

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****SUIT NO. 3251 OF 1997**

HDFC Bank Ltd.)
(formerly known as Centurion Bank of Punjab Ltd.))
a Company incorporated under the Companies Act, 1956 and a)
Banking Company under the provisions of the Banking Regulation)
Act, 1949 and having its Registered Office at HDFC Bank House,)
Senapati Bapat Marg, Lower Parel, Mumbai-400 013)..Plaintiff

vs.

1. Western India Industries Ltd.)
(Now in Liquidation) through the Official Liquidator,)
Calcutta High Court, 9, Old Post Office Street, 5th floor,)
Kolkatta-700 001)
2. Western Paques India Limited)
(Now in Liquidation) through the Official Liquidator,)
Bombay High Court, 5th floor, Bank of India Building,)
M.G. Road, Fort, Mumbai-400 001)
3. Grasim Industries Ltd.)
Unit Harihar Polyfibers, a public limited company,)
carrying on business at Kumarapatnam (Near Harihar),)
Karnataka-581 123)
4. Official Liquidator, High Court, Bombay,)
being the Liquidator of Western Paques India Ltd.)
5. The Official Liquidator, Calcutta High Court,)
being the Liquidator of Western India Industries Ltd.)..Defendants

Mr. B.B. Saraf, along with Mr. Sahil Saiyed, instructed by M/s.Wadia Ghandy & Co., for the Plaintiff.

Mr. Vaibhav Sharma along with Mr. Anwar Patel, instructed by M/s. Mulla & Mulla & Cragie Blunt & Caroe, for Defendant No.3.

Ms. Yogini Chauhan, Assistant Official Liquidator, present.

CORAM: S.J. KATHAWALLA, J.

DATE : 26th June, 2015.

ORAL JUDGMENT:

1. The present suit was filed by the erstwhile Twentieth Century Finance Corporation ("TCFC") seeking a declaration that the lease agreement between them and Defendant No. 1 was validly terminated, a declaration of ownership in respect of bio-gas plant more particularly described in the Schedule at Exhibit G to the plaint, for recovery of arrears of lease rentals, for recovery of rentals for the balance period of lease and for damages/ compensation in the facts and circumstances detailed hereunder. The Plaintiffs have also claimed interest.

2. Vide an Order dated 9th April 1999 passed by this Court, TCFC was ordered to be amalgamated with Centurion Bank Limited ("CBL") and all the assets and liabilities of the TCFC were transferred to CBL with effect from 31st December 1997. Bank of Punjab Ltd. was amalgamated with CBL with effect from 1st October 2005 by and under an order of Reserve Bank of India ("RBI") dated 24th September 2005 and the merged entity was renamed as Centurion Bank of Punjab Ltd. ("CBOP"), CBOP

was amalgamated with HDFC Bank Ltd, (the present Plaintiff) with effect from 23rd May 2008. As the successor in interest, HDFC Bank Ltd has pursued the present suit.

3. Defendant No. 1 Western India Industries Ltd., now in liquidation was carrying on business of turnkey projects and effluent treatment plants. By an Order passed by the High Court at Calcutta dated 25th November 1997 in Company Petition No. 351 of 1998, Defendant No. 5 herein was appointed as Liquidator of Defendant No. 1. The Plaintiff subsequently on 25th June, 1998 obtained leave of the Calcutta High Court to continue the present suit against Defendant No.1.

4. Defendant No. 2 Western Paques India Limited now also in liquidation was engaged in the business of manufacturing effluent treatment plants and generation of power and is sued in its capacity as Guarantor. By an Order dated 7th August 1997 passed by this Court in Company Petition No. 434 of 1997, Defendant No. 4 was appointed as Liquidator of Defendant No. 2 Company. The Plaintiff obtained leave to continue the suit against Defendant No. 2. Defendant No. 3 is a public limited company carrying on business of textiles. Reliefs were sought against Defendant No. 3 at the time of filing the suit, but pursuant to an amendment allowed vide Order dated 1st September, 2014 by this Court, Defendant No. 3 is reduced to a necessary formal party.

