IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2022

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.P.No.758 of 2013

The State Industrial Promotion Corporation
of Tamilnadu Limited, represented by its
Chairman & Managing Director. .. Petitioner

Vs.

1.M/s.Omsakthi Plastics India Ltd.,
(Formerly Omsakthi Polyene Inds.),
30, Balaji Singh Street,
Saidapet,
Chennai – 600 015.

2.S.Amalraj
3.S.Vijayakumar
4.K.V.Balamurali Krishna Kumari
.. Respondents

This Original Petition has been filed under Section 31 (i)(aa) of the State Financial Corporation Act, 1951, directing the respondents to jointly and severally to pay the petitioner a sum of Rs.45,64,10,929.50 together with interest till the date of realization failing which to proceed against personally and against their properties;

b).For costs of the petition;

c).Pass such other reliefs as per Section 41(i)(aa) of the State Financial Corporation Act, 1951.

For petitioner : Ms.Sudharshana Sunder

Respondents : ex-parte

ORDER

This petition has been filed under Section 31(1)(aa) of State Financial Corporation Act, 1951, seeking a direction against the respondents to jointly and severally pay the petitioner a sum of Rs.45,64,10,929.50/- together with interest till the date of realization failing which to proceed against the 2nd, 3rd and 4th respondents personally with respect to their individual properties.

2.The petitioner / State Industries Promotion Corporation of Tamil Nadu Limited, had been approached by the 1st respondent / M/s.Omsakthi Plastics India Ltd., (Formerly Omsakthi Polyene Industries) at Saidapet, Chennai, seeking loan assistance to set up a plastic manufacturing unit of HDPE/PP woven sacks at land in Survey No.559/1, D.No.2 / 103, Ariyur, Vellore – 632 055.

3.After satisfying themselves, the petitioner had sanctioned a term loan of Rs.150 Lakhs on 15.02.1996. The respondent had created an equitable mortgage on 30.08.1996 and Deed of Hypothecation also on the same date. They also issued deed of undertaking and also issued personal guarantee on the same date. It is stated that the respondents did not come forward to pay the dues accumulated. Therefore, taking recourse to Section 29 of the State Financial Corporation Act, 1951, the petitioner took possession of the immovable property. But they found that the Sales Tax Department had a charge over the property and therefore, while bringing the immovable property to auction, the petitioner had to surrender possession to the Sale Tax Department. This led the petitioner to proceed only against the movable properties, which had been offered as security.

4.The petitioner, while inspecting the factory premises of the respondents found that the movables which had been hypothecated were missing. Therefore, the petitioner had filed a criminal complaint against the respondents 2 to 4 under Section 29 of the State Financial Corporation Act, 1951. These proceedings continued in its own normal way. The criminal complaint was filed on 17.05.2001. The complaint went missing in the office of the Judicial Magistrate – I, Vellore. Thereafter, on 22.02.2011 nearly after 10 years, the Investigation Officer filed a Referred Charge Sheet in RCS No.57 of 2011 stating that 'action is dropped'. This led the petitioner, with the only option to take recourse against the 2nd and 4th respondents exercising the personal guarantee given by them to satisfy the return of the loan amount. It is under these circumstances that the present petition had been filed.

5.A perusal of the records show that the respondents had been served. But they had taken a conscious decision to abstain from appearing before this Court and consequently, by an order dated 18.03.2022 they were set ex-parte.

6.The petitioner was directed to lead evidence. Accordingly, the Assistant Manager, G.Jayachandran was examined as PW-1. The authorization giving him authority to tender evidence was marked as Ex.P1. The copy of the Loan Sanction Letter was marked as Ex.P2. It is seen that only the copy was produced and the learned Master while marking evidence had put up the issue of admissibility before this Court. However, since the original deed of undertaking, the original deed of hypothecation and the original deed of guarantee were marked as Exs.P3 to P5, it is only obvious that those documents had been executed only consequent to the loan having been sanctioned by the petitioner herein, I would hold that Ex.P2 can be safely relied upon and taken on record. The said document is therefore deemed to be admissible in evidence.

7.Again the actual creation of equitable mortgage was marked as Ex.P6. The foreclosure and recall notice was marked as Ex.P7 and the copy of the First Information Report registered against the respondents was marked as Ex.P8, which was produced from the Court of the Judicial Magistrate – I Vellore. The copies of these documents were marked but since they are part of the same transaction consequent to the loan having been sanctioned, I would take on record the copies already marked.

8.Ex.P9 is the copy of the notice issued by the Judicial Magistrate – I Vellore, with respect to the final report filed by the Investigation Officer. The copy alone had been marked, but since it is a copy of a judicial proceeding, the authenticity cannot be disputed or denied.

9.The petitioner had given a notice dated 16.06.2011 calling upon the 2nd to 4th respondents to pay the dues, and bringing to their notice that the guarantee has been extended. Again a copy had been produced, but again since it is continuation of the loan sanction, I would take the said document on record.

10.When the matter was came for consideration earlier, this Court had directed that the further document relating to the closure of the FIR to be marked and thereafter, Ex.P12 came to be marked, which was the letter from the respondents / Ranipet office enclosing a copy of the Referred Charge Sheet of the Judicial Magistrate – I Vellore. The documents are copies and but since it is encloses a judicial order, I would take that on record.

11.The learned counsel for the petitioner insisted that the period of limitation which is three years to proceed against the directors or those who had given personal guarantee from the date of foreclosure notice stand extended in view of the proceedings pending before the Judicial Magistrate – I Vellore. The learned counsel pointed out that necessity to institute the criminal complaint arose, since the properties hypothecated were not found and consequently, placing liability on the respondents, a First Information Report was lodged. The investigation meandered around in its own normal way and finally, in the year 2011, the Judicial Magistrate – I Vellore, passed this order under Ex.P12 stating that the Investigation Officer had forwarded a Referred Charge Sheet.

12.If the immovable properties were made available and located by the Investigation Officer, then there would be no necessity for the petitioner to invoke the personal guarantee offered by the respondent, unless the amount realized by sale is insufficient. But the limitation starts on from the order of the date of Judicial Magistrate - I and Ex.P12 reflects that date as 22.02.2011. This petition before this Court had been filed on 07.08.2013 within the period of three years.

13.In view of the evidence produced and in view of fact that the petition had been presented within a period of three years this petition stands allowed as prayed for. Interest from this date will be @ 6% p.a. Simple Interest till date of payment. No costs.

C.V.KARTHIKEYAN, J.

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14.The petitioner is directed to proceed against 2nd to 4th respondents invoking the personal guarantee and against their individual property, if any which stand in their name to realize the amount due.

12.10.2022

Internet: Yes/No
Index: Yes/No
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