. Subs, by Act 39 of 2000, sec. 17, for sub-section (1) (w.e.f. 5-9-2000).

- (a) guaranteeing, on such terms and conditions as may be agreed upon,—
  - (i) loans raised by industrial concerns which are repayable within a period not exceeding twenty years, and are floated in the public market;
  - (ii) loans raised by industrial concerns from scheduled banks or State cooperative banks or other financial institutions;
- (b) guaranteeing, on such terms and conditions as may be agreed upon, deferred payments due from any industrial concern in connection with its purchase of capital goods within India;
- (c) underwriting of the issue of stock, shares, bonds or debentures by industrial concerns;
- (d) transferring for consideration any instruments relating to loans and advances granted by it to industrial concerns;
- (e) acting as agent of the Central Government or the State Government or the Development Bank or the Small Industries Bank or the IFCI Limited formed and registered under the Companies Act, 1956 (1 of 1956) or any other financial institution notified in this behalf by the Central Government in respect of any matter connected with, or arising out of, the grant of loans or advances to an industrial concern, or subscription to debentures of an industrial concern or relating to the business of the Development Bank, Small Industries Bank, IFCI Limited or financial institution;
- (f) subscribing to, or purchasing of, the stock, shares, bonds or debentures of an industrial concern or any other concern;
- (g) retaining as part of its assets any stock, shares, bonds or debentures which it may acquire by subscription or in fulfilment of its underwriting liabilities and disposing of the stock, shares, bonds or debentures so acquired;
- (h) granting loans or advances to, or subscribing to debentures of, an industrial concern, repayable within a period not exceeding twenty years from the date on which they are granted or subscribed to, as the case may be:

Provided that the Financial Corporation may, with the prior approval of the Small Industries Bank, exceed the said limit of twenty years up to a further period of ten years:

Provided further that nothing contained in this clause shall be deemed to preclude the Financial Corporation from granting loans or advances to, or subscribing to debentures of, and industrial concern to which may be attached an option to convert such debentures or loans into stock or shares of the industrial concern:

Provided also that the Financial Corporation may, in the exercise of such option, convert the amounts outstanding on such debentures or loans into stock or shares of the industrial concern if such concern increases its subscribed capital by the issue of further stock or shares in accordance with and subject to, the provisions of section 81 of the Companies Act, 1956 (1 of 1956).

*Explanation.*— In this clause, the expression "the amounts outstanding on such debentures or loans" shall mean the principal, interest and other

charges payable on such debentures or loans as at the time when the amounts are sought to be converted into stock or shares;

- (i) accepting or discounting promissory notes and bills of exchange made, drawn, accepted or endorsed by industrial concerns or by any person selling capital goods manufactured by one industrial concern to another industrial concern;
- (j) undertaking research and surveys for evaluating or dealing with marketing or investments or undertaking and carrying on techno-economic studies or other activities in connection with the development of any industry;
- (k) providing technical and administrative assistance to any industrial concern or any person for the promotion, management or expansion of any industry;
- (l) planning and assisting in the promotion and development of industries;
- (m) providing consultancy and merchant banking services;
- (n) acting as the trustee for the holders of debentures or other securities;
- (o) leasing, sub-leasing or giving on hire or hire-purchase of industrial plant, equipment, machinery or any other asset;
- (p) factoring;
- (q) providing export related credit and services;
- (r) undertaking money market related activities;
- (s) setting up of mutual funds and undertaking asset management activity;
- (t) promoting, forming or conducting or assisting in the promotion, formation, or conduct of companies, subsidiaries, societies, trusts or such other associations of persons as it may deem fit;
- (u) opening or confirming or endorsing letters of credit and negotiating or collecting bills and other documents drawn thereunder;
- (v) doing such other business as the Small Industries Bank may authorise, and or generally the doing of such acts and things as may be incidental to or consequential upon, the exercise of its powers or the discharge of its duties under this Act.

(2) The Financial Corporation may receive, in consideration of any of the services mentioned in sub-section (1), such commission, brokerage, interest, remuneration or fee as may be agreed upon.]

<sup>1</sup>[\* \* \*]

(3) Subject to the provisions of sub-section (5) of section 7, the aggregate of contingent liabilities of the Financial Corporation under clauses (a), (b) <sup>2</sup>[(c) and (ca)] of sub-section (1) shall not at any time exceed twice the paid-up share capital and

1. Sub-section (2) omitted by Act 43 of 1985, sec. 15 (w.e.f. 21-8-1985).

2. Subs, by Act 77 of 1972, sec. 15, for "and (c)" (w.e.f. 30-12-1972).

reserve fund of the Corporation except with the prior approval of the State Government and in consultation with the '[Small Industries Bank] but in no case shall exceed thrice the paid-up share capital and reserve fund of the Corporation.]

<sup>2</sup>[4) Nothing contained in this section shall entitle any Financial Corporation to hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent, of the subscribed share capital of that company or thirty per cent, of its own paid-up share capital and free reserves, whichever is less.

(5) If, on the commencement of the State Financial Corporations (Amendment) Act, 1972 (77 of 1972), any Financial Corporation is holding shares in excess of the limits specified in sub-section (4), the Corporation shall report the matter forthwith to the Reserve Bank and shall, within such period as the Reserve Bank may allow, so reduce its share holding as to conform to the provisions of that sub-section.]

<sup>3</sup>[25A. **Power to acquire rights.**—The Financial Corporation shall have the right to acquire, by transfer or assignment, the rights and interests of any such financial institution as may be notified by the Central Government (including any other rights incidental thereto) in relation to any loan or advance granted or any amount recoverable by such institution, either in whole or in part, by the execution or issue of any instrument or by the transfer of any instrument by endorsement or in any other manner:

Provided that such loan or advance or amount relates to any business which the Financial Corporation may transact under this Act.]

<sup>4</sup>[25B. **Gifts, grants etc.**—The Financial Corporation may receive gifts, grants, donations or benefactions from Government or any other source.]

<sup>5</sup>[26. **Limit of accommodation.**—On and from the commencement of the State Financial Corporations (Amendment) Act, 2000, the Financial Corporation shall not enter into any arrangements under clause (a), (d) or (h) of sub-section (1) of section 25 with any industrial concern so that the total amount outstanding against that concern in respect of all such arrangements together with the amount of the face value of the shares and stocks of that concern whether subscribed or agreed to be subscribed and the outstanding liabilities on account of underwriting agreements and the deferred payments guarantees is more than—

- (i) five hundred lakhs of rupees in the case of a corporation established "by or under any other law or a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) or a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or any other law relating to co-operative societies for the time being in force; and
- (ii) two hundred lakhs of rupees in any other case:

1. Subs, by Act 52 of 1975, sec. 35, for "Reserve Bank" (w.e.f. 16-2-1976) and again subs, by Act 39 of 2000 sec. 17, for "Development Bank" (w.e.f. 5-9-2000).