5. Vide Order dated 30th January, 2015 read with Order dated 13th February, 2015 passed by this Court, after satisfying itself in relation to service and notice of proceedings, the present suit was directed to proceed ex-parte against Defendant

Nos. 1 and 2 acting through Defendant Nos. 4 & 5. The records indicate that Defendant No. 4 acting on behalf of Defendant No. 2 has filed its written statement whereas no written statement has been filed on behalf of Defendant No. 1, the other contesting party.

6. The Plaintiff has filed Affidavit of Evidence of Mr. Ashwin Indulkar dated 26th June, 2015, the Manager of the Plaintiff herein, who since 2nd February, 1998, was initially employed with TCFC and thereafter continued in employment with CBL, CBOP and then the Plaintiff, pursuant to the merger/amalgamation, as detailed hereinabove. Mr. Indulkar is duly authorized by the Plaintiff vide Power of Attorney dated 8th April, 2013, a true copy whereof is placed on record as Annexure A to the Compilation of Documents.

7. The Plaintiff alongwith its Affidavit of Evidence has filed a Separate Compilation of Documents and in its evidence (paragraph 6 in particular) has sought leave to lead secondary evidence of documents enlisted in Schedule I to the Affidavit of Evidence. It is deposed on behalf of the Plaintiff that the original documents were kept at the office of erstwhile CBL on the 2nd floor of a building Centre Point, C.S. No. 107(pt) Bhoiwada-Sewri Division, Dr. Ambedkar Road, Parel, Mumbai- 400012. A major fire broke out in this building on 29th October 2004 and the entire building was destroyed. The entire second floor collapsed into the ground floor destroying all the original documents at the office including those pertaining to the transaction forming subject matter of disputes in the present suit. The Plaintiff has relied upon a

copy of the Report prepared by the Fire Brigade dated 1st November, 2004 and an intimation dated 1st November, 2004 addressed by the erstwhile CBL to the Senior Inspector Bhoiwada Police Station intimating about the fire viz. Annexures B & C to the Compilation of Documents. The deponent has stated that office copies of letters addressed by the Advocate for the Plaintiff to Defendants are also not traceable on account of fire in the office of the Advocate for the Plaintiff recently. The deponent states that he had personally seen the Original Documents pertaining to the transaction as also original office copies of correspondence addressed by the Advocate for the Plaintiff to Defendants. It is stated that the photocopies of documents relied herein were personally taken by the deponent by way of mechanical process for record purpose thereby ensuring the accuracy of contents thereof. It is also submitted that in or about October 1997, the inspection of original documents listed in Schedule I hereto was also granted to the Advocates for Defendant No. 3 by the Advocate for the Plaintiff herein. Copies of the duly acknowledged office copies of letters dated 29th October, 1997 and 3rd November, 1997 recording grant of inspection of most of the original transaction documents enlisted in Schedule I hereto are at Annexures D & E to the Compilation of Documents without the last page of letter dated 3rd November, 1997 which is claimed to be missing from records. The Advocate for Defendant No. 3 have also seen the original documents and the original inspection letters dated 29th October, 1997 and 3rd November, 1997 are stated to be in possession of Advocates for Defendant No. 3. Considering these detailed statements and the circumstances explained in evidence,

the Plaintiff is permitted to lead secondary evidence of these documents. The documents submitted along with the Affidavit of Evidence are taken on record and marked in Evidence on the basis of the statements made in the affidavit in lieu of examination in chief.

8. The Plaintiff's case in brief as reflected in its plaint and Affidavit of Evidence is as under:

- i. In or about March 1995, Defendant No. 1 approached the erstwhile TCFC at Mumbai with a request to lease to Defendant No. 1 a bio-gas plant required by them (hereinafter referred to as "the said plant"). Defendant No. 1 themselves selected the manufacturer and supplier of the said plant viz. Defendant No. 2 herein and intimated the suppliers name to TCFC for placing the purchase order. Defendant No. 1 approved the said plant and requested TCFC to make the payment of the price of the said plant viz. Rs 15,00,00,000/-(Rupees Fifteen Crores Only) to Defendant No. 2. TCFC accordingly from time to time made payment of the price of the said plant to Defendant No. 2 and the said plant was duly installed and commissioned by Defendant No. 2 directly at the premises of Defendant No. 3 at the request of Defendant No. 1. The Plaintiff has produced copies of the following documents viz. Annexures F to J of the Compilation of Documents to prove the purchase of the said plant by TCFC from Defendant No. 2 :

