IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.44 OF 2015

IN

SUMMARY SUIT NO.858 OF 2014

IL & FS Financial Services Limited .... Plaintiff

In the matter between

IL & FS Financial Services Limited .... Plaintiff

Vs.

Shri. Subhash Chand Agrawal & Ors. .... Defendants

Mr. Denyar Madon, Senior Counsel alongwith Mr. Ankit Tiwari i/by M.K. Ambalal & Co. for the Plaintiff.

Mr. Ankit Kulkarni i/by Little & Co. for defendants no.1,2,3,5,6 and 7.

Coram : **Smt. R.P. SondurBaldota, J.**
Date : 30th October, 2015

P.C. :

1 In a suit for recovery of amounts due under letters of guarantee, the plaintiff has taken up this Summons for Judgment against the defendants. The suit claim as per the particulars stated therein is of Rs.70,90,43,702/-.

2 The plaintiff is a Non-Banking Financial Company, engaged in the business of financial and advisory services. Defendants no.1 to 6 are the promoters and directors of Vandana Udhyog Limited. A Company incorporated under the Companies Act. Defendant no.7 is also the Company incorporated under the Companies Act. In the year 2011, the plaintiff had advanced Infra Loan Facility of Rs.100 Crores to Vandana Udhyog Limited under the Loan Agreement dtd. 6th January, 2012. Under the agreement, the loan was to be repayed with interest in four equal quarterly instalments at the end of 27th, 30th, 33rd and 36th month from the date of the first disbursement i.e. 24th January, 2012. Defendants no. 1 to 7 executed Letters of Guarantee dtd. 16th January, 2012, 6th January, 2012, 19th January, 2012, 6th January, 2012, 19th January, 2012, 19th January, 2012 and 6th January, 2012 respectively, under which each defendant jointly and severally undertook the repayment of the loan amount to the plaintiff. The borrower Company made payment of interest until 30th June, 2013, after which it committed default. In the months July, August and September 2013, the borrower issued three cheques in favour of the plaintiff in the sums of Rs.70,32,329/- each and the fourth cheque was in the sum of Rs.1,40,64,658/-. When the cheques were presented for payment, the same were dishonoured with remark “funds insufficient”. The plaintiff has thereafter initiated criminal proceedings against the borrower and it's directors, which are

pending. The plaintiff had issued notice dtd.12th February, 2014 calling upon the borrower and the defendants to pay sum of Rs.3,99,04,110/- being part of the total dues. The borrower, by it's reply dtd.18th February, 2014 admitted the loan facility availed to it by the plaintiff but cited several difficulties faced for repayment of the loan. When the payment was not forthcoming, the plaintiff by separate letters all dtd. 11th March, 2014 called upon defendants no.1 to 6 to make payment of the outstanding amount. These defendants, however, took up several frivolous contentions by their replies dtd.19th March, 2014 and 22nd March, 2014. Then by the letter dtd.9th April, 2014, the plaintiff invoked the guarantees and called upon defendants no.1 to 6 to make the payment of dues as contained therein. When the notice was not complied, the plaintiff filed the suit herein for recovery of the amount of Rs.70,90,43,702/- being the part of principal amount due and the interest thereon.

3 Defendants no.1 to 7 have filed common reply to the Summons for Judgment, wherein they dispute territorial jurisdiction of this court to entertain the suit. They also point out that the plaintiff has filed Suit No.856 of 2014 for recovery of loan amount from the borrower. These defendants contend that Vandana Udhyog Limited and defendant no.7 of which defendants no.1 to 6 are promoters/directors have availed loans of more than 1300 Crores from various nationalised banks and financial institutions for developing Thermal Power Project. For

the reasons beyond the control of the borrower and it's promoters, the cut-off debt of the project could not be achieved. Consequently, the loans availed of from various financial institutions including the plaintiff could not be repayed within the stipulated time. Therefore the borrower had requested to restructure the term loan facility under the Corporate Debt Restructuring Scheme, which was subsequently approved by the Corporate Debt Restructuring Empowered Group in it's meeting dtd.13th February, 2013. There were further difficulties in the way of the Company due to quashing of coal block allocations by the Apex Court. According to these defendants, the term loan extended by the plaintiff of Rs.100 Crores is minuscule compared to the term loan of approximately Rs.1300 Crores extended by consortium of other nationalised banks project. These defendants also point out that the borrower had pledged it's shares in favour of the plaintiff under the Share Pledge Agreement dtd. 6th January, 2012 at 2.5 times more than the disbursed loan amount. Therefore, there is sufficient security available with the plaintiff.

4 The averments in the affidavit-in-reply, in fact confirm the entire case of the plaintiff. Resultantly, the plaintiff is entitled to have the Summons for Judgment made absolute. As regards the claim of the plaintiff against the principal debtor, Vandana Udhyog Limited, Mr. Madon, the learned Senior Counsel appearing for the plaintiff tenders consent order dtd.21st

October, 2015 passed in Suit No.856 of 2014. Under the order, the principal debtor has submitted to decree in the sum of Rs.96,39,18,426/- alongwith interest at the contractual rate. The principal debtor has undertaken to pay the decretal amount in accordance with the agreed schedule noted in the order. The last date for the payment under the schedule is of 30th October, 2017. The order refers to the pendency of the present suit and records that any decree passed in this suit shall not be executed against the directors of the Company until the amounts as undertaken in the order are paid. The two relevant clauses from that order read as follows.

> "4 Any decree passed by this Court in pending Summary Suit No.858 of 2014 shall not be executed against the Directors of the Defendant Company until the amounts as undertaken hereinabove, are paid.
>
> 5 It is clarified that after the payment of the above amounts, if any further amounts are due and payable under the decree passed in the Summary Suit No.858 of 2014, the Plaintiff shall be at liberty to execute the same against the Directors of the Defendant Company."

5 The Summons for Judgment is hence made absolute and the suit is disposed off accordingly. The execution of the decree will however be governed by the two clauses noted above.

(Smt. R.P. SondurBaldota, J.)