



O.P.No.529 of 2017

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :09.01.2025

Pronounced on :22.01.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

ORIGINAL PETITION NO.529 OF 2017

The Tamil Nadu Industrial Investment Corporation Limited,
Rep.by its Branch Manager,
Mr.E.Paulrajan,
Thiruvallur Branch,
No.86, C&D, 2nd Main Road,
Ambattur Industrial Estate,
Chennai 600 058.

.. Petitioner

/versus/

1.M/s Feena Petro Products Limited,
Vadamadurai Village,
Uthukottai Taluk, Thiruvallur District.

2.M/s Feena Petro Products limited,
No.37, Karpaga Vinayagar Koil Street,
Alandur, Chennai 600 016.



O.P.No.529 of 2017

WEB COPY

3.A.Silveser (deceased),
No.19, Antony Street,
Vadiveeswaram Village,
Maravankudieruppu,
Nagercoil 629 062,
Kanyakumari District.

4.Thiru.A.S.K.Newton (deceased),
No.19, Antony Street,
Vadiveeswaram Village,
Maravankudieruppur,
Nagercoil 629 062,
Kanyakumari District.

5.Thiru.A.S.K.Milton,
S/o A.Silvester,
No.19, Antony Street,
Vadiveeswaram Village,
Maravankudieruppu,
Nagercoil 629 062,
Kanyakumari District.

6.Tmt.M.Jesu Ratna Bai,
W/o A.Silvester,
No.19, Antony Street,
Vadiveeswaram Village,
Maravankudieruppu,
Nagercoil 629 062,
Kanyakumari District.

Repondents 4 to 6 are the legal heirs of the deceased third respondent as per order dated 08.07.2019 on memo and



O.P.No.529 of 2017

WEB COPY

time extended as per order dated 08.01.2020.

7.Mrs.A.Bernet,
W/o(late) A.S.K.Newton,
No.19, Antony Street,
Vadiveeswaram Village,
Maravankudieruppu,
Nagercoil 629 062,
Kanyakumari District.

8.Mr.N.Kington,
S/o (late)A.S.K.Newton,
No.19, Antony Street,
Vadiveeswaram Village,
Maravankudieruppu,
Nagercoil 629 062,
Kanyakumari District.

Respondents 7 and 8 are brought on record as the
legal representatives of the deceased 4th respondent
as per order dated 15.11.2019 in application No.6258
of 2018 and time extended as per order dated
17.12.2019.

9.Ms.N.Kingsy,
D/o (late) A.S.K.Newton,
No.19, Antony Street,
Vadiveeswaram Village,
Maravankudieruppu,
Nagercoil 629 062,
Kanyakumari District.

.. Respondents

Respondent 9 is brought on record as the legal representatives
of the deceased 4th respondent as per order dated 30.11.2019
in application No.2815 of 2020.



O.P.No.529 of 2017

WEB COPY

Prayer: Original Petition has been filed under Section 31 and 31(1)(i)(aa) of the State Financial Corporation Act, 1951, praying to pass a judgment and decree or order against the respondents:

(a)directing the respondents 1 to 3 to pay a sum of Rs.18,429,890,115.65 (Rupees one thousand eight hundred and forty two crores ninety eight lakhs ninety thousand one hundred and fifteen and paise sixty five only) as on 30.11.2016 to the petitioner Corporation with interest at the rate of 17% for term loan (quarterly) and 36% for hire purchase loan per annum compounded half yearly from the date of the petition till the date of realization in full;

(b)permit the petitioner to sell the schedule mentioned property of the respondents 4 and 6;

(c)directing the respondents to pay the cost of this petition to the petitioner; and

(d)pass such further or other orders as this Hon'ble Court may deem fit to award in the circumstances of the case and thus render justice.

For Petitioner :Mr.K.Magesh

For Respondents :Mr.J.Pravin for
Mr.P.Jesus Moris Ravi

=====

ORDER

Tamil Nadu Industrial Investment Corporation (in short “TIIC”) is a Public Financial Institution governed by State Financial Corporation Act, 1951. This petition is filed under Section 31 and 31(1)(aa) of the State



O.P.No.529 of 2017

Finance Corporation Act, 1951 for recovery of money from the respondents, who have defaulted in repayment of loan amount advanced on mortgage of immovable properties and hypothecation of movables.

