

O.P.No.719 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 20.12.2024

Pronounced on: 07.01.2025

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Original Petition No.719 of 2011

Tamil Nadu Industrial Investment Corporation Limited,
Rep. by its Branch Manager, Special Recovery Branch,
No.692, Anna Salai, Nandanam, Chennai – 600 035.

... Petitioner

/versus/

1. M/s.Pulsar Electronics Ltd,
represented by its Director,

2. Thiru.N.S.Ravindran,

3. Thiru.V.P.Raman,

4. Thiru.K.Raman, (died)

5. Thiru.Ajith Thomas,

6. Thiru.S.Padmanabhan,

7. Thiru.Padmaja Financial Services,

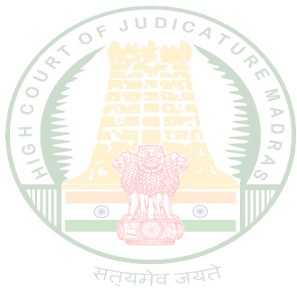
8. Thiru.Karthik Kumar.

... Respondents

PRAYER: Original Petition has been filed under Sections 31 (a), 31(aa) and 32 of the State Financial Corporation's Act, 1951, prays that,

(a) Determining the liability and direct the respondents 2 to 8 herein to pay jointly and severally a sum of Rs.12,18,39,232.60/- (Rupees Twelve Crores Eighteen Lakhs Thirty Nine Thousand Two Hundred and Thirty Two and Paise Sixty only) to the petitioner Corporation with interest at the rate of 16% p.a from the date of the petition to till the date of realization in full.

(b) awarding costs of the petition.



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For Petitioner : Mr.M.Jaseem Mohamed

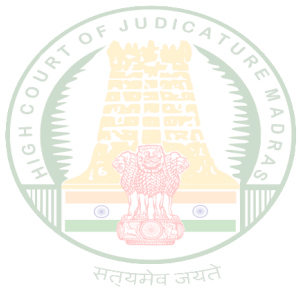
For R6 & R7 : Mr.R.Saravanakumar.

For R1 to R5 & R8 : No appearance

ORDER

The petitioner herein, the Tamilnadu Industrial Investment Corporation Limited (hereinafter be referred as: 'TIIC' in short), is a Public Financial Institution incorporated under the Companies Act and governed by the provisions of the State Financial Corporations Act, 1951.

2. The First Respondent, M/s.Pulsar Electronics Limited (hereinafter be referred as: 'Company' in short) applied for a term loan of Rs.60 lakhs on 07/05/1987 for the purchase of land, machinery and construction of building to set up a factory for manufacturing Electronic bush Button for Telephones. The Company availed the loan from TIIC and hypothecated the machinery by way of deed of hypothecation on 04/12/1987 for a sum of Rs.60 lakhs. The respondents 2 to 8 are the guarantors. They executed deed of continuing and binding guarantee on 04/12/1987 and 17/06/1988. The title deeds of the factory site was deposited with the TIIC.

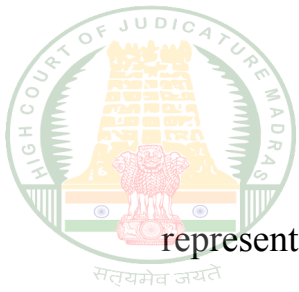


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3. As per the terms and conditions, the first respondent is supposed to repay the loan with 16% interest per annum in 12 equal half-yearly instalments. Due to default in repayment, on 10/03/1994, TIIC took possession of the mortgaged land and building at Kakkalur Industrial Estate, along with the machineries been hypothecated.

4. Meanwhile, a winding up petition was filed before the High Court of Madras in Company Petition No.5 of 1994 as against the 1st respondent/Company. In the said petition, the Official Liquidator was appointed who took charge of the Company assets and liquidated the same. The petitioner/TIIC participated in the proceedings and received a sum of Rs.55 lakhs. The petitioner, claiming a sum of Rs.12,18,39,232.60/- as balance amount on 18.09.2011 after giving credit to the remittance made by the 1st respondent/Company, including the receipt of Rs.55,00,000/- from the Official Liquidator, has preferred the present petition under Section 31(a), 31(aa) and 32 of the State Financial Corporations Act 1951.

5. Out of eight respondents, the third respondent namely, V.P.Raman died and the petition against him got abated. Except for the 6th respondent/S.Padmanabhan and 7th respondent/Padmaja Financial Services,



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represented by S.Padmanabhan, the other respondents have not filed any

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6. As far as counter filed by the 6th and 7th respondents is concerned, they have denied obligation to pay any money to the petitioner. To assist the 1st respondent financially, the 7th respondent invested a sum of Rs.26,10,000/- by acquiring Rs.2,61,000/- shares from the 1st respondent Company. The 1st respondent/Company availed term loan facility from the petitioner/TIIC. At the request of the petitioner/TIIC, the 6th respondent gave personal guarantee and the 7th respondent gave Corporate Guarantee for the Term Loan facility. The guarantee was given in the year 1988 but thereafter it was not renewed. On 24.11.1991, the 2nd respondent/N.S.Ravindran, the promoter of the 1st respondent/Company agreed to purchase the shares of the 7th respondent. In terms of the agreement executed between the 7th respondent and 2nd respondent, on 24.11.1991, the 2nd respondent acquired entire shares of the 7th respondent in the 1st respondent/Company. The said transfer of shares was approved by the 1st respondent Company. As a consequence, upon the sale of entire shares, the 6th respondent resigned from the Board of the 1st respondent Company which effect from 29.05.1992 and same was accepted in the Board meeting of the 1st respondent Company held on 29.05.1992 in which the



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nominee of the petitioner/TIIC was present. Thus, the transfer of shares and

relinquishment of the personal guarantee were known to the petitioner/TIIC as early as 29.05.1992. A request on behalf of the 6th and 7th respondents to release their personal guarantee and Corporate Guarantee, respectively was sent to the petitioner/TIIC *vide* letter dated 04.06.1992. Thereafter, the 6th and 7th respondents not aware of the functioning of the 1st respondent Company.

