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

+ **CS(OS) 889/2013**

% ***Judgment dated 22.04.2014***

M/S CANBANK FACTORS LTD Plaintiff
THROUGH: Mr. P.k. Mittak, Advocate

Versus

ROHIT DIWAN & ANR Defendants
THROUGH:

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

G.S.SISTANI, J (ORAL)

1. The plaintiff has filed the present suit for recovery of Rs. 84,17,169.73. Summons in the suit were issued on 20.05.2013. Defendants were served on 30.07.2013. Despite service and time having being granted written statement was not filed by the defendant, consequently right of defendants to file written statement was closed on 28.02.2014. The plaintiff has filed affidavit of Mr. Santosh Kumar (PW1), by way of evidence. The affidavit by way of evidence of PW1 has been exhibited as Ex. PW1/A.
2. PW1 has deposed that he holds general power of attorney from the plaintiff company in his favour to sign and file the present plaint. The power of attorney has been exhibited as **EX. PW-1/1**.
3. PW 1 has also deposed that that he has seen defendants No.1 and Mr. Dinesh Gupta, Senior Vice President, signing documents during his visits in the office of plaintiff company for transactions and he can identify the signatures of the defendants No.1 and Mr. Dinesh Gupta on documents.

4. It has further been deposed that defendant no.1 is engaged in the business of wholesale trading of nuts, dry fruits, spices & herbs, etc. under the name and style of his sole proprietorship firm M/s. Madhoram Mohan Lal. The defendant no.1 approached the plaintiff company for factoring facility, against sales bills raised by the defendant no.1, upon his customers for credit sales, by factoring/ discounting the said bills.
5. PW1 has also deposed that under 'Sales Bills Factoring facilities- with Recourse', the plaintiff discounts/prepays the bills of Credit Sales by its Client(s) (like defendant no.1) against discount charges. The payment of the Sales bills is to be made directly to the plaintiff company by the debtor(s) of the client(s) of the plaintiff company against the said discounted / factored / prepaid Sales bills. In case the said debtor(s) of client(s) of the plaintiff Company fail(s) to pay the amount of the said sales bills, the said client of the plaintiff company indemnifies by making said payments alongwith applicable /eligible charges inasmuch as ultimately the said client(s) of the plaintiff company is liable for such payments jointly with its customers / drawees(s) of discounted / factored / prepaid Sales bills severally as well.
6. It has been deposed that for delayed period of payment, the plaintiff, as per the agreement, is entitled for charges recoverable from the clients at such rate as is agreed with the client.
7. Mr. Santosh Kumar has further deposed that at the request of the defendant no.1, being a client of plaintiff company, the plaintiff company had sanctioned the Sale bill factoring of Rs.50.00 lacs tenable till 07.09.2011, vide its sanction advice dated 08.09.2010. The Factoring limit was, however, further enhanced from time to time. Copy of said sanction letter dated 08.09.2010 has been placed on record as Annexure-'B' and the said sanction letter has been exhibited as **EX.PW-1/2**. The signature

of defendant No.1 alongwith seal of his proprietorship firm M/s. Madhoram Mohan Lal is at Point A and the signature of Shri Dinesh Gupta, the then Senior Vice President of the plaintiff company is at Point B.

8. Mr. Santosh Kumar PW1 has also deposed that on 09.09.2010 the defendant no.1 had executed (i) letter of proprietorship, (ii) Factoring-cum-Prepayment Agreement (Domestic-Sale Bill/Invoice) & (iii) Power of attorney in favour of the plaintiff company. Copies of said Letter of Proprietorship, Factoring-cum-Prepayment Agreement (Domestic-Bill/Invoice) and Power of attorney in favour of plaintiff were filed alongwith plaint as Annexures-‘C’ , ‘D’ and ‘E’, and the same have been exhibited as **EX.PW-1/3**, **EX.PW-1/4** and **EX.PW-1/5** , respectively. Ex.PW-1/3 at Point ‘A’ bears the signature of defendant No.1 alongwith seal of his proprietorship firm M/s. Madhoram Mohan Lal and at Point ‘B’ Senior Vice President of the plaintiff company has signed alongwith seal of plaintiff company. Ex.PW-1/5 at Point ‘A’ bears the signature of defendant no.1 alongwith seal of his proprietorship firm M/s. Madhoram Mohan Lal.
9. It has also been deposed that the defendant no.2, being mother of the defendant no.1 stood as a guarantor in her personal capacity and executed the required guarantee agreement for the aforesaid facility/limit granted to the defendant no.1 by the plaintiff company. The guarantee of the defendant no.2 is continuing and subsisting. Copies of guarantee agreements, dated 09.09.2010 for guarantee of Rs.50.00 lacs and dated 10.12.2010 for guarantee of Rs.75.00 lacs (i.e. after enhancement of limit of Rs.50.00 lacs to Rs.75.00 lacs) by way of Ad-hoc, executed by the defendant no.2 and the same have been exhibited as Ex.PW-2/1, PW-2/2.

