

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****SUMMONS FOR JUDGMENT NO. 61 OF 2016****IN****SUMMARY SUIT NO. 420 OF 2016**

1. M/s. Tata Motors Limited)
(formerly known as Tata Engineering and)
Locomotive Company Limited), a Company)
incorporated under the provisions of the)
Companies Act, 1913, having its registered)
office at Bombay House, 24, Homi Modi Street)
Fort, Mumbai - 400 001)

2. TML Distribution Company Limited, a)
Company incorporated under the provisions)
of Companies Act, 1956 and a wholly owned)
Subsidiary Company of Plaintiff No. 1 Company)
having its registered office at 3rd Floor,)
Nanavati Mahalaya, 18, Homi Modi Street)
Hutatma Chowk, Mumbai - 400 001) ... Applicants / Plaintiffs

Versus

1. Om Sai Motors Private Limited, a Company)
incorporated under the provisions of Companies)
Act, 1956 having its registered office at Ground)

Floor, Jyoti Plaza, S.V. Road, Kandivali (West))
Mumbai - 400 067)

2. Mr.Gangadhar Shivram Shetty, the Director)
of Defendant No. 1 Company, an Indian)
Inhabitant, an adult, residing at A/702, Bhakti)
Palace, New Link Road, Dahisar (West),)
Mumbai - 400 068)

3. Mr.Uday Shetty, Director of Defendant No. 1)
Company, an Indian Inhabitant, an adult,)
residing at Barsbetto House, Village Mudradi,)
P.O. Hebri, Karkala Taluka, Udupi - 576 145)) ... Defendants

Mr. Gaurav Joshi, Sr. Adv. a/w. Mr.Abhishek Khare, instructed by M/s. Khare Legal Chambers, for the Plaintiffs.

Mr. Vishal Kanade a/w. Mr. Shekh instructed by M/s. ASD Associates, for the Defendants

CORAM: S.J. KATHAWALLA, J.

DATE: 22ND JANUARY, 2018

JUDGMENT:

1. By the above Summary Suit, the Plaintiffs have sought an order and decree against the Defendants to jointly and severally pay to the Plaintiffs the outstanding principal amount of Rs. 4,88,69,226.15 (Rupees Four Crores Eighty Eight Lakhs

Sixty Nine Thousand Two Hundred Twenty Six and Fifteen Paise only) i.e. an amount of Rs. 2,68,21,552.07 (Rupees Two Crores Sixty Eight Lacs Twenty One Thousand Five Hundred Fifty Two Seven Paise only) payable to Plaintiff No.1 and an amount of Rs. 2,20,47,674.08 (Rupees Two Crores Twenty Lacs Forty Seven Thousand Six Hundred Seventy Four Eight Paise only) payable to Plaintiff No.2, along with interest accrued thereon at the rate of 18 per cent per annum till the date of filing of the present Summary Suit and further interest at the rate of 21 per cent per annum from the date of filing of the Suit until realization thereof as per particulars of claim annexed and marked Exhibit-FF to the Plaint.

2. After the Writ of Summons was served on the Defendants, the Defendants through their Advocates entered appearance. In view thereof, the Plaintiffs took out the above Summons for Judgment and prayed that Judgment be entered in favour of the Plaintiffs and against the Defendants in terms of the prayer made in the Suit and as set out hereinabove.

3. Briefly set out hereunder are the facts as narrated by the Plaintiffs in the Plaint :

3.1 The Plaintiff No.1 - Tata Motors Limited (Tata Motors) (formerly known as Tata Engineering and Locomotive Company Limited) is a Company incorporated under the provisions of the Companies Act, 1913 and is engaged, inter alia, in the business of designing, developing, manufacturing and selling, among others,

passenger and commercial vehicles and spare parts thereof and providing value added services including but not limited to AMC, refurbishment, pre-owned vehicle business, loyalty programmes relating to sales and service of the vehicles, rural marketing, etc. Plaintiff No. 2- TML is a wholly owned subsidiary of Tata Motors and is engaged, inter alia, in the business of distribution and delivery of vehicles across India, that are manufactured by Tata Motors. In or about the year 2007-2008, due to the expanding business of Tata Motors and the increasing complexities in handling and distribution of its products, Tata Motors considered it appropriate to hand over the distribution of its products and the logistic support activities required for the same to its wholly owned subsidiary company i.e. TML, Plaintiff No. 2 herein.

