

(2008) 09 BOM CK 0001
In the Bombay High Court
Case No : Misc. Petition No. 41 of 2001

SICOM Ltd.

APPELLANT

Vs

Parca Paper Industries Limited and Others

RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Bombay Court Fees Act, 1959 — Article 1, 7
Civil Procedure Code, 1908 (CPC) — Section 2(2), 51
Limitation Act, 1963 — Article 137
State Financial Corporations Act, 1951 — Section 29, 31, 31(1), 31(2), 32

Citation : (2008) 6 ALLMR 7 : (2008) 5 BomCR 524 : (2008) 110 BOMLR 2849 : (2009) 1 MhLj 921

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : Kevic Setalvad and P. Panjabi, for the Appellant; G.R. Mehta, G.W. Mattos, A.G.P, for the Respondent

Judgement

Roshan Dalvi, J.—The Petitioner granted a loan of Rs. 4.37 crores to Respondent No. 1. Respondent Nos.2 to 7 guaranteed the repayment of the said loan under deeds of personal guarantee and corporate guarantees executed by them Exhibits A to E, to the Petition. The Petitioner sought to enforce the guarantees. Since there were defaults in the repayment of loan, the Petitioner got the properties of Respondent No. 1 mortgaged to the Petitioner, sold for recovering the loan amount u/s 29 of the State Financial Corporation Act, 1951 (SFCA).

2. The Petitioner had ceded its first charge from the mortgaged property on Paripassu basis in favour of the Maharashtra State Financial Corporation, who had also granted another loan to Respondent No. 1.

3. The Petitioner invoked the Deeds of guarantee executed by Respondents 2 to 7 by their notice dated 14th September, 2000, Exhibit E, to the Petition, calling upon the Respondents 2 to 7 to pay the Petitioner Rs. 7,44,06,464/-. The Respondents failed to pay that amount. The Petitioner, therefore has sought to

enforce the liability of Respondents 2 to 7 as the sureties/guarantors of the said loan u/s 31(1)(aa) of the SFCA. The Petitioner has claimed Rs. 8,34,39,808/as on 31st December, 2000 under the particulars of claim, ExhibitG to the Petition.

4. The Petitioner has also applied for an injunction against Respondents 2 to 7 from selling, transferring or assigning the mortgaged properties of Respondent No. 1.

5. Upon the filing of the Petition the Respondents have been issued a notice to show cause why the liability of Respondent Nos.2 to 7 as sureties under those guarantees should not be enforced. The Respondents 2 to 7 have accordingly shown cause.

6. It may be mentioned that the Petitioner's right against Respondent No. 1 is u/s 29 of the SFCA. The Petitioner right, if any, against Respondents 2 to 7 are u/s 31(1)(aa) of the SFCA. This Court would be required to pass an order u/s 32(7) (da) of the SFCA directing the enforcement of the liability of the sureties or rejecting the Petitioner's claim in that behalf.

7. It is contended on behalf of the Respondents that this Petition for enforcing the personal liability of the surety is essentially for payment of the amounts, due and payable under the deeds of guarantee, which is the unpaid balance amount of the loan payable by Respondent No. 1. Consequently, this Petition is in the nature of a Suit for claiming a money decree and hence, is amenable to payment of ad valorem Court Fees. The fixed Court fees of Rs. 100/has been paid by the Petitioner on the premise that for Petitions under the SFCA no money decree is required to be passed, even for enforcement of the liability of the surety, and as the Petition is essentially is in the nature of the execution of an application which is not amenable for payment of the ad valorem Court Fees. This aspect would have to be first determined. Notice to the Government Pleader has been issued in respect of the judgment relating to the payment of Court Fees. Mr. Mattos, Government Pleader as well as Mr. Mehta on behalf of Respondents 2 to 7 have drawn my attention to several judgments of the Apex Court as well as of this Court with regard to the nature of the claim in a Petition for enforcement of the liability of the surety.

8. Mr.Kevic Setalvad, Mr. G.R. Mehta and Mr. G.W. Mattos, have drawn my attention to various judgments of the various Courts to see the nature and purport of an application u/s 31(1)(aa) of the SFCA.

9. In the case of Gujarat State Financial Corporation v. Natson Manufacturing Co. Pvt. Ltd and Ors. (1979) 1 SC 193 the question relating to the payment of Court Fees in an application u/s 31(1) of the SFCA came to be decided. Section 31(1) relates to the Petition for an order of sale of the mortgaged property. It is, therefore, essentially against the principal debtor, who has mortgaged the property and who has been given a loan upon such mortgage.

