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

+ CS(OS) 2299/1995

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Judgment dated 28.02.2012

CANBANK FINANCIAL SERVICES LTD.

..... Plaintiff

Through : Mr. Anil Airi and Ms. Sadhana Sharma,
Advs.

versus

M/S.INDANA SPICES & FOOD INDUSTRIES LTD.

..... Defendant

Through : Mr. Kanwal Chaudhari, Adv. for Official
Liquidator.

CORAM:

HON'BLE Mr. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit under the Provisions of Order XXXVII of the Code of Civil Procedure for recovery of Rs.1,50,41,249.70. Present suit is duly supported with the affidavit of Sh.B.V. Suresh Gadwal, the senior Vice President of the plaintiff company. The affidavit has been placed on record.
2. An application for leave to defend filed by the defendant was dismissed by an order dated 3.12.1997. Further proceedings could not take place on account of the fact that defendant company was declared to be into liquidation.
3. An application for leave to defend filed by the defendant was dismissed by an order dated 3.12.1997. Further proceedings could not take place on account of the fact that defendant company went into liquidation.

4. Learned counsel for the plaintiff has handed over a copy of the order dated 13.10.2010 passed on an application filed by plaintiff under Section 446 of Companies Act seeking leave of the court to proceed with the recovery suit. No objection of the learned counsel appearing for the Official Liquidator has been recorded in the aforesaid order. Relevant portion of the Order dated 13.10.2011 reads as under:

“CO.APPLS.788/2008.

Present application has been filed under Section 446 of the Companies Act, 1956 seeking leave of this Court to proceed with the recovery suit bearing Suit No.2299/1995 against the company in liquidation.

Mr.Kanwal Chaudhary, learned counsel for the Official Liquidator has no objection to the present application being allowed.

Accordingly, with the consent of the parties, applicant-Canbank Financial Services Limited is granted leave to proceed with its recovery suit bearing No2299/1995 against the company in liquidation.

With the aforesaid observations, the present application stands disposed of.”

5. Brief facts, to be noticed for disposal of the present suit, are that the in the month of March, 1991, the defendant company approached the plaintiff company for subscribing to and placement of funds in the Non-convertible debentures to be issued by the defendant. The plaintiff agreed to subscribe to and place the funds amounting to Rs.1.50 crores on the following terms and conditions:

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[a]	Front end fees	:	10%
[b]	Interest	:	14%
[c]	Right	:	Renunciation of

			FCD equivalent to Rs.45 lacs.
[d]	From the time of placement of funds till the time of allotment of NCD the defendant shall pay interest @20% p.a. on the said amount of Rs.1.50 crores		

7. The defendant vided its communication dated 10.8.1991 agreed to the said terms and conditions and thereafter a written contract was executed between the parties. On 10.8.1991 the plaintiff disbursed a sum of Rs.1.50 crores towards the subscription of 14% secured redeemable non-convertible debentures (hereinafter referred to as NCDs] of Rs.100 each and the defendant undertook to allot 1,50,000 NCDs against the said sum. On 26.9.1991 the defendant allotted 1,50,000 NCDs of Rs.100/- each to the plaintiff. As per the terms agreed between the parties the defendant became liable to pay interest on the said sum of Rs.1.50 crores @20% p.a. with effect from 10.8.1991 to 25.9.1991 i.e. from the date of disbursement of the funds till the date of allotment of the NCDs. Further the defendant was liable to pay interest @14% p.a. on half yearl basis and the first installment of the interest was to be paid from the date of allotment to 31.3.1992 and subsequently on 1st February and on 1st August of each year.
8. Learned counsel for the plaintiff submits that the amounts were advanced to the defendant as per the terms of the sanction, duly accepted by the defendant and the defendant undertook to adhere to the said terms. However, failed to fulfill its contractual obligation and did not pay the interest as and when it became due. Counsel further submits that plaintiff had issued various reminders to the defendant calling upon the defendant to pay the outstanding on the NCD's, however, the defendant failed and neglected to pay the said amounts, legally due and payable to the plaintiff.