2. Ins. by Act 77 of 1972, sec. 15 (w.e.f. 30-12-1972).

3. Ins. by Act 43 of 1985, sec. 16 (w.e.f. 21-8-1985).

4. Ins. by Act, 39 of 2000, sec. 18 (w.e.f. 5-9-2000).

5. Section 26 subs, by Act 6 of 1962, sec. 11 (w.e.f. 16-4-1962) and again subs, by Act 39 of 2000, sec. 19 (w.e.f. 5-9-2000).

Provided that the Financial Corporation may, with the prior approval of the Small Industries Bank, exceed the limit under clause (i) or clause (ii) up to four times.]

**27. Power to impose conditions for accommodation.**—(1) In entering into any arrangement under section 25 with an industrial concern, the Financial Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Financial Corporation and securing that the accommodation granted by it is put to the best use by the industrial concern.

'[(2) Where any arrangement entered into by the Financial Corporation with an industrial concern provides for the appointment by the Financial Corporation of one or more directors of such industrial concern, such provision and any appointment of directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to the industrial concern, and any provision regarding share qualification, age limit, number of directorships, removal of office of directors and such like conditions contained in any such law or instrument aforesaid shall not apply to any director appointed by the Financial Corporation in pursuance of the arrangement as aforesaid.

(3) Any director appointed in pursuance of sub-section (2) shall—

- (a) hold office during the pleasure of the Financial Corporation and may be removed or substituted by any person by order in writing by the Financial Corporation;
- (b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;
- (c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement.]

**28. Prohibited business.**—<sup>2</sup>[(1)] The Financial Corporation shall not—

- '[(a) except as provided in section 8, accept deposits;
- (b) except as provided in clauses <sup>4</sup>[(da)], (f) and (g) of sub-section (1) of section 25, subscribe to the shares or stock of any company;]
- (c) grant any loan or advance on the security of its own shares;
- <sup>5</sup>[(d) grant any form of assistance to any industrial concern in respect of which the aggregate of the paid-up share capital and free reserves exceeds ten

1. Subs, by Act 77 of 1972, sec. 17, for sub-section (2) (w.e.f. 30-12-1972).  
 2. Section 28 re-numbered as sub-section (1) thereof by Act 77 of 1972, sec. 18 (w.e.f. 30-12-1972).  
 3. Subs, by Act 6 of 1962, sec. 13, for clauses (a) and (b) (w.e.f. 16-4-1962).  
 4. Ins. by Act 77 of 1972, sec. 18 (w.e.f. 30-12-1972).  
 5. Clause (d) ins. by Act 77 of 1972, sec. 18 (w.e.f. 30-12-1972) and subs, by Act 39 of 2000, sec. 20 (w.e.f. 5-9-2000).

crores of rupees or such higher amount not exceeding thirty crores of rupees as the State Government, on the recommendation of the Small Industries Bank, may, by notification in the Official Gazette, specify.]

[(2) The Financial Corporation shall not enter into any kind of business with any industrial concern, of which any of the directors of the Financial Corporation is a proprietor, partner, director, manager, agent, employee or guarantor, or in which one or more directors of the Financial Corporation together hold substantial interest:

Provided that this section shall not apply to any industrial concern if any director of the Financial Corporation—

- (i) is nominated as a director of the Board of such concern by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or by a Corporation established by or under any other law; or
- (ii) is elected on the Board of such concern by virtue of shares held in the concern by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or by a Corporation established by or under any other law, by reason only of such nomination or election, as the case may be.

*Explanation.*—"Substantial interest" in relation to an industrial concern means the beneficial interest held by one or more of the directors of the Financial Corporation or by any relative as defined in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956) of such director whether singly or taken together, in the shares of the industrial concern, the aggregate amount paid-up on which either exceeds five lakhs of rupees or five per cent, of the paid-up share capital of the industrial concern, whichever is less.

- (3) The provisions of sub-section (2)—
  - (i) shall not apply to any transaction relating to the business entered into prior to the commencement of the State Financial Corporations (Amendment) Act, 1972 (77 of 1972) and all such business and any transaction in relation thereto may be implemented or continued as if that Act had not come into force;
  - (ii) shall apply only so long as the conditions precedent to such disability as set out in the sub-section continue.]

**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 <sup>2</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, the Financial Corporation shall have the <sup>3</sup>[right to take over the management or

1. Ins. by Act 77 of 1972, sec. 18 (w.e.f. 30-12-1972).

2. Ins. by Act 77 of 1972, sec. 19 (w.e.f. 30-12-1972).

3. Subs. by Act 77 of 1972, sec. 19, for "right to take over the management of the industrial concern" (w.e.f. 30-12-1972).

possession or both of the industrial concerns], as 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 <sup>2</sup>[\* \* \*] under sub-section (1), shall vest in the transferee all rights in or to the property transferred <sup>3</sup>[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.

<sup>4</sup>[(4) '[Where any action has been taken against an industrial concern] under the provisions of sub-section (1), all costs, <sup>6</sup>[charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it <sup>7</sup>[as incidental thereto] shall be recoverable from the industrial concern and the money which is received by it <sup>8</sup>[\* \* \*] 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 <sup>1</sup>[the concern].

#### COMMENTS

(i) A loanee industrial unit hypothecated its property to the Financial Corporation. On not being able to repay the whole amount of loan the property was put on sale. Loanee industrial unit was not given an opportunity before accepting offer of the prospective purchaser as to why such offer should not be accepted. Such a sale is vitiated. Loanee's offer to repay balance of loan in lump sum was rejected without giving any ground for rejection but the Corporation agreed to get its dues back from purchaser in instalments. This attitude of the Corporation is *mala fide* and against the normal conduct of the instrumentality of the State, *Ashvi Electric, Adityapur v. Bihar State Financial Corporation*, AIR 2000 Pat 27.

(ii) On default being made in payment of loan by the petitioner State Financial Corporation proceeded to seize the Unit of the petitioner and an advertisement was given for its sale. Sale offer was accepted and possession was handed over to the purchaser. The agreement for sale was challenged but no relief was granted. Subsequent challenge on the ground that no reasonable opportunity was granted is not tenable; *Smt. Sudha Tripathi v. State of Madhya Pradesh*, AIR 1999 MP 188.