10. In a Petition u/s 31(1) of the SFCA the Court is required to confirm an order

of attachment and direct the sale of the attached property. In paragraph 9 of the judgment the ambit of Section 31(1) has been shown. It is held that there is a special procedure for enforcement of the claims by Financial Corporations under the said Section. The Corporation has to make an application for reliefs u/s 31(1). The Court can grant the sale of the mortgaged property, transfer the management of the Industrial concern to the Financial Corporation and/or, restrain the industrial undertaking from transferring its machinery. It is held that such an application is not a Suit for recovery of mortgaged money by the sale of mortgaged property. There cannot be a preliminary decree for accounts or a final decree for payment of money, nor can it enforce a personal liability even if such liability is incurred in a contract of mortgage. The Corporation cannot pray for a decree for its outstanding dues. Hence, no money decree can be passed. Consequently, it is held that the relief is incapable of monetary evaluation and hence, Article 1 of Schedule I of the Bombay Court Fees Act, 1959 would not be attracted and ad valorem court fee would not be payable, since it is not an application for repayment of the loan, even if the Corporation would specify the figure for the purpose of determining how much of the security should be sold. Consequently, it is observed that the investigation of the claim of the Corporation would not involve the conditions that can be raised in a Suit, which can be in terms of monetary gain or prevention of monetary loss envisaged under Article 7 of Schedule I of the Bombay Court Fees Act, 1959. It is held that the substantive relief in such an application is akin to the application for attachment of property in execution of a decree at a stage posterior to the passing of the decree, and hence, the provisions of Article 7 of Schedule I of the Court Fees Act also would not apply to such a Petition. Consequently, it is held that a Petition u/s 31(1) would be covered only by the residuary Article 1(c) of Schedule II of the Court Fees Act and would attract only a fixed Court Fees.

11. It may be mentioned that in 1979 when the aforesaid case was decided Section 31(1) of the SFCA did not have the provision relating to the enforcement of the liability on the surety. That provision came to be incorporated under the Amendment Act 43 of 1985, which came into effect from 21st August, 1985, under which Section (aa) came to be added to Section 31(1).

12. After the amendment of the Act in the case of Maharashtra State Financial Corporation v. Esthier D. Gama, Bombay 1987 Mh.L.J. 731 , it was held by Justice Suresh, as he then was, with regard it being added to the scheme of the Act under Sections 31 and 32, that the order contemplated thereunder is not a decree. It only gives a limited relief. It secures the property which is mortgaged to the Financial Corporation and the Financial Corporation and enforce the securities. The judgment observes that in such a situation, there was no question of further application for execution. So long as the attachment continues, and the order for sale of the attached property remains in force the Financial Corporation would be entitled to carry into effect the order securing the property. It may be mentioned that this judgment does not consider the claim against the sureties.

13. In the case of Maharashtra State Financial Corporation v. Hindtex Engineers Pvt. Ltd. 1987 Mh. L.J. 243 it has been held by Justice Mrs. Sujata v. Manohar, as she then was, that Section 31 was incapable of monetary evaluation. She has considered the order that can be passed u/s 31(1)(a) with regard to the sale of the mortgaged property. It is held that repayment of the loan against the mortgaged property cannot be stipulated in that SubSection. Hence, following Natson's case (Supra) it is held that Article 1(c) of Schedule II of the Bombay Court Fees Act, 1959 would only be applicable.

14. It may be mentioned that in both the aforesaid judgments of Bombay High Court, in the cases of Esther D. Gama and Hindtex (supra) Section 31(1)(aa) has not been considered despite the amendment. The Court was called upon to consider only the rights of principal borrower of the money. The claim by the Corporation against the principal borrower can be made only for attachment and sale of the mortgaged property. The claim against the guarantor/surety for enforcement of the surety/ personal guarantee is quite different.