- a) Invoice bearing No. WPIL/94-95/H-1 dated 13th March, 1995 raised by Defendant No. 2 on TCFC in the sum of Rs.15,00,00, 000/-
 - b) Stamp Receipts issued by Defendant No. 2 to TCFC dated 28th March 1995 in the sum of Rs.12,50,00,000/- and Rs.2,50,00,000/- respectively.
 - c) Bank Statement dated 31st March 1995 of the Applicant issued by Credit Lyonnais showing debit of Rs. 2,00,00,000/- (Rupees Two Crores Only).
 - d) Bank Statements dated 4th April 1995 of the Plaintiff issued by the State Bank of India showing debit of Rs. 12,50,00,000/- (Rupees Twelve Crore Fifty Lakhs Only).
 - e) Bank Statements dated 4th April 1995 of the Plaintiff issued by Canara Bank showing debit of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs Only).
- ii. TCFC and thereafter the Plaintiff, thus, became the sole and absolute owners of the said plant leased to Defendant No. 1 under the said Agreement. TCFC by a Lease Agreement No. TCFC/689/95 dated 14th March, 1995 executed and entered into by and between TCFC as “the Lessor” and Defendant No. 1 as “the Lessee” (hereinafter referred to as “the said agreement”) agreed to lease to Defendant No. 1, the said plant to the tune of Rs 15,00,00,000/- (Rupees Fifteen Crores Only) on the terms and conditions mentioned in the said Agreement for a period of 72 months. Apart from the said Agreement, 6 separate Lease

Summary Schedule (hereinafter referred to as “the said Schedules”) were also executed by and between TCFC and Defendant No. 1 which were treated to be and form part of the said Agreement. The said Schedules set out particulars of the said plant leased, the duration of the lease, the amount of the lease rentals payable by Defendant No. 1 to TCFC etc. (Annexures K & L to the Compilation of Documents). The said plant was received and accepted by Defendant No. 1 as lessees and Defendant No. 1 agreed to pay the lease rentals to TCFC for the use thereof.

- iii. By a Letter of Guarantee dated 29th November 1995, Defendant No. 2 absolutely, irrevocably and unconditionally guaranteed the payment of the lease rentals along with all other amounts payable by Defendant No. 1 to TCFC under the said agreement. The Guarantee was continuous in nature and binding on Defendant No. 2. (Annexure M to the Compilation of Documents).
- iv. The ownership and title of the said plant leased to Defendant No. 2 always remained and continued to remain with TCFC alone and thereafter the Plaintiff herein. Defendant No. 1 was only permitted to use the said plant as Lessee under the said Agreement. The said

agreement also contained negative covenants restraining Defendant No. 1 from selling, assigning, pledging, hypothecating or otherwise encumbering the said plant or removing the plant from the original site viz. premises of Defendant No. 3 without prior written consent of TCFC. Defendant No. 1 was responsible to maintain and keep the said plant in good order and condition and on the termination or expiry of the lease, Defendant No. 1 was required to deliver the said plant to TCFC in good order and condition.

- v. Defendant No. 1 made payment of lease rentals in respect of the said plant to TCFC under the said agreement till November 1996. However, thereafter defaults occurred in making payment of lease rentals as and when the same became due for payment. Defendant No. 1 is liable to pay compensation by way of delayed payment charges on the defaulted installment in terms of the said Agreement.
- vi. The Plaintiff was initially unaware of the terms and conditions on which the said plant was installed at the premises of Defendant No. 3. As Defendant Nos. 1 and 2 are closely connected and/or group companies, Defendant No.1 contrary to the provisions of the Lease Agreement dated 14th March, 1995 permitted Defendant No.2 to deal

