



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 24TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

O.P.No.402 of 1998

In the matter of State Financial
Corporation Act

State Industries Promotion,
Corporation of Tamilnadu Ltd.,
represented by the Managing Director
registered office at No.19A,
Rukmani Lakshmipathy Road,
Egmore, Chennai- 600 008

...Petitioner

VS

1.M/s.Casino Rexines
274, Purasawalkam High Road,
Chennai - 600 007

2.H.Abbas
No.40, Rosarry Church Road,
First Lane, Chennai-4

3.A.M.K.Abdul Hameed
No.1, Ranganathan Street,
Chennai -17

...Respondents

Original Petition praying that this Hon'ble Court be pleased to

a)determine and enforce the liability of the respondents 2 and 3 by

directing respondents 2 and 3 to pay jointly and severally the sum of

Rs.1,11,64,145/- together with interest 20.5% p.a. on Rs.1,11,64,145/- from

1.6.98 till date of payment and in default to proceed against their assets.



b) pay the costs of the petition.

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This original petition coming on this day before this Court for hearing in the presence of Ms. Sudharsana Sundar, Advocate for the petitioner herein and the respondents 2 and 3 herein not appearing in person or by advocate and upon reading the plaint filed herein and upon perusing the evidence adduced therein and the other exhibits therein referred to and this Court having observed that the petitioner has proved its claim,

It is ordered as follows :-

That the respondents 2 and 3 herein as a personal guarantors are liable to pay the amount due to the petitioner corporation herein.

2. That the petitioner herein shall be at liberty to recover the outstanding dues in the manner known to law.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 24TH DAY OF MARCH 2022.

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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O.P.No.402 of 1998

ORDER

DATED : 24.03.2022

THE HON'BLE MR. JUSTICE
P.VELMURUGAN

FOR APPROVAL: 13.04.2022

APPROVED ON : 21.04.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.03.2022

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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

O.P.No.402 of 1998

State Industries Promotion

Corporation of Tamil Nadu Ltd.,
represented by the Managing Director

... Petitioner

vs.

1.M/s.Casino Rexines

2.H.Abbas

3.A.M.K.Abdul Hameed

... Respondents

Original Petition filed under Section 31(1)(aa) of the State Financial Corporation Act, 1951, praying to

a) determine and enforce the liability of the respondents two and three by directing the respondents two and three to pay jointly and severally the sum of Rs.1,11,64,145/- together with interest at 20.5% p.a. on Rs.1,11,64,145/- from 1.6.98 till date of payment and in default to proceed against their assets;

b) pay the costs of the petition;

c) pass such further orders as this Hon'ble Court may deem fit under the circumstances.

For Petitioner

For Respondents

: M/s.Sudharsana Sundar

: Mrs.Kalpa Reddy

for R2 & R3 – No Appearance



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ORDER

This petition filed under Section 31(1)(aa) of the State Financial Corporation Act, 1951, directing the respondents 2 and 3 to pay the petitioner a sum of Rs.1,11,64,145/- together with interest at 20.5% per annum from the date of filing till the date of realisation.

2. The case in brief is as follows :

The petitioner is the deemed Financial Corporation within the meaning of the terms as contemplated in Section 46(1) of the State Financial Corporation Act, 1951. The first respondent is the borrower and the respondents 2 and 3 are the guarantors of the said loan transaction. The first respondent approached the petitioner for financial assistance and the petitioner Corporation sanctioned term loan for a sum of Rs.10 lakhs to the first respondent on 16.5.1981. Apart from the above term loan, the petitioner-Corporation sanctioned Central Investment Subsidy for a sum of Rs.5 lakhs on 16.6.1981, for which, the 1st respondent created a mortgage over fixed assets of the Company and the respondents 2 and 3 have executed personal guarantee. Further, there was a paripassu agreement between the petitioner/Corporation and 'Tamil Nadu Industrial Investment Corporation Limited' [hereinafter referred to as 'TIIC' for sake of



