

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 358 OF 2014

Imperial Marktrade (I) Private Limited,
A Private Limited Company
incorporated in India under the
Companies Act, 1956 having its
registered office at Office No. 36,
Shrinaman Plaza, behind Shoppers
Stop, Kandivali (W), Mumbai- 400067

... Plaintiff

Versus

RDMK Impex Private Limited,
A Private Limited Company
incorporated in India under the
Companies Act, 1956 having its
registered office Flat No. 101 / 102,
Triveni Cooperative Housing Society
Limited, Mitt Chowki, Marve Road,
Malad (W), Mumbai - 400064 and City
Office at 311, Commerce House,
Nagindas Master Road, Fort,
Mumbai - 400001

... Defendant

Ms. Bharati Narichania i/b. Vibha Jurisconsult Company for the Plaintiff.
None for the Defendant.

CORAM : S.J. KATHAWALLA, J.
DATED : 14TH AUGUST, 2015

ORAL JUDGMENT :

1. The above Suit is filed by the Plaintiff - Imperial Marktrade (I) Private Limited against the Defendant - RDMK Impex Private Limited for an order and decree against the Defendant to pay to the Plaintiff, a sum of Rs.44,59,11,233.00 being the principal plus interest @ 12% thereon (as per the Particulars of Claim at

Exhibit-F) together with further interest @ 12% p.a. on the principal sum of Rs.32,00,00,000.00/- from the date of filing of the Suit till payment and / or realization.

2. Despite repeated attempts being made by the Plaintiff to serve the Writ of Summons on the Defendant, the packets containing the Writ of Summons were returned with the remarks 'left / unknown'. In view thereof, the Plaintiff was allowed to serve the Writ of Summons on the Defendant through Substituted Service. Despite service of the Writ of Summons on the Defendant through the Substituted Service, the Defendant has not filed its Written Statement to the above Suit and is also not represented before this Court. The Suit is therefore taken up for ex-parte hearing.

3. The Plaintiff has filed the Affidavit of Evidence in lieu of Examination-in-Chief of its Director – Mr. Yatin Shah (PW-1) and has also filed the Compilation of Documents relied on by the Plaintiff.

4. The PW-1 has deposed in his Affidavit in lieu of Examination in Chief as follows :

4.1. That PW-1 is the Director of the Plaintiff and is fully conversant with the facts of the case on the basis of his personal knowledge as well as from the documents available with the Plaintiff.

4.2. That the Plaintiff is a Private Limited Company registered under the provisions of Companies Act, 1956 and carrying on business as Traders. The Defendant is a Private Limited Company registered under the provisions of the Companies Act, 1956 carrying on business *inter alia* as Importer and Exporter.

4.3. That the Plaintiff has filed the above Suit for recovery of outstanding dues payable by the Defendant in respect of the Inter Corporate Deposit given by the Plaintiff to the Defendant.

4.4. The Board of Directors of the Plaintiff Company have at their meeting held on 8th February, 2014 passed a resolution authorizing PW-1 to represent the Plaintiff in the present Suit. That PW-1 has tendered the certified true copy of the extract of the minutes of meeting of the Board of Directors of the Plaintiff Company held on 8th February, 2014, wherein the resolution was passed authorizing the PW-1 to represent the Plaintiff in the above Suit. The same is taken on record and marked Exhibit-P-1.

4.5. That in or about August and September-2010, various meetings were held by the Plaintiff's Directors including PW-1 and the Defendant's Directors Mr. Banwar Singh Rajpurohit and Mr. Sanjay Nagvanshi, who had approached the Plaintiff seeking financial assistance of Rs.45 Crores. The Defendant had agreed to pay interest thereon. At the meeting held on 3rd September, 2010 with the Defendant, the Plaintiff agreed to extend financial assistance in the sum of Rs. 32 Crores in 10 installments. The Defendant agreed to accept an amount of Rs. 32 Crores in 10 installments from the Plaintiff by way of Inter Corporate Deposit (ICD) and agreed to repay the amount of Rs. 32 Crores with interest @ 12% p.a. within a period of six months from the date of disbursal of the last ICD installment and pay the interest quarterly to the Plaintiff.

4.6 That vide a letter dated 9th September, 2010 addressed by the Plaintiff to the Defendant, PW-1 inter alia recorded and confirmed the Plaintiff's understanding

and agreement to advance financial assistance of Rs. 32 Crores to the Defendant as well as the Defendant's agreement to repay Rs.32 Crores with interest @ 12% p.a. within a period of six months from the date of disbursal of the last ICD installment and also recorded that the interest shall be paid quarterly. PW-1 has tendered the original office copy of the Plaintiff's letter dated 9th September, 2010 duly signed by PW-1. The same is taken on record and marked Exhibit-P-2.