1. Subs, by Act 56 of 1956, sec. 14, for "right to sell" (w.e.f. 1-10-1956).
2. The words "of sale and realisation" omitted by Act 56 of 1956, sec.14 (w.e.f. 1-10-1956).
3. Subs, by Act 56 of 1956, sec. 14, for "as if the sale" (w.e.f. 1-10-1956).
4. Subs, by Act 56 of 1956, sec. 14, for sub-section (4) (w.e.f. 1-10-1956).
5. Subs, by Act 77 of 1972, sec. 19, for certain words (w.e.f. 30-12-1972).
6. Subs, by Act 6 of 1962, sec. 14, for "charges and expenses properly incurred" (w.e.f. 16-4-1962).
7. Subs by Act 77 of 1972, sec. 19, for "as incidental to such management, or transfer and realisation".
8. The words "from such management, or transfer and realisation" omitted by Act 77 of 1972, sec. 19 (w.e.f. 30-12-1972).
9. Subs, by Act 6 of 1962, sec. 14, for "the owner of the concern" (w.e.f. 16-4-1962).

(iii) Financial Corporation taking over the industrial concern is deemed to be an owner thereof and has absolute rights to sell the industrial concern as its unit or even sell its machinery and equipment in a single lot separately from the landed property if it subserves the interest of the corporation *i.e.* realisation of the amount due to it. Moreover, section 52A of the Companies Act, 1952 cannot be involved in contradiction of this section of the Act; *F.S. Chhajerh v. Kerala Financial Corporation*, (1995) 82 Com Cas Ker 1.

(iv) Even though this section does not provide as such, but in view of the principles of natural justice and fair play it is necessary for the corporation to issue notice to the guarantor regarding the intended auction lest in the absence of serving of such notice, the corporation cannot carry on with the intended auction. In other words, both borrower and guarantor are entitled to such prior notice of an intended auction; *Smt. Hiranyaprava Samantray v. Orissa State Financial Corporation*, AIR 1995 Ori 1.

(v) Where possession of factory premises of a company taken over by Financial Corporation was legal and valid action under this section, workers of debt company were held to be having no right of hearing in such circumstances. Writ Petition filed by workers challenging proceedings under this section is not maintainable; *Mahabir Prashad Sharma v. Collector Rewari at Narnawl*, AIR 1995 P&H 11.

(vi) Where after the rehabilitation package prescribed in respect of sick industry, the State Financial Bank and some other bank had agreed to give loan to the sick industry but there was inordinate delay in releasing the loan and that was the prime cause of non-revival of the industrial unit in question and the industry had deposited the amount prescribed by the court during the pendency of writ application, the State Financial Bank which had taken possession of the industry was directed to deliver possession of the unit to the entrepreneur and further directed both the banks to release the balance of the amount they had agreed to pay to industrial unit as the banks had not acted fairly; *M/s. Surendra Steel Industries (P.) Ltd. v. Orissa State Financial Corporation*, AIR 1995 Ori 48.

(vii) Seizure of an industrial unit can neither be said to be unfair for unreasonable if such action is resorted to by the State Financial Corporation concerned by reason of default in prepayment of loan by the former; *M.D. Mishra v. State of Orissa*, AIR 1995 Ori 52.

(viii) Under this section Financial Corporation can take possession of an industrial concern for realizing its debts from the borrower. It can further transfer it. To bring a case under this section Financial Corporation should have given the loan and the borrower should have been unable to pay the same; *U.P. Financial Corporation v. Gajendra Cold Storage (P) Ltd.*, 1992 (1) Bank CLR 769.

(ix) If a loanee is unable to pay the debt, the Corporation is entitled to take the possession of the property and can further transfer it; *Miss K.T. Sulochana Nair v. Managing Director, Orissa State Financial Corporation*, AIR 1992 Ori 157.

(x) State Financial Corporation can ask for its dues even if the industrial concern does not have working capital or power supply. The Industrial concern has no right to refuse the instalment due on the basis of above mentioned grounds; *Jeenu Plast India (Private) Ltd. v. Orissa State Financial Corporation*, AIR 1992 Ori 196.

**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 or 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 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 '[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 '[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 subsection (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.

[(1A) When the application is for the relief mentioned in clause (aa) of subsection (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 subsection (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.

(3) Before passing any order under sub-section (1) or sub-section (2) [or issuing a notice under sub-section (1A)] the district judge may, if he thinks fit, examine the officer making the application.

<sup>2</sup>[(4) At the same time as he passes an order under sub-section (1), the district judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed.

(4A) If no cause is shown on or before the date specified in the notice under sub-section (1A) the district judge shall forthwith order the enforcement of the liability of the surety.]

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the district Judge shall forthwith make the *ad interim* order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (5 of 1908) insofar as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the district judge may—

- (a) confirm the order of attachment and direct the sale of the attached property;
- (b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;
- (c) release the property from attachment;
- (d) confirm or dissolve the injunction; <sup>3</sup>[\* \* \*];
- <sup>4</sup>[(da) direct the enforcement of the liability of the surety or reject the claim made in this behalf; or]
- (e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

Provided that when making an order under clause (c) <sup>4</sup>[or making an order rejecting the claim to enforce the liability of the surety under clause (da) or making an order rejecting the claim to transfer the management of the industrial concern to the Financial Corporation under clause (e)], the district judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

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

2. Subs. by Act 43 of 1985, sec. 20, for sub-section (4) (w.e.f. 21-8-1985).

3. The word "or" omitted by Act 43 of 1985, sec. 20 (w.e.f. 21-8-1985).

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

Provided further that unless the Financial Corporation intimates to" the district judge that it will not appeal against any order releasing any property from attachment "[or rejecting the claim to enforce the liability of the surety or rejecting the claim to transfer the industrial concern to the Financial Corporation], such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure 1908 (5 of 1908) for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

<sup>2</sup>[(8A) An order under this section transferring the management of an industrial concern to the Financial Corporation shall be carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the possession of immovable property or the delivery of movable property in execution of a decree, as if the Financial Corporation were the decree-holder.]

(9) Any party aggrieved by an order <sup>3</sup>[under sub-section (4A), sub-section (5)] or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

<sup>4</sup>[(11) The functions of a district judge under this section shall be exercisable—

- (a) in a presidency town, where there is a city civil court having jurisdiction, by a judge of that court and in the absence of such court, by the High Court; and
- (b) elsewhere, also by an additional district judge <sup>5</sup>[or by any judge of the principal court of civil jurisdiction].]

