IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 21ST DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.P. No. 845 of 2016

(In the matter of State Financial Corporations Act, 1951)

State Industries Promotion Corporation
of Tamilnadu Limited,
Represented by its Managing Director. ... Petitioner

-Vs-

1.a) M/s. F.C. Alloy Steels Pvt. Limited,
Y-69, Anna Nagar,
Chennai – 600 040.

b) M/s. F.C. Alloy Steels Pvt. Limited.,
Plot No.1-B, SIPCOT Indl. Complex,
Pudukottai – 622 002.
Pudukottai District.

2. Thiru V. Kothadaraman,
S/o. K.V. Nath,
Y-69, Anna Nagar,
Chennai – 600 040.

3. a) Thiru V. Sathyanarayanan,
S/o. N. Vedachalam,
352, Pudukottai Housing Units,
Rajagopalapuram,
Pudukottai – 622 003.

b) Thiru V. Sathyanarayanan,
Y-69, Anna Nagar,
Chennai – 600 040.

4. a) Thiru V. Raghunathan,
S/o. T.S. Viswanathan,
350, Pudukottai Housing Units,
Rajagopalapuram,
Pudukottai – 622 003.

b) Thiru V. Raghunathan,
Y-69, Anna Nagar,
Chennai – 600 040.

5. M/s. Tamilnadu Industrial Investment,
Corporation Limited,
No.692, Anna Salai,
Nandanam,
Chennai – 600 035. ... Respondents

Original petition praying that this Hon'ble Court be pleased to pass an order in favour of the petitioner and against the respondents.

a) Determining the liabilities of the respondents and directing the respondents jointly and severally to pay the petitioner a sum of Rs.33,94,75,957.22 together with interest per annum from till the date of realization failing which to proceed against personally and against their properties.

b) For the cost of the petition.

This Original Petition coming on this day before this Court for hearing in the presence of Mrs.Sudarshana Sundar, Advocate for the

Petitioner herein and Mr.K.Magesh, Advocate for the 5th respondent herein and the respondents 1 to 4 herein not appearing in person or by advocate and upon reading the petition filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and this Court having observed that the respondent 2 to 4 are the guarantors to all the loan transactions and they have also not paid the dues to the petitioner, **it is ordered as follows :-**

That the respondents 1 to 4 jointly and severally do pay to the Petitioner herein, a sum of Rs.48,33,95,161/- (Rupees Forty Eight Crores Thirty Three Lakhs Ninety Five Thousand One Hundred and Sixty One only) with further interest at the rate of 6% per annum on the sum of Rs.33,94,75,957.22 (Rupees Thirty Three Crores Ninety Four Lakhs Seventy Five Thousand Nine Hundred and Fifty Seven and Twenty Two paise only) from this date till the date of realisation.

2. That the respondents 1 to 4 herein, be and are hereby directed to pay the aforesaid amount to the petitioner herein, within a period of one month from the date of receipt of copy of this order.

3. That in so far as the 5th respondent is concerned, they are only a formal party, as there is a “Paripassu Arrangement” between them and the Petitioner, with regard to the loan availed by the first respondent company

and its repayment, therefore, the petition as against the 5th respondent herein, be and is hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 21ST DAY OF DECEMBER 2021.

Sd/-
ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ED

03.01.2022

O.P. No. 845 of 2016

ORDER

DATED : 21.12.2021

THE HON'BLE MR. JUSTICE

ABDUL QUDDHOSE

FOR APPROVAL: 20/01/2022

APPROVED ON : 20/01/2022

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No.692, Anna Salai,
Nandanam,
Chennai – 600 035. ... Respondents

Original petition praying that this Hon'ble Court be pleased to pass an order in favour of the petitioner and against the respondents.

a) Determining the liabilities of the respondents and directing the respondents jointly and severally to pay the petitioner a sum of Rs.33,94,75,957.22 together with interest per annum from till the date of realization failing which to proceed against personally and against their properties.

b) For the cost of the petition.

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

This petition has been filed under Section 31(1) (aa) of the State Financial Corporation Act, 1951, seeking for determination that the liability of the respondents to the petitioner is Rs.33,94,75,957.22 and to direct the respondents jointly and severally to pay the petitioner the said sum from the date of filing of this petition till the date of realization, failing which, proceed against the respondents personally against their properties.

2. The petitioner is a Public Limited Company, incorporated under the Indian Companies Act, 1956 and is also a Government Company, as per Section 617 of the Companies Act.

