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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 2558/1999

% ***Judgment dated 19.10.2011***

APOLLO FINANCE P LTD Plaintiff
Through : Mr. B.L. Wali, Adv.

versus

GSL INDIA AND ANR. CD+ Defendant
Through

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

I.A.NO.7180/2000

1. Plaintiff has filed the present suit under the provisions of Order XXXVII of the Code of Civil Procedure for recovery of Rs.41,73,150/- based on a written contract.
2. Summons were issued in the prescribed form to the defendants. Memo of appearance was filed by the defendants. The plaintiff has filed an application for summons for judgment. Consequent to the said application, the defendants filed present application (I.A.No.7180/2000) for leave to defend.
3. It is pointed out by learned counsel for the plaintiff that during the pendency of this matter, defendants had made an application for

stay of the suit on the ground that winding up petition being CP No.79/1995 was admitted by the Company Judge of Gujarat High Court on 15.2.2000 and subsequent thereto BIFR exercising its powers under the Sick Industrial Companies (Special Provision) Act, 1985, (in short SICA) has entertained Reference No.254/2000 on 7.8.2000. The said application made by defendants was rejected, which led to filing of the appeal, which was allowed on 5.9.2008 and the Court while staying the proceedings granted liberty to the plaintiff herein to approach BIFR or AAIFR as the case may be seeking its consent to proceed with the suit. Subsequently on 6.11.2008, when the suit was listed, it was directed that defendants will, after every six months, file an affidavit indicating present status of proceedings before BIFR and copy of the affidavit will be given to the plaintiff and in case of default the matter will be listed before the Court. The defendants had been complying with the order dated 6.11.2008, which is evident from the orders passed by Joint Registrar of this Court on 15.5.2009, 7.7.2009 and 17.12.2009. Thereafter on 15.7.2010 counsel for the defendants informed the Joint Registrar of this court that defendants are not in touch with him and he wishes to withdraw his Vakalatnama. On 15.7.2010, the Joint Registrar also noticed that the affidavit in compliance of the order dated 6.11.2008 has not been filed by the defendants. The matter was adjourned from time to time and on 10.3.2011 counsel for the defendants was permitted to withdraw

his Vakalatnama from the matter as notice was duly served to the defendants. Thereafter on two occasions court notice was issued to the defendants. Service report on both the occasions was awaited. Once counsel for the defendants had issued notice to his clients i.e. the defendants seeking withdrawal of his Vakalatnama in fact no court notice was necessary, which was, however, issued on two occasions by way of abandon caution. The defendants have also chosen not to appear nor the order dated 16.11.2008 has been complied with. Defendant has also failed to file affidavit bringing to the notice of the Court the present status before BIFR. In the absence of any affidavit and non-appearance on behalf of the defendants it seems that petition of the defendant before the BIFR stands dismissed.

4. Taking into consideration that present suit pertains to the year 1999 and none has chosen to appear on behalf of the applicants/defendants to press present application for leave to defend, present application is dismissed.

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5. As per the plaint, defendant no.1 is a company incorporated under the Companies Act, 1956. The main objects of defendant no.1 are to carry on business of weaving, knitting, winding, combing, spinning, reeling, and processing or otherwise dealing in silk, synthetic, rayon, nylon, polyester, cotton and all other yarns and fibrous substances. Defendant no.2 is the Chairman and Managing

Director of defendant no.1. As part of its business, plaintiff offers various forms of finance and similar facilities to its customers. As per the plaint, in the month of June 1996, the defendants approached the plaintiff at its registered office at New Delhi and requested the plaintiff for inter corporate deposit loan of Rs.25,00,000/-. The defendants agreed to pay the interest on the principal amount at the rate of 31% per annum. Defendant no.2 stood guarantee for defendant no.1 for repayment of the said loan with interest. The original Letter of Guarantee and Promissory Note have been placed on record. The inter corporate deposit agreement-cum-pledge deed was executed by and between the plaintiff and defendant no.1 on 8.6.1996. In addition to above documents, defendant no.1 by Agreement of Pledge also pledged 37,000 shares of Earth Prapti Investments Pvt. Ltd. and 13,000 shares of Mangalam Marketing and Finance Pvt. Ltd. with the plaintiff company as security for repayment.

6. Learned counsel for the plaintiff submits that loan amount of Rs.25.00 lakhs became repayable on 7.9.1996, however, defendants failed to repay the said principle amount and instead paid the agreed interest upto 3.9.1997 under written acknowledgements contained in the letters dated 27.11.1996, 22.2.1997, 30.7.1997 and 3.11.1997. Copies of the said letters have been placed on record. Counsel further submits that defendant no.1 also issued a cheque bearing no.884068 dated

8.9.1996 in the sum of Rs.25.00 lakhs in favour of the plaintiff for due discharge of its debt, however, the said cheque when presented was dishonoured with the remark 'that payment stopped by the drawer'. Counsel next submits that despite repeated requests the aforesaid payment was not made by defendants. Counsel also submits that a legal notice dated 2.9.1999 issued to the defendant, was also not replied to by the defendants, which forced the plaintiff to file present suit and claims interest on the basis of a written contract executed between the parties from 4.9.1997 till the date of filing of the suit.

7. Plaintiff in the light of above facts prays that the above suit may be decreed with interest based on the written contracts executed between the parties and on the basis of a cheque, which was dishonoured on presentation.
8. I have heard counsel for the plaintiff and also perused the original documents placed on record including the Promissory Note signed by defendant no.2 on behalf of defendant no.1 as the Chairman and Managing Director, promising to repay Rs.25.00 lakhs with interest at the rate of 31% also the inter corporate deposit agreement-cum-pledge deed and the letter of guarantee signed and executed by defendant no.2 and letters dated 27.11.1996, 22.2.1997, 30.7.1997 and 3.11.1997. Since defendants have failed to press the application filed by them for leave to defend, present suit is decreed in the sum of Rs.41,73,150/- in favour of the

plaintiff. Plaintiff will, however, be entitled to *pendente lite* interest at the rate of 6% from the date of filing of the suit till realization with costs.

I.A.NOS.13070/2011 & 13108/2011.

9. Applications stand dismissed in view of the order passed in the suit.

OCTOBER 19, 2011
msr

G.S.SISTANI,J