"[(12) For the removal of doubts it is hereby declared that any court competent to grant an *ad interim* injunction under this section shall also have the power to appoint a Receiver and to exercise all the other powers incidental thereto.]

#### COMMENTS

(i) If any property is mortgaged under section 32, the debtor can take the help of Order 34 Rule 5 of the Code of Civil Procedure and get the mortgaged redeemed; *Maganlal v. M/s. Jaiswal Industries*, AIR 1989 SC 2113.

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

2. Ins. by Act 56 of 1956, sec. 16 (w.e.f. 1-10-1956).

3. Subs. by Act 43 of 1985, sec. 20, for "under sub-section (5)" (w.e.f. 21-8-1985).

4. Subs. by Act 6 of 1962, sec. 15, for sub-section (11) (w.e.f. 16-4-1962).

5. Ins. by Act 77 of 1972, sec. 21 (w.e.f. 30-12-1972).

(ii) The District Judge has full power to deliver the possession of property sold in auction; *S.A.N. Engineering and Lucomotive Company Ltd., Bangalore v. Gujarat State Financial Corporation*, AIR 1989 Bom 236.

(iii) The court has full powers to pass any order as far as auction sale is concerned. If an order is made by a District Judge, it is made by the court of District Judge; *M/s. Hotel Natraj v. Karnataka State Financial Corporation*, AIR 1989 Kant 90.

(iv) When the Financial Corporation has complied with the requisite provisions of this section to enforce the securities mortgaged/pledged/hypothecated to it in case of non-payment of loan amount, the question does not arise as to any further application for execution as such or for invocation of provisions of the Code of Civil Procedure; *The Maharashtra State Finance Corporation v. Esther D. Gama*, AIR 1988 Bom 61.

(v) The District Court exercising jurisdiction under this section has certain inherent powers by virtue of the relevant provisions of Code of Civil Procedure to meet the ends of justice or to prevent abuse of the process of the court. In exercise of such inherent powers, the court can entertain an application for setting aside of an *ex-parte* order, provided that it is satisfied as to existence of sufficient cause for non-appearance on the date fixed by the applicants; *Rakesh Sugar Tail Factory, Mohammadabad v. U.P. Financial Corporation, Kanpur*, AIR 1984 All 23.

**'[32A. Power of Financial Corporation to appoint directors or administrators of an industrial concern when management is taken over.—**(1) When the management of an industrial concern is taken over by the Financial Corporation, the Financial Corporation may, by order notified in the Official Gazette, appoint as many persons as it thinks fit,—

- (a) in any case in which the industrial concern is a company as defined in the Companies Act, 1956 (1 of 1956) to be directors of that industrial concern; or
- (b) in any other case, to be administrators of that industrial concern.

(2) The power to appoint directors or administrators under this section includes the power to appoint any individual, firm or company to be the managing agent or manager of the industrial concern on such terms and conditions as the Financial Corporation may think fit.]

<sup>2</sup>[(3) Nothing in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in any instrument relating to the industrial concern shall, in so far as it makes in relation to a director, any provision for the holding of any share qualification, age limit, restriction on the number of directorships, retirement by rotation or removal from office, apply to any director appointed by the Financial Corporation under this section.]

**'[32B. Effect of notified order under section 32A.—**On the issue of a notified order under section 32A.—

- (a) in any case in which the industrial concern is a company as defined in the Companies Act, 1956 (1 of 1956) all persons holding office as directors of the industrial concern and in any other case, all persons holding any

1. Ins. by Act 56 of 1956, sec. 17 (w.e.f. 1-10-1956).

2. Ins. by Act 6 of 1962, sec. 16 (w.e.f. 16-4-1962).

office having the powers of superintendence, director and control of the industrial concern, immediately before the issue of the notified order, shall be deemed to have vacated their offices as such;

- (b) any contract of management between the industrial concern and any managing agent or any director or manager thereof holding office as such immediately before the issue of the notified order shall be deemed to have terminated;
- (c) in the case of an industrial concern which is a company as defined in the Companies Act, 1956 (1 of 1956) the managing agent, if any, appointed under section 32A shall be deemed to have been duly appointed in pursuance of the said Act and the memorandum and articles of association of the industrial concern and the provisions of the said Act and the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly, but no such managing agent shall be removed from office except with the previous consent of the Financial Corporation;
- (d) the directors or the administrators appointed under section 32A shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the industrial concern is, or appears to be, entitled, and all the property and effects of the industrial concern shall be deemed to be in the custody of the directors or administrators as the case may be, as from the date of the notified order;
- (e) the directors appointed under section 32A shall, for all purposes, be the directors of the industrial concern duly constituted under the Companies Act, 1956 (1 of 1956) and such directors, or as the case may be, the administrators appointed under section 32A, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the industrial concern, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial concern or from any other source whatsoever.] :

[32C. **Powers and duties of directors and administrators.**—(1) Subject to the control of the Financial Corporation, the directors, or as the case may be, the administrators appointed under section 32A, shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial concern and shall exercise such powers and have such duties as may be prescribed.

(2) Without prejudice to the generality of the powers vested in them under subsection (1), the directors or as the case may be, the administrators appointed under section 32A, may, with the previous approval of the Financial Corporation, make an application to a court for the purpose of cancelling or varying any contract or agreement entered into at any time before the issue of the notified order under section 32A,

between the industrial concern and any other person and the court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial concern, make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) that contract or agreement and the contract or agreement shall have effect accordingly.]

**'[32D. No right to compensation for termination of contract of managing agent, managing director, etc.—**(1) Notwithstanding anything to the contrary contained in any contract or in any law for the time being in force, no managing agent, managing director or any other director or a manager or any person in charge of management of an industrial concern shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with such concern.

(2) Nothing contained in sub-section (1) shall affect the right of any such managing agent or managing director, or any other director or manager or any such person in charge of management to recover from the industrial concern, moneys recoverable otherwise than by way of such compensation.]

**'[32E. Application of Act 1 of 1956.—**(1) Where the management of an industrial concern, being a company as defined in the Companies Act, 1956 (1 of 1956), is taken over by the Financial Corporation, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such concern,—

- (a) it shall not be lawful for the shareholders of such concern or any other person to nominate or appoint any person to be a director of the concern;
- (b) no resolution passed at any meeting of the shareholders of such concern shall be given effect to unless approved by the Financial Corporation;
- (c) no proceeding for the winding up of such concern or for the appointment of receiver in respect thereof shall lie in any court, except with the consent of the Financial Corporation.