with the said plant as if Defendant No. 2 had complete and absolute right of ownership to deal with the same. Upon a visit to the premises of Defendant No. 3 by a representative of the Plaintiff, Defendant No. 1 informed the Plaintiff that the said plant was put up by Defendant No. 2 on the land belonging to Defendant No. 3 and that after a period of 6 1/2 years, the said plant will be transferred to Defendant No. 3 at the cost of Rs.5,00,000/- (Rupees Five Lakhs Only). Defendant Nos. 1 and 2 without the consent and knowledge of the Plaintiff entered into an arrangement in respect of the said plant with Defendant No. 3. On further inquiry, Defendant No. 3 by their letter dated 17th February, 1997 at Annexure N informed the Plaintiffs that as per the arrangement arrived at between Defendant Nos. 2 & 3, Defendant No. 3 has paid an amount of Rs.1,05,00,000/- (Rupees One Crore Five Lakhs only) to Defendant No. 2 till that date and it has been further agreed between them that the said plant shall be transferred to Defendant No.3 after a period of approximately 6 1/2 years at the cost of Rs. 5,00,900/- (Rupees Five Lakhs Nine hundred only).

- vii. TCFC vide its letter dated 27th May, 1997 called upon Defendant No. 1 to pay the outstanding amount specified therein viz. a sum of Rs 1,57,95,625/- towards quarterly installments of Lease Rentals and

delayed payment charges of Rs 9,79,270.27/- within 14 days from the receipt of the letter. The particulars of outstanding lease rentals were also annexed to the notice which is at Annexure O. Defendant No. 1's failure to pay the outstanding amounts, constituted an event of default in terms of the said agreement and the erstwhile TCFC became entitled to make the necessary declarations in terms of the said agreement for declaring the entire amounts by way of Lease Rentals for the full period of the lease specified under the said agreement to be immediately due and payable to them by Defendant No. 1.

- viii. TCFC by another letter dated 17th June 1997 (Annexure P to the Compilation of Documents) called upon Defendant No. 1 to pay the entire amount of lease rentals for the full period of lease under the Lease Agreement forthwith.
- ix. In view of Defendant No. 1's continuing default in payment of lease rentals, despite receipt of demand notices as aforesaid, the Plaintiff in terms of said Agreement, vide their Advocates letter dated 11th July' 1997 addressed to all Defendants (Annexure Q to Compilation of Documents) duly and validly terminated the said agreement together with the said schedules and called upon Defendant Nos. 1 & 2 to jointly

and severally pay to the Plaintiff the amounts mentioned therein aggregating to Rs.13,78,69,895/- (Rupees Thirteen Crores Seventy Eight Lakhs Sixty Nine Thousand Eight Hundred and Ninety Five Only) with further interest thereon @ 30% p.a. from June, 1997 till payment and/or realization. Defendant Nos. 1 & 2 were also called upon to forthwith return to the Plaintiffs the said plant which had been leased to Defendant No. 1.

- x. The Plaintiff had leased the said plant to Defendant No. 1 on the terms and conditions contained in the said agreement as mentioned hereinabove. Defendant No. 1 took and acknowledged delivery of the said plant in good order and condition. Defendant No. 1 was bound and liable to perform and observe all the terms and conditions of the said agreement. Since Defendant No. 1 committed various breaches and defaults of the terms of the said agreement which constituted events of default, in terms thereof, the Plaintiff exercised all their rights and remedies under the said agreement and recalled the arrears of lease rentals and delayed payment charges and other amounts due and payable by Defendant No. 1 to the Plaintiffs after due notice. Defendant Nos. 1 & 2 also became bound and liable immediately to pay to the Plaintiffs the remaining lease rentals for the entire period of the lease

under the said agreement. Despite grant of sufficient time and repeated reminders and demands, Defendant Nos. 1 & 2 failed and neglected to pay the same to the Plaintiffs. Upon termination of the said Agreement Defendant No. 1 became bound and liable to re-deliver the said plant in good order and condition to the Plaintiffs in which they failed.

