O.P. No.774 of 2018

N.SATHISH KUMAR, J.

This Petition has been filed under Section 31(aa) of the State Financial Corporations Act, 1951 for determining the liability and direct the respondents 2 & 3 to pay a sum of Rs.59,19,39,646/- to the petitioner Corporation with interest per annum failing which to proceed personally and against the properties.

2**.** The first respondent is the Company approached the petitioner Corporation for loan assistance for the manufacture of Engineering Components at SIDCO Industrial Estate. The petitioner corporation sanctioned a term loan of Rs.150 lakhs and Subsidy of Rs.3.10 lakhs. The respondents 2 and 3 executed the personal guarantee for the loan, which is a continuing guarantee and in the nature of guarantee cum indemnity. As the respondent Company failed to pay the loan amount, the loan account was foreclosed on 03.06.2002 and the petitioner Corporation took possession of the assets on 06.06.2023. Further, the first respondent Company was wound up and the fourth respondent Official Liquidator sold the plant and machinery and a sum of Rs.55,25,158/- was received by the petitioner

Corporation on 09.12.2015. Even thereafter, there is a sum of Rs.59,19,39,646/- to be paid by the petitioner Corporation as on 30.06.2018. Hence, this petition.

3. The respondents despite serving notice remained *ex parte*. The Assistant Officer of the petitioner corporation is examined as P.W.1 and Exs.P1 to P12 were marked. P.W.1 in her 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.2 is the photocopy of the term loan sanction order dated 17.11.1995. Exs.P5 & P8 are the photocopy of the deed of guarantees. Ex.P10 is the photocopy of the invocation of the deed of guarantee dated 16.08.2016. Ex.P12 are the photocopies of the account statements.

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.

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6**.** Accordingly, this petition is allowed. The respondents 2 & 3 is directed to pay a sum of Rs.59,19,39,646/- to the petitioner Corporation with interest per annum failing which to proceed personally and against the properties.. 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.

08.11.2023

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