(2) Subject to the provisions contained in sub-section (1) and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government in consultation with the State Government, by notification in the Official Gazette, specify in this behalf, the Companies Act, 1956 (1 of 1956) shall continue to apply to such concern in the same manner as it applied thereto before the issue of the notified order under section 32A.]

**'[32F. Restriction on filing of suits for dissolution, etc., of an industrial concern not being a company when its management is taken over.—**(1) Where the management of an industrial concern not being a company as defined in the Companies Act, 1956 (1 of 1956) is taken over by the Financial Corporation, no suit or proceedings for dissolution or for partition shall, insofar as it relates to that industrial concern, lie in any court or before any tribunal of other authority except with the consent of the Financial Corporation.

(2) No proceeding for the appointment of any official assignee or receiver in relation to any industrial concern the management of which has been taken over by the Financial Corporation shall lie in any court except with consent of the Financial Corporation.]

**<sup>1</sup>[32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue.]**—Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.]

#### CHAPTER IV

### INVESTMENT OF FUNDS, ACCOUNTS AND AUDIT

**33. Funds of the Financial Corporation.**—(1) Every Financial Corporation shall have its own fund, and all receipts of the Financial Corporation shall be carried thereto and all payments by the Corporation shall be made therefrom.

(2) All moneys belonging to the fund shall be deposited in the Reserve Bank <sup>2</sup>[or the State Bank of India or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959)] <sup>3</sup>[or in any of the banks specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970)] <sup>4</sup>[or any of the banks specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980)] <sup>5</sup>[or, in consultation with the Reserve Bank, in a scheduled bank or a State Co-operative Bank].

**<sup>6</sup>[34. Investment of funds.]**—The Financial Corporation may invest its funds in accordance with applicable guidelines and prudential norms as may be prescribed and in such securities as the Board may decide from time to time.]

**35. Disposal of profits.**—(1) The Financial Corporation shall establish a reserve fund.

(2) After making provision for bad and doubtful debts, depreciation of assets and all other matters which are usually provided for by banking companies, the Financial Corporation may out of its net annual profits declare a dividend:

<sup>7</sup>[\*\*\*]

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

2. Subs. by Act 6 of 1962, sec. 17, for "or with any agency of the Reserve Bank other than a Government treasury" (w.e.f. 16-4-1962).

3. Ins. by Act 77 of 1972, sec. 22 (w.e.f. 30-12-1972).

4. Ins. by Act 43 of 1985, sec. 22 (w.e.f. 21-8-1985).

5. Subs. by Act 56 of 1956, sec. 18, for "or in a scheduled bank in consultation with the Reserve Bank" (w.e.f. 1-10-1956).

6. Subs. by Act 39 of 2000, sec. 21, for section 34 (w.e.f. 5-9-2000).

7. The proviso omitted by Act 39 of 2000, sec. 22 (w.e.f. 5-9-2000).

<sup>1</sup>[\* \* \*]

<sup>2</sup>**35A. Special reserve fund.**—(1) the Financial Corporation may establish a special reserve fund, to which shall be transferred such portion of the dividends accruing to the State Government Development Bank and the Small Industries Bank on the shares of the Financial Corporation as may be fixed by agreement between the State Government, Development Bank and the Small Industries Bank:

Provided that after the notified date this sub-section shall have effect as if for the words "the State Government, the Development Bank and the Small Industries Bank", the words "the State Government and the Small Industries Bank" have been substituted except as regards all dividends accruing in respect of any completed accounting period prior to the notified date.

(2) No shareholder of the Financial Corporation, other than the State Government or the Small Industries Bank, shall have any claim to the special reserve fund.

(3) The amount standing to the credit of the special reserve fund may be utilised by the Financial Corporation for only such purposes as are approved by the State Government and the Small Industries Bank.]

**36. General meetings.**—(1) A general meeting (hereinafter referred to as the annual general meeting) shall be held annually at a place in the State where there is an office of the Financial Corporation within '[four months] from the date on which the annual accounts of the Financial Corporation are closed, and a general meeting may be convened by the Board at any other time.

<sup>4</sup>[(2) The shareholders present at the annual general meeting shall be entitled to discuss and adopt—

- (a) the balance-sheet and profit and loss account of the Financial Corporation made up to the date on which its accounts are closed and balanced;
- (b) the report of working of the Financial Corporation for the period covered by the accounts;
- (c) the auditor's report on the balance-sheet and accounts; and
- (d) proposals for declaration of dividend and capitalisation of reserves.

(3) The shareholders present at an annual general meeting may also discuss any other matter to be transacted at such meetings in accordance with the provisions of this Act.]

**37. Audit.**—<sup>5</sup>[(1) The accounts of the Financial Corporation shall be audited by auditors duly qualified to act as the auditors under sub-section (1) of section 226 of the Companies Act, 1956 (1 of 1956), who shall be appointed by the Financial

1. Sub-section (3) omitted by Act 77 of 1972, sec. 23 (w.e.f. 30-12-1972).

2. Section 35A ins. by Act 6 of 1962, sec. 19 (w.e.f. 16-4-1962) and subs, by Act 39 of 2000, sec. 23 (w.e.f. 5-9-2000).

3. Subs, by Act 43 of 1985, sec. 24, for "three months" (w.e.f. 21-8-1985).

4. Subs, by Act 39 of 2000, sec. 24, for sub-section (2) (w.e.f. 5-9-2000).

5. Sub-section (1) subs, by Act 77 of 1972, sec. 25 (w.e.f. 3-12-1972) and again subs, by Act 39 of 2000, sec. 25 (w.e.f. 5-9-2000).

Corporation in general meeting of shareholders out of the panel of auditors approved by the Reserve Bank of India for such terms and on such remuneration as the Reserve Bank may fix.]

(2) Every auditor shall be supplied with a copy of the annual balance-sheet of the Financial Corporation, and it shall be his duty to examine it, together with the accounts and vouchers relating thereto, and every auditor shall have a list delivered to him of all books kept by the Financial Corporation and shall at all reasonable times have access to the books, accounts and other documents of the Financial Corporation and may in relation to such accounts examine any director or officer of the Financial Corporation.

(3) The auditors shall make a report to the shareholders upon the annual balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of affairs of the Financial Corporation, and in case they had called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(4) The State Government may, in consultation with the Comptroller and Auditor-General of India, at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Financial Corporation for the protection of its shareholders and creditors or upon the sufficiency of their procedure in auditing the affairs of the Financial Corporation and may enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted, or direct that any other examination be made by the auditors, if in its opinion public interest so requires.