2. According to the petitioner, the Directors of M/s Fenna Petro Products Limited, sought s Term Loan for its two projects one at Vadamadurai Village, Thiruvallur District and another at Ettayapuram Village, Tuticorin District. A sum of Rs 84.10 lakhs and subsidy bridge loan of Rs.11.30 lakhs was sanctioned on 10.08.1994 and 10.03.1995 respectively. The first respondent company availed only 50% of the term loan sanctioned. It could not implement the second plant at Ettayapuram Village. However, for purchase of LPG Cylinders and Valves, the first respondent company availed Hire Purchase Loan of Rs.90 lakhs on 28.08.1995 and the second respondent company availed Rs.150 Lakhs on 30.01.1996. For the loans, the respondents 3 to 6, who are the Directors of first and second respondent company, stood guarantee for the repayment of



O.P.No.529 of 2017

the loan. The fourth and sixth respondent gave their properties as security and created mortgage in favour of the petitioner (TIIC). Also fixed deposit of Rs.13.50 Lakhs for the Hire purchase Loan-I and Rs.22.50 Lakhs for the Hire purchase loan-II invested by the borrower company was given as security. After payment of few instalments initially, the first and second respondent failed to repay the loan as per the terms of the agreement. Hence, the loan account was foreclosed on 16.10.1997. The properties mortgaged and hypothecated were taken possession on 31.08.1998. However, on the application of the borrower, the High Court on 15.09.1998 ordered to release the possession to enable the borrower to revive the company, but subsequently, the BIFR petition filed by the borrower was dismissed and the petitioner (TIIC) repossessed the properties on 07.02.2000. The collateral properties at Nagarcoil was also taken possession by TIIC on 08.02.2000. The first and second respondent are the prime borrowers. The respondents 3 to 6 are the Directors of the prime borrower company and they are the personal guarantors for repayment of the loan. Hence, they are jointly and severally liable to pay a sum of Rs.18,429,890,115.65 as on 30.11.2016. On



O.P.No.529 of 2017

behalf of the petitioner, legal notice dated 25.01.2017 was sent to all the respondents calling upon them to repay the loan. The legal notices returned unserved with endorsement either as “not claimed” or as “left the premises”.

3. The relief sought in the petition are:

(a) direction to the respondent 1 to 6, to pay a sum of Rs 184,429,890,115.65/- (Rupees One thousand eight hundred and forty two crores ninety eight lakhs ninety thousand one hundred and fifteen rupees and sixty paise only) as on 30/11/2016 with 17% interest for Term Loan (with quarterly rest) and 36% for Hire Purchase Loan pa compounded half yearly from the date of petition (08/06/2017) till the date of realisation in full.

(b) To permit the petitioner (TIIC) to sell the schedule mentioned property of the 4th and 6th respondent.

(c) To direct the respondents to pay costs and



O.P.No.529 of 2017

WEB COPY

(d) such other order as deem fit.

4. According to the Respondents, they admit that the first and second respondent Company borrowed loan from TIIC in the year 1994 and 1995. The personal guarantee was given by the Directors at the time of borrowing, the said guarantee was never renewed thereafter. The Directors are not signatories to the loan documents. The property purported to be mortgaged with the petitioner is restricted only in respect of assignment of 30 years lease given to the borrower Company. Therefore, the relief under Section 31 of the State Financial Corporations Act, 1951, against the respondents is not maintainable, since the schedule mentioned properties are not the properties mortgaged to the petitioner. The petition for recovery of money filed after 22 years without any acknowledgement of debt or renewal of loan. Therefore, it is hopelessly barred by limitation. The last disbursement of loan was on 30.01.1996. The loan was foreclosed on 16.10.1997. A sum of Rs.58,75,650/- lying in the fixed deposits was adjusted to the loan on



O.P.No.529 of 2017

WEB COPY

31.03.2001. Suit laid in the year 2017, hence, it is beyond the period of limitation prescribed under the Act. The claim of about Rs.1842 crores for a loan of less than Two Crores of Rupees is obviously baseless. No break up given for the actual due against term loan to claim interest at the rate of 17% and due against Hire Purchase loan to claim 36% interest. The petitioner corporation has not produced documentary evidence or oral evidence to substantiate the claim. The witness for the petitioner is a Junior Officer in TIIC. He is not competent to give evidence on behalf of the petitioner being a Corporation incorporated under the Statute. Under law, the Petitioner Corporation has to be represented by a person duly authorised by the Board. The authorisation given by the Branch Manager in favour of PW-1 to represent the petitioner is not a valid authorisation. The petitioner (TIIC) had not placed the entire facts regarding the loan repayment. For the suppression of material facts, the petition has to be dismissed.



