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O.P. No.181 of 2012

N.SATHISH KUMAR, J.

This Petition has been filed under Sections 31(a), 31(aa) & 32 of the State Financial Corporation Act, 1951 for determining the liability and direct the respondents 2 to 7 to pay a sum of Rs.4,39,54,941.28/- to the petitioner Corporation with interest at the rate of 16.5% from the date of petition to till the date of realisation.

2. The first respondent is the Company and others respondents are directors and guarantors. The first respondent intended to set up an SSI Unit in S.No.189/3A2, Anuppampattu Village, Ponneri Taluk, Tiruvallur District to engage in the manufacture of cycle rims, and applied for loan with the petitioner corporation. On 27.06.1990, the petitioner corporation sanctioned a term loan of Rs.21.50 lakhs towards purchase and erection of plant and machinery. The petitioner Corporation issued terms and conditions of loan on 17.07.1990. The respondents 1 to 6 herein hypothecated the machinery by the deed of hypothecation dated 21.01.1991. The respondent 1 to 6 mortgaged the factory site by the Deed of Mortgage on 21.01.1991 and

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created equitable mortgage and deposited all the title deeds with the petitioner corporation. As the defendants failed to repay the loan amount which resulted in foreclosure of term loan dues on 22.08.1994 . The petitioner Corporation took possession of the factory assets on 21.09.1994 and brought the factory assets in exercise of the powers conferred under Section 29 of the State Financial Corporations Act for public auctions and realised a sum of Rs.21.56 lakhs. Even thereafter, the respondents are liable to pay the balance dues of Rs.4,39,54,941.28 as on 31.12.2010. In this regard, legal notice is also sent on 18.11.2010, however, the same returned undelivered. Hence, this petition.

3. The respondents despite serving notice remained *ex parte*. The Junior Officer of the petitioner corporation is examined as P.W.1 and Exs.P1 to P12 were marked. P.W.1 in his evidence had narrated the terms and conditions of the sanction letter of loan, mortgage, hypothecation and guarantee deed executed by others and to substantiate the same. Ex.P.1 is the Original terms and conditions of sanction order dated 16.07.1990. Ex.P2 is the original registered mortgage deed dated 21.01.1991. Ex.P3 is the original deed of hypothecation dated 21.01.1991. Ex.P4 is the original deed

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of guarantee dated 21.01.1991. Ex.P6 is the original letter dated 22.01.1991 confirming the deposit of title deeds. Ex.P7 is the original notice dated 22.08.1994. Ex.P12 is the original authorisation letter dated 18.04.2022. Ex.P.13 is the photocopy of the account sheets. Ex.P.14 is the original auction sale confirmation letter dated 02.03.2010.

4. The above documents clearly shows that the properties have been mortgaged after availing the loan, auction was conducted only on 28.10.2009, a part of the amount has been realised and application has been filed within a period of three years thereafter. In this regard, the Hon'ble Apex Court in the judgement reported in *(2015) 5 SCC 518* in the case of *Deepak Bhandari Vs. Himachal Pradesh State Industrial Development Corporation Limited* has held as follows:

> *22. It is thus clear that merely because the Corporation acted under Section 29 of the State Financial Corporation Act did not mean that the contract of indemnity came to an end. Section 29 merely enabled the Corporation to take possession and sell the assets for recovery of the dues under the main contract. It may be that only the Corporation taking action under Section 29 and on their taking possession they became deemed owners. The mortgage may have come to an end, but the contract of indemnity, which was an independent contract, did not. The right to claim for the balance*

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arose, under the contract of indemnity, only when the sale proceeds were found to be insufficient. The right to sue on the contract of indemnity arose after the assets were sold. The present case would fall under Article 55 of the Limitation Act, 1963 which corresponds to old Articles 115 and 116 of the old Limitation Act, 1908. The right to sue on a contract of indemnity/ guarantee would arise when the contract is broken.

23. Therefore, the period of limitation is to be counted from the date when the assets of the Company were sold and not when the recall notice was given.

5. Considering the above and the fact that the respondents remained *ex parte*, I am of the view that the petitioners have proved their claim and hence, the petitioners are entitled for recovery of amount.

6**.** Accordingly, this petition is allowed. The respondents 2 to 7 are directed to pay jointly and severally a sum of Rs.4,39,54,941.28/- to the petitioner Corporation with interest at the rate of 16.50% p.a., from the date of petition to till the date of realisation in full. The parties shall bear their own costs.

01.11.2023

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