(5) The Financial Corporation shall send a copy of every report of the auditors to the Comptroller and Auditor-General of India at least one month before it is placed before the shareholders.

(6) Notwithstanding anything contained in the preceding sub-sections, the Comptroller and Auditor-General of India may, either of his own motion or on a request received in this behalf from a State Government, undertake such audit and at such times as he may consider necessary:

'\*\*\*]

(7) Every audit report under sub-section (6) shall be forwarded to the State Government and the Government shall cause the same to be laid before the Legislature of the State.

<sup>2</sup>**[37A. Inspection.]**—(1) The '[Small Industries Bank] at any time may, with the approval of the Central Government, and on being directed so to do by that Government shall cause an inspection to be made by one or more of its officers of the working of any Financial Corporation and its books and accounts; and the '[Small Industries Bank] shall send the report of such inspection to the Central Government and to the State Government and shall supply a copy thereof to the Financial Corporation.

1. Proviso omitted by Act 39 of 2000, sec. 25 (w.e.f. 5-9-2000).

2. Ins. by Act 56 of 1956, sec. 21 (w.e.f. 1-10-1956).

3. Subs. by Act 52 of 1975, sec. 37, for "Reserve Bank" (w.e.f. 16-2-1976) and against subs by Act 39 of 2000, sec. 26, for "Development Bank" (w.e.f. 5-9-2000),

(2) It shall be the duty of every director or every officer of the Financial Corporation to produce to any officer making an inspection under sub-section (1) all such books, accounts and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the Financial Corporation as the said officer may require of him within such time as the said officer may specify.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or in any other law for the time being in force, no court, tribunal or other authority shall have power to require the '[Small Industries Bank] or any of its officers to produce before such court, tribunal or other authority the report of the inspection made by it under sub-section (1) or any copy thereof.

(4) The State Government may, after considering any report sent to it under sub-section (1), give such instructions to the Board as it considers necessary and it shall be the duty of the Board to comply with such instructions.]

**38. Returns.**—<sup>2</sup>[(1) The Financial Corporation shall furnish to the State Government, the '[Small Industries Bank] and the Reserve Bank such statements and returns in such form as the State Government, the '[Small Industries Bank] or the Reserve Bank may require from time to time.]

(3) The Financial Corporation shall furnish <sup>4</sup>[to the State Government, the '[Small Industries Bank] and the Reserve Bank] within <sup>5</sup>[four months] of the close of each financial year a statement in the prescribed form of its assets and liabilities as at the close of that year, together with a profit and loss account for the year, the auditors' report and a report of the working of the Financial Corporation during the year and copies of the said statement, account and reports shall be published in the Official Gazette and shall also be laid before the Legislature of the State.

#### CHAPTER V

#### MISCELLANEOUS

#### **39. Power to give instructions to Financial Corporation on questions of policy.—**

(1) In the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government <sup>6</sup>[in consultation with <sup>7</sup>[and after obtaining the advice of,] the "[Small Industries Bank]].

(2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

1. Subs, by Act 52 of 1975, sec. 37, for "Reserve Bank" (w.e.f. 16-2-1976) and against subs by Act 39 of 2000, sec. 26, for "Development Bank" (w.e.f. 5-9-2000).

2. Subs by Act 43 of 1985, sec. 25, for sub-sections (1) and (2) (w.e.f. 21-8-1985).

3. Subs, by Act 39 of 2000, sec. 27, for "Development Bank" (w.e.f. 5-9-2000).

4. Subs, by Act 52 of 1975, sec. 38, for "to the State Government and to the Reserve Bank" (w.e.f. 16-2-1976).

5. Subs, by Act 56 of 1956, sec. 22, for "three months" (w.e.f. 1-10-1956).

6. Ins. by Act 56 of 1956, sec. 23 (w.e.f. 1-10-1956).

7. Ins. by Act 77 of 1972, sec. 26 (w.e.f. 30-12-1972).

8. Subs, by Act 52 of 1975, sec. 37, for "Reserve Bank" (w.e.f. 16-2-1976) and again subs by Act 39 of 2000, sec. 28, for "Development Bank" (w.e.f. 5-9-2000).

<sup>1</sup>[(2A) Nothing contained in sub-section (1) and sub-section (2) shall apply in a case where a State Government holds less than fifty-one per cent, of the equity shares in the Financial Corporation.

(2B) Notwithstanding the equity share holding of a Financial Corporation by a State Government, the State Government may advise the Financial Corporations on the matters of policy.]

(3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government <sup>2</sup>[under sub-section (1) of this section or the instructions given to the Board under sub-section (4) of section 37A], the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up, and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any court.

**40. Declaration of fidelity and secrecy.** — <sup>3</sup>[(1) The Financial Corporation shall not, except as otherwise required by this Act or any other law for the time being in force, divulge any information relating to, or to the affairs of, its constituents except in circumstances in which it is, in accordance with the law or practice and usage, customary among bankers, necessary or appropriate for the Financial Corporation to divulge such information.

(2) The Financial Corporation may, for the purpose of efficient discharge of its functions under this Act, collect from, or furnish to —

- (a) the Central Government;
- (b) the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955), any subsidiary bank within the meaning of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) any other scheduled bank, any "[State Co-operative Bank, the Small Industries Bank or the Development Bank],

such credit information or other information as it may consider useful for the purpose, in such manner and at such time as it may think fit.

*Explanation.* — For the purposes of this sub-section, the expression "credit information" shall have the same meaning as in clause (c) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934) subject to the modification that the banking company referred to therein shall mean a bank referred to in clause (b) of this sub-section.]

<sup>3</sup>[(3) Every director, auditor, officer or other employee of the Financial Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

1. Ins. by Act 39 of 2000, sec. 28 (w.e.f. 5-9-2000).

2. Ins. by Act 56 of 1956, sec. 23 (w.e.f. MO <956).

3. Ins. by Act 48 of 1983, sec. 6 (w.e.f. 30-12-1983).

4. Subs. by Act 39 of 2000, sec. 29, for "State Co-operative Bank or the Development Bank" f/.e.f. 5-9-2000).

5. Section 40 renumbered as sub-section (3) thereof by Act 48 of 1983, sec. 6 (w.e.f. 30-12-1983).

**41. Indemnity of directors.**—(1) Every director shall be indemnified by the Financial Corporation against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) A director shall not be responsible for any other director or for any officer or other employee of the Financial Corporation or for any loss or expenses resulting to the Financial Corporation by the insufficiency or deficiency of value of or title to any property or security acquired or taken on behalf of the Financial Corporation or by anything done in good faith in the execution of the duties of his office or in relation thereto.

