
(2008) 07 P&H CK 0085
In the Punjab And Haryana At Chandigarh

Aggarwal Overseas Limited	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 31, 32

Citation : (2008) 152 PLR 772 : (2008) 4 RCR(Civil) 690

Hon'ble Judges : Rakesh Kumar Garg, J;J.S. Khehar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, J.—M/s San Components Limited had taken term loan of Rs. 1.50 crores from Haryana State Industrial Development Corporation Limited (hereinafter referred to as "HSIDC") on 5.2.2002. M/s Aggarwal Overseas Limited i.e. the petitioner in the instant writ petition signed a bond of guarantee dated 5.2.2002, offering security of its immovable properties. This guarantee was given to secure the loan sanctioned by the HSIDC to M/s San Components Limited.

2. The HSIDC issued a notice dated 19.12.2005 u/s 29 of the State Financial Corporation Act, 1951 to M/s San Components Limited as also to Smt. Neelam Aggarwal and Sanjay Mohan Aggarwal asserting that an amount of Rs. 153.59 lacs was outstanding against M/s San Components Limited as on 31.10.2005. It was also asserted therein that M/s San Components Limited as making persistent default as a consequence whereof the primary security of the industrial unit was taken over u/s 29 of the State Financial Corporations Act, 1951 and put to sale wherein the HSIDC had received a bid of Rs. 67 lacs, which it had decided to confirm. However, M/s San Components Limited had challenged the action initiated by the HSIDC u/s 29 of the State Financial Corporations Act, 1951, before this Court. This Court ordered the HSIDC not to confirm the said sale without its approval.

3. It was also brought out that in view of the aforesaid, the sale of the unit of M/s San Components Limited had not yet been confirmed in favour of the highest bidder. It was also brought out that since the aforesaid sale proceeds would not be sufficient towards the amount recoverable from M/s San Components Limited, the HSIDC had decided to issue a notice to the guarantors of the company before taking over collateral security pledged to the HSIDC. The guarantors were accordingly required to clear the arrears within 14 days failing which it was asserted that the pledged securities would be taken over u/s 29 of the State Financial Corporations Act, 1951, and the same would be put up for sale in due course.

Though another communication dated 14.8.2006, HSIDC informed the guarantors that collateral securities taken over u/s 29 of the State Financial Corporations Act, 1951 has been advertised for sale for realizing the recoverable balance.

4. The petitioner approached the Delhi High Court by filing C.W.P. (Civil) No. 13647 of 2006, challenging the action of the HSIDC in taking over the properties of the petitioner u/s 29 of the State Financial Corporations Act, 1951. It was canvassed before the Delhi High Court that the properties of the guarantors could be taken over in terms of the procedure stipulated under Sections 31 and 32 of the State Financial Corporations Act, 1951. On 21.9.2006, the Delhi High Court passed an interim direction to the effect that any sale of the properties of the petitioner u/s 29 of the State Financial Corporation Act, 1951, would be subject to the decision in the said writ petition. However, when the aforesaid writ petition came up for consideration on 4.3.2008, the Counsel representing the petitioner stated that the Delhi High Court had no jurisdiction to deal with the matter and this jurisdiction in the matter was vested in this Court. The petitioner was accordingly permitted to withdraw the aforesaid writ petition on 4.3.2008.

5. After withdrawing the writ petition filed in the Delhi High Court the petitioner approached this Court. The submission advanced at the hands of the petitioner even before this Court, is the same as it was before the Delhi High Court namely, that the action initiated by the HSIDC against the petitioner under the Section 29 of the State Financial Corporations Act, 1951, was without jurisdiction. According to the petitioner, the petitioner being a guarantor, action could only be taken against the petitioner under provisions of Sections 31 and 32 of the State Financial Corporations Act, 1951.

6. In order to substantiate the contention advanced by the learned Counsel for the petitioner, as has been noticed in the foregoing paragraph, learned Counsel for the petitioner placed reliance on the decision rendered by a Full Bench of this Court in *Paramjit Singh Ahuja v. Punjab State Financial Industrial Development Corporation Limited and Ors.* C.W.P. No. 5397 of 2003 decided on 18.10.2006. This Court re corded the following conclusions:

1. The State Financial Corporation/the creditor u/s 29 of the Act, has a right to

transfer by way of lease or sale and realize the property pledged mortgaged hypothecated or assigned to the financial corporation by the industrial concern and also by the surety.

2. The liability of the surety is co-extensive with that of the principal borrower and it is not necessary for the financial corporation/creditor to first proceed against the principal borrower and only thereafter proceed against the surety. Creditor be at liberty to proceed against the surety even in the first instance.

3. The financial corporation has a right to proceed u/s 29 or u/s 31 of the Act. It has a further right to abandon its right/remedy u/s 29 and proceed u/s 31 and vice versa.