7. The petitioner/TIIC, in exercise of the power conferred under Section 29 of the State Financial Corporations Act 1951 had taken over the Company and the properties mortgaged with the Corporation. No foreclosure notice or demand notice served to the 6th and 7th respondents and they were not informed about the action taken by the petitioner/TIIC under Section 29 of State Financial Corporation Act. Furthermore, these respondents were not parties to the Company Petition No.5 of 1994 in which the Hon'ble High Court appointed an Official Liquidators, took possession of the assets held by the 1st respondent Company and liquidated the same to pay Rs.55 lakhs to the petitioner/TIIC, being one of the secured creditors.

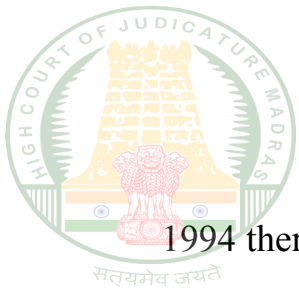
8. It is contended by these respondents that, after taking possession of the property mortgaged with the Corporation, without proceeding against the



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property to recover the loan, TIIC allowed the Official Liquidator to sell the property in auction and divide the proceeds pro rata among the secured creditors. Having failed to protect the interest of the Corporation by liquidating the assets mortgaged with it and credit the sale proceeds wholly towards the loan amount in exercise of power under Section 29 of State Financial Corporations Act 1951. Having participated in the liquidation proceedings and received its pro rata shares, TIIC cannot proceed further against the Company, which already been liquidated or its Directors or the guarantors. Having handing over the possession of the assets of the 1st respondent Company to the Official Liquidators without any demur and protest, the petitioner has abdicated all its right under Section 29 of the State Financial Corporations Act. Thereafter, proceed against the guarantors under Section 31(a), 31(aaa) and Section 32 of the State Financial Corporations Act. The respondents further alleges that the Official Liquidator had sold only the factory site and not the other assets of the 1st respondent Company.

9. It is also contended in the counter that after taking possession of the 1st respondent/Company, the petitioner failed to protect the property properly. The factory suffered a huge fire accident but the petitioner failed to renew the fire insurance policy after taking possession of the assets in the year



1994 thereby, causing loss to the assets of the Company due to gross negligence

and mismanagement.

10. To prove the claim, Thiru.P.Santhana Kennedy, Junior Officer, TIIC has graced the witness box and was examined as P.W.1. Proof affidavit in lieu of cross-examination filed by him and been cross-examined by the defendants. Ex.P.1 to Ex.P.12 were marked. The 6th respondent/Padmanabhan also graced the witness box and was examined as R.W.1. Ex.R.1 to Ex.R.8 were marked through him on behalf of the respondents

Point for determination:-

Whether the petitioner/TIIC, after liquidation of the 1st respondent Company and receiving its shares as a secured creditor, has any right to proceed against the Company, its promoters and guarantors for recovery of balance loan amount and whether the claim is barred by limitation?

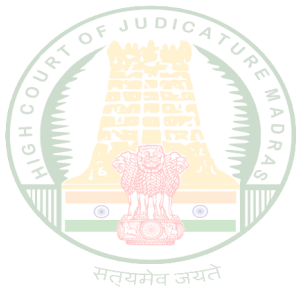
11. The Learned Counsel appearing for the petitioner/TIIC contended that under Sections 31(a) & 31(aa) of the State Financial Corporations Act, the right of the Corporation to proceed further for recovery even after the liquidation of the borrowing Company will survive. Furthermore,



he contended that Section 31 of the State Financial Corporations Act, 1951

gives right to the State Financial Corporation to proceed against the guarantor independently, even after discharging the principal debtor.

12. Contrarily, the Learned Counsel appearing for the 6th and 7th respondents who stood personal Guarantee and Corporate Guarantee respectively, contended that the Guarantees were executed when they were the shareholders of the 1st respondent company. After transferring their shares to the 2nd respondent, they were neither Directors of the Company nor persons interested in the Company. The guarantee issued got terminated once they got released from the 1st respondent Company. Even otherwise, the initial guarantee executed was never been renewed subsequently. The petitioner/TIIC though took possession of the properties mortgaged by the 1st respondent as early as in the year 1994 had not proceeded further for recovery as contemplated under Section 29 of the State Financial Corporations Act. Instead submitted itself to the winding up proceedings initiated in the High Court in C.P.No.5 of 1994. After liquidation of the 1st respondent Company and the distribution of its assets pro rata to the creditors, 1st respondent Company was absolved from all liabilities. The petitioner/TIIC, after absolving the principal creditor, cannot proceed against the personal guarantor or the Corporate guarantor.



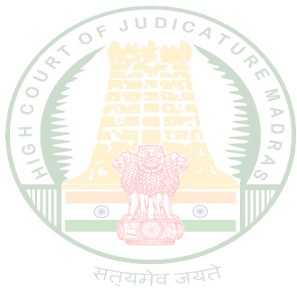
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13. It is contended by the Learned Counsel appearing for the respondents 6 & 7 that, in any event, the petition filed in the year 2011 for the debts which was crystallised in the year 1994 is hopelessly barred by limitation.