respondent. However, the respondents failed to repay the loan amounts and hence, the petitioner Corporation sent a foreclosure notice dated 29.03.1989 to the respondents. In order to protect the interest of the TIIC as well as the petitioner-Corporation, on 17.8.1989 TIIC took possession of the mortgaged assets of the first respondent firm by exercising the powers under Section 29 of 'the State Financial Corporation Act, 1951' [hereinafter referred to as 'SFC Act' for brevity and convenience] and sold the plant and machinery on 24.03.1992 for a sum of Rs.5.75 lakhs in favour of the M/s.Eastern Star Pvt. Ltd., Bangalore and also the land and building on 25.8.1994 for a sum of Rs.13,12,990/-. As per the paripassu agreement, the petitioner-Corporation received a sum of Rs.1,80,700/- from TIIC towards the sale of plant and machineries and Rs.5,96,295.40/- towards the sale of land and building. The total amount received by the petitioner by way of sale of assets of the 1st respondent firm is Rs.7,76,995.40/- and the said sale consideration was credited to the loan account. Hence, the petitioner-Corporation is entitled to recover the balance dues from the personal guarantors/respondents 2 and 3 herein. On 18.1.1996, the petitioner Corporation issued a notice invoking personal guarantee and the respondents 2 and 3 sent a reply notice, for which, the petitioner Corporation also sent a rejoinder and the same was acknowledged by the respondents 2 and 3. As per the Statement of



partnership firm is Rs.1,11,64,145/-. Further, as per the personal guarantee/Ex.P4, the respondents 2 and 3 are liable to pay the due amount to the petitioner-Corporation.

3. The 2nd respondent alone filed a counter affidavit and denied the various averments. The loan availed by the first respondent as well as the deed of guarantee executed are admitted. The petitioner took possession of the hypothecated assets of the first respondent firm in the year 1984 and the sale was completed in the year 1989 itself and after sale of the assets, there is no liability fasten on the respondents. There is no personal guarantee executed by the partners, the respondents 2 and 3 and hence, the liability cannot be fastened on them. Further, with regard to the claim of Rs.1,09,11,057.50/- as term loan interest against the outstanding principal of Rs.2,23,514/- and other claims made by the petitioner are illegal and arbitrary. Further he has contended that when the loan was foreclosed in 1984, the petition was filed in the year 1998 and as such, it is clearly barred by limitation and the liability cannot be enforced against the respondents 2 and 3. Hence, the petition is liable to be dismissed.

4. After completing the pleadings, in order to prove the case of the

petitioner, the Assistant Manager of the petitioner's Corporation who was



examined as P.W.1, reiterated the averments made in the petition and marked the following documents viz., Ex.P1 to Ex.P11.

<i>Exhibits</i>	<i>Dated</i>	<i>Nature of the documents</i>
P1	24.06.1981	Terms and Conditions of the term loan
P2	05.11.1981	Deed of Hypothecation
P3	05.11.1981	Deed of undertaking given by the respondents
P4	05.11.1981	Personal Guarantee for term loan given by the respondents
P5	29.03.1989	Foreclosure Notice
P6	20.07.1995	Letter received from the TIIC
P7	18.01.1996	Notice invoking personal guarantee
P8	30.01.1996	Reply sent by the respondents through their lawyer
P9	09.02.1996	Rejoinder
P10	-	Acknowledgement for the rejoinder
P11	31.05.1998	Statement of Accounts

5. On the side of the respondents, no oral and documentary evidence was produced.

6. When the matter was posted before the learned Master for recording evidence on the side of the respondents, the learned counsel for the respondents reported 'No instructions'. Since the matter is pending from 1998 and the evidence was completed in the year 2001 itself, this Court is inclined to dispose of the matter based on the records available and the



7.The learned counsel for the petitioner by placing reliance on the decision of this Court in the case of ***Tamil Nadu Industrial Investment Corporation Ltd., rep.by its Branch Manager, Chennai – 14 Vs. Tvl.Trinity Music Recorders, a Partnership Firm rep.by its partner S.Vaidyanathan, Chennai – 18 and 2 others*** reported in (2000 (III) CTC 525) submitted that for enforcing the liabilities of the sureties which are co-extensive with the principal debtor who did not make the repayment of loan, cannot be treated as a plaint and it would not be barred by limitation. The relevant paragraphs are extracted here under :

"11. Learned counsel for the petitioner also relied on M/s.Easwari Industries, Shencottai and others v. Tamil Nadu Indl. Investment Corporation Ltd. by its Branch Manager, Tirunelveli, 1998(1) MLJ I wherein it is observed that the order passed under Section 31 of the State Financial Corporation Act is not a decree under the Code and procedure of making, the calculation held, was a process of execution of a decree already passed under the Act. Learned counsel for the petitioner also relied upon Maganlal v. M/s.Jaiswal Industries, Neemach, AIR 1989 SC 2113, and also Rajasthan Financial Corpn. V. Banwari Lal, AIR 1997 Raj.273. It is stated that where an application is filed by State Financial Corporation under Section 31(1) for enforcing the liabilities of the sureties which are co-extensive with the principal debtor who did not make the repayment of loan, the substantive relief



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sought in the application is like the relief sought in an execution proceedings. Hence, it cannot be treated as a plaint and it would not be barred by limitation provided under Article 137 of Limitation Act. These decisions are applicable to the case on hand.

