

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sicom Ltd. Vs. Zenith Steel Tubes and Industries Ltd. and anr.

Sicom Ltd. Vs. Zenith Steel Tubes and Industries Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/369495

Court : Mumbai

Decided On : Apr-25-2005

Reported in : III(2007)BC568

Judge : S.U. Kamdar, J.

Acts : [State Financial Corporations Act, 1951](#) - Sections 31(1) and 46; Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 22

Appeal No. : Misc. Petition No. 64 of 2000

Appellant : Sicom Ltd.

Respondent : Zenith Steel Tubes and Industries Ltd. and anr.

Advocate for Def. : J.N. Shiralkdaar, Adv.

Advocate for Pet/Ap. : V.R. Dhond and ;K.G. Desai, Advs., i/by., ;Mehta Laljee, Adv.

Disposition : Petition allowed

Judgement :

S.U. Kamdar, J.

1. The present petition is filed under Section 31(1)(aa) of the State Financial Corporations Act.

2. The facts of the present case briefly enumerated are as under:

The petitioner is the deemed State Financial Corporation within the meaning of Section 46 of the [State Financial Corporations Act, 1951](#). The respondent company was carrying on business of manufacturing galvanised pipes. Some time in or about November, 1992, the 1st respondent company approached the petitioner for financial assistance to the tune of Rs. 142 lakh to meet the part finance of the cost of the project. It was proposed to set up a factory at Survey No. 66 /1B within village Madap, Taluka Kolhapur, District Raigad for manufacture of galvanised pipes. The said amount was sanctioned and vide their letter dated 20.11.1992 a sum of Rs. 142 lakh was advanced by the petitioner to the 1st respondent. An agreement was entered into for term loan and the respondent No. 1 also created a security for repayment of the said amount by hypothecating their plant and machinery and created an equitable mortgage of their factory premises situated at the aforesaid address. A loan agreement was executed on 30.3.1993 agreeing to repay the said amount of loan in various instalments. On 30.3.1993 the 2nd respondent executed a personal guarantee for repayment of the said amount on default on the part of the 1st respondent. The respondent No. 1 company committed various defaults in repayment of the aforesaid amount. In view of the defaults committed, the petitioner issued a notice on 16.10.1998 calling upon the respondent No. 1 company to make payment of the overdue amount within the stipulated period of time. However, the 1st respondent failed and neglected to make the payment and, therefore, by notice dated 10.1.1999 the petitioner called upon the respondent No. 1 to repay the entire amount by 3.2.1999 failing which the possession of the assets will be taken on 3.2.1999. However, the respondent No. 1 failed and neglected to make the payment and thus the petitioner issued a notice on 13.6.2000 calling upon the respondent No. 2 to make payment of the aforesaid amount by invoking the personal guarantee given by the 2nd respondent. In spite of the said notice being served, the respondent No. 2 did not make the aforesaid payment. Thus, accordingly, the present petition is filed against the respondent No. 2 under Section 31(l)(aa) of the State Financial Corporations Act enforcing the said personal guarantee. The respondent No. 1 has since been declared sick by the BIFR under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and thus the said company is

under the BIFR and the proceedings are not yet terminated.

3. In the present case, the respondent has contended that in view of Section 22 of the said Act, the personal guarantee cannot be invoked as against the 2nd respondent. For the reasons set out by me in my judgment in Misc. Petition Nos. 51 to 61 of 2000, I cannot accept the aforesaid contention and, therefore, accordingly, the same is rejected.

4. It has been next contended that the petitioner company cannot enforce the guarantee unless the assets which are mortgaged in their favour has been realised. I am unable to accept the aforesaid contention also firstly because the said assets cannot be realised because of the BIFR proceedings initiated by the respondent No. 1 itself. In any event, the liability of the guarantors is independent to the principal debtor and, therefore, the same can be invoked and the amount can be recovered.

5. In the aforesaid circumstances, I find no merit in the contentions advanced by the learned Counsel for the respondent and accordingly I allow the petition and pass the following order:

6. I direct the respondent No. 2 to make payment to the petitioner of a sum of Rs. 75,89,225 with further interest at the rate of 12% per annum till payment and/ or realisation. However, there shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com