14. In support of his argument, the Learned Counsel for the petitioner/THC rely upon following judgments.

(i) ***BRS Ventures Investments Ltd v. SREI Infrastructure Finance Ltd & Another*** reported in **2024 SCC Online SC 1767**, wherein it has held that,

15. If the creditor recovers a part of the amount guaranteed by the surety from the surety and agrees not to proceed against the surety for the balance amount, that will not extinguish the remaining debt payable by the principal borrower. In such a case, the creditor can proceed against the principal borrower to recover the balance amount. Similarly, if there is a compromise or settlement between the creditor and the surety to which the principal borrower is not a consenting party, the liability of the borrower qua the creditor will remain unaffected. The provisions regarding the discharge of the surety discussed above show that involuntary acts of the principal borrower or creditor do not result in the



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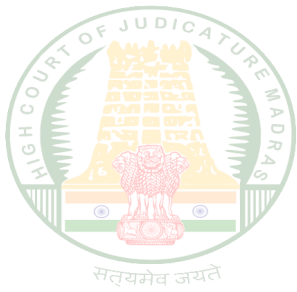


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discharge of surety.

16. In the case of Lalit Kumar Jain v. Union of India and others reported in (2021) 9 SCC 321, this Court dealt with the legal effect of approving the resolution plan in CIRP of the corporate debtor on the liability of the surety. This is in the context of Section 135 of the Contract Act, which provides that if the creditor compounds with or gives time or agrees not to sue the principal debtor, it amounts to discharge of the surety. In paragraphs 122 to 125 of the said decision, this Court held thus:

“122. It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this Court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability. In Maharashtra SEB [Maharashtra SEB v. Official Liquidator, (1982) 3 SCC 358] the liability of the guarantor (in a case where liability of the principal debtor was discharged under the Insolvency law or the Company law), was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act, 1872 as there is no discharge under Section 134 of that Act. This Court observed as follows :



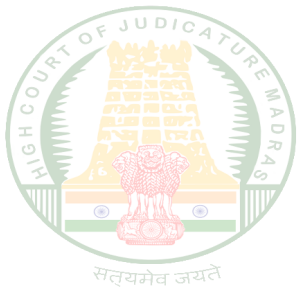
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(SCC pp. 362-63, para 7)

*“7. Under the bank guarantee in question the Bank has undertaken to pay the Electricity Board any sum up to Rs. 50,000 and in order to realise it all that the Electricity Board has to do is to make a demand. Within forty-eight hours of such demand the Bank has to pay the amount to the Electricity Board which is not under any obligation to prove any default on the part of the Company in liquidation before the amount demanded is paid. The Bank cannot raise the plea that it is liable only to the extent of any loss that may have been sustained by the Electricity Board owing to any default on the part of the supplier of goods i.e. the Company in liquidation. The liability is absolute and unconditional. The fact that the Company in liquidation i.e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i.e. the guarantor. Under Section 128 of the [Contract Act, 1872](#), the liability of the surety is coextensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the [Contract Act, 1872](#) by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. **But a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability** (see *Jagannath Ganeshram Agarwale v. Shivnarayan Bhagirath* [*Jagannath Ganeshram Agarwale v. Shivnarayan Bhagirath*, [1939 SCC OnLine](#)*



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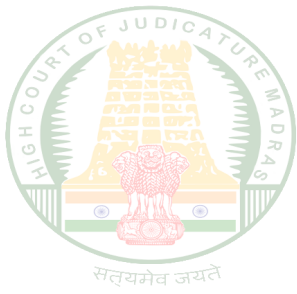
Bom 65 : AIR 1940 Bom 247]; see also Fitzgeorge, In re [Fitzgeorge, In re, [1905] 1 K.B. 462]).”

123. This legal position was noticed and approved later in Industrial Finance Corpn. of India Ltd. v. Cannanore Spg. & Wvg. Mills Ltd. [Industrial Finance Corpn. of India Ltd. v. Cannanore Spg. & Wvg. Mills Ltd., (2002) 5 SCC 54] An earlier decision of three Judges in Punjab National Bank v. State of U.P. [Punjab National Bank v. State of U.P., (2002) 5 SCC 80] pertains to the issues regarding a guarantor and the principal debtor. The Court observed as follows : (Punjab National Bank case [Punjab National Bank v. State of U.P., (2002) 5 SCC 80], SCC p. 80-81, paras 1-6)

“1. The appellant had, after Respondent 4's management was taken over by U.P. State Textile Corporation Ltd. (Respondent 3) under the Industries (Development and Regulation) Act, advanced some money to the said Respondent 4. In respect of the advance so made, Respondents 1, 2 and 3 executed deeds of guarantee undertaking to pay the amount due to the Bank as guarantors in the event of the principal borrower being unable to pay the same.

2. Subsequently, Respondent 3 which had taken over the management of Respondent 4 became sick and proceedings were initiated under the Sick Textile Undertakings (Nationalisation) Act, 1974 (for short “the Act”). The appellant filed suit for recovery against the guarantors and the principal debtor of the amount claimed by it.

3. The following preliminary issue was, on the pleadings of the parties, framed:



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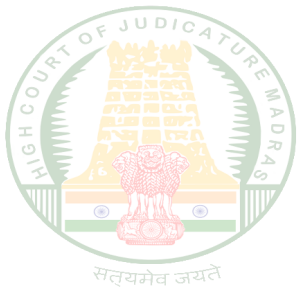
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'Whether the claim of the plaintiff is not maintainable in view of the provisions of Act 57 of 1974 as alleged in Para 25 of the written statement of Defendant 2?'

