



O.P.No.438 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.09.2023

Pronounced on : 27.09.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No. 438 of 2011

Tamilnadu Industrial Investment
Corporation Limited,
Rep by its Branch Manager,
Special Recovery Branch,
No.692, Anna Salai,
Nandanam,
Chennai-600 035.

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Petitioner

Vs.

1.M/s.Soorya Bottling Company Pvt.Ltd,
rep. By its Managing Director.

2.R.Saravnan

3.R.Kishore Kumar

4.R.Krishnamoorthy

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Respondents

PRAYER: Original Petition filed under Section 31(a), 31(aa) and 32 of the State Financial Corporation's Act 1951, prays to determine the liability and direct the respondents 2 to 4 herein to pay jointly and severally a sum of Rs.1,16,70,185/-(Rupees One Crore sixteen Lakhs Seventy Thousand One



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hundred and Eighty Five only) to the petitioner corporation with interest at the rate of 16% p.a. From the date of the petitioner to till the date of realization in full and to award costs of the petition.

For Petitioner : Mr.A.Rameshkuamr

For Respondents : Mr.J.Arunprasad for R4

: RR1 to 3 Exparte on 19.9.2023

ORDER

This petition has been filed to determine the liability and direct the respondents 2 to 4 herein to pay jointly and severally a sum of Rs. 1,16,70,185/- (Rupees one crore sixteen lakhs seventy thousand one hundred and eighty five only) to the petitioner corporation with interest at the rate of 16% p.a. from the date of the petitioner to the date of realisation in full and to award the costs of the petition.

2.The averments in the petition are as follows:-

The petitioner is a public financial institution incorporated under the Companies Act to grant loans and advances to industries in the state of Tamil Nadu and Pondicherry on the security of hypothecation and mortgages. The petitioner obtains funds from Apex Financial Institutions of India and lends them to entrepreneurs at a concessional rate of interest. The first respondent intended to set up a bottling unit for the manufacturing and



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bottling of mineral water and applied for a loan with the petitioner corporation. The petitioner's corporation sanctioned a term loan of Rs. 27.60 lakhs and a subsidy bridge loan of Rs. 7.56 lakhs on 28.07.1999 towards the purchase and erection of machinery.

2.1. The petitioner's corporation issued the terms and conditions of the loan on 28.7.99. As per the terms and conditions, the loan is to be repaid in 28 quarterly installments with interest at the rate of 16.00% per annum. The respondents hypothecated the machinery by a deed of hypothecation on 04.01.2000 for a sum of Rs. 27,60,000/-. The fourth respondent mortgaged his property as security. The respondents 2 to 4 executed a deed for continuing and binding guarantee on 04.01.2000. The first respondent commenced production in 2000; initially, he repaid the installments of the loan, but subsequently, he did not pay. Even removing the machinery beyond the reach of the corporation.

2.2. The petitioner's corporation took possession of the property mortgaged by the 4th respondent on March 28, 2003, and realised a sum of Rs. 8,45,000/-. The respondent has so far remitted a sum of Rs. 14,05,733/- as principal and Rs. 2,58,418/- as interest, totaling to Rs. 16,64,151/-. The respondents are liable to pay the balance principal of Rs. 13,54,267/-, interest of Rs. 1,03,11,896/-, and other dues of Rs. 4,022/-, totaling a sum of



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Rs. 1,16,70,185/- as of January 30, 2010.

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2.3. The petitioner is entitled to recover the same from respondents 2 to 4. The petitioner sent a legal notice to the respondents on December 20, 2010. But the respondents did not come forward to pay the installments and hence the petitioner had filed this original petition for recovery to determine the liability of the respondents and pass orders to recover a sum of Rs. 1,16,70,185/- (Rupees one crore, sixteen lakhs seven hundred and eighty-five only) from the petitioner's corporation with interest at the rate of 16% p.a. from the date of the recovery and costs.