13.Learned counsel for the 3rd respondent next contended that the payments made under Exs.D1 to D3 were not given credit to. The statement of account was filed under Ex.P8. On a perusal of Exs.D1 to D3 it is evidently clear that all these payments have been given credit to in the statement of account. I am of the view that there is absolutely no defence on the part of the respondents 2 and 3. The petitioner Corporation is entitled to enforce the guarantee and as the guarantee is a continuing one and the petition, is filed within-three years after the public auction, it is well within the time. One other contention raised by the 3rd respondent is that there was no proper publication and the sale has been made for a lesser price. Except the bald suggestion made in the course of the cross examination, no legal evidence has been adduced on the side of the respondent relating to this aspect. Under the circumstance, I am of the view that the petitioner Corporation is entitled to claim the amount and the claim is also not barred by time"

8. The learned counsel for the petitioner by placing reliance on the



others v. Kerala Financial Corporation reported in 2000(1) CTC 101

submitted that for awarding interest Section 34 CPC was not attracted to the proceedings instituted under Section 31 SFC Act and the Court cannot reduce the rate of interest. The relevant paragraph Nos.15 and 16 are extracted here under :

"15. After analysing the rulings referred to by both the sides and perusing the records we are of the opinion that the judgment of the High Court is correct. The view taken that Section 34 CPC cannot be invoked in proceedings instituted under Section 31 of the Act and interest will be payable in accordance with the terms of the agreement is right. The question has been squarely answered in Everest Industrial Corpn. which was in turn based on the principle laid down in Natson Manufacturing Co.(P) Ltd., 1979 (1) SCC 193. The rulings cited by learned counsel for the appellants have no relevance in this case as pointed out earlier.

16. The District Court having found on the facts that the appellants had not made out a case for reduction of interest was in error in reducing the rate of interest for the period from the date of the petition to the date of the order under Section 34 CPC. The same is contrary to the law laid down by this Court. Hence, we agree with the high Court that the interest should be paid at the rate of 15% till the debt is discharged".



9. The learned counsel appearing for the petitioner in support of his contentions, relied on the decisions of the Hon'ble Supreme Court reported in **(2015) 5 SCC 518 in the case of Deepak Bhandari vs. Himachal Pradesh State Industrial Development Corporation Limited)**

27. We thus, hold that when the Corporation takes steps for recovery of the amount by resorting to the provisions of Section 29 of the Act, the limitation period for recovery of the balance amount would start only after adjusting the proceeds from the sale of assets of the industrial concern. As the Corporation would be in a position to know as to whether there is a shortfall or there is excess amount realised, only after the sale of the mortgaged/hypothecated assets. This is clear from the language of sub-section (1) of Section 29 which makes the position abundantly clear and is quoted below:

“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 and 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, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, 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.”



10. Quoting the above judgments, the learned counsel appearing for the petitioner stated that the petition is not barred by limitation and the respondents are liable to pay the outstanding dues to the petitioner.

11. The defence taken by the respondents is that after completing sale proceedings, they cannot proceed with recovery of the balance money and the guarantors has no liabilities. Further the respondents took a defence that the petition is barred by limitation. But, a perusal of Ex.P4 Personal Guarantee, reveal that after realizing the amount by the principal debtor, if the principal debtor did not pay the outstanding dues, the petitioner is entitled to recover the same from the personal guarantors. In this case, since the principal debtor has committed default in repaying the loan, the TIIC had taken possession of the first respondent's properties and realized the sale proceeds to the petitioner in two instalments viz. Rs.1,80,700/- on 21.01.1993 and Rs.5,96,295.40 on 20.07.1995. During the cross examination of P.W.1, he has clearly revealed the above fact. As per the decisions of the Hon'ble Supreme Court cited supra, the three years period of limitation for effecting personal guarantee would start from the date of realization of the last sale proceeds.

12. In this case, a perusal of the petition and the evidence of P.W.1 clearly shows that the petitioner received the last sale proceeds on 20.07.1995 and this petition was filed on 29.06.1998, which is well within



the limitation of three years and therefore, the defence taken by the respondents is not acceptable.

13. A perusal of the records shows that the petitioner has proved its claim and the respondents 2 and 3 as a personal guarantors, are liable to pay the amount due to the petitioner Corporation. The petitioner is at liberty to recover the outstanding dues in the manner known to law.

14. With the above observations, the original petition is allowed.

Sd./-P.V.J.
24.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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