4. *The trial court as well as the High Court, both came to the conclusion that in view of the provisions of Section 29 of the Act, the suit of the appellant was not maintainable.*

5. *We have gone through the provisions of the said Act and in our opinion the decision of the courts below is not correct. Section 5 of the said Act provides for the owner to be liable for certain prior liabilities and Section 29 states that the said Act will have an overriding effect over all other enactments. This Act only deals with the liabilities of a company which is nationalised and there is no provision therein which in any way affects the liability of a guarantor who is bound by the deed of guarantee executed by it. The High Court has referred to a decision of this Court in Maharashtra SEB v. Official Liquidator [Maharashtra SEB v. Official Liquidator, (1982) 3 SCC 358] where the liability of the guarantor in a case where liability of the principal debtor was discharged under the Insolvency law or the Company law, was considered. **It was held in this case that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act, 1872 as there is no discharge under Section 134 of that Act.***

6. *In our opinion, the principle of the aforesaid decision of this Court is equally applicable in the present case. The right of the appellant to recover money from Respondents 1, 2 and 3 who stood guarantors arises out of the terms of the deeds of guarantee which are not in any way superseded or brought to a naught merely because the appellant may not have been able to recover money from the principal borrower. It may here be added that even as a result of the Nationalisation Act the liability of*



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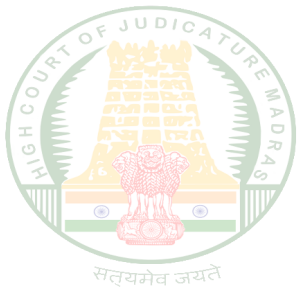


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the principal borrower does not come to an end. It is only the mode of recovery which is referred to in the said Act.”

124. In Kaupthing Singer & Friedlander Ltd. [Kaupthing Singer & Friedlander Ltd. (No. 2), In re, [2012] 1 A.C. 804 : [2011] 3 WLR 939 : [2012] 1 All ER 883, paras 11, 12, 53-54] the UK Supreme Court reviewed a large number of previous authorities on the concept of double proof i.e. recovery from guarantors in the context of insolvency proceedings. The Court held that : (AC p. 814, para 11)

“11. The function of the rule is not to prevent a double proof of the same debt against two separate estates (that is what insolvency practitioners call “double dip”). The rule prevents a double proof of what is in substance the same debt being made against the same estate, leading to the payment of a double dividend out of one estate. It is for that reason sometimes called the rule against double dividend. In the simplest case of suretyship (where the surety has neither given nor been provided with security, and has an unlimited liability) there is a triangle of rights and liabilities between the principal debtor (“PD”), the surety (“S”) and the creditor (“C”). PD has the primary obligation to C and a secondary obligation to indemnify S if and so far as S discharges PD's liability, but if PD is insolvent S may not enforce that right in competition with C. S has an obligation to C to answer for PD's liability, and the secondary right of obtaining an indemnity from PD. C can (after due notice) proceed against either or both of PD and S. If both PD and S are in insolvent liquidation, C can



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*prove against each for 100p in the pound
but may not recover more than 100p in the
pound in all.”*

125. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.”

(ii) K.P.Khemka and another v. Haryana State Industrial and Infrastructure Development Corporation Limited and others reported in 2024 (8) SCC 391, wherein it has held that,

“39. It will be clear from Section 32-G of the State Financial Corporations Act that the section confers a right of recovery on the financial corporation, without prejudice to any other mode of recovery which includes the right to file a suit. The conferment of such a right to recover an “amount due” as arrears of land revenue, notwithstanding any other remedy, is for a public purpose and in public interest.



40. At this point, we deem it appropriate to refer to a passage from Salmond on Jurisprudence, 12th Edn., on the concepts of “right” and “power” (pp. 224, 229 and 230):

“42. Legal rights in a wider sense of the term

We must now consider the wider use of the term, according to which rights, do not necessarily correspond with duties. In this generic sense, a legal right may be defined as any advantage or benefit conferred upon a person by a rule of law. Of rights in this sense there are four distinct kinds. These are (1) Rights (in the strict sense), (2) Liberties, (3) Powers, and (4) Immunities. Each of these has its correlative, namely, (1) Duties, (2) No-Rights, (3) Liabilities, and (4) Disabilities.

A debt is not the same thing as a right of action for its recovery. A former is the right in the strict and proper sense, corresponding to the duty of the debtor to pay; the latter is a legal power, corresponding to the liability of the debtor to be sued. That the two are distinct appears from the fact that the right of action may be destroyed (as by prescription) while the debt remains.”

(iii) *Tamil Nadu Industrial Investment Corporation Ltd v.*

M/s.Decolyte Engineering Industries, Rep. by its Managing Director, reported



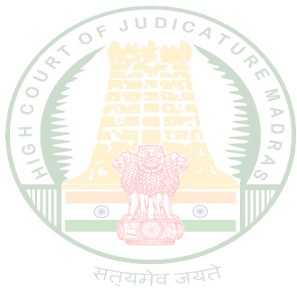
in **2013 SCC Online Mad 3488**, wherein it has held that,

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“15. In this case, action has been taken and Original Petition is filed under the provision of Section 31 of the State Financial Corporations Act, 1951. It is, therefore, necessary to consider the import of Section 31 of the Act. Section 31 reads as follows:

“31. Special Provision for enforcement of claims by Financial Corporations.—(1) Where an industrial concern in breach of any agreement makes any default in repayment of any loan or advance or any instalment thereof or in the meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation required an industrial concern to make immediate repayment of any loan or advances under Section 30 and the industrial concern fails to make such repayment then, without prejudice to the provisions of Section 69 of the Transfer of Property Act, 1982 any officer of the Financial Corporation generally or specially authorised by the Board in this behalf, may apply to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:

(a) for an Order for the sale of the property pledged, mortgaged, hypothecated



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or assigned to the Financial Corporation as security for the loan or advance; or

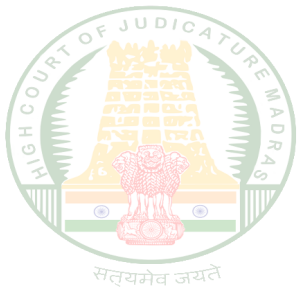
(aa) for enforcing the liability of any surety; or

(b) for transferring the Management of the industrial concern to the Financial Corporation; or

(c) for an Ad-Interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

(2) An Application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.”

