O.P.No.205 of 2016

P.VELMURUGAN,J.

This petition has been filed under Section 31(1) (aa) of the State Financial Corporations Act, 1951 for a direction to direct the respondents to jointly and severally pay the petitioner a sum of Rs.63,67,97,746/- together with interest per annum failing which to proceed against personally and against their properties.

2. The petitioner Corporation is a deemed Financial Corporation within the meaning of the Section 46(1) of the State Financial Corporations Act, 1951. The first respondent company had approached the petitioner for a term loan assistances for setting up an unit for the manufacture of Telephone receiver set at Electrical Industrial Complex, Kakkalur by way of Term loan. The petitioner Corporation sanctioned a term loan of Rs.90.00 lakhs on 07.04.1987 and subsidy of Rs.10.00 lakh on 20.04.1988 for which, the respondents 2 to 4 had executed personal guarantee and 5th respondent had executed Corporate Guarantee for the due repayment of the term loan of Rs.90.00 lakhs and the subsidy of Rs.10.00 lakhs and that the first respondent company agreed to repay the loan amount with the company interest.

Thereafter, since the 1st respondent company committed default in repayment of principal and interest, the petitioner issued show cause notices on 16.03.1992 and 22.07.1992 followed by the foreclosure order dated 03.05.1993. Subsequently, the first respondent filed W.P.No.10056 of 1993 and obtained interim stay against the foreclosure order. M/s.TIIC took possession of the mortgaged assets of the first respondent by exercising the powers conferred under Section 29 of the State Financial Corporation Act, 1951 on 10.03.1994. This Court, by its order dated 10.08.1994 dismissed the W.P.10056 of 1993. In the mean time one of the unsecured creditor, Viz., M/s.Tata Keltron Limited had obtained winding up order against the company in C.A.No.37 of 1994 in C.P.No.5 of 1994. The Sixth Respondent M/s.TIIC initiated action to dispose the assets by releasing advertisement. In order to prevent the same, the Official Liquidator filed an application and this Court prohibited the sixth respondent M/s.TIIC for disposing the assets of the company and subsequently the Official Liquidator took possession of the mortgaged assets on 02.04.2002 from the sixth respondent M/s.TIIC and the entire assets (Land, Building, Plant and Machinery) of the first respondent was auctioned for a sum of Rs.345.00 lakhs to the highest bidder

K.Dhanalakshmi by the Official Liquidator, which was confirmed by the order of this Court in C.A.No.669 of 2009 in C.P.No.5 of 1994 dated 24.06.2009. Thereafter, the petitioner received the proportionate share of Rs.55,00,000/- from the Official Liquidator on 14.05.2010. After adjusting the pro-rata share, there is still a sum of Rs.63,67,97,746 due payable by the first respondent as on 31.12.2014 towards the loan and the interest. Hence, the present petition has been filed by the petitioner for enforcing their rights against the personal guarantors.

3. Heard both sides and perused the records.

4. The petitioner has filed the petition under Section 31(1) (aa) of the State Financial Corporation Act for enforcing the liabilities of respondents. Even a bare reading of the averment in the petition itself shows that the petitioner received the proportionate share from the sale proceeds from the Official Liquidator on 14.05.2010 itself. The Hon'ble Supreme Court reported in ***2006(4) CTC 89 (Maharashtra State Financial Corporation vs. Ashok K.Agarwal and others)*** held that the period of limitation for

invoking personal guarantee is 3 years and as per the Article 136 and 137 of the Limitation Act, the petition to invoke personal guarantee for recovery of short fall amount is barred by limitation. The petition under Section 31 and 32 of the State Financial Corporation Act, is not the way of execution of a decree or order of any civil suit. The period of limitation has to be counted from the date of when the assets of the company were sold and the amount was realized and credited in the account of the Corporation. Therefore, the petitioner should have filed the petition to invoke personal guarantee under Section 31 (1) (aa) of the State Financial Corporations Act, 1951, within 3 years from the date on which the sale proceeds were received from the Official Liquidator, whereas, it has been filed after the lapse of 4 years i.e. in the year 2015 which is beyond the period of limitation. Therefore the original petition is liable to be dismissed on the ground that the claim is barred by limitation.

5. Accordingly, this Original Petition is dismissed.

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Index : No
Internet : Yes
Speaking order/ Non-speaking order

List of the witness examined on the side of the petitioner:

P.W.1 – G.Jayachandran

List of Exhibits marked on the side of the petitioner:

Exhibits	*Nature of the documents*
P1	The original authorization letter dated 10.01.2022
P2	The photocopy of the sanction letter dated 07.04.1987
P3	The photocopy of the registered mortgage dated 04.12.1987
P4	The photocopy of the deed of hypothecation dated 04.12.1987
P5	The photocopy of the deed of undertaking dated 04.12.1987
P6	The photocopy of the deed of personal guarantee dated 04.12.1987 by the 3rd and 4th respondents
P7	The photocopy of the deed of personal guarantee dated 10.03.1988 by the 2nd respondent
P8	The photocopy of the corporate guarantee for term loan dated 10.031988 by the 6th respondent
P9	The certified copy of the equitable mortgage
P10	The certified copy of the equitable mortage
P11	The photocopy of the deed of agreement for state subsidy dated 05.07.1988
P12	The photocopy of the deed of undertaking dated 05.07.1988
P13	The photocopy of the deed of personal guarantee dated 05.07.1988

Exhibits	*Nature of the documents*
P14	The office copy of the letter dated 03.05.1993 from the petitioner to the respondent
P15	The office copy of the invocation of deed of guarantee dated 11.02.2012
P16	The office copy of the letter dated 07.06.2010 from the petitioner to the Official Liquidator
P17	The photocopy of the statement of account

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