9. Some of the events that transpired after filing of the present suit as put forth by the Plaintiff in its evidence that have a bearing on the Plaintiff's claim as reflected in the Plaint are detailed hereunder:

- i. After filing of the present suit vide an ad-interim order dated 22nd September 1997, a copy of the Agreement dated 20.01.1994 between Defendant Nos. 2 & 3 was shared by Defendant No. 3 (Annexure T to the Compilation of Documents). The Plaintiff and Defendant No. 3 thereafter arrived at an understanding as more particularly recorded in Minutes of Order dated 8th September 1998 whereby it was agreed that the Plaintiff would operate the said plant as located in the premises of Defendant No. 3 and shall be entitled to receive payments directly from Defendant No. 3 in terms of the aforesaid agreement dated 20th January 1994. It was also agreed that the Plaintiff would transfer the said plant in favour of Defendant No. 3 free from all encumbrances for a consideration of Rs 5,00,000/- (Rupees Five Lakhs only) Lakhs after 19000 tonnes equivalent LSHS had been replaced as

was initially agreed by Defendant Nos. 2 and 3 in the agreement dated 20th January 1994. This Court vide its Order 30th November 1998 in Notice of Motion No.2776 of 1997 approved the arrangement as recorded in Minutes of Order dated 8th September 1998.

- ii. The suit was thereafter transferred to the Debts Recovery Tribunal at Mumbai. On 31.01.2006 an arrangement was arrived at between erstwhile CBOP and Defendant No. 3 for running the said plant and as per this understanding one MULTISTREAM GREENS (PRIVATE) LTD. (MGPL), a company registered under the Indian laws, having its registered office at, 312, 1st Floor, IInd stage, 13th Cross, West of Chord Road, Mahalakshmi Layout, Bangalore 560-086 was appointed as an agent of CBOP to run the said plant upto 1.12.2016. This arrangement was sanctioned/approved by the Debts Recovery Tribunal vide its order dated 31.01.2006. (Annexure U to the Compilation of Documents.)
- iii. MGPL was thus running the said plant without any risk and/or responsibility extending to CBOP. The suit was thereafter retransferred to this Hon'ble Court on the issue of jurisdiction.

- iv. With a view to effectively/efficiently utilize the fully available PH liquor, an agreement dated 21.04.2011 modifying the terms of earlier agreements dated 21.01.1994 and 31.01.2006 was signed between the Plaintiff, Defendant No. 3 and MGPL. In view of the above modified agreement dated 21.04.2011 (being subject to the orders passed by the court, the Plaintiff was required to transfer the said plant to Defendant No. 3 on 1.12.2013 upon Defendant No. 3 paying a consideration of Rs 5,00,000/- (Rupees Five Lakhs only) to the Plaintiff, irrespective of MGPL achieving the requirement of replacement of 19000 tonnes equivalent LSHS. The Plaintiff thus received revised monthly rentals from MGPL in consideration of the early transfer and MGPL being a signatory to the agreement provided its express consent to the modified arrangement. The modified arrangement was accepted by this court as recorded in Order dated 25th April, 2011.
- v. Defendant No. 3 vide its letter dated 2.11.2013 informed the Plaintiff about its willingness to pay the required consideration of Rs. 5,00,000/- (Rupees Five Lakhs Only) in terms of agreement dated 21.04.2011 and the Plaintiff and Defendant No. 3 with a view to give effect to their understanding in terms of agreement dated 21.04.2011 executed a Deed for Transfer of the said plant dated 1st December, 2013, whereby the right, title and interest of the Plaintiff in the said

plant was transferred in favor of Defendant No. 3 for a consideration of Rs 5 Lakhs and subject to the final order passed by this Court. In view of this agreement, the Plaintiff is no longer seeking possession of the said plant which currently lies with Defendant No. 3.

- vi. Pursuant to the understanding arrived at between the Plaintiff and Defendant No. 3 as recorded in the Minutes of Order dated 8th September, 1998, the Plaintiff has directly received an amount of Rs.2,61,75,641/- (Rupees Two Crores Sixty One Lakhs Seventy Five Thousand Six Hundred and Forty One Only) from Defendant No. 3 and/or MGPL as agreed pursuant to the aforesaid Orders from December 1998 till date. This amount is required to be deducted from the total claim of the Plaintiff against Defendant Nos. 1 & 2 herein. This is more particularly detailed in the Statement of Deduction annexed as Annexure V to the Compilation of Documents.