15. That has been considered in the case of Maharashtra State Financial Corporation Vs. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and Others, . In that case a Corporation failed to recover the amount from the principal borrower. Personal guarantee was given by the guarantor. The Corporation sought to recover the amount due and payable by the principal borrower from the surety whose liability was coextensive with the principal debtor. It was held that the extent of the liability of the surety which was sought to be enforced under such an application was in monetary terms. It was observed that u/s 31(2) the application would need to state the nature and extent of the liability of the industrial concern to the financial corporation and u/s 32(1) an order for attachment can be passed only for "an amount equivalent to the value to the outstanding liability". Similarly u/s 32(1A) the notice required to be given to the surety was to show cause why "the liability should not be enforced". u/s 32(6) the Judge is required to investigate the claim of the financial Corporation. The reference to the aforesaid Sections were made in respect of the monetary claim of the Financial Corporation and the extent of the liability of the Industrial Concern. This exercise was undertaken in this case to decide the pecuniary jurisdiction of the Courts. Hence, it came to be concluded that when the extent of the liability was below Rs. 50,000/the Bombay City Civil Court would have jurisdiction and if it exceeds that amount the Bombay High would have jurisdiction to pass an order u/s 32 of the SFCA.

16. In paragraph 23 of the judgment the claim of enforcement of liability against any surety is considered. It is observed that the term "any surety" will include both the surety who has given security and the surety, who has given personal guarantee. If notice is issued against such a surety and the surety has shown cause, the claim of the Financial Corporation as against such surety would have to be determined by the Court u/s 32(6) of the SFCA, and thereafter, a direction u/s 32(7)(da) would have to be issued for enforcement of the liability or for

rejecting the claim. For determining such liability a speedy remedy is provided. It is, therefore, observed that this has the effect of "cutting across and dispensing with the provisions of the Code of Civil Procedure, 1908, from the stage of filing a suit to the stage of obtaining a decree against the surety in execution of which such property could be sold, hence, only an order can be passed in such Petition u/s 31(1)(aa), which can straight away be executed as if it were a decree against the surety. Consequently the importance of the words "extent of the liability u/s 31(2) of SFCA" is emphasised. Since the liability of the surety is coextensive, the extent of the liability to be shown in the application would be in conformity with the surety bond. After cause being shown this liability has to be determined by the Judge, upon investigation of the claim of the Financial Corporation u/s 32(6), so that an order u/s 32(7)(da) can be passed for enforcing the liability of the surety. Hence, it is concluded in paragraph 23 of the judgment, that the extent of liability will be in terms of the monetary value, even if it would not be a decree, *stricto sensu* u/s 2(2) of the C.P.C for recovery of money.

17. The observations of the Supreme Court in the judgment show that in an application for enforcement of any surety including a surety for personal guarantee " the claim of the Corporation" , " the liability of the Industrial Concern" as also the coextensive liability of the surety would be determined and the order would be passed straightaway on the application, after considering the cause, if any, shown by the surety which could straightaway be executed as if it were a decree against the surety. This claim would, therefore, be in terms of the monetary value. Hence, the order to be passed, though it may not be called the decree, would required to be executed. The order is, therefore, not in the nature of an Execution Application. It is an order for a money decree. It is the order determining the extent of liability in terms of the monetary value and that order required to be executed under the C.P.C, would, therefore, have monetary value. The Petition for such an order would, therefore, be susceptible to the monetary evaluation.

18. It is argued by Mr. Setalvad on behalf of the Petitioner that the dissenting judgment of Justice Agrawal, in the case of Jaycee Drugs (*supra*) has considered the concept of payment of the Court fees in an application u/s 31(1)(aa). He has drawn my attention to paragraph 36 of the judgment which accepts the requirement of the fixed Court fees u/s 31(1). It observes that under the aforesaid SubSection, the claim of the Financial Corporation to be investigated is not a monetary claim, but only relating to the sale of the mortgaged property or the transfer of the management of the Industrial Concern. Paragraph 41 of the judgment deals with the claim for enforcing the liability of any surety. It is observed at the end of paragraph 41 of the judgment that it cannot be comprehended, how under provisions 31(1)(aa) while passing an order in the nature of the money decree against the surety, Parliament would have refrained from making the provision prescribing the procedure for carrying into effect such an order. It is held that the Parliament intended to place the surety on the same footing as the principal debtor for the enforcement of the claims as against the

properties of the principal debtor and the surety. Hence, enforcement of the liability of the surety would also be by attachment and sale of the property, and therefore, "akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree". It is, therefore, held that such a construction would obviate the need for procedure to effectuate the order u/s 32(7)(da).

19. It may be mentioned that this dissenting judgment considered specifically the claim against the surety for security and not on personal guarantee. Consequently, in the majority judgment (*supra*) observations relating to the personal guarantee of a surety considered in paragraph 23 would prevail. The liability for enforcement of the personal surety would, therefore, be in the nature of the monetary value. The claim to that end would be a monetary claim. The order against such a surety for enforcement by such a liability would be an order akin to a monetary decree. It would be an order, which would be executable under the C.P.C., as if it were a decree. That would be to the extent of the liability shown in the application which should be in conformity in surety bond. The extent of the liability would be computed, ordered and executed. Hence, though a summary procedure is laid down under the Act, that summary procedure enures for a rapid order to be passed against the Financial Corporation. It nevertheless, is an order, which will have to be executed as all decrees of the Civil Court would be. That would be under the modes laid down u/s 51 of the C.P.C.