3.2 Defendant No. 1 Om Sai Motors Pvt. Ltd. (Om Sai Motors) is a Private Limited Company incorporated under the Companies Act, 1956 and is engaged, inter alia, in the business of acting as dealers/sellers/distributors of all kinds of automobiles, passenger cars, etc. and their spare parts, tyres, engines, etc. and also to act as a vehicle service centre, repairing centre, etc. Om Sai Motors was dealing with Tata Motors and TML through its Officers/Directors being Defendant No. 2 Gangadhar Shivram Shetty (Gangadhar Shetty) and Defendant No. 3-Uday Shetty. Apart from Om Sai Motors, Gangadhar Shetty solely owned and managed a proprietary concern Om Sai Automobiles, which was in June, 2004 merged into Om Sai Motors. Tata Motors was initially dealt with Om Sai Automobiles through its

proprietor Mr. Gangadhar Shetty and post the aforesaid merger was dealing with Om Sai Motors through its Directors Gangadhar Shetty and Uday Shetty.

3.3 On 23rd May, 2001, Gangadhar Shetty applied to Tata Motors on behalf of Om Sai Automobiles (his sole Proprietary concern) for car dealership. At that time, Gangadhar Shetty represented to Tata Motors that he runs a multi choice dealership showroom through Om Sai Motors at Kandivali (West); deals in second hand cars through M/s.Om Sai Motors in Borivali and runs a Tata Authorised Service Centre through Om Sai Automobiles. He further represented that the multi-choice car show room at Kandivali shall be converted to Tata Dealership showroom on obtaining the Letter of Intent from Tata Motors. Gangadhar Shetty also furnished valuation reports of the properties owned by him, the provisional balance sheet and also profit and loss accounts of Om Sai Automobiles and Om Sai Motors. On the basis of the said representations, Tata Motors issued its approval for appointment of Om Sai Automobiles as their authorised dealer.

3.4 On 25th October, 2001, Tata Motors issued a Letter of Intent to Gangadhar Shetty thereby allowing Om Sai Automobiles to start and establish dealership at Kandivali for *Tata Indica, Tata Safari, Tata Sierra, Tata Estate and Tata Sumo*. The Letter of Intent was interalia accompanied by a draft Dealership Agreement. The Letter of Intent for dealership was duly accepted and signed by Gangadhar Shetty on behalf of Om Sai Automobiles.

3.5 Pursuant to the above mentioned Letter of Intent, Gangadhar Shetty executed a Deed of Guarantee with Tata Motors on 22nd February, 2002 wherein Gangadhar Shetty admitted and accepted his personal and irrevocable liability to pay to Tata Motors such amounts of money as may be due and payable and may remain unpaid under or arise from the said Dealership Agreement. It was also provided that the guarantee would remain effective and operative notwithstanding that Gangadhar Shetty ceases to be the Partner of Om Sai Automobiles. Gangadhar Shetty further agreed that the guarantee shall remain in full force and effect and shall be enforceable until the amounts due from Om Sai Automobiles (his proprietary concern) are fully received by Tata Motors, notwithstanding the termination of the dealership.

3.6 On 2nd April, 2002, Tata Motors entered into a Dealership Agreement with Om Sai Automobiles through its Proprietor, Gangadhar Shetty (first Dealership Agreement). The first Dealership Agreement was made effective from 1st January, 2001 to 31st December, 2003. As per the said first Dealership Agreement, Tata Motors had appointed Om Sai Automobiles as their Authorised Agent to sell and service *Tata Indica, Tata Safari, Tata Sierra, Tata Estate and Tata Sumo* on a principal to principal basis.

3.7 On 31st May, 2004 Tata Motors entered into a Dealership Agreement (second Dealership Agreement) with Om Sai Automobiles through its Proprietor Gangadhar Shetty. The said second Dealership Agreement was made effective from

1st January, 2004 to 31st March, 2007. As per the second Dealership Agreement, Tata Motors appointed Om Sai Automobiles as their Authorised Dealer to sell and service *Tata Indica, Tata Safari, Tata Sumo, Tata Carrier, Tata Scorpio, Tata touring* and parts and accessories thereof on a principal to principal basis.

