O.P. No.405 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 3 to pay a sum of Rs.1,43,97,267/- to the petitioner Corporation with interest at the rate of 18% from 01.10.2011 to till the date of realisation and ordering sale of A & B Schedule herein property.

2. The first respondent is the Company and others respondents are directors and guarantors. The first respondent intended to set up a software development unit at 19, Adam Sahib Street, Royapuram, Chennai – 13 and applied for loan with the petitioner corporation. On 06.01.1992, the petitioner corporation sanctioned a term loan of Rs.6 lakhs and Soft Seed Capital of Rs.1.20 lakhs towards purchase machinery. The petitioner Corporation issued terms and conditions of loan on 06.01.1992. The first respondent herein hypothecated the machinery by the deed of hypothecation dated 05.07.1993. The fourth respondent created equitable mortgage and

deposited all the title deeds with the petitioner corporation. The respondents 2 and 3 executed a Deed of Guarantee and indemnity on 05.07.1993 for the loan. The first respondent has paid a sum of Rs.7,50,074/- commencing from 29.09.1993 to 04.11.2010 and there is a balance of Rs.1,43,97,267/-. 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 P10 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 substantiated the same. Ex.P.3 is the Original loan sanction order dated 06.01.1992. Ex.P4 is the original deed of hypothecation dated 05.07.1993. Ex.P5 is the original deed of guarantee dated 05.07.1993 executed by the respondent 2 and 3. 31.03.1982. Ex.P6 is the original letter confirming the deposit of title deeds dated 06.07.1993. Ex.P7 is the original notice dated 09.02.2012. Ex.P10 is the certified copies of the account statement.

4. The above documents clearly shows that the properties have been

mortgaged after availing the loan, a part of the amount has been realised and there are dues payable by the respondents, and further, the 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 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.*
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> *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 3 are directed to pay jointly and severally sum of Rs.1,43,97,267/- to the petitioner Corporation with interest at the rate of 18% from 01.10.2011 to till the date of realisation. Further, the petitioner Corporation is also permitted to sell the mortgage property by their authorised officer to realise the amounts. The parties shall bear their own costs.

01.11.2023

dhk

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