3. The respondents 1 to 3 remained absent, and the fourth respondent alone appeared through the learned counsel. However, the fourth respondent did not file any written statements.

4. From the side of the petitioner one witness was examined as PW.1 and Ex.P1 to ex.P9 were marked. Despite the 4th respondent appeared through counsel, he did not file written statement and he did not even choose to cross examine PW.1.

5. A senior officer of the petitioners has stated in his evidence about



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the loan transaction between the petitioner's corporation and the first respondent. The authorization letter authorising PW.1 to depose evidence on behalf of the corporation has been marked as Ex.P1. The terms and conditions of the loan sanctioning order dated 28.07.1999 marked as Ex.P2.

6. On perusal of Ex.P2, it is seen that the petitioner sanctioned a loan of Rs. 27.60 lakhs and a subsidy bridge loan of Rs. 7.56 lakhs. The first respondent agreed to repay the loan amount in 28 quarterly installments with an initial moratorium of 12 months. As agreed, the loan was not repaid. The 2nd and 3rd respondents have executed a deed of hypothecation by hypothecating the machinery and other fittings as security for the loan. The respondents 2 to 4 had executed a deed of guarantee, which is marked as Ex.P4. The 4th respondent had offered the immovable property as security by creating a mortgage in respect of immovable properties by deposit of title deeds. The letter confirming the above mortgage deed is marked as Ex.P5.

7. PW.1 has stated that by proceeding against the mortgage property, a sum of Rs. 8,45,000/- was realised. The respondents had repaid a sum of Rs. 14,05,733, which is inclusive of principal and interest. However, the



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first respondent is due to repay the remaining loan amount along with interest for several years that has accrued to Rs. 1,03,11,896/-, and the balance principle amount stood at Rs. 13,54,267/-, making together a sum of Rs. 1,16,70,185/- as of January 30, 2010.

8. Despite the petitioner claims that the balance principal amount is Rs. 13,54,267/- and interest is Rs.1,03,11,896/-, as on 31.01.2011, the account statement which has been marked as Ex.P9 would show that as on 30.11.2010, the amount payable towards interest is only Rs. 74,96,593/- and the principal amount is Rs. 13,54,267/-. Apart from that, the respondents are liable to pay the other dues towards miscellaneous expenses like fees for valuation reports, legal fees etc at Rs.4,022/-. As per the account statement, it is proved by the petitioner that the respondents are liable to pay a sum of Rs. 13,54,267/- towards principal and interest which is Rs.74,96,593/- and Rs. 4,022/- towards sundries and totally Rs. 88,54,782/-.

9. Hence, the order for the recovery is granted to the petitioner for a sum of Rs.88,54,782/- along with interest. Though the contractual rate of interest is said to be at 16% per annum, taking into consideration of the loss in business, I feel some leniency should be shown in the interest part. So I



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feel the interest from the date of filing the suit until the date of the decree
should be at 9% per annum, and from the date of the order till realisation at
the rate of 6% per annum.

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jrs

Internet :Yes/No

Speaking: Non speaking

Neutral:Yes/ No



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APPENDIX

Petitioner's witness:

P.W.1 – S.Nagarajan

Documents exhibited by the petitioners:

<i>Exhibi ts</i>	<i>Documents</i>
Ex.P1	The original authorization letter dated 23.06.2022 given by the petitioner corporation in petitioner's favour.
Ex.P2	The original terms and conditions of sanction order dated 28.07.1999.
Ex.P3	The original deed of hypothecation dated 04.01.2000.
Ex.P4	The original deed of guarantee dated 04.01.2000.
Ex.P5	The original letter dated 04.01.2000 confirming the deposit of title deed.
Ex.P6	The certified copy of the account sheets (compared with the original)
Ex.P7	The office copy of the notice dated 20.12.2010 issued to the respondents 1 to 3.
Ex.P8	The original postal acknowledgment card.
Ex.P9	3 Nos. of the original returned postal covers.

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