10. The Plaintiff has sought and pressed for a decree in terms of prayer clause (a), b(i), (iv), (v) of the Plaint after giving credit of amount received pending the suit. The Counsel for the Plaintiff on instructions stated that the Plaintiff is not pressing for other reliefs as claimed in the Plaint including damages/compensation. The Plaintiff has jointly and severally claimed from Defendant Nos. 1 & 2 (now in liquidation) a sum of Rs. 11,36,06,089/- (Rupees Eleven Crores Thirty Six Lakhs Six

Thousand and Eighty Nine Only) under the said Lease Agreement as per Particulars of Claim annexed as Annexure R to the Compilation of Documents being arrears of lease rentals of 2,26,85,848/- (Rupees Two Crores Twenty Six Lakhs Eighty Five Thousand Eight Hundred Forty Eight only) and delayed payment, charges of Rs. 10,86,839/- (Rupees Ten Lakhs Eighty Six Lakhs Eight Hundred and Thirty Nine Only) for the period December 1996 upto 11th July, 1997 together with interest thereon at the rate of 21% p.a. from 12th July, 1997 upto 26th June, 2015 amounting to Rs.8,98,33,402/-(Rupees Eight Crores Ninety Eight Lakhs Thirty Three Thousand Four Hundred and Two only) and further interest thereon at the rate of 21% p.a. from 27th June, 2015 till payment and/or realization. In addition to the aforesaid amount the Plaintiff has claimed that Defendant Nos. 1 & 2 are also jointly and /or severally bound and liable to pay to the Plaintiffs a sum of Rs.54,09,53,795/- (Rupees Fifty Four Crores Nine Lakhs Fifty Three Thousand Seven Hundred and Ninety Five Only) as per Particulars of Claim (Annexure "S" to the Compilation of Documents) being the lease rentals of Rs.11,31,97,500/-/- (Rupees Eleven Crores Thirty One Lakhs Ninety Seven Thousand Five Hundred Only) for the remaining period of the lease as reflected in the said schedules from 12th July, 1997 onwards at a quarterly rate of Rs. 78,97,500/- (Rupees Seventy Eight Lakhs Ninety Seven Thousand Five Hundred Only) till the full contemplated period of the said lease ending in or around 2001 based on the periods set out in the said Schedules together with interest thereon of Rs.42,77,56,295/- (Rupees Forty Two Crores Seventy Seven Lakhs Fifty Six Thousand Two Hundred and Ninety Five only) at the

rate of 21% p.a. from 12th July, 1997 till 26th June, 2015 and further interest thereon at the rate of 21% p.a. from 27th June, 2015 till payment and/or realization.

11. It has been submitted on behalf of the Plaintiff that the basis of the aforesaid calculations is the quarterly lease rentals as set out in the said Schedules for their respective durations read with the Clause on remedies as contained in the said Agreement (Page 25 of the Compilation of Documents). Further, it is submitted that although a higher amount was claimed at the time of filing the suit with interest at the rate of 30% p.a., the aforesaid Particulars of Claim are based on a calculation of interest at the contractual rate of 21% p.a. as reflected in the Lease Summary Schedule of the said Agreement (Pg 27 of the Compilation of Documents). The Plaintiff has also claimed delayed payment charges of Rs. 10,86,839/- (Rupees Ten Lakhs Eighty Six Thousand Eight Hundred and Thirty Nine Only) for the period December 1996 upto 11th July, 1997 in terms of the said Lease Agreement (Clause on remedies).

12. Thus the Plaintiff has claimed an aggregate amount of Rs.62,83,84,243/- (Rupees Sixty Two Crores Eighty Three Lakhs Eighty Four Thousand Two Hundred and Forty Three only)) as being due and payable to the Plaintiffs after adjusting the amounts received in the past as per the Statement of Adjustment annexed and marked as Annexure W to the Compilation of Documents, which considers the Statement of Claim as mentioned in Annexures R & S and therefrom the amount mentioned in Statement of Reduction annexed as Annexure V is deducted.

