IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY THE 16TH DAY OF JUNE 2016.

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

O.P.No.285 of 1998

In the matter of State Financial Corporation Act 1951.

M/s.State Industries Promotion, Corporation of Tamil Nadu Limited, represented by the Managing Director.

..Petitioner

-vs-

1.M/s.Southern Castings Limited, No.4, Venkatesa Agaraharam Road, Mylapore, Madras 600 004, represented by the Director.

2.C.J.Karunamurthy.

..Respondents

Original Petition praying that to determine and enforce the liability of the 2nd Respondent by directing the 2nd Respondent to pay a sum of Rs.6,37,34,391.31/- together with interest at 9% per annum for 16.04.1998 till date of payment and in default to proceed against his assets and for costs.

This Original Petition coming on this day before this court for hearing Court made the following order:

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This Petition has been filed under Section 31 (a)(11) and 32 of the State Financial Corporation Act, 1951, to determine and enforce the liability of the second respondent by directing the second respondent to pay a sum of Rs.6,37,34,391.31 together with interest at 9% per annum from 16.04.1998 till date of payment and in default to proceed against his assets.

2.The matter is pending from 1998 onwards. Despite several adjournments, there is no representation on behalf of the respondents.

3.The petitioner is a public limited company. The first respondent applied for financial assistance for setting up an industrial unit and it was sanctioned three term loans and an interest free sales tax loan. The first respondent created mortgage over fixed assets of the company and executed security documents over the land and building and plant and machinery in favour of the petitioner, towards security. The second respondent executed personal guarantee for each of the loan in the form of guarantee cum indemnity bonds.

4.The first respondent committed default in repayment of the dues. Therefore, action was initiated under Section 29 of the State Financial Corporation Act and the mortgaged

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assets of the first respondent were brought for sale by the Tamil Nadu Industrial Investment Corporation Limited. Pursuant to the auction, the first respondent was informed about the highest offer. Since the first respondent did not come forward to pay the dues, the sale was confirmed. After adjusting the sale proceeds, the first respondent is in arrears of Rs.6,37,34,391.31. The first respondent approached the BIFR for rehabilitation of the company. Since the efforts taken were not successful, the BIFR recommended for winding up of the first respondent company..

4.One Mr.G.Mohan, Assistant Manager of SIPCOT Limited, Chennai was examined as P.W.1 and marked the following documents viz., Exs.P1 to P19:

Ex.P1 is the sanction order dated 07.12.1979 for Rs.30 lakhs to the first respondent company.

Ex.P2 is the undertaking in original dated 18.09.1980 given by the respondents.

Ex.P3 is the deed of hypothecation in original dated 11.09.1980 given by the respondents.

Ex.P4 is the sanction order dated 13.02.1981 in original granting further loan of Rs.12 lakhs to the respondents.

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Ex.P5 is the undertaking dated 25.11.1981 in original given by the respondents.

Ex.P6 is the deed of hypothecation in original dated 25.11.1981 given by the respondents.

Ex.P7 is the deed of guarantee dated 25.11.1981 given by the respondents.

Ex.P8 is the sanction order dated 14.10.1982 for additional term loan of Rs.4.33 lakhs.

Ex.P9 is the deed of undertaking dated 02.03.1983 given by the respondents.

Ex.P10 is the deed of hypothecation dated 02.03.1983 executed by the respondents.

Ex.P11 is the deed of guarantee dated 02.03.1983 executed by the respondents.

Ex.P12 is the sanction order dated 13.10.1982 for the sanction of interest free sales tax loan.

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Ex.P13 is the deed of undertaking dated 02.03.1983 executed by the respondents.

Ex.P14 is the deed of hypothecation dated 02.03.1983 executed by the respondents.

Ex.P15 is the deed of guarantee dated

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02.03.1983 executed by the respondents.

Ex.P16 is the copy of the foreclosure notice issued by the petitioner Corporation to the respondents for their default in payment of dues.

Ex.P17 is the statement of accounts tabulating the total amount of dues, due by the respondents as Rs.6,37,34,391.31.

Ex.P18 is the letter dated 28.03.1994 addressed by TIIC to the petitioner enclosing a cheque for Rs.27.54 lakhs on pro-rate basis.

Ex.P19 is the letter dated 29.03.1996 addressed by TIIC to the petitioner enclosing a cheque for Rs.3.02 lakhs towards the balance amount.

5.By way of cross-examination of P.W.1, the following documents were marked:

Ex.R1 is the registered copy of the sale deed executed on 11.03.1994.

Ex.R2 is the letter addressed to the General Manager, TIIC by the Sountern Castings Limited dated 26.12.1990.

Ex.R3 is the letter from TIIC addressed to

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the General Manager, SIPCOT dated 09.01.1991.

4.The facts, as narrated above, are not in dispute and the status of the respondents is also not in dispute. There is also no dispute regarding the borrowing of the loan and execution of guarantee.

5.Considering the averments made in the petition and on perusing the materials available on record, I am of the opinion that the petitioner is entitled for the relief sought for in the petition.

6.In fine, this petition is ordered and the second respondent is directed to pay a sum of Rs.6,37,34,391.31 together with interest at 9% per annum from 16.04.1998 till date of payment and in default to proceed against his assets.

Sd/.M.M.S.J

16.06.2016

//Certified to be a true copy//
Dated this the day of 2016.

S.s/24.10.2016 COURT OFFICER

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From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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