O.P. No.487 of 2016

N.SATHISH KUMAR, J.

This Petition has been filed under Sections 31(i) (aa) of the State Financial Corporation Act, 1951 for directing the respondents 2 to 6 to pay a sum of Rs.1,23,74,49,749.51/- to the petitioner Corporation with interest per annum from the date of petition till the date of realisation.

2**.** The first respondent is the Company and others respondents are directors and guarantors. The first respondent approached the petitioner Corporation for sanction of term loan for its Alloy Steel Castings at Athikadu, Thekkur Village, Thirupathur Taluk, Sivagangai District. The petitioner Corporation sanctioned a term loan of Rs.130 lakhs, state subsidy of Rs.15 lakhs. The respondents have executed Deed of Hypothecation, Undertaking, Personal Guarantee and created equitable mortgage. The respondents failed to repay the amount as per the repayment schedule, which resulted in foreclosure of loan on 06.12.2001. The petitioner Corporation took possession of the mortgage unit on 31.03.1995. However, the property could not be sold due to the Distraint order passed by the Deputy Commercial Tax Officer, Tirupathur under Section 8 of the Revenue and Recovery Act on 28.09.2007. Therefore, the Corporation issued notice invoking personal guarantee on 07.11.2013 and immediately this Original Petition has been filed within a period of three years.

3. The respondents despite serving notice remained *ex parte*. The Assistant Manager (F) of the petitioner corporation is examined as P.W.1 and Exs.P1 to P14 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.1 is the original authorisation letter dated 15.02.2022 given by the petitioner. Ex.P3 is the photocopy of the deed of undertaking dated 10.07.1991. Ex.P4 is the photocopy of the deed of hypothecation dated 10.07.1991. Ex.P4 to P7 are the photocopy of the deed of personal undertakings by the respondents. Ex.P10 is the photocopy of the deed of personal guarantee for subsidy dated 18.12.1992. Ex.P12 is the office copy of the invocation of personal guarantee dated 07.11.2013. Ex.P13 is the original Distraint order dated 28.09.2007 passed by the Deputy Commercial Tax Officer. Ex.P14 is the photocopy of the account statement as on 31.03.2016.

4. The above documents Exs.P5 to P7 and P10 clearly shows that the personal guarantee have been given by the respondents 2 to 6 in favour of the petitioner corporation and and there are dues payable by the respondents, and further, the application has been filed within a period of three years after issuance of notice invoking personal guarantee. 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.*

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 petitioner has proved its claim and hence, the petitioner is entitled for recovery of amount.

6**.** Accordingly, this petition is allowed. The respondents 2 to 6 are directed to pay jointly and severally sum of Rs.1,23,74,49,749.51/- together with interest per annum from the date of petition till the date of realisation. The parties shall bear their own costs.

01.11.2023

dhk

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