<sup>1</sup>[**41 A. Protection of action taken by persons appointed under section 27 or section 32A.**—No suit, prosecution or other legal proceeding shall lie against any person appointed as director, administrator, managing agent or manager by the Financial Corporation in pursuance of section 27 or section 32A for anything which is in good faith done or intended to be done by him as such director, administrator, managing agent or manager.]

<sup>2</sup>[**41B. Nomination in respect of deposits, bonds, etc.**—(1) Notwithstanding anything contained in any other law for the time being in force, where a nomination in respect of any deposits, bonds or other securities is made in the prescribed manner, the amount due on such deposits, bonds or securities shall, on the death of the depositor or holder thereof, vest in, and be payable to, the nominee subject to any right, title or interest of any other person to such deposits, bonds or securities.

(2) Any payment by the Financial Corporation in accordance with the provisions of subsection (1) shall constitute a full discharge to the Financial Corporation on its liability in respect of such deposits, bonds or securities.]

**42. Offences.**—(1) Whoever, in any bill of lading, warehouse receipt or other document given to the Financial Corporation, whereby security is given or is purported to be given to the Financial Corporation for any accommodation granted by it under this Act, wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

(2) Whoever, without the consent in writing of the Financial Corporation, uses the name of the Financial Corporation in any prospectus or advertisement shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) No court shall take cognizance of any offence punishable under this Act otherwise than on a complaint in writing signed by an officer of the Financial Corporation authorised by the Board in this behalf.

**43. Provisions relating to income-tax and super-tax.**—For the purposes of the '[Income-tax Act, 1961(43 of 1961)], the Financial Corporation shall be deemed to be a company within the meaning of that Act and shall be liable to income-tax and super-tax accordingly on its income, profits and gains:

1. Ins. by Act 6 of 1962, sec. 21 (w.e.f. 16-4-1962).

2. Ins. by Act 39 of 2000, sec. 30 (w.e.f. 5-9-2000).

3. Subs. by Act 43 of 1985, sec. 26, for "Indian Income-tax Act, 1922 (11 of 1922)" (w.e.f. 21-8-1985).

Provided that any sum paid by the State Government under the guarantee given in pursuance of <sup>1</sup>[\*\*\*] <sup>2</sup>[section 7 or section 8] shall not be treated as the income, profits and gains of the Financial Corporation and any interest on debentures, <sup>3</sup>[bonds or deposits] paid by the Financial Corporation out of such sum shall not be treated as expenditure incurred by it:

Provided further that in the case of any shareholder such portion of a dividend as has been paid out of any such sum advanced by the State Government shall be deemed to be <sup>4</sup>[his] income from "interest on securities" <sup>5</sup>[and the income-tax shall be payable thereon as if it were the interest receivable on any security of a State Government issued income-tax free] within the meaning of section 8 of that Act.

<sup>6</sup>**[43A. Delegation of powers.**—The Board may, by general or special order, delegate to the managing director or to any other officer of the Financial Corporation <sup>7</sup>[or to any committee appointed under section 21] subject to such conditions and limitations, if any, as may be specified in the order such of its powers and duties under this Act as it may deem necessary.]

<sup>8</sup>**[43B. Reports to the Board.**—(1) The minutes of every meeting of the committee appointed under section 21 shall, after confirmation thereof at the next meeting of the committee, be laid before the Board at the next following meeting of the Board.

**44. Act 18 of 1891 to apply to the books of the Financial Corporation.**—The Financial Corporation shall be deemed to be a bank for the purposes of the Bankers' Books Evidence Act, 1891 (18 of 1891).

**45. Liquidation of Financial Corporation.**—No provision of law relating to winding up of companies or corporations shall apply to the Financial Corporation, and the Financial Corporation shall not be placed in liquidation, save by order of the State Government and in such manner as it may direct. 'o- «-;- •-.-; -, »v:-?Tt-S ,&A .

**46. Power to apply Act to certain financial institutions in existence at commencement of Act.**—(1) The Central Government may by notification in the Official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to <sup>10</sup>[any institution established by a State Government] which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a Financial Corporation established by the State Government for the State within the

1. The words "Section 6 or" omitted by Act 39 of 2000, sec. 31 (w.e.f. 5-9-2000).
2. Subs, by Act 6 of 1962, sec. 22, for certain words (w.e.f. 16-4-1962).
3. Subs, by Act 6 of 1962, sec. 22, for "or bonds" (w.e.f. 16-4-1962).
4. Subs, by Act 48 of 1952, sec. 3 and Sch.II, for "its" (w.e.f. 2-8-1952).
5. Subs, by Act 6 of 1962, sec. 22, for "declared to be ingopje^-Jax free" (w.e.f. 16-4-1962).
6. Ins. by Act 6 of 1962, sec. 23 (w.e.f. 16-4-1962).
7. Ins. by Act 43 of 1985, sec. 27 (w.e.f. 21-8-1985).
8. Ins. by Act 43 of 1985, sec. 28 (w.e.f. 21-8-1985).
9. Sub-section (2) omitted by Act 39 of 2000, sec. 32 (w.e.f. 5-9-2000).
10. Subs, by Act 43 of 1985, sec. 29, for "any institution in existence at the commencement of this Act" (w.e.f. 21-8-1985).

meaning of this Act, and the provisions of this Act shall become applicable thereto according to the tenor of the notification:

<sup>1</sup>[Provided that no notification shall be issued under this sub-section in respect of any institution unless a request is made in that behalf by the State Government concerned.]

(2) Any notification issued under sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification.

<sup>2</sup>**46A. Extension of jurisdiction of the Financial Corporation to other States by agreement.**—(1) Where a Financial Corporation has been established for any State <sup>3</sup>[and one or more other States not served in whole or in part by a Financial Corporation] desires that the Financial Corporation <sup>4</sup>[should serve the needs of those States or of any area therein], and the States, after consultation with the <sup>5</sup>[Small Industries Bank], enter into an agreement which is published in the Official Gazettes of each of those States, then the Financial Corporation shall, on the issue of a notification in the Official Gazette by the Central Government, serve the needs of those States <sup>6</sup>[or, as the case may be, of the area therein] in terms of the agreement <sup>6</sup>[and any Financial Corporation or any State may enter into separate or successive agreements as aforesaid with one another or with other Financial Corporations of States and in relation to different areas of the States].