10. PW1 has further deposed that on 10.12.2010, the plaintiff company, at the request of the defendant no.1, granted Ad-hoc facility/limit of Rs.25.00 lacs under Sales Bill Factoring Limits (SBF Limits), vide sanction letter dated 10.12.2010, copy of which was filed alongwith plaint as Annexure-‘H’ and said sanction letter dated 10.12.2010 has been exhibited as **EX.PW-1/6** and at Point ‘A’ it bears the signature of defendant No.1 alongwith seal of his proprietorship firm M/s. Madhoram Mohan Lal and at Point ‘B’ it bears the signature of Shri Dinesh Gupta, the then Senior Vice President of the plaintiff company. For this the defendant no.1 executed a Supplemental Factoring-cum-Prepayment Agreement dated 10.12.2010, copy of which was filed alongwith plaint as Annexure-‘I’ and the same has been exhibited as **EX.PW-1/7** and at Point ‘A’ it bears the signature of defendant No.1 alongwith seal of his proprietorship firm M/s. Madhoram Mohan Lal and at Points ‘B’ it bears the signature of Shri Dinesh Gupta, the then Senior Vice President of the plaintiff company.
11. It has also been deposed that the said Ad-hoc Limit was utilized by the defendant no.1.
12. PW1 has also deposed that on 30.03.2011, the plaintiff company, at the request of the defendant no.1, granted Ad-hoc facility/limit of Rs.15.00 lacs under Sales Bill Factoring Limits (SBF Limits), vide sanction letter dated 30.03.2011, copy of which was filed alongwith plaint as Annexure-‘J’ and said sanction letter dated 30.03.2011 has been exhibited as **EX.PW-1/8** and it bears the signature of PW1 Mr. Santosh Kumar, at Point ‘A’. For this the defendant no.1 executed a Supplemental Factoring-cum-Prepayment Agreement dated 30.03.2011, copy of which was filed alongwith plaint as Annexure-‘K’ and the same has been exhibited as **EX.PW-1/9** and at Point ‘A’ it bears the signature of defendant No.1

alongwith seal of his proprietorship firm M/s. Madhoram Mohan Lal and at Points 'B' it bears the signature of PW1.

13. It has further been deposed that the said Ad-hoc Limit was utilized by the defendant no.1.
14. PW1 has further deposed that on 20.08.2011, the plaintiff company, at the request of the defendant no.1, granted Ad-hoc facility/limit of Rs.15.00 lacs under Sales Bill Factoring Limits (SBF Limits), vide sanction letter dated 20.08.2011, copy of which was filed alongwith plaint as Annexure-'L' and said sanction letter dated 20.08.2011 is exhibited as **EX.PW-1/10** and at Point 'A' bears the signature of PW1 Mr. Santosh Kumar. For this the defendant no.1 executed a Supplemental Factoring-cum-Prepayment Agreement dated 20.08.2011, copy of which was filed alongwith plaint as Annexure-'M' and the same has been exhibited as **EX.PW-1/11** and at Point 'A' it bears the signature of defendant No.1 alongwith seal of his proprietorship firm M/s. Madhoram Mohan Lal and at Points 'B' it bears the signature of PW1.
15. It has also been deposed that the said Ad-hoc Limit was also utilized by the defendant no.1.
16. PW1 Mr. Santosh Kumar has further deposed that under such prepayment / factoring system, the defendant no.1 was allowed to get factored his sale bills of the goods, payable within stipulated time, in the sanctioned limit of the credit arrangement. The prepayment amount of the factored sales bills is credited to the defendant no.1 through its Working Capital Account maintained by his bankers and threreafter, the payment(s) of the said factored bills are to be made by the drawee of the said bills within the stipulated time directly to the plaintiff company. For this the defendant no.1 had given an irrevocable Power of attorney in favour of the plaintiff

company authorizing it to realize/ collect/ receive the due amount of the factored bills directly from the purchaser(s) of goods.

