O.P. No.984 of 2016

N.SATHISH KUMAR, J.

This Petition has been filed under Sections 31(1) (aa) of the State Financial Corporation Act, 1951 for directing the respondents to pay a sum of Rs.76,40,14,820/- to the petitioner Corporation with interest from 31.12.2014 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 loan assistance for construction of buildings and purchase of machinery for setting up an Industry for manufacture of ground nut oil and de-oiled cake at Chinnasalem (North) Kallakurichi Taluk, Villupuram. The petitioner sanctioned First Term Loan of Rs.96 lakhs, Second term loan of Rs.10 lakhs. The respondents have executed Deed of Hypothecation, Undertaking and Personal Guarantee. The respondents 2 to 8 have executed a Deed of Personal Guarantees in favour of the petitioner Corporation. The guarantee is continuing one and is in the nature of guarantee cum indemnity. The respondents failed to repay the amount as per the repayment schedule, which resulted in foreclosure of loan on

09.08.1996. The petitioner Corporation took possession of the mortgage unit on 30.12.1998 in exercise of powers conferred under Section 29 of the State Financial Corporations Act. Further, the Assistant Commissioner (Commercial Taxes) Villupuram auctioned the assets of the respondent Company on 04.11.2004 for the recovery of sales tax arrears to a sum of Rs.56,21,535/- and confirmed the same on 09.02.2005. Therefore, the Corporation issued notice invoking personal guarantee on 16.04.2012 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 P16 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 11.02.2022. Ex.P3 is the photocopy of the deed of undertaking dated 14.02.1992. Ex.P4 is the photocopy of the deed of hypothecation dated 14.02.1992. Exs.P5, P8, P10 & P13 are the photocopy of the deed of guarantee given by the respondents in favour of the

petitioner Corporation. Ex.P14 is the photocopy of the letter dated 09.02.2005 sent by Assistant Commissioner, Villupuram. Ex.P15 is the photocopy of the invocation of personal guarantee dated 16.04.2012. Ex.P16 is the photocopy of the account statement.

4. The above documents Exs.P5, P8, P10 & P13 clearly shows that the deed of guarantee have been given by the respondents 2 to 8 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 are directed to pay jointly and severally sum of Rs.76,40,14,820/- to the petitioner Corporation with interest from 31.12.2014 till the date of realisation. The parties shall bear their own costs.

01.11.2023

dhk

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