16. From the reading of the above, it is evident that the special procedure contained in Section 31(1) is not something akin to a mortgage Suit to recover the money by sale of mortgaged property. An Application thereunder is neither a Plaint as contemplated by the Court Fees Act. The reliefs contemplated by Section 31(1) on being granted does not result in a money decree or decree for recovery of outstanding loans or advances. An Application under Section 31(1) is something akin to an Application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. This question



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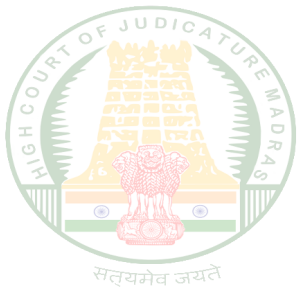


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is answered in the case of Maganlal v. Jaiswal Industries, Neemach, AIR 1989 SC 2113, decided by the Apex Court.

17. In Maganlal v. Jaiswal Industries, Neemach, AIR 1989 SC 2113, the Hon'ble Apex Court, in Paragraph 24 of the Judgment, observed as follows:

“24. The purpose of enacting Sections 31 & 32 of the Act was apparently to provide for a speedy remedy for recovery of the dues of the Financial Corporation. This purpose however was, in cases covered by clause (a) of sub-section (1) of Section 31 confined to the stage of obtaining an order akin to a decree in a Suit, in execution whereof “the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance” could be sold. Sections 31 & 32 of the Act cut across and dispense with the provisions of the Code from the stage of filing a Suit to the stage of obtaining a decree in execution whereof such properties as are referred to in clause (a) of sub-section (1) of Section 31 could be sold. After this stage was reached sale in execution of an order under Section 32 of the Act was for purposes of execution put at par with the sale in execution of a decree obtained in a suit, by enacting sub-section (8) of Section 32 of the Act. This sub-section as noted earlier provides that an Order of Attachment or sale of property under this Section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 for the attachment or sale of



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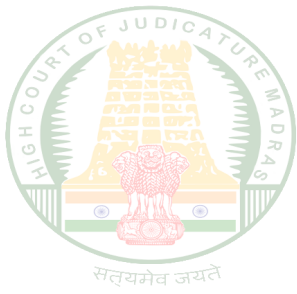
property in execution of a decree as if the Financial Corporation were the decree-holder.”

18. Similar view was expressed in Rajasthan Financial Corporation v. Banwari Lal, AIR 1997 Raj. 273, and the relevant passage in Paragraph 8 of the Judgment reads as follows:

“8. The observation of the Court below that the Application was barred by the limitation in view of Article 137 of the Limitation Act, is also perverse and bad in law. The Court below was not appreciated Sections 31 & 32 of the Act in right perspective. As already stated the Application under Section 31(1) of the Act cannot be treated as plaint. The substantive relief sought in the Application is alike the relief sought in the Execution Application.”

19. This Court in Tamil Nadu Industrial Investment Corporation Ltd. v. Tvl. Trinity Music Recorders, 2000 (3) CTC 525, held in Paragraph 11 as follows:

“11. Learned Counsel for the Petitioner also relied on Easwari Industries, Shencottai v. Tamil Nadu Indl. Investment Corporation Ltd. by its Branch Manager, Tirunelveli, 1998 (1) MLJ 1, wherein it is observed that the order passed under Section 31 of the State Financial Corporation Act is not a decree under the Code and procedure of making, the calculation held, was a process



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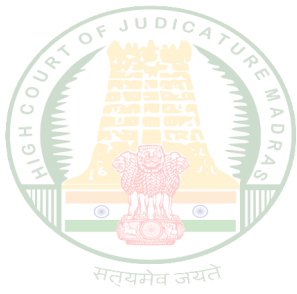


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of execution of a decree already passed under the Act. Learned Counsel for the Petitioner also relied upon Maganlal v. Jaiswal Industries, Neemach, AIR 1989 SC 2113, and also Rajasthan Financial Corpn. v. Banwari Lal, AIR 1997 Raj. 273. It is stated that where an Application is filed by State Financial Corporation under Section 31(1) for enforcing the liabilities of the sureties which are co-extensive with the principal debtor who did not make the repayment of loan, the substantive relief sought in the Application is like the relief sought in an Execution proceedings. Hence, it cannot be treated as a Complaint and it would not be barred by limitation provided under Article 137 of Limitation Act. These decisions are applicable to the case on hand.”

20. *Further, in the case of T.N. Industrial Investment Corporation Ltd. v. Kalathi & Co., 2013 (6) MLJ 629, which was decided by one of us (R. Sudhakar, J.), in respect of the very same Appellant-Corporation, this Court answered the point of limitation in favour of the Appellant-Corporation. We are in agreement with the reasoning contained therein as it is in consonance with the decision of the Apex Court in Maganlal v. Jaiswal Industries, Neemach, AIR 1989 SC 2113 (cited supra).*

21. *In the light of the above discussion, it is clear that the last payment received by the Appellant-Corporation was on 27.2.2006 by selling the Secured Assets and the Original Petition was filed on*



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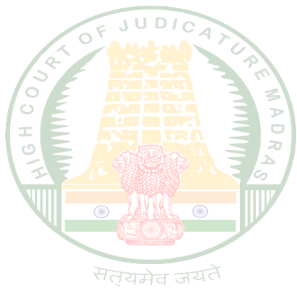
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23.1.2012, i.e., after 5 years, 10 months and 27 days, however, within twelve years. As such, O.P. No. 300 of 2012 is not barred by limitation. The finding of the learned Single Judge that limitation to recover the amount due is only three years, is unacceptable as the Application under Sections 31(a), 31(aa) & 32 of the State Financial Corporation Act, 1951 is not a Complaint and it is to be treated as a decree. In view of the aforesaid position in law, it is an inevitable one to conclude that the period prescribed under Article 136 of the limitation Act is applicable and not Article 137 as decided by the learned Single Judge. We answer the issue in favour of the Appellant.”