<sup>6</sup>[(1A) Any agreement entered into under sub-section (1) may be modified or rescinded by mutual agreement between the parties thereto and every such mutual agreement shall also provide for the apportionment of assets and liabilities].

(2) An inter-State agreement among the participating States may, as far as may be, make all such provisions as are referred to in sub-section (2) of section 3A.

**46B. Effect of Act on other laws.**—The provision of this Act and of any rule or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern.]

<sup>7</sup>[\*\*\*]

1 Ins. by Act 43 of 1985, sec. 29 (w.e.f. 21-8-1985).

2. Ins. by Act 56 of 1956, sec. 24 (w.e.f. 1-10-1956).

3. Subs. by Act 77 of 1972, sec. 27, for "and any other State" (w.e.f. 30-12-1972).

4. Subs. by Act 77 of 1972, sec. 27, for "should serve its needs" (w.e.f. 30-12-1972).

5. Subs. by Act 52 of 1975, sec. 37, for "Reserve Bank" (w.e.f. 16-2-1976) and again subs. by Act 39 of 2000, sec. 33, for "Development Bank" (w.e.f. 5-9-2000).

6. Ins. by Act 77 of 1972, sec. 27 (w.e.f. 30-12-1972).

7. Section 47 omitted by Act 39 of 2000, sec. 34 (w.e.f. 5-9-2000).

**48. Power of Board to make regulations.**—(1) The Board may, after consultation with the '[Small Industries Bank] and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for—

- (a) the holding and conduct of elections under this Act, including the final decision on doubts or disputes regarding the validity of elections;
- (b) the manner in which, and the conditions subject to which, the first allotment of the shares of the Financial Corporation shall be made;
- (c) the manner in which, and the conditions subject to which, the shares of the Financial Corporation may be held and transferred and generally all matters relating to the rights and duties of shareholders;
- <sup>2</sup>[(ca) the maintenance of register of shareholders, particulars to be entered in such register, the safeguards to be observed in the maintenance of register of shareholders on computer floppies or diskettes, compact disk or any other electronic form the inspection and closure of the register of shareholders and all other matters connected therewith under section 6;
- (cb) the manner of nomination of directors under clause (d) of section 10;
- (cc) the entrusting or delegation of duties to the managing director by the Board under clause (c) of sub-section (1) of section 17;
- (cd) the functions of Executive Committee under sub-section (2) of section 18;
- (ce) the guidelines and prudential norms in accordance with which investment may be made under section 34;
- (cf) the manner in which nomination may be made under section 41B; and
- (cg) the investments (whether by way of deposits in bank or otherwise) of the amounts which are not for the time being required for transaction of business;]
- (d) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised;
- (e) the calling of meetings of the Board, and of the Executive Committee, fees for attending meetings thereof and the conduct of business thereat;
- (f) the manner and terms of issue and repayment of bonds and debentures by the Financial Corporation;
- (g) the conditions which the Financial Corporations may impose in granting loans or advances;

1. Subs. by Act 52 of 1975, sec. 37, for "Reserve Bank" (w.e.f. 16-2-1976) and again subs by Act 39 of 2000, sec. 35, for "Development Bank" (w.e.f. 5-9-2000).

2. Ins. by Act 39 of 2000, sec. 35 (w.e.f. 5-9-2000).

[\* \* \*]

- (i) the forms of returns and statements required under this Act;
- (j) the duties and conduct of officers, other employees, advisers and agents of the Financial Corporation;
- (k) the establishment and maintenance of provident or other benefit funds for employees of the Financial Corporation;
- (l) the taking over of the management of any industrial concern on a breach of its agreement with the Financial Corporation;
- (m) the appointment of <sup>2</sup>[committees] for the purposes of this Act, <sup>3</sup>[fees for attending meetings thereof and the conduct of business thereat]; and
- (n) generally, the efficient conduct of the affairs of the Financial Corporation.
- <sup>4</sup>[(o) the form and manner in which the balance-sheet and the accounts of the Financial Corporation shall be prepared;
- (p) any other matter which is to be, or may be, prescribed.]

<sup>5</sup>[(3) All regulations made under this section shall be published in the Official Gazette and any such regulation shall have effect from such earlier or later date as may be specified in the regulations.]

<sup>6</sup>[48A. **Laying of rules and regulations before State Legislature;**—<sup>7</sup>[\* \* \*] and every regulation made under section 48 shall be laid, as soon as may be after it is made, before the State Legislature.]

<sup>8</sup>[48B. **Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for the procedure for filing and hearing of appeals under subsection (5) of section 5.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter

1. Clause (h) omitted by Act 43 of 1985, sec. 30 (w.e.f. 21-8-1985).

2. Subs, by Act 43 of 1985, sec. 30, for "advisory committees for technical and other advice" (w.e.f. 21-8-1985).

3. Ins. by Act 56 of 1956, sec. 25 (w.e.f. 1-10-1956).

4. Ins. by Act 39 of 2000, sec. 35 (w.e.f. 5-9-2000).

5. Subs, by Act 77 of 1972, sec. 28, for sub-section (3) (with retrospective effect).

6. Ins. by Act 4 of 1986, sec. 2 and Sch. (w.e.f. 15-5-1986).

7. The words "Every rule made under section 47 and "omitted by Act 39 of 2000, sec. 36 (w.e.f. 5-9-2000).

8. Ins. by Act 39 of 2000, sec. 37 (w.e.f. 5-9-2000).

have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

**\*[49. Power to remove difficulty.**—If any difficulty arises in giving effect to the provisions of this Act, as amended by the Public Financial Institutions Laws (Amendment) Act, 1975 (52 of 1975), the Central Government may, by order, do anything, not inconsistent with such provisions, for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiration of three years from the commencement of the said Amendment Act.]

*THE SCHEDULE*

<sup>2</sup>[See section 40(3)]

**DECLARATION OF FIDELITY AND SECRECY**

I, ..... do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as a director, officer, employee or auditor (as the case may be) of the Financial Corporation and which properly relate to any office or position in the said Financial Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Financial Corporation, nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Financial Corporation and relating to the business of the Financial Corporation.

Signed before me

Signature

1. Ins. by Act 52 of 1975, sec. 39 (w.e.f. 16-2-1976).  
2. Subs, by Act 48 of 1983, sec. 6, for "(See section 40)" (w.e.f. 30-12-1983).