O.P.No.529 of 2017

WEB COPY

5. Pending disposal of the petition, the 3rd and 4th Respondents died. Their Legal Heirs were brought on record as respondents 7 to 9. The respondents contested the petition by filing counter and also leading oral and documentary evidence.

6. On behalf of the petitioner, Mr.D.Suresh Babu, Junior Officer, TIIC examined as PW-1. Documents Ex.P-1 to Ex.P-16 were marked. On behalf of the respondent, the fifth respondent Mr. A.S.K.Milton examined as RW-1. Document to show that the M/s Fenna Petroproducts Limited incorporated on 29.07.1993 not exists and struck off from the register is marked as Ex.R-1.

7. The point for consideration is whether the petitioner has proved the claim for recovery of money from the respondents so as to permit the

10/23



O.P.No.529 of 2017

petitioner to sell the schedule mentioned properties owned by the 4th and 6th respondents?

8. The case of the petitioner is that under Ex.P-1, dated 10.08.1994 term loan of Rs.84.10 lakhs was sanctioned, but only 50% of it was availed by the defendant company. Unfortunately, neither the petitioner nor PW-1 able to say how much loan disbursed out of the sanctioned amount. In the petition it is vaguely mentioned as only 50% out of sanctioned amount disbursed. However, the relief is sought for a consolidated amount with different rates of interest, without break up between the Term Loan and Hire Purchase Loan.

9. The dates and events furnished by the petitioner counsel indicates that, after declaring the loan of the first and second respondent company as 'Non-Performing Assets' (NPA), a sum of Rs.58,75,650/- been recovered on

11/23



O.P.No.529 of 2017

31.03.2001 from the fixed deposits. A sum of Rs.14 lakhs been recovered in public auction held on 07.11.2005, by sale of machineries hypothecated. Further, in the year 2011 a sum of Rs.40 lakhs paid by the respondents for releasing 4 collateral properties. The payments of these amounts after the account became NPA not whispered in the pleadings. Whether the amounts mentioned above were credited to the loan account also not stated in the petition or by PW-1. Whether these payments were credited to the Term Loan or to the Hire Purchase loan is also not mentioned in the petition. When the rate of interest chargeable for these two kinds of loans are different and calculated at different rate, (each quarter in case of Term Loan and compoundable in case of Hire Purchase Loan), the petition must have disclosed the details about repayment and breakup, which are material facts to entertain the petition and grant the relief sought.

10. It is amply clear by not disclosing the material particulars the petitioner has come with unclean hands suppressing the material facts. The



O.P.No.529 of 2017

money claim without proper break up details regarding payment under two different categories of loans, with a complex relief of two different rates of interest on the consolidated hoofing amount of Rs.1842 crores of rupees for the loan of less than two crores renders the petitioner case not only misleading but illegal.

11. After the foreclosure of the loan account in the year 1997, the last payment of Rs.40 lakhs received by the petitioner by releasing the collateral properties is in the year 2011. After 6 years, the petition is filed in the year 2017. No proper explanation given by the petitioner for not proceedings against the secured properties immediately. Apparently, the properties mentioned in the schedule of the petition were not mortgaged by its owners.