(iv) **Deepak Bhandari v. Himachal Pradesh State Industrial**

Development Corporation Limited reported in (2015) 5 SCC 518, wherein it has held that,

“28. It is thus clear that merely because the Corporation acted under Section 29 of the State Financial Corporations 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 on 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



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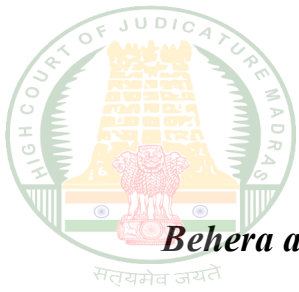
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contract of indemnity, which was an independent contract, did not. The right to claim for the balance arose, under the contract of indemnity, only when the sale proceeds were found to be insufficient. The right to sue on the contract of indemnity arose 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.

29. 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.”

15. On behalf of the respondents 6 & 7, the judgment of the Orissa High Court was relied upon, wherein the Single Judge in ***Orissa State Financial Corporation v. Ramesh Chandra Behera and another*** reported in ***2002 SCC OnLine Ori 21*** and also provided a comparative table how the facts of the case in hand differ from the facts of the case reported in ***BRS Ventures Investments v. SREI Infrastructure Finance Ltd & Another*** reported in ***2024 SCC Online SC 1767***.

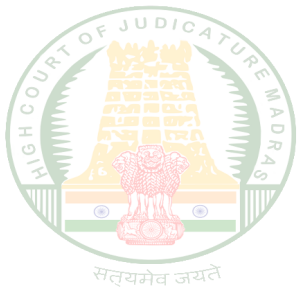
16. In ***Orissa State Financial Corporation v. Ramesh Chandra***



Behera and another reported in **2002 SCC OnLine Ori 21**, it was held,

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“6. Law is no more res integra that; the liability of a surety is co-extensive with that of the principal debtor and a decree can be executed either against the principal debtor or the surety, at the discretion of the creditor. However, where the surety is made to discharge such liability of the principal debtor, such surety has got a right to be reimbursed by the principal debtor. Section 31 of the Act, quoted supra, contemplates several reliefs which can be granted on the basis of an application of a Financial Corporation. Clause (a) of Section 31(1) deals with the question of sale of property mortgaged, which does not preclude the Court to decide the liability of the principal debtor. In view of the amended provision of Section 31, incorporated by the Amendment Act of 1985, there cannot be any iota of doubt that Section 31 can also be invoked for enforcing the liability of a surety. Before passing an order under any of the clauses, i.e. (a), (aa), (b) and (c) of Section 31(1), it is incumbent upon the District Judge to find out the liability of the principal debtor first, and only after being satisfied about the liability of the principal debtor, i.e. the industrial concern, and regarding the default in payment of any loan or advance as envisaged under sub-section (1) of Section 31 has to pass appropriate order granting reliefs in accordance with the various clauses enumerated in sub-section (1) of Section 31. The reliefs which can be granted under clauses (a) and (aa) imply that the liability of the industrial concern



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has to be found out first. Though there is no provision in Section 31 to enforce the personal liability of an industrial concern, a cumulative reading of the section leads to the conclusion that there is no bar to decide about such liability. Once such liability is found, the Court can proceed in the manner contemplated in Sections 31 and 32 of the Act. On the basis of such finding, the Corporation can seek appropriate relief under Section 32-G of the Act, or even alternatively can file a suit to enforce the liability. The view taken by me finds support from the earlier decision of this Court in Misc. Appeal No. 670 of 1996 (OSFC v. Bani Prasanna Das) decided on October 22, 1998.”

17. The cause of action for this petition is stated as below:-

“The cause of action arose at Chennai where the loan was granted on 30.04.1987, when the loan was sanctioned, on 04.12.1987, when the loan documents were executed, on 01.07.1996, when the last installment become due on 03.05.2011, when the money was received from the liquidator, on 10.05.2011, when final notice of demand was made by the petitioner Corporation.”

18. Ex.P.1 is the letter from the petitioner/TIIC addressed to the 1st respondent bearing date as 11.05.1987. It is an intimation regarding the sanction of financial assistance to a tune of Rs.60 lakhs for setting up a new industrial unit. This is followed by deed of hypothecation dated 04.12.1987



(Ex.P.2), where the plant and machineries described in the schedule were

hypothecated by the borrower (1st respondent) in favour of the petitioner/TIIC.

Ex.P.3 is the deed of guarantee executed by the 8th respondent for the term loan extended to the 1st respondent Company, to a tune of Rs.60 lakhs. Ex.P.4 is the memorandum of entry executed by the 2nd respondent, who is the Managing Director of the 1st respondent Company, acknowledging the deposit of title deeds and the creation of equitable mortgage over the land and building with fixtures.

19. As far as 6th and 7th respondents are concerned, it is the deed of guarantee dated 17.06.1988 executed in favour of the petitioner/TIIC for the loan sanctioned to the 1st respondent Company under which the petitioner/TIIC claims right to recover the dues payable by the 1st respondent Company, even after its liquidation. The recital in Ex.P.3 indicates that, in case of default by the borrowing Company, the guarantor shall at any time be called upon for payment of the money due. The 6th respondent, as a Director of the 7th respondent Company, has indemnified the Corporation against all losses, including principal, interest or other money secured by the mortgage as well as costs, charges and expenses whatsoever which the Corporation may incur by reason of any default on the part of the 1st respondent/Company or its successor or

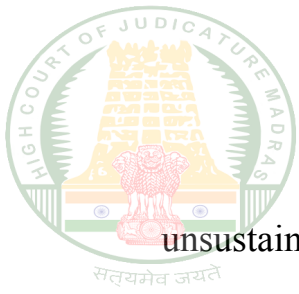


20. Clause: 2 of the Deed of Guarantee, marked as Ex.P.5 makes clear that if the guarantor wants to transfer the guarantee, it should give one month notice in writing to the Corporation, expressing their intention to transfer the guarantor.