Mr.Airi, next submits that the defendant vide its communication dated 18.01.1993 acknowledged and admitted its liability to pay the said amounts towards interest. The defendant again assured the plaintiff that it would make the payment of interest on the NCD's from February, 1993 onwards, and also assured that it was taking appropriate steps for scrutinizing the said NCD's. However, despite its acknowledgement and assurances the defendant failed and neglected to clear its outstanding. Mr.Airi also submits that defendant is also liable to pay interest @ 24% per annum compounded with half yearly rests from the date of accrual of the interest on the NCD's till the date of realization and as on 16.09.1995, a sum of Rs.1,37,59,786.54 became due and payable by the defendant to the plaintiff. The plaintiff has also subscribed to 29,998,14% fully convertible debentures (hereinafter referred to as FCD's) of Rs.150/- each of the defendant company aggregating to sum of Rs.44,99,700/-. The said FCD's were allotted to the plaintiff on 26.03.1992. As per the terms of allotment of FCD's the defendant company was liable to pay interest @ 14% per annum on half yearly basis on 30th September and 31st March, of each year or upto the date of conversion.

9. Learned counsel for the plaintiff contends that as on 26.09.1992 Rs.75/- of each FCD were converted into five equity shares of Rs.10% each at a premium of Rs.5/- per share and the balance of Rs.75/- of each FCD was converted into five equity shares of Rs.10/- each at a premium of Rs.5/- per share on 26th September, 1993. Counsel further contends that a total sum of Rs.2,99,980/- shares were allotted to the plaintiff on conversion of the said FCD's. The defendants did not adhere to the terms of the allotment of the FCD's and failed to pay any interest on the same. Although the plaintiff issued number of reminders, calling upon them to pay the interest, the defendant has also acknowledged its liability vide its

communication dated 12.06.1993 to pay the said amounts towards interest. The defendant further expressed its inability to pay the same, due to financial exigencies and assured the plaintiff that they would clear its outstanding at the earliest. Despite the assurances given, the defendant has failed to clear its liability. Counsel contends that in view of the above circumstances defendant is liable to pay interest @ 24% per annum, compounded with half yearly rests from the date of accrual of the interest on the FCD's till the date of its realization and as on 16.09.1995 a sum of Rs.11,45,407.17 became legally due and payable to the plaintiff by the defendant. Counsel also contends that the plaintiff has issued a legal notice dated 16.09.1995 to the defendant calling upon the defendant to pay the sum of Rs.1,37,59,786.54 and a sum of Rs.11,45,407.17 due and payable on account of NCD's and FCD's respectively as on 16.09.1995. The defendant was further called upon by the plaintiff to pay interest @ 24% per annum compounded with half yearly rests on the said amount w.e.f. 16.09.1995 till the date of its realization, which the defendants have failed to pay. The plaintiff also prays for pendene lite and future interest @24% per annum.

10. I have heard counsel for the parties and perused the plaint and the documents, including the communication dated 10.08.1991, dated 18.01.1993, 12.06.1993, dated 12.09.1995, the legal notice dated 16.09.1995 and the postal receipts, which have been filed on record. Plaintiff has filed carbon copies of the communication dated 10.08.1991 which contains terms of sanction of Non-convertible Debentures (NCDs) of Rs.150.0 lacs on private placement. By the communication of the same date the defendant had requested the plaintiff to disburse the amount by way of pay order in favour of the company. On receipt of the sum of Rs.150 lacs, the defendant signed and executed a receipt on the same date,

original of which has been placed on record. By another communication dated 18.01.1993 the defendants informed and confirmed that they wish to commence payment of interest on Non-convertible Debentures (NCDs) from February, 1993 onwards. By another communication of 12.06.1993 the defendants informed the plaintiff that due to financial exigencies the interest had not been paid on the Non-convertible Debentures (NCDs) issued and requested the plaintiff to bear with them for some more time. Similar request was made by another communication dated 12.09.1995. Plaintiff has also placed on record carbon copy of the legal notice dated 16.09.1995 calling upon the defendants to clear their outstanding along with interest. Postal receipts have also been placed on record. Having regard to the documents placed on record, particularly, receipts, I am satisfied that present suit is maintainable under the provisions of Order 37 CPC. The receipts also evidenced that the payment had been received by defendant from the plaintiff. By communications dated 12.06.1993 as also of 12.09.1995 the defendants acknowledge their liability and sought time for making the payments.

11. As the leave to defend application already stands dismissed, plaintiff has been able to make out a case for passing of decree. Accordingly, the present suit is decreed in the sum of Rs.1,50,41,249.70 along with pendente lite and future interest @ 12% per annum. Decree-sheet be drawn up accordingly.

I.A.NO.12126/1996

12. In view of order passed in the suit, application stands disposed of.

FEBRUARY 28, 2012
msr/ssn

G.S.SISTANI,J