4.7 That thereafter the Plaintiff on ten occasions instructed to its banker / HDFC Bank Limited, Fort Branch, Mumbai to transfer from time to time an amount aggregating to Rs. 32 Crores from its current account to the Defendant's account with Axis Bank Limited, P.M. Road Branch, Mumbai, the details of which are set out in paragraph 5 of Affidavit of Evidence in lieu of Examination in Chief of PW-1. PW-1 has tendered the office copies of 10 RTGS Transfer Applications. The same are taken on record and marked Exhibit-P-3 collectively.

4.8 That the relevant entries were effected in the Plaintiff's books of accounts. PW-1 has tendered the original office copies of the relevant ledger entries of the ICD transactions with the Defendant in the Plaintiff's books of accounts as well as the ledger copies thereto duly certified by the Chartered Accounts. The same are taken on record and marked Exhibit-4- collectively.

4.9 That the Plaintiff's banker - HDFC Bank Limited had transferred a total amount of Rs. 32 Crores to the Defendant's current account with Axis Bank Limited, P.M. Road Branch, Mumbai and debited the Plaintiff's account for the corresponding amount of transfer evidencing payment of Rs. 32 Crores to the Defendant. PW -1 has tendered the original office copies of eight bank statements

issued by HDFC Bank Limited in respect of the ICD transactions, which are duly certified as true copy by HDFC Bank Limited. The same are taken on record and marked Exhibit-5 collectively.

4.10 That the repayment of Rs. 32 Crores by the Defendant was to commence from 22nd August, 2011 i.e. after six months from the date of disbursement of the last ICD installment on 21st February, 2011 and the interest was payable quarterly. Since the Defendant failed to make the said payment, the Plaintiff vide letter dated 30th August, 2011 called upon the Defendant to repay the total amount of Rs. 32 Crores together with accrued interest @ 12% per annum. PW-1 has tendered the original copy of the Plaintiff's letter dated 30th August, 2011 duly signed by him. The same is taken on record and marked Exhibit-P-6.

4.11 That the Plaintiff has also addressed letters dated 4th December, 2011, 4th October, 2012 and 24th January, 2013 calling upon the Defendant to honour their commitments and assurances given in the various meetings held. PW-1 has tendered the office copies of the Plaintiff's letters dated 4th December, 2011, 4th October, 2012 and 24th January, 2013 addressed to the Defendant duly signed by him and Mr. Ram Ratan Khandelwal, Directors of the Plaintiff. The same are taken on record and marked Exhibit-P-7 collectively.

4.12 That despite receipt of the said letters, the Defendant failed to make any payment. However, the Defendant time and again personally re-assured PW-1 that the Defendant would honour all its commitments and promises. PW-1 therefore by his letter dated 4th December, 2015 addressed to the Defendant once again demanded the outstanding payment from the Defendant and also recorded their

commitment to make payment on 15th January, 2014. PW-1 also informed the Defendant that if they fail to pay the said amount as promised, the Plaintiff would initiate legal action against the Defendant. The same is taken on record and marked Exhibit-8.

4.13. That since the Defendant has failed and neglected to make any payment to the Plaintiff, the Plaintiff has filed the present Suit for reliefs sought therein.

4.14 That the Defendant has not replied to a single letter addressed by the Plaintiff to the Defendant and there is no dispute or denial of liability by the Defendant to repay an amount of Rs.32 Crores plus Rs.12,59,11,233.00 towards interest @ 12% per annum as agreed. It is submitted by the Plaintiff that therefore the Suit be decreed as prayed.

5. I have perused and considered the facts set out in the Plaint, annexures and the evidence of PW-1. I have also perused and considered the documents which are marked as Exhibits-P-1 to P-8.

6. From Exhibits-P-1 to P-8, it is established that an amount of Rs.32 Crores is advanced by the Plaintiff to the Defendant in ten installments. The Defendant had agreed to repay the said amount of Rs.32 Crores along with interest 12@ per annum to the Plaintiff within a period of six months from the date of disbursement of the last ICD installment on 21st February, 2011. However, the Defendant failed and neglected to pay the principal as well as interest accrued thereon. Despite several letters written by the Plaintiff to the Defendant, the Defendant has not responded to the same. The Defendant has not disputed and denied its liability to pay the dues of the Plaintiff as claimed. The Defendant has not filed its Written Statement and has

also not come forward to oppose the reliefs sought in the Suit. In the circumstances,

I pass the following order :

- i. The above Suit is decreed in terms of prayer Clause (a), which is reproduced hereunder :

“(a) that the Defendant be ordered and decreed to pay to the Plaintiff, a sum of Rs.44,59,11,233.00 being the principal plus interest @ 12% thereon (as per the Particulars of Claim at Exhibit-F), together with further interest @ 12% p.a. on the principal sum of Rs.32,00,00,000.00/- from the date of filing of the Suit till payment and / or realization”.

- ii. The Defendant to pay costs of the Suit to the Plaintiff.
- iii. The Suit is accordingly disposed of.

(S.J.KATHAWALLA, J.)