Clause: 2 of the Deed of Guarantee, reads as below:-

“2. The Guarantors may, at any time upon giving one month's notice in writing to the Corporation, require the Corporation to transfer to the Guarantors the said Mortgage Debt and interest and all securities for the same upon the Guarantors paying to the Corporation the amount then owing upon the security of the Mortgage by way of principal, interest and all other monies and also all costs, charges and expenses incurred by the Corporation by way of and incidental to such transfer.”

21. Nowhere in this document that the extent of liability is restricted, either in terms of the amount or in terms of the period. Therefore, the contention of the respondents that the deed of guarantee has become redundant after transfer of the shares in favour of the 2nd respondent is baseless and



unsustainable. The deed of guarantee executed by the 6th respondent on behalf

of the 7th respondent clearly states that, if the guarantor wants of transfer the Guarantor it should be in writing with one month prior notice. It is not the case of the respondents that they put the petitioner/TIIC advance notice of one month to transfer the guarantor and same was acted upon. It is an unilateral action of the 6th and 7th respondents, who claims that they have transferred their shares held in the 1st respondent company and intimated it to the petitioner/TIIC. Therefore, the deed of guarantee (Ex.P.5) has come to an end. This contention cannot be countenanced since the recital found in Ex.P.5 clearly indicates that the guarantee will get terminated only on discharge of the debt by the principal borrowing.

22. In the instant case, the loan was sanctioned on 30.04.1987. Due to default, the mortgaged land and building were taken into possession by the petitioner/TIIC on 10.03.1994. After taking possession of the property by exercising power under Section 29 of the State Financial Corporations Act, 1951, the petitioner/TIIC could not proceeded further to auction the property for recovery. Since in the meantime, Company Petition No.5 of 1994 filed and allowed on 04.03.2009. The Official Liquidator had sold the mortgaged property and paid Rs.55 lakhs to the petitioner/TIIC. This amount been given



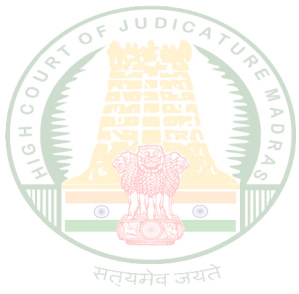
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credit into the loan account of first respondent.

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23. It is contented by the Learned Counsel appearing for the respondents 6 & 7 that the petitioner/THIC, having taken possession of the property in 1994 ought to have sold the property and appropriated the entire sale consideration. Instead, it allowed the Official Liquidator in the winding up proceedings, to sell the property and receive only a portion of the proceeds. Having discharged the principal debtor, which is the 1st respondent Company, the THIC cannot proceed against the guarantor by invoking Section 31 of the State Financial Corporations Act.

24. In *Orissa State Financial Corporation case* cited supra, which is relied by the respondents Counsel, it is held that liability of a surety is co-extensive with that of the principal debtor and the decree can be executed either against the principal debtor or the surety, at the discretion of the creditor. However, where the surety is made to discharge such liability of the principal debtor, such surety has got a right to reimburse by the principal debtor. It is the principle of subrogation been applied both in the judgment of Orissa High Court referred above and the judgment of the Hon'ble Supreme Court in *BRS Ventures Investments* cited above.



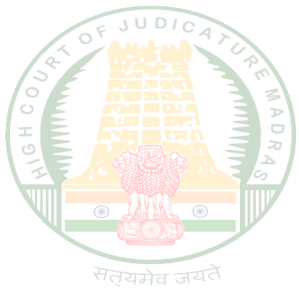
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25. Section 31 of the State Financial Corporations Act, 1951, reads

as below:-

31. Special provisions for enforcement of claims by Financial Corporation.— (1) *Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof [or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under Section 30 and the industrial concern fails to make such repayment [then, without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882 (4 of 1882)], any officer of the Financial Corporation, generally or specially authorized by the Board in this behalf, may apply to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:-*

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the [Financial Corporation] as security for the loan or advance; or



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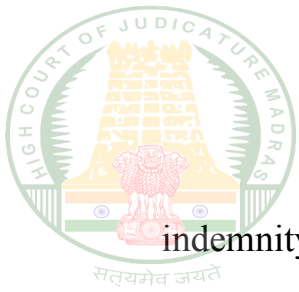


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(aa) for enforcing the liability of any surety; or

This provision is in addition to the right conferred on the Finance Corporation in case of default, as contemplated under Section 29 of the State Financial Corporation Act, 1951.

26. It is an admitted case of the petitioner/TIIC that initially proceeded under Section 29 of the State Financial Corporations Act, took possession of the property mortgaged and hypothecated by the 1st respondent/Company. Later, they allowed the Official Liquidator to liquidate those properties. The petitioner/TIIC further submitted themselves to the jurisdiction of the Company's Court and participated along with other secured creditors, for the recovery of the dues. The 1st respondent/Company was liquidated in 2009 and is no more in existence. The liability of the Company is limited but its Directors can be held personally liable if they have indemnified the Bank for the default of the Company. The personal guarantee given by the Directors of Corporate debtors and third parties will not get extinguished till the liability is discharged. As held ***Deepak Bhandari case*** cited supra, merely because State Financial Corporations proceeded under Section 29, the



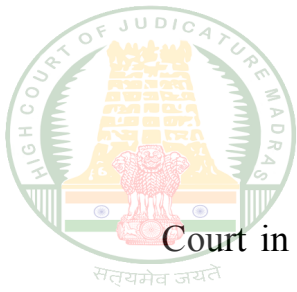
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indemnity will not come to an end.

