O.P. No.293 of 2017

N.SATHISH KUMAR, J.

This Petition has been filed under Sections 31(a), 31(aa) & 32 of the State Financial Corporation Act, 1951 for determining the liability and direct the respondents 2 to 7 to pay a sum of Rs.120,07,48,600/- to the petitioner Corporation with interest from the date of petition to till the date of realisation.

2. The first respondent is the Company and others respondents are directors and guarantors. The first respondent intended to set up an SSI Unit in SIPCOT Industrial Complex, Gummidipoondi to engage in the manufacture of Oxygen and applied for loan with the petitioner corporation. On 20.06.1988, the petitioner corporation sanctioned a term loan of Rs.88 lakhs towards purchase and erection of plant and machinery. The respondents 1 to 6 herein hypothecated the assets by the deed of hypothecation dated 14.11.1985. The respondent 1 to 6 mortgaged the factory site by the Deed of Mortgage on 14.11.1985 and created equitable mortgage and deposited all the title deeds with the petitioner corporation. As the defendants failed to repay the loan amount which resulted in foreclosure

of term loan dues on 10.09.1991. This Court by its Order dated 20.12.2022, appointed Official Liquidator and the Official Liquidator took possession of the factory assets on 07.07.2004 and brought the factory assets for public auctions and realised a sums of Rs.1,93,30,146 on 04.10.2013 and another sum of Rs.15.91,895 on 25.09.2014. Even thereafter, the respondents are liable to pay the balance dues of Rs.88,37,95,955 as on 31.03.2015. In this regard, legal notice is also sent on 22.04.2015, however, no amount has been paid. Hence, this petition.

3. The respondents despite serving notice remained *ex parte*. The Assistant Manager 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 to substantiate the same. Ex.P.1 is the Original authorization letter dated 10.01.2022. Ex.P.2 is the Original registered mortgage deed for term loan dated 14.11.1985. Ex.P.3 is the original deed of hypothecation dated 14.11.1985. Ex.P.4 is the original deed of undertaking dated 14.11.1985. Ex.P.5 is the Original deed of hypothecation for interest free sales tax loand dated 26.10.1988. Ex.P.6 is

the Original Personal guarantee for term loan dated 23.07.1987. Ex.P.7 is the Original sanction letter dated 20.06.1988. Ex.P.8 is the original personal guarantee for term loan dated 14.11.1985. Ex.P.9 is the original deed of undertaking dated 26.10.1988. ExP.10 is the original deed of personal guarantee dated 26.10.1988. Ex.P.11 original deed of guarantee dated 17.10.1988. Ex.P.12 is the original deed of agreement dated 17.12.1985. Ex.P.13 is the original deed of undertaking dated 17.11.1985. Ex.P.14 is the original deed of personal guarantee dated 17.11.1985. Ex.P.13 is the photocopy of the account statement.

4. The above documents clearly shows that the properties have been mortgaged after availing the loan, auction was conducted realised a sums of Rs.1,93,30,146 on 04.10.2013 and another sum of Rs.15.91,895 on 25.09.2014 and part of the amount has been realized and this petition 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 their claim and hence, the petitioner is entitled for recovery of amount.

6**.** Accordingly, this petition is allowed. The respondents 2 to 7 are directed to pay jointly and severally a sum of Rs.120,07,48,600/- to the petitioner Corporation with interest at the rate of 14 p.a., from the date of petition to till the date of realisation in full. The parties shall bear their own costs.

08.11.2023

vrc

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vrc

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