Ex.P-3, the no objection letter given by A.S.K.Newton (4th respondent - since deceased) and Ex.P-9, the no objection letter given by Jesu Ratna Bai (6th respondent) along with the letter of consent to create an equitable mortgage of their properties (Item No.1 and Item No.2 in the petition



O.P.No.529 of 2017

schedule) never acted upon by registering the mortgage deed duly executed by the owners of the property. In the cross examination of PW-1, when a specific question put to him regarding the date of registration of the mortgage deed, he had ascertained that the mortgage deed was registered on 09.03.1995. The said deed is marked as Ex.P-5. The perusal of this mortgage deed shows that it was executed by A.S.T. Milton and A.S.P.Winston, they both are the Directors of the first respondent company and not the owners of the properties. The documents exhibited shows, Item No.1 is owned by Mrs. Jesu Ratna Bai/ the 6th respondent; and Item No.2 is owned by Mr.A.S.K.Newton/the 4th respondent. Further, it is also pertinent to note that all other documents like deed of undertaking (Ex.P-6); Power of Attorney deed (Ex.P-7) and Deed of guarantee not executed by the owners of the properties. In the cross examination, PW-1 admits that only the representatives of the borrower company had signed the deeds and not the owners of the properties.



O.P.No.529 of 2017

WEB COPY

12. Further, scrutinising of the exhibits reveals in respect of Hire Purchase Loan, the 4th and 6th respondents are alien to the transactions. Neither the 4th respondent nor 6th respondent are signatories to Ex.P-10, the deed of terms and condition for sanction of HP loan, the deed of hypothecation (Ex.P-11) and Letter of undertaking (Ex.P-12). Only in Ex P-13, which is the letter of guarantee, the 4th respondent along with Newton (3rd respondent) and Mr.A.S.P Winston has signed. However, this document is not a complete document. In page 2 of this printed document, the material details like, amount advanced, name of the borrower, the extend of guarantee offered by the signatories are all left blank. Therefore, this document is inadmissible in evidence and cannot be relied to fasten liability on the 4th respondent.



O.P.No.529 of 2017

WEB COPY

13. Therefore, the Court holds that this petition does not satisfy the requirement to invoke Section 31 of the State Financial Corporations (SFC) Act of 1951. In the absence of proper and legal mortgage of the property, the limitation for recovery of money is restricted to 3 years from the date of last transaction. The failure to establish any renewal of the guarantee or acknowledgement of debt within the period of limitation makes the case of the petitioner hopelessly worst.

14. Lastly, the letter of authorisation to PW-1 given by the Branch Manager and marked as Ex.P-15 creates doubt about the competency of the witness in view of the judgment of this court rendered in O.P.No.482 of 2012, dated 02.08.2024, wherein the Learned Judge has held as below:-

“22. In MANU/KA/1960/2013, Canara Workshops Limited Vs. Mantesh, it had been held as follows: “4.Under Section 291 of the Companies



O.P.No.529 of 2017

Act, 1956, except where express provision is made, that the powers of a company in respect of a particular matter; are to be exercised by the company in general meeting, the individual directors have such powers only as are vested in them by the Memorandum and Articles of Association. The question of authority to institute a suit or other proceeding on behalf of a company is therefore not a technical matter as it often affects the policy and finances of the company and unless the power to institute a proceeding is specifically conferred on a particular director, he would have no authority to institute a suit or other proceeding on behalf of the company and such power can be conferred by the Board of Directors only by passing a resolution in that regard. It may also be seen that even in respect of civil suits, under Order XXIX Rule 1 of the Code of Civil Procedure, 1908, in a suit by a Corporation, any pleading may be signed and verified on behalf of the Corporation by the Secretary or by a Director or other principal officer of the Corporation, who is able to depose to the facts of the case. This would indicate that the said provision merely prescribes that any pleadings on behalf of a corporation may be signed and verified by its Secretary



WEB COPY



O.P.No.529 of 2017

or by its Director or by any other principal officer, who is able to depose to all the facts of the case. It does not empower such a officer to conduct the case on behalf of the Corporation, for which, such officer must be authorized by the Board of Directors by a resolution or must be empowered under the Memorandum and Articles of Association to bring a suit.”