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27. Peculiarly, in the present case, the petition for recovery is filed both against the principal borrower and the Guarantor. The conduct of the petitioner, allowing the 1st respondent/Company to get wound up and receiving Rs.55 lakhs from the proceeds of the assets of the 1st respondent Company without any demure or protest or reservation do not extinguishes its right or remedy against the principal debtor or the guarantors. After exhausting its right against the property mortgaged by the principal debtor, the TIIC had proceed against the borrowing Company and the Guarantor since the liability of the borrower not fully satisfied.

28. The Division Bench of this Court in ***Tamil Nadu Industrial Investment Corporation Ltd v. M/s.Decolyte Engineering Industries***, case, relying upon ***Maganlal v. Jaiswal Industries*** referred supra has held that petition under Section 31 of State Financial Corporations Act is akin to execution proceedings. Also has held that, the limitation for recovery is 12 years. As far as this case, the last payment towards the debt against mortgage was on 03.05.2011, when the petitioner Corporation received Rs.55 lakhs through the Official Liquidator. The petition for recovery presented before



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Court in 30.09.2011 and taken on file on 07.12.2011 assigning O.P.No.719 of

2011. Therefore, the claim is well within limitation.

29. On the facts and the precedent referred above, it is substantially clear that the State Financial Corporation can proceed under Section 31 of the Act. The liquidation of the first respondent Company is an involuntary act of the principal debtor and the creditor. Therefore, the loss of mortgaged property no way will absolve the guarantors.

30. For the reasons stated above, this Court finds that the respondents are liable to pay the petitioner the amount mentioned in the petition and as prayed.

31. Hence, the Original Petition is allowed with costs.

07.01.2025

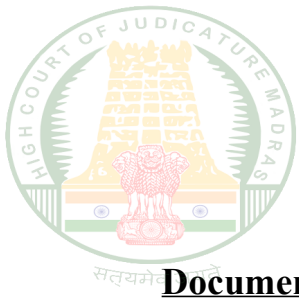
Index :Yes.
Internet :Yes.
bsm

Petitioner's witness:

P.W.1 – P.Santhana Kennedy

Respondent's Witness:

R.W.1 – Mr.S.Padmanabhan



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Documents marked:

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<i>Exhibits</i>	<i>Documents</i>
Ex.P.1	Original Deed and Conditions of Loan dated 07.05.1987 of the petitioner corporation.
Ex.P.2	Original Deed of Hypothecation First Term Loan dated 04.12.1987.
Ex.P.3	Original Deed of Guarantee dated 04.12.1987.
Ex.P.4	Original Mortgage Confirmation Letter and memorandum of entry dated 04.12.1987.
Ex.P.5	Original Deed of Guarantee dated 17.06.1988.
Ex.P.6	Original Deed of Guarantee dated 22.03.1988.
Ex.P.7	Photocopy of notice dated 10.05.2011.
Ex.P.8	Original acknowledgement of M/s.Padmaja Financial Services Private Limited dated 16.05.2011 (7 th Respondent).
Ex.P.9	Original postal acknowledgement dated 16.05.2011 of the 2 nd Respondent.
Ex.P.10	(5 Nos) are the original returned postal covers.
Ex.P.11	certified copy of Accounts statement dated 04.12.1987.
Ex.P.12	Photocopy of the order dated 04.03.2009 passed by this Hon'ble Court in Company Petition No.5 of 1994.
Ex.P.13	Original Authorization letter dated 23.01.2020 given by the Branch Managr, The Tamilnadu Industrial Investment Corporation Limited, Tiruvallur Branch.
Ex.P.14	Extract of the minutes of the meeting in 2019-2020 of the Board of Directors of the Corporation held on 31.07.2019 along with the certificate under Section 65B of the Indian Evidence Act, 1872.

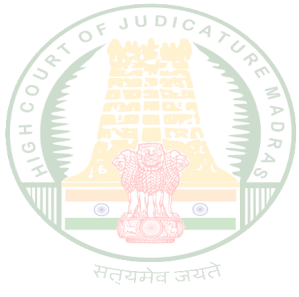
<i>Exhibits</i>	<i>Documents</i>
<i>Ex.R.1</i>	Original agreement dated 24.11.1991 executed between the 2 nd respondent and the 6 th respondent on behalf of the 1 st and 7 th respondents.
<i>Ex.R.2</i>	Original minutes of the board of directors meeting of the first respondent.
<i>Ex.R.3</i>	Original letter dated 16.05.1992 issued by the 2 nd respondent to the



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<i>Exhibits</i>	<i>Documents</i>
	6 th respondent along with the statement of remuneration of the 6 th respondent and the approval issued by the ministry of law.
<i>Ex.R.4</i>	Original notice of the board meeting and agenda of the 1 st respondent
<i>Ex.R.5</i>	Original letter dated 26.05.1992 issued by the 7 th respondent to SIPCOT
<i>Ex.R.6</i>	Original letter dated 29.05.1992 issued by the 7 th respondent to the 1 st respondent
<i>Ex.R.7</i>	Original letter dated 04.06.1992 issued by the 1 st respondent to the Bank of Baroda Limited.
<i>Ex.R.8</i>	Original letter dated 04.06.1992 issued by the 1 st respondent to SIPCOT.

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Dr.G.JAYACHANDRAN,J.

bsm

Delivery order made in
Original Petition No.719 of 2011

07.01.2025