20. The judgment in the case of SICOM Limited Vs. Padmashri Mahipatrai J. Shah and Others, Justice Kamdar, as he then was, upon considering the case of Natson and Jaycee (*supra*) held that Court fees were not liable to be paid u/s 31(1)(aa).

21. Mr. Mehta as well as Mr. Mattos drew my attention to the fact that an interim order had come to be passed in this very Petition prior to the aforesaid judgment by Justice Smt.Baam, as she then was, directing payment of Court fees. That order was not brought to the notice of the learned Judge. Notice to the Government Pleader was not given as required under the rules for considering the payment of Court fees, if any, and hence, that order of learned Single Judge would not have persuasive value.

22. In the case of Maharashtra State Financial Corporation v. Ashok K. Agarwal and Ors. (2006) 131 Comp. Case 1(SC) it has been held that an application u/s 31 of the SFCA is by way of a legal fiction akin to executing decrees as permitted by the CPC though no decree of a Civil Court *stricto sensu* is passed u/s 32 of the SFCA. The Financial Institution cannot be said to be a decree holder u/s 2(2) of the CPC and there is no decree or order of a Civil Court, which is being executed. Hence, it was held that Article 137 of the Limitation Act (and not Act 136) would apply to Petitions u/s 31 of the SFCA. It is sought to be contended by Mr. Setalvad on this ground that, since the order u/s 32 of SFCA is held not to be a decree which could be executed, it could not be a monetary decree and, hence, not susceptible to *ad veloram* Court fees.

23. A reading of the aforesaid six judgments as a whole show that all the applications made, and orders passed u/s 31(1)(a) for sale of the mortgaged property, u/s 31(1)(b) for transfer of its management or u/s 31(1)(c) for an injunction restraining the transfer of the plant and machinery or equipment of the industrial concern would not be susceptible to monetary evaluation as an order under these Sections would simply have to be enforced/executed. The relief would be akin to attachment in execution of the decree posterior to the passing of the decree. This would be incapable of monetary evaluation. However, the order for enforcing the liability of a personal surety would be a claim made by the Financial Corporation stating the extent of the liability and that would have to be enforced under an order of the Court in execution as per the provisions of the CPC. It is only such a claim where the extent of the liability can be determined in monetary value and which is made in terms of a monetary value which would be susceptible to the monetary evaluation. Hence, such a claim would attract payment of ad veloram Court fees. Even the claim of surety for security would be enforced, only by attachment of that property and, therefore, that also, though made u/s 31(1)(aa), would not attract payment of ad veloram Court fees.

24. In this case the claim is for enforcement of a personal surety under the deeds of mortgage executed by Defendants 2 to 7. The Plaintiffs have made the claim upon determining the extent of the liability of Defendants 2 to 7 as on 31st December, 2000 in a sum of Rs. 8,34,39,808/. That claim is seen to be monetarily evaluated. Hence, it requires payment of ad veloram Court fees on such amount.

25. Under an interim order passed in this Petition, the Petitioner have deposited Rs. 3 lakhs, which the highest Court fee payable after amendment to the Bombay Court Fees Act under Act 18 of 2002. This Petition has been filed prior to the amendment. At the time of the Petition the highest Court fee payable was Rs. 75,000/. The Petitioner would be required to pay such Court fees.

26. The Respondents have shown cause to the notice issued by the Court for filing Petition. The Respondents contend that this Court has no territorial jurisdiction to try the Petition. u/s 31 of the SFCA the Court within whose limits of jurisdiction the industrial concern carries on the whole or substantial part of its business is the Court, which would have jurisdiction to try the Petition. The Respondent No. 1 is stated to be having its factory premises and registered office at Panvel, Raigad District. However, office of Respondent No. 1 is shown to be at 109, Trinity, A.P. Market, S.S. Gaikwad Marg, Dhobitalaon, Mumbai 400, 002.