3. The petitioner was incorporated to promote and develop medium and major industries and also to hasten the Industrial Development in backward and underdeveloped areas in the State of Tamil Nadu. One of the functions of the petitioner was to grant loans and advances to the Industrial concerns in the State of Tamil Nadu on the security of mortgage, hypothecation etc., of the immovable and movable properties of such industrial concerns. The petitioner is a deemed Financial Corporation within the meaning of Section 46(1) of the State Financial Corporations Act, 1951.

4. The first respondent availed financial facilities from the petitioner on various dates from 04.02.1983 to 31.08.1990. The details of the financial facilities availed by the first respondent from the petitioner are as follows:

a) First Term Loan of Rs.34.00 lakhs out of Term Loan of Rs.35.00 lakhs

b) Term Loan of Rs.1.00 lakh out of the Total Sanction of Rs.35.00 lakhs

c) Second (Additional) Term Loan of Rs.13.00 lakhs

d) Third Term Loan (RSR Scheme) of Rs.3.00 lakhs

e) IFST Loan of Rs.63.62 lakhs

f) IDBI Seed Capital Assistance of Rs.5.00 lakhs

g) Subsidy of Rs.10.30 lakhs

5. For availing the financial facilities and to secure the loans, the respondents have executed Deed of Hypothecation, Deed of Undertaking Personal Guarantee and have also executed Registered Mortgage dated 04.02.1983 in favour of the petitioner.

6. The first respondent is the principal borrower and excepting for the respondent No.5, all other respondents are the guarantors. The respondent No.5 is a formal party, as there is a "Paripassu Arrangement" between the petitioner and the fifth respondent. The fifth respondent is also

interested in recovering money from the first respondent and its guarantors. No relief has been sought for against the fifth respondent in this petition.

7. The first respondent-Company was declared as a sick unit by the Board for Industrial and Financial Reconstruction (BIFR). Since efforts made by the BIFR to rehabilitate the unit did not yield desired results, the BIFR recommended for winding up of the unit on 22.02.1993. The Office of the Official Liquidator has taken over the unit on 24.05.2001, as ordered by this Court in C.P.No.43 of 1995 dated 23.03.2001.

8. This Court, by its order dated 13.04.2004, confirmed the sale of plant and machinery in favour of M/s.Jessi Constructions for Rs.18,10,000/-. and by its order dated 04.04.2005, confirmed the sale of land and building in favour of Shri.V.Lawrence, Sole proprietor, M/s.Jessi Constructions, Neyveli for Rs.12,50,000/-. From and out of the sale proceeds, the petitioner received the proportionate share of Rs.22,79,350/- from the Official Liquidator on 05.10.2007. After adjusting the pro-rata share, according to the petitioner, there still remains a balance of Rs.33,94,75,957.22 due and payable by the first respondent as on 31.12.2014 towards the loan availed by them. The details of the outstanding

amount of Rs.33,94,75,957.22, due as on 31.12.2014, are detailed hereunder:

Heads	Amount (in Rupees) as on 31.03.2014
1. Term Loan Principal Outstanding	70,70,647.22
2.Term Loan Interest over dues a.Sundries recoverable Principal b.Interest on sundries	32,77,67,804.00 13,954.00 9,03,629.00
3.IFST loan – Principal Penal interest	6,60,000.00 25,42,582.00
4.Seed Capital: Principal Service Charges	 4,35,000.00 82,341.00
Total	33,94,75,957.22

9. The first respondent is the borrower and the respondents 2, 3 and 4 are the guarantors and they are jointly and severally liable to pay the aforementioned amount to the petitioner. The petitioner has also issued a notice dated 22.12.2011 to the respondents, calling upon them to pay the dues and despite the said notice, the respondents have failed to pay the amount. In such circumstances, this petition has been filed to determine the liabilities of the respondents and direct them to pay the determined amount to the petitioner together with interest from the date of petition till the date of realization.

10. Before the learned Master, G.Jeyachandran, Authorised Representative of the Petitioner-Corporation was examined as a witness (P.W.1). In his deposition, he has reiterated the contents of the affidavit filed in support of O.P. No.845 of 2016. Through P.W.1, the following documents were marked as Exhibits.

