

**O.P.No.297 of 2017**

**K.KALYANASUNDARAM, J.,**

This Petition has been filed under Section 31 (i)(aa) of the State Financial Corporation Act, 1951, for a direction to the respondents jointly and severally to pay a sum of Rs.1,09,83,82,941/- to the petitioner-Corporation together with interest from the date of petition till the date of realisation, failing which to proceed against personally and against their properties and for costs.

2.The petitioner is a public limited company. The first respondent applied for financial assistance for set up an unit for the manufacture of Cold Formed Steel Components, viz., High Tensile Standard Nuts, High Tensile Special Nuts etc., at SIPCOT Industrial Complex, Gummidipoondi with the petitioner-Corporation and it sanctioned a term loan of Rs.99,00,000/- on 25.03.1987 and subsidy of Rs.15,00,000/- on 06.07.1987. Equity mortgage was created for the term loan of Rs.98,00,000/-, out of the term loan of Rs.99,00,000/-, balance Rs.1,00,000/- was created by way of registered mortgage.

3. It is further stated that the respondents 2 to 5 have executed Deed of Personnel Guarantees on 19.05.1987 and 03.09.1987 for the due repayment of the term loan of Rs.99,00,000/- and subsidy of Rs.15,00,000/- by the first respondent. The respondents 3 to 5 have also executed a Deed of Hypothecation on 19.05.1987, thereby hypothecating the machinery and equipment purchased out of the financial assistance of the Petitioner. The guarantee is a continuing one of the liabilities and the sureties are coextensive with the first respondent. Since the first respondent company did not pay the amount due to the petitioner and committed breach of terms and conditions stipulated in the agreement, the petitioner foreclosed the loan and has taken possession of the machinery and brought for public auction and sold it for a sum of Rs.38,00,000/- to M/s.Ramsays Corporation, Chennai. Likewise, the land and building were sold to the highest bidder M/s.Durai Shipping and Services (P) Ltd., for a sum of Rs.72,45,000/-.

4. It is the case of petitioner that after adjusting sale proceeds, there is still a sum of Rs.1,09,83,82,941/- due payable by the first respondent towards the loan. Therefore, the petitioner is entitled to recover the amount due from the second to fifth respondents.

5. Though the respondents have been served and their names have also been printed in the cause list, there was no representation on behalf of the respondents. Therefore, the matter was directed to be listed before the learned Master for recording evidence on 11.01.2018.

6. One Mr.T.Pichai Srinivasan, Deputy Manager of the petitioner Corporation was examined as P.W.1 and filed proof affidavit, reiterating the averments contained in the petition and marked Exs.P1 to P13 viz.,

| <b>Exs</b> | <b>Documents</b>                                                                                          | <b>Dated</b> |
|------------|-----------------------------------------------------------------------------------------------------------|--------------|
| P1         | Original authorisation letter given by the petitioner Company in his favour to give evidence in this case | 30.01.2018   |
| P2         | Original Loan sanction letter along with terms and conditions of sanction of loan                         | 03.04.1987   |
| P3         | Original Deed of undertaking                                                                              | 19.05.1987   |
| P4         | Original Deed of Hypothecation                                                                            | 19.05.1987   |
| P5         | Original Deed of personal guarantee of term loan                                                          | 19.05.1987   |
| P6         | Original Registered deed of indenture                                                                     | 18.05.1987   |
| P7         | Photocopy of Form No.8 filed with the Registrar of Companies for the term loan of Rs.98,00,000/-          | 15.06.1987   |
| P8         | Photocopy of Form No.8 filed with the Registrar of Companies for the term loan of Rs.1,00,00,000/-        | 15.06.1987   |
| P9         | Original Deed of undertaking                                                                              | 03.09.1987   |
| P10        | Original Deed of personal guarantee                                                                       | 03.09.1987   |
| P11        | Copy of the forecloser letter                                                                             | 05.09.1990   |

| <b>Exs</b> | <b>Documents</b>                       | <b>Dated</b> |
|------------|----------------------------------------|--------------|
| P12        | Office copy of the letter              | 05.11.2014   |
| P13        | Statement of accounts as on 31.12.2014 | -            |

7. 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.

8. 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.

9. In fine, this petition is ordered and the respondents 2 to 5 herein are directed to pay jointly and severally a sum of Rs.1,09,83,82,941/- to the petitioner Corporation together with interest at the rate of 6% p.a from the date of the petition till the date of realisation.

30.10.2019

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