27. Paragraph 6 of the affidavit in reply of Respondent No. 2 dated 3rd October, 2001 shows that the factory of Respondent No. 1 did not even commence trial production and Respondent No. 1 did not carry on any business. Hence, on the Respondent's own showing the industrial concern cannot be taken to have carried on any part of its business in Raigad District. Paragraph 13 of the said affidavit in reply further shows that Respondent No. 1 did not commence actual

business, since the trial production was not commenced at its factory in Raigad District. Hence, also no substantial part or any part of the business of the Industrial Concern can be stated to be within Raigad District.

28. Admittedly in the said paragraph the administrative office being in Mumbai is not denied, as contended by the Petitioner from the letterheads of the Respondents. The correspondence with the Petitioner has been carried on from the Administrative Office. The only business which Respondent No. 1 as the industrial concern could have carried on is some administrative work. There is no part of the business carried on outside the limits of this Courts" jurisdiction. Hence, this Courts" territorial jurisdiction cannot be taken to be barred.

29. The next contention of the Respondents is that the signatory to the Petition is not an authorised signatory of the Petitioner. The Petitioner have produced the Board authorisation in favour of the signatory. In view thereof, the cause shown does not survive.

30. On merits, the Respondents 2 to 7 have contended that the attachment and sale of the factory premises and other properties of the industrial concern of Respondent No. 1 was at a gross undue valuation brought out in collusion and by fraud practiced by the Officers of the Petitioner and the liability of Respondents 2 to 7 as the sureties/guarantors for the unpaid balance amount has been adversely affected due to such undervaluation and is not the correct amount ascertained to be paid under the personal guarantee of Respondents 2 to 7. It is also contended that under the sale of the property of the industrial concern Respondent No. 1 sought to be effected the reversionary rights of Respondent No. 2 who was the owner of the land beneath the factory also came to be wrongfully sold. It is argued on their behalf that Respondent No. 1 had only the leasehold interest in the land beneath the factory. Respondent No. 2 was the owner of the land. He had a reversionary interest. He could have claimed reversion after 24 years. Though there was advertisement of leasehold interest of the industrial concern, the entire property being the leasehold interest of the Industrial concern, its plant, machinery and equipments which had come to be hypothecated/mortgaged to the Petitioner, as also the reversionary rights in favour of the Respondent No. 2 came to be sold. The Respondents have challenged the entire sale. They contend that whereas the price which was sought was for the leasehold interest, the sale is for the leasehold interest as well as the reversionary rights.

31. What transpired upon the defaults made by the Industrial concern would have to be seen to determine the merit of this case. u/s 29 of SFCA upon any default in repayment of the money made by the industrial concern, the financial corporation is entitled to take over the possession of the industrial concern as well as the right to transfer by way of lease or sale and also to realise the entire property mortgaged to the Financial Corporation. The deed of mortgage dated 18th September, 1996 relied upon by the Respondents themselves in their compilation shows Respondent No. 1 industrial concern as the mortgagor

company and Respondent No. 2 as the comortgagor. Clause 4 of the Mortgage Deed shows the deposit of title deeds. The clause shows mortgage of the leasehold right, title and interest of the mortgagor Company and the reversionary rights of the comortgagor. Recital 7 of the mortgage deed shows the term loan of Rs. 4.37 Crores taken from the Petitioner for acquiring fixed assets. Recital 7(b) of the mortgage deed shows the mortgagor company having secured in favour of the Petitioner the leasehold plots, plant, machinery etc, a floating charge on the liquid assets, the irrevocable joint and several guarantees of Respondents 2,3 and 4 and the Corporate guarantees of Respondents 5,6 and 7. It further shows the assignment by the comortgagor Respondent No. 2 by his reversionary rights in the leasehold plots. Consequently under Clause III(b) the reversionary rights in the plots of land leased to the industrial concern admeasuring 20250 sq. mtrs is a part of the mortgage.

32. Further in Clause XVI of the mortgage deed it is covenanted that it would be lawful for the Petitioner to sell the mortgaged premises which includes the reversionary rights of Respondent No. 2.

33. The Petitioner took possession in 2001 under the take over notice dated 11th January, 2001. The reply of Respondent No. 1 thereto dated 17th January, 2001 signed by its Directors has not refuted the claim of the Petitioner. They had sent the list of inventory showing the purchase cost of items at Rs. 68183572/. They claimed that the market value of the industrial concern would be 30 to 35% more than that amount. They requested the Petitioner's representative to verify the inventory list and requested the Petitioner to wait for 2 or 3 months as they were making efforts to restructure their undertaking or get private auction bids or claim additional funding.