23.The evidence had been tendered by the person who is incompetent to tender evidence. Ex.P1 had been signed by the Branch Manager and he is not competent to direct the Junior Officer to tender evidence. The petitioner, as stated above, is a company incorporated under the provisions of the Companies Act, 1956. The Board of Directors alone can pass a resolution and authorize any person whom they feel competent to tender evidence particularly when evidence is to be adduced on behalf of the company. It is also seen that the petitioner had recovered more than Rs.1.5/- Crores even as early as in the year 2010. Then, they must produce an audited statement of accounts to show the balance due what had been produced are a few account sheets which had been signed by the Branch Manager. The audit sheets are xerox copies. The witness who spoke about them had no knowledge



O.P.No.529 of 2017

about them. He is not the author of these account sheets. It is not known, from which date he had been employed under the petitioner. He is incompetent to speak about the correctness of these account sheets. His evidence as a matter of fact had been rejected by this Court. Therefore, the petition as against the 4 th and 5 th respondents is not maintainable, since,

(emphasis added)

i).PW-1 had no authority to depose evidence on behalf of the petitioner.

ii).The account sheets which had been signed by the Branch Manager are actually xerox copies and had not been proved in manner known to law.

iii).The Branch Manager had not come forward to tender evidence.

iv).Even if the evidence is to be taken into consideration, no evidence had been let in that the 4 th and 5th respondents have directly inherited assets from the 2nd respondent

15. Leave alone the competency of PW-1, the petition is based on the loan transaction and the statement of account maintained during the course



O.P.No.529 of 2017

of business. In the absence of details in the petition regarding clear break up of the loan sanctioned, repayments and due payable under the two heads of loan, atleast the statement of accounts marked as Ex.P-16 should disclose the necessary particulars, whereas Ex.P16 which is relied by the petitioner is bereft of details of exact loan amount disbursed under each head and the repayments. Ex.P-16, the statement of accounts not even certified to be true extract of the ledger maintained, which is mandatory under the Bankers Book Evidence Act. The witness through whom Ex.P16, the statement of accounts marked, have no knowledge about the entries in the statement of accounts. He is not able to explain how the claim of Rs.1842 crores arrived. His ignorance about the transaction and payments exposed, when he answered in negative to the question, whether any amount has been paid by the respondent, after classification of the account as NPA. In fact, the account was declared NPA on 01.01.1998. Thereafter, several payments were made towards the loan repayment either by sale of machineries hypothecated or by sale of collateral properties or by adjustment from the Fixed Deposits. Without giving proper credit to these payments under

20/23



O.P.No.529 of 2017

respective loan accounts, the petition is filed for a consolidated amount with interest at two different rates.

16. In view of vague and truncated particulars furnished by the petitioner which are not adequate to substantiate the relief sought for in this petition and also in view of the limitation, ***this Original Petition stands dismissed as devoid of merits. No costs.***

22.01.2025

Index:yes
ari

Petitioner's witness:-

PW-1 :Mr.D.Suresh Babu

Documents marked:-

Exhibit	Details
Ex.P1	Photocopy of application to Tamil Nadu Industrial Investment Corporation Ltd. Dated 10.08.1994.

21/23



O.P.No.529 of 2017

Ex.P2	Photocopy of the letter by 1 st respondent dated 12.01.1995.
Ex.P3	Photocopy of letter dated 14.02.1995 by 4 th respondent.
Ex.P4	Photocopy of the revised project cost dated 24.02.1995.
Ex.P5	Photocopy of Mortgage deed dated 07.03.1995
Ex.P6	Photocopy of undertaking dated 07.03.1995.
Ex.P7	Photocopy of power of attorney dated 07.03.1995.
Ex.P8	Photocopy of deed of guarantee dated 07.03.1995.
Ex.P9	Photocopy of letter sent to the all respondents dated 08.03.1995.
Ex.P10	Photocopy of Tamil Nadu Industrial Investment Corporation Ltd., terms and conditions dated 01.09.1995.
Ex.P11	Photocopy of deed of hypothecation dated 16.10.1995.
Ex.P12	Photocopy of letter dated 26.10.1995.
Ex.P13	Photocopy of deed of guarantee dated 16.10.1995.
Ex.P14	Photocopy of legal notice dated 25.01.2017 with returned cover.
Ex.P15	Original authorization letter dated 26.07.2022.
Ex.P16	Photocopy of Statement of Accounts.

Respondents' witness:-

RW-1 :Mr.A.S.T.Milton

Documents marked:-

Ex.R1 :Copy of Master Data online dated 28.02.2023.

22.01.2025



WEB COPY



O.P.No.529 of 2017

DR.G.JAYACHANDRAN,J.

ari

delivery Order made in
O.P.No.529 of 2017

22.01.2025