O.P. No.983 of 2016

N.SATHISH KUMAR, J.

This Petition has been filed under Sections 31(i) (aa) and 32 of the State Financial Corporation Act, 1951 for determining the liability and direct the respondents to jointly and severally pay a sum of Rs.25,55,26,350/- to the petitioner Corporation with interest at 22% per annum from 30.03.1994 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 unit for manufacture of Electrolytic Capacitor at SIPCOT Industrial Complex, Gummidipoondi, Thiruvallur District. Term loan of Rs.42 lakhs, IDBI Seed Capital Loan of Rs.8.50 lakhs, IFST Loan of 61.02 lakhs and State subsidy of Rs.7.95 lakhs were sanctioned. The respondents have executed Deed of Hypothecation, Undertaking, Personal Guarantee and created equitable mortgage. The respondents 2 to 4 have executed a Deed of Personal Guarantees in the nature of guarantee cum indemnity and is continuing one of the liabilities and the sureties are coextensive with the first respondent. The respondents failed to repay the

amount as per the repayment schedule, as a result, foreclosed the loan on 29.10.1991. The petitioner took possession of the mortgaged assets on 20.10.1992 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.45.50 lakhs was received on 11.09.2009 and there is a balance of Rs.25,55,26,350/-. The petitioner issued a notice on 30.04.2009 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 P22 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 loan sanction letter dated 30.04.1987. Exs.P3 & P10 are the original deed of undertaking. Ex.P4 is the original deed of registered mortgage dated 12.03.1987. Ex.P5 is the original deed of hypothecation for first term loan dated 12.03.1987. Exs.P6, 11, 14 & 19 are the original deed of personal guarantees executed by the respondents in favour of the

petitioner Corporation. Ex.P21 is the office copy of the invocation of deed of guarantee dated 30.04.2009. Ex.P22 is the certified copy of the accounts 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 petitioner has proved its claim and hence, the petitioner is entitled for recovery of amount.

6**.** Accordingly, this petition is allowed. The respondents are directed to pay jointly and severally sum of Rs.25,55,26,350/- to the petitioner Corporation with interest at 22% per annum from 30.03.1994 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

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