13. The claim of the Plaintiff has gone unopposed and/or uncontested. Defendant No. 4 has filed its Written Statement in its capacity as Official Liquidator of Defendant No. 2 but has stated that it has no knowledge of the facilities granted as the same are prior to the date of appointment of the Liquidator and the same are not admitted in the absence of evidence. It has also been stated therein that there is no property of Defendant No. 2 in the custody of Defendant No. 4 in his capacity as Official Liquidator of Defendant No. 2. Defendant No. 1 and/or Defendant No. 5 being the Liquidator of Defendant No. 1 has not filed any Written Statement nor remained present at the time of hearing in the matter despite notice. Defendant No. 3 has appeared through Advocates but has not opposed/objected to the reliefs sought by the Plaintiff in the present suit, presumably in view of arrangement arrived at between the Plaintiff and Defendant No. 3 as recorded in the aforesaid Orders of the Court.

14. The documents placed on record at Annexures F to J establish that the Plaintiff purchased the said plant from Defendant No. 2 in or around March-April 1995 for a consideration of Rs 15 crores duly received by Defendant No. 2. The receipt of consideration has been duly acknowledged by Defendant No. 2 by executing stamp receipts dated 28th March, 1995 viz. Annexure G to the Compilation of Documents. The proof of payment is also reflected and/or corroborated by the Bank statements relied upon by the Plaintiff viz. Annexures H to J to Compilation of Documents.

15. The Plaintiff leased the said plant to Defendant No. 1 by the Lease Agreement dated 14th March 1995 (Annexure K to the Compilation of Documents). The Plaintiff was entitled to receive lease rentals on a quarterly basis for 72 months. The quantum of lease rentals and the specific periods of lease spanning 72 months are particularly set out in the 6 Summary Lease Schedules dated 28th March 1995 at Annexure L to the Compilation of Documents. The Particulars of Claim furnished by the Plaintiff with its Evidence at Annexures R & S to the Compilation of Documents are in line with the quantum specified in the 6 summary Lease Schedules. The percentage of interest sought viz. 21% is the agreed contractual rate of interest. Defendant No. 2 by virtue of Letter of Guarantee dated 29th November, 1995, executed in favour of the Plaintiff has absolutely, irrevocably and unconditionally guaranteed the payment of the lease rentals alongwith all other amounts payable by Defendant No. 1 to TCFC under the Lease Agreement and the Guarantee being continuous in nature is valid, subsisting and binding on Defendant No. 2. Defendant Nos. 1 & 2 and/or Defendant Nos. 4 & 5 acting on behalf of the First Two Defendants herein, having notice of the present proceedings and being afforded reasonable opportunity have not contested the case. The Plaintiff is thus entitled to an ex-parte declaration in terms of prayer clause (a) viz. that the Lease Agreement has been validly terminated pursuant to Notice dated 11th July 1997. The Plaintiff is also entitled to the claim of money as per the Particulars of Claim at Exhibit W to the Compilation of Documents which has been explained above. Further, Defendant No. 3 who was present before this court has also not disputed the amounts received by the Plaintiff till date as reflected in

Statement of Deduction annexed as Annexure V to the Compilation of Documents which the Plaintiff fairly seeks to adjust from its total claim. Thus, the Plaintiff is entitled to an aggregate amount of Rs.62,83,84,243/- (Rupees Sixty Two Crores Eighty Three Lakhs Eighty Four Thousand Two Hundred and Forty Three only) after adjusting the amounts received in the past as per the Statement of Adjustment annexed and marked as Annexure W to the Compilation of Documents.

16. In light of the aforesaid, the suit is decreed as under:

- (a) It is declared that the Lease Agreement dated 14th March, 1995 and Summary Lease Schedule executed pursuant thereto have been and stand duly and validly terminated with effect from 11th July, 1997.
- (b) The Defendant Nos. 1 & 2 are jointly and/or severally ordered and decreed to pay to the Plaintiffs a sum of **Rs.62,83,84,243/-** (Rupees Sixty Two Crores Eighty Three Lakhs Eighty Four Thousand Two Hundred and Forty Three only) as on 26th June, 2015 as per the Statement of Adjustment annexed and marked as Annexure W to the Compilation of Documents together with further interest thereon at the rate of 21% p.a. with effect from 27th June 2015 till payment and/or realisation.
- (c) The parties shall bear their own costs.

(d) Decree to be drawn up in terms hereof.

(S.J. KATHAWALLA, J.)