3.8 In furtherance of the said second Dealership Agreement, Om Sai Automobiles (the Authorized Dealer) issued a Letter dated 31st May, 2004, authorising TML to act as a Facilitator and assist the Authorized Dealer by arranging for transit insurance and transportation of Tata vehicles sold under the said second Dealership Agreement, to the place of the Authorised Dealer.

3.9 On 28th June, 2004, Gangadhar Shetty wrote a letter to Tata Motors informing them of the merger of Om Sai Automobiles, his Proprietary concern, with Om Sai Motors-Defendant No.1. Thereafter, Om Sai Motors vide its letter dated 6th September, 2003, informed Tata Motors of the shareholding pattern of the existing Directors in Om Sai Motors. The said letter dated 6th September, 2004 was signed by both the Directors of Om Sai Motors i.e. Gangadhar Shetty and Uday Shetty.

3.10 Tata Motors vide its letter dated 16th September, 2004, granted its permission for the said merger. By the said letter, the terms and conditions of the said second Dealership Agreement were made applicable to Om Sai Motors and Om Sai Motors was appointed as the Authorised Dealer for sale and service of *Tata Indica, Tata Safari, Tata Carrier, Tata Scorpio, Tata Touring* and parts and

accessories thereof in terms of the said second Dealership Agreement.

3.11 In furtherance of the aforesaid merger of Om Sai Automobiles and Om Sai Motors and in view of the permission from Tata Motors vide its letter dated 16th September, 2009 for the said merger, on 15th March, 2005, Gangadhar Shetty and Uday Shetty executed “Deeds of Guarantee” whereunder Gangadhar Shetty and Uday Shetty admitted and accepted their personal and irrevocable liability to pay such amounts of money to Tata Motors as may be due and payable and which may remain unpaid under or arise from the said second Dealership Agreement. As agreed, under the earlier guarantee, the present guarantees were also to remain effective and operative, notwithstanding that Gangadhar Shetty and Uday Shetty ceased to be the Directors/Officers of Om Sai Motors. Gangadhar Shetty and Uday Shetty also agreed that these guarantees shall remain in force and shall be enforceable until the amounts due from Om Sai Motors are fully received by Tata Motors, notwithstanding the termination of the dealership.

3.12 Even after the expiry of the period stated in the second Dealership Agreement (i.e. on 31st March, 2007), Om Sai Motors continued to act as the Authorised Dealer for the Tata passenger business and accessories and spare parts thereof and the transactions between the parties were continued on the same terms and conditions as stated in the said second Dealership Agreement. Meanwhile Tata Motors vide its letter dated 8th June, 2007, issued a Letter of Intent for sales extension

at Andheri to Om Sai Motors with certain conditions as more particularly set out in the said letter.

3.13 On 31st July, 2008 Tata Motors entered into a Dealership Agreement (the third Dealership Agreement) with Om Sai Motors. The said third Dealership Agreement was made effective from 1st January, 2008 to 31st March, 2010. For the said third Dealership Agreement, Tata Motors also informed of its decision of handing over the distribution of vehicles and logistic support activities required to its wholly owned subsidiary TML-Plaintiff No.2. As per the said third Dealership Agreement, Tata Motors had appointed Om Sai Motors as the Plaintiffs Authorised Dealer for sale and service of *Tata Indica, Tata Safari, Tata Estate, Tata Touring, Tata Sumo* and parts and accessories thereof on a principal to principal basis. Clause 22 of the said third Dealership Agreement confirmed the joint and several liabilities of Gangadhar Shetty and Uday Shetty, Directors of Om Sai Motors, for any dues receivable from Om Sai Motors on account of the said third Dealership Agreement, even after the dealership is terminated.

3.14 Pursuant to its separate arrangement with Tata Motors for distribution and logistic support for Tata vehicles, TML entered into a Distribution and Logistic Support Agreement dated 31st July, 2008, with Om Sai Motors for the period from 6th August, 2008 to 31st March, 2010. By the said Agreement, TML agreed to extend its distribution and logistic support for the Tata passenger car vehicles and spare parts

and accessories thereof sold under the said third Dealership Agreement with Om Sai Motors. In furtherance of the said third Dealership Agreement with Om Sai Motors and the said distribution and logistic support agreement dated 31st July, 2008 with TML, Om Sai Motors issued a “Letter of Authority” dated 5th August, 2008, authorising TML to act as a facilitator and thereby help Om Sai Motors by arranging transit insurance