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Exhibits	Nature of the document
Ex.P-1	Original Authorisation letter dated 16.11.2021.
Ex.P-2	Original sanction letter dated 16.09.1982.
Ex.P-3	Original Deed of Undertaking dated 04.02.1983.
Ex.P-4	Original Deed of Hypothecation dated 04.02.1983.
Ex.P-5	Original Deed of registered mortgage dated 04.02.1983.
Ex.P-6	Original Personal Guarantee for Term Loan dated 04.02.1983.
Ex.P-7	Office copy of the Form No.8 dated 16.06.1983 for creation of equitable mortgage.
Ex.P-8	Office copy of the Form No.8 dated 19.02.1983 for creation of equitable mortgage.
Ex.P-9	Office copy of the sanction letter dated 16.10.1984.
Ex.P-10	Original Deed of Undertaking dated 23.01.1985.
Ex.P-11	Original Deed of Hypothecation dated 23.01.1985.
Ex.P-12	Original Deed of personal guarantee for term loan dated 23.01.1985.
Ex.P-13	Office copy of the Form No.8 for creation of equitable mortgage.
Ex.P-14	Office copy of the sanction letter dated 05.01.1990.
Ex.P-15	Original Deed of Undertaking dated 31.08.1990.
Ex.P-16	Original Deed of Hypothecation dated 31.08.1990.
Ex.P-17	Original Deed of personal guarantee for term loan dated 31.08.1990.
Ex.P-18	Office copy of the Form No.8 dated 24.09.1990 for creation of equitable mortgage.
Ex.P-19	Office copy of the sanction letter dated 08.07.1986.

Exhibits	Nature of the document
Ex.P-20	Original Deed of Hypothecation dated 18.11.1987.
Ex.P-21	Original Deed of Undertaking dated 18.11.1987.
Ex.P-22	Original Deed of Personal Guarantee dated 18.11.1987.
Ex.P-23	Original sanction letter dated 06.06.1983.
Ex.P-24	Original Deed of Hypothecation dated 06.06.1983.
Ex.P-25	Original Deed of Undertaking dated 06.06.1983.
Ex.P-26	Original Personal Guarantee dated 06.06.1983.
Ex.P-27	Original Deed of Undertaking dated 04.03.1983.
Ex.P-28	Original Deed of Guarantee dated 04.03.1983.
Ex.P-29	Office copy of the foreclosure and recall order dated 18.11.1991.
Ex.P-30	Office copy of the Invoking of Personal Guarantee dated 22.12.2011.
Ex.P-31	Office copy of Official Liquidator to the petitioner claim dated 16.05.2007.
Ex.P-32	Certified copy of the Account Statement as on 31.12.2014.

11. As seen from the evidence available on record, it is clear that the first respondent is a defaulter under various loan agreements entered into between the petitioner and referred to supra. The respondents 2 to 4 are guarantors to the loan transaction, as they have executed personal guarantees in favour of the petitioner for the due repayment of the loan by the first respondent-Company. All the personal guarantees have also been marked as Exhibits. The Deed of Hypothecation, Deed of Undertaking executed by the respondents have also been marked as Exhibits, before the learned master as referred to supra.

12. After giving due consideration to the pleadings as well as the evidence available on record, it is clear that the first respondent is a defaulter under various loan facilities availed by them from the petitioner and they have not repaid the dues in accordance with the respective loan agreements to the petitioner. The respondents 2 to 4 are the guarantors to all the loan transactions and they have also not paid the dues to the petitioner. Being guarantors, the respondents 2 to 4 are jointly and severally liable to pay the determined amount to the petitioner for the default committed by the first respondent. The petitioner has filed the account statement as on 31.12.2014 which gives the details of outstanding amount payable by the respondents, which reflects that a sum of Rs.33,94,75,957.22 is due payable by the respondents No.1 to 4 as on 31.12.2014.

13. This Court, after giving due consideration to the pleadings as well as the evidence available on record, is of the considered view that the petitioner has proved its claim and a sum of Rs.33,94,75,957.22 is due payable by the respondents No.1 to 4 jointly and severally to the petitioner together with interest at rate of 6% per annum from the date of petition till the date of realization. The respondents No.1 to 4 are directed to pay the aforementioned sum to the petitioner within a period of one month from the

date of receipt of copy of this Order.

14. Insofar as the 5th respondent is concerned, they are only a formal party, as there is a "Paripassu Arrangement" between them and the petitioner with regard to the loan availed by the first respondent Company and its repayment. Therefore, the petition as against the 5th respondent is dismissed and petition as against the respondents No.1 to 4 is allowed as prayed for.

Sd./- A.Q.J.,
21.12.2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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