34. The Petitioner advertised the assets of the industrial concern for its sale on "as is, where is" , basis on 31st March, 2001 and then on 11th July, 2003. The Petitioner received 8 bids, the details of which have been given by the Petitioner in their compilation and have been inspected by the Respondents. The general condition of sale of the properties of the industrial concern show the sale of leasehold land, plant and machinery and other movable assets. Clause 1 of the conditions of the sale show that the property is put up for sale for exercise of the power of sale available to the Petitioner u/s 99 of SFCA as mortgagee in possession. Consequently the conditions for sale show all the properties being sold including the reversionary rights. It is the case of the Petitioner in their affidavit dated 15th July, 2008 that after the initial advertisement given on 30th March, 2001 no offers were received. Even in the second advertisement given on 22nd June, 2001 no offers were received. In a further advertisement given on 27th July, 2002 3 offers were received. The Petitioner informed the Respondents of the highest of those offers and advised them to arrange for a better offer within 15 days. The Respondents by their letter dated 19th September, 2002 informed the Petitioner of a better offer of Rs. 81 lakhs from one M/s. Pushpa Infrastructure. Thereafter, the highest offeror enhanced his offer to Rs. 111lakhs

and then to Rs. 115 lakhs and later to Rs. 120 lakhs. However, the highest offeror failed to pay the amount. The Petitioner, thereafter, gave further advertisement on 11th July, 2003 and received 8 offers. Those were below the previous offers. Hence, the properties were not sold to any of those offerors.

35. The Petitioner then tried to sell the said property by showing the property individually to purchasers in 2003/2004. One M/s. Jairaj Packaging Pvt. Ltd., offered to purchase the secured assets as a composite unit for Rs. 80 lakhs which was then raised to Rs. 125 lakhs, which was the highest offer received by the Petitioner and it was higher than the offer suggested by the Respondents, which did not fructify. Thus, purchase by Jairaj Packaging Pvt. Ltd., and the sale by the Petitioner of the secured assets included the leasehold rights of the industrial concern, its plant, machinery and equipments and the reversionary interest of Respondent No. 2. The sale was to be executed either in favour of the said Jairaj Pvt. Ltd., or their nominees. The Petitioner executed the sale in favour of the said Jairaj Packagers Pvt. Ltd., and Polypro Fabrics India Ltd., by way of a Deed of Consignment of leasehold rights together with the reversionary rights dated 15th April, 2005. The Petitioner has given the bifurcation of the amounts paid for the land and building and for the plant and machinery separately.

36. The Petitioner's valuation for the land and buildings at Rs. 52,76,500/has been accepted by the Stamp Office. The Petitioner have paid stamp duty upon registration of the said Deed of Consignment.

37. The case made out by the Petitioner is seen to be a distress sale in the normal course. The Respondents have sought to challenge the figures. While showing the cause the Respondents are entitled to show any gross under valuation, fraud, collusion or the like. Though all of this is alleged, none of these is substantiated. It is worth noting that despite making the allegations of undervaluation the Respondents have not brought a single offer. They have also not shown the correct valuation either as per the ready reckoner or in view of the offers of adjoining properties.

38. The Deeds of guarantee executed by the Respondents upon which this claim for enforcement of sureties is filed and which are annexed as Exhibits B to E to the Petition enjoin the Respondents irrevocably to pay the unpaid amount from the loan of Rs. 4.37 Crores upon default of the industrial concern to the Petitioner. The guarantee is the continuing guarantee enforceable against the guarantors as principal debtors themselves.

39. After giving credit for the amount recovered by way of sale, the liability of the industrial concern remains to the extent shown in ExhibitG to the Petition. The Petitioner have claimed interest compounded in ExhibitG. The Petitioner have modified and updated their claim without claiming compound interest under the particulars of claim marked ExhibitA1 to the affidavit of the Petitioner dated 8th July, 2008. It is not for this Court to consider each of entries. The Respondents have not shown any gross anomaly with the interest. The claim of undervaluation

is remains unsubstantiated.

40. Hence, the following order:

- i) The Petitioner's claim for enforcement of the personal guarantee of Respondents 2 to 7 to the extent shown in the particulars of claim ExhibitA1 to the affidavit dated 8th July, 2008 is granted for the total sum of Rs. 1,95,66,878/ as claimed therein. The guarantee of Respondent Nos.2 to 7 shall be enforced to that extent.
- ii) The Petitioner shall be returned excess amount, if any, deposited after deducting therefrom the Ad Valorem Fee payable by the Petitioners on the amount claimed in prayer (a) of the Petition.