7. Despite the aforesaid determination rendered by this Court which accepted the initiation of proceedings against the guarantor u/s 29 of the State Financial Corporations Act, 1951, it is the contention of the learned Counsel for the petitioner that the apex Court in *Karnataka State Financial Corporation v. N. Narasimahaiah and Ors.* Appeal (Civil) Nos. 610-612 of 2004 decided on 13.3.2008, had clearly concluded that it was not open to the HSIDC to initiate proceeding against the petitioner who was a guarantor u/s 29 of the State Financial Corporations Act, 1951. In order to substantiate, learned Counsel for the petitioner has placed reliance on the narration contained in paragraph 14, 15, 18 and 31 in the judgment of the Apex Court, referred to hereinabove. The aforesaid paragraphs from the aforesaid judgment are being extracted hereunder:

Section 29 of the Act nowhere states that the corporation can proceed against the surety even if some properties are mortgaged or hypothecated by it. The right of the financial corporation in terms of Section 29 of the Act must be exercised only on a defaulting party. There cannot be any default as is envisaged in Section 29 by a surety or a guarantor. The liabilities of a surety or the guarantor to repay the loan of the principal debtor arises only when a default is made by the latter.

15. The words "as well as" in our opinion play a significant role. It confers two different rights but such rights are to be enforced against the same person, viz., the industrial concern. Submission of the learned senior Counsel that the second part of Section 29 having not referred to "industrial concern", any property pledged, mortgaged, hypothecated or assigned to the financial corporation can be sold, in our opinion cannot be accepted. It is true that Sub-section (1) of Section 29 speaks of guarantee. But such a guarantee is meant to be furnished by the Corporation in favour of a third party for the benefit of the industrial concern. It does not speak about a surety or guarantee given in favour of the corporation for the benefit of the industrial concern.

Banking practice may enable a financial corporation to ask for collateral security. Such security, we would assume, may be furnished by the Directors of a Company but furnishing of such security or guarantee is not confined to the Directors or employees or their close relatives. They may be outsiders also. The

rights and liabilities of a surety and the principal borrower are different and distinct.

Apart from the defences available to a principal borrower under the provisions of, the Indian Contract Act, a surety or a guarantor is entitled to take additional defence. Such additional defence may be taken by the guarantor not only against the corporation but also against the principal debtor. He, in a given situation, would be entitled to show that the contract of guarantee has come to a not. Ordinarily, therefore, when a guarantee is sought to be enforced, the same must be done through a court having appropriate jurisdiction. In the absence of any express provision in the statute, a person being in lawful possession cannot be deprived thereof by reason of default on the part of a principal borrower.

31. A surety may be a Director of the Company. He also may not be. Even if the is a close relative of the Director or the Managing Director of the Company, the same is not relevant. A Director of the Company is not an industrial concern. He in his capacity as a surety would certainly not be. A juristic person is a separate legal entity. Its veil can be lifted or pierced only in certain situations See: Salomon v. Salomon and Co. 1897 AC 22, (1944) 12 ITR 458 , Juggi Lal Kamalapat Vs. Commissioner of Income Tax, U.P., and Kapila Hingorani Vs. State of Bihar, .

9. We have given our thoughtful consideration to the contention advanced by the learned Counsel for the petitioner. We have also examined the bond of guarantee executed by the petitioner. In the bond of guarantee the petitioner expressly contracted as under:

6. In order to give effect to the guarantee herein contained the Corporation shall be entitled to act as if the guarantor was the principal debtor to the Corporation for all payments and covenants guaranteed by its as aforesaid to the Corporation.

10. The question to be determined while examining the submission advanced by the learned Counsel for the petitioners, is whether the action initiated against the petitioner by the HSIDC is in furtherance of Clause 6 of the Bond of Guarantee (extracted herein above), or u/s 29 of the State Financial Corporations Act. In our view, when the petitioner himself expressly accepted the term expressed at Serial No. 6 of the Bond of Guarantee that in case the principal debtor failed to discharge his liability towards the HSIDC would be entitled to act as if the guarantor was the principal debtor. It is not a matter of dispute that the principal debtor could have been proceeded against u/s 29 of the State Financial Corporations Act, 1951, in case there was default in payments. In our view, the petitioner having expressly contracted to accept that in case the principal debtor failed to discharge his liabilities towards the HSIDC, the HSIDC, would be entitled to act against the guarantor i.e. the petitioner herein as if he was the principal debtor.

11. In view of the aforesaid, it is clear that the petitioner himself accepted to wear the shoes of the principal debtor in case of default in payments. Having

done so, it is natural that the action initiated by the HSIDC against the petitioner u/s 29 of the State Financial Corporations Act, 1951, was on account of the acceptance by the petitioner himself. Thus viewed, it is not as if the HSIDC unilaterally initiated action against the guarantor i.e. the petitioner herein u/s 29 of the State Financial Corporations Act, 1951. The aforesaid action came to be initiated on account of the express acceptance to be regulated under the aforesaid provision in view of Clause 6 of the Bond Guarantee extracted hereinabove. In view of our aforesaid conclusion, we are of the view that the decision rendered by the Apex Court in Karnataka State Financial Corporation's case is clearly inapplicable to the facts and circumstances of this case.

12. It needs to be expressly noticed here that the petitioner did not challenge the vires or Clause (6) of the Bond of Guarantee extracted hereinabove, nor was it his case that the same could not have enforced against him.

For the reasons recorded hereinabove, we find no merit in the instant writ petition and the same is accordingly dismissed.