O.P. No.982 of 2016

N.SATHISH KUMAR, J.

This Petition has been filed under Sections 31(i) (aa) of the State Financial Corporation Act, 1951 for determining the liability and direct the respondents to jointly and severally pay a sum of Rs.35,10,64,329/- to the petitioner Corporation with interest at documented rate per annum from 01.08.2011 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 setting up an Industry for manufacture of Micro process based PC, Micro and Mini computer systems at SIPCOT Industrial Complex, Gummidipoondi, Thiruvallur District. Term loan of Rs.80 lakhs, IFST Loan of 98.76 lakhs and State subsidy of Rs.9 and 3.21 lakhs were sanctioned. The respondents have executed Deed of Hypothecation, Undertaking, Personal Guarantee and created equitable mortgage. The respondents 2 and 3 have executed a Deed of Personal Guarantees in the nature of guarantee cum indemnity. The respondents failed to repay the amount as per the repayment schedule, as a result, foreclosed the loan on

24.09.1991. The petitioner took possession of the mortgaged assets on 29.05.2002 in exercise of powers conferred under Section 29 of the State Financial Corporations Act. The assets of the first respondent Company was auctioned and a sum of Rs.85.01 lakhs was received on 23.10.2010 and there is a balance of Rs.35,10,64,329. The petitioner issued a notice on 20.05.2009 to the respondents invoking personal guarantee and demanded the dues, however, no amount was recovered. Hence, this petition.

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 P19 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.2 is the photocopy of the sanction letter dated 04.09.1986. Ex.P3 is the original deed of undertaking dated 23.01.1987. Ex.P5 is the original deed of hypothecation dated 01.07.1983. Ex.P6, P9 to P13, P15 & P16 are the original deed of personal guarantees given by the respondents 2 and 3 in favour of the petitioner Corporation. Ex.P18 is the office copy of the invocation of deed of guarantee dated 20.05.2009. Ex.P19 is the photocopy

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.*
>
> *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 are directed to pay jointly and severally sum of Rs.35,10,64,329/- together with interest at documented rate per annum from 01.08.2011 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

N.SATHISH KUMAR, J.

dhk

O.P. No.982 of 2016

01.11.2023