17. He has also deposed that the defendant no.1 from time to time had been acknowledging its outstanding liability by confirming debit balance, on closing of every financial year ending on 31st March every year, in the books of accounts of the plaintiff company maintained in ordinary and regular course of its business, copy of balance confirmation / acknowledgement dated 12.04.2012 duly executed and signed by the defendant no.1 was filed alongwith plaint as Annexure-‘N’ and the said balance confirmation / acknowledgment dated 12.04.2012 has been exhibited as **EX.PW-1/12** and at Point ‘A’ it bears the signature of defendant No.1 alongwith seal of his proprietorship firm M/s. Madhoram Mohan Lal and at Points ‘B’ it bears the signature of PW1, Mr. Santosh Kumar.
18. It has further been deposed that as a result of great persuasion by the plaintiff company, the defendant no.1 issued six cheques dated 12.04.2010 in discharge of his liability with request to present the same after the defendant no.1 would give clearance/signal for presenting the same after arrangement of funds in the bank account. The defendant no.1, in July, 2012, told the plaintiff company to present the said cheques but to the utter shock and surprise to the plaintiff company the above said cheques were returned unpaid, regarding which plaintiff company issued a legal notice dated 16.07.2012 to defendant no. 1. Thereafter, the defendant no.1 approached the plaintiff company and handed over a letter dated 30.07.2012 thereby promising to make payment as per payment schedule provided therein and accordingly issued fresh cheques to avoid legal action under section 138 of Negotiable Instruments Act the same were also returned unpaid by the banker of the defendant no.1. The

plaintiff company has already initiated criminal proceedings against defendant no.1 for the same. Copy of the said letter dated 30.07.2012 of defendant no.1 was filed alongwith the plaint as Annexure-‘O’ and has been exhibited as **EX.PW-1/13** which at point ‘A’ bears the signature of defendant No.1.

19. PW1 has also deposed that on 04.05.2012 the account of the defendant no.1 was classified as non-performing asset and was transferred to a separate account called ‘the Mirror Account’ wherein the due discount charges for delayed period, etc. were debited and as on 29.04.2013 (i.e. one day before filing the present suit) Rs.84,17,169.73 (Rupees eighty four lacs seventeen thousands one hundred sixty nine and paisa seventy three only) was due in the books of accounts maintained in ordinary and regular course of business of plaintiff company, against the defendant no.1. True copies of statement of accounts were filed alongwith plaint as Annexure-‘P’ (colly.) and the same has been exhibited as **EX.PW-1/14** (colly). **EX.PW-1/14** (colly) bears the signature of PW1 Mr. Santosh Kumar at Point ‘A’.
20. It has also been deposed that the plaintiff company served a notice dated 10.04.2013 through Sh. P. K. Mittal, Advocate to the defendants, but the defendants failed to pay off their outstanding liability and slept over the same. The copies of said notice dated 10.04.2013, postal registration receipts, courier booking receipts, undelivered returned envelopes and internet generated delivery reports of notice dated 10.04.2013 were collectively filed alongwith plaint as Annexure-‘Q’ (colly.). The office copy of said notice dated 10.04.2013, nine postal registration receipts, nine courier booking receipts, four speed post track report available on website of India Post and one courier delivery report has been exhibited as **EX.PW-1/15** , **EX.PW-1/16** , **EX.PW-1/17** , **EX.PW-1/18** , **EX.PW-1/19**

, EX.PW-1/20 , EX.PW-1/21 , EX.PW-1/22 , EX.PW-1/23 , EX.PW-1/24 , EX.PW-1/25 , EX.PW-1/26 , EX.PW-1/27 , EX.PW-1/28 , EX.PW-1/29 , EX.PW-1/30 , EX.PW-1/31 , EX.PW-1/32 , EX.PW-1/33 , EX.PW-1/34 , EX.PW-1/35 , EX.PW-1/36, EX.PW-1/37 and EX.PW-1/38 , respectively.

21. Mr. Santosh Kumar has also deposed that on 10.04.2013 defendant no.1 visited the officer of plaintiff company at Nehru Place, New Delhi and paid a meager amount of Rs.40,000/- (Rupees forty thousand only) vide cheque no.560451 dated 10.04.2013 drawn on Canara Bank, Amritsar under cover of letter dated 10.04.2013. Copy of said letter dated 10.04.2013 of the defendant no.1 was filed alongwith plaint as Annexure- 'R' and the same has been exhibited as EX.PW-1/39 which at Point 'A' bears signature of the defendant no.1.
22. It has further been deposed that the plaintiff company is also entitled and accordingly claims for delayed payment charges @ 17.25% per annum, as per agreement terms, during the pendency of the suit and future till actual realization of the due amount of the plaintiff from the defendants.
23. The plaintiff has also filed affidavit of Mr. Abhay Kumar Sharma (PW2), by way of evidence. The affidavit by way of evidence of PW2 has been exhibited as Ex. PW2/A. PW2 has deposed that he is holding the post of Officer in the plaintiff company since 2007 and has been dealing with the documentations of the plaintiff company with its various client.
24. PW2 has also deposed that he has seen the defendant Nos.1 and 2 and Mr. Dinesh Gupta, Senior Vice President, signing documents during his visits in the office of plaintiff company for transactions and he can identify the signatures of the defendant Nos.1, 2 and Mr. Dinesh Gupta on documents.

25. He has further deposed that the defendant no.1 had executed the required documents for Sale Bill Factoring Limits- With Recourse.
26. PW2 has also deposed that the defendant no.2, being mother of the defendant no.1 stood guarantor in personal capacity and executed the required guarantee agreement for the aforesaid facility/limit granted to the defendant no.1 by the plaintiff company. The guarantee of the defendant no.2 is continuing and subsisting. Copies of guarantee agreements, one dated 09.09.2010 for guarantee of Rs.50.00 lacs and another dated 10.12.2010 for guarantee of Rs.75.00 lacs (i.e. after enhancement of limit of Rs.50.00 lacs to Rs.75.00 lacs) by way of Ad-hoc, executed by the defendant no.2 were filed alongwith plaint as Annexure-‘F’ & ‘G’, respectively and the said guarantee agreements dated 09.09.2010 and 10.12.2010 are exhibited as **EX.PW-2/1** & **EX.PW-2/2** , respectively, which at Point ‘A’ bear signature of defendant No.2.
27. I have heard counsel for the plaintiff and perused the plaint and accompanying documents. Plaintiff has filed two affidavits by way of evidence. The evidence of the plaintiff is unrebutted and unchallenged. The plaintiff has been able to establish that the plaintiff company had sanctioned Sale Bill Factoring of Rs. 50 Lacs vide its sanction letter dated 08.09.2010 in favour of defendant no. 1. Copy of sanction letter dated 08.09.2010 has been exhibited as Ex. PW-1/2. Defendant no.1 had executed (i) letter of proprietorship, (ii) Factoring-cum-Prepayment Agreement (Domestic-Sale Bill/Invoice) & (iii) Power of attorney in favour of the plaintiff company and the same are exhibited as EX.PW-1/3, EX.PW-1/4 and EX.PW-1/5. The plaintiff company had further granted to defendant no. 1 Ad-hoc facility/limit of Rs. 25 Lacs, Rs. 15 Lacs, and Rs. 15 Lacs under Sales Bill Factoring Limits, vide sanction letters dated 10.12.2010, 30.03.2011 and 20.08.2011 respectively. The said sanction

letters are exhibited as Ex. PW-1/6, Ex. PW-1/8 and Ex. PW-1/10 respectively. For the said sanction letters defendant no. 1 executed Supplemental Factoring-cum-Prepayment Agreements dated 10.12.2010, 30.03.2011 and 20.08.2011 which are exhibited as Ex. PW-1/7, Ex. PW-1/9 and Ex. PW-1/11 respectively. Defendant no. 2 executed guarantee agreements dated 09.09.2010 for Rs. 50 lacs and another dated 10.12.2010 for Rs. 75 lacs. The said agreements are exhibited as Ex. PW-2/1 and Ex. PW-2/2 respectively. The plaintiff has also placed on record the books of accounts maintained by plaintiff showing the total due from defendant no.1. Plaintiff has also claimed interest @ 17.25%.

28. Having regard to the submissions made and taking into consideration the evidence of plaintiff which has gone unrebutted and unchallenged, the present suit is decreed in favour of the plaintiff and against the defendants in the sum of Rs. 84,17,169.73 together with pendent lite interest @ 8% from the date of filing of the suit, till realization. Decree-sheet be drawn up accordingly.
29. Counsel for the plaintiff submits that the plaintiff had paid Court fees in terms of the Court Fees (Delhi Amendment) Act, 2012, however, as per the recent judgment titled as *Delhi High Court Bar Association & Anr Vs. Govt. Of NCT of Delhi & Anr.*, plaintiff is entitled to refund of the court fee.
30. Registry is directed to process the case of the plaintiff and refund the excess court fees, in terms of recent judgment passed in the case *Delhi High Court Bar Association & Anr Vs. Govt. Of NCT of Delhi & Anr.*

G.S.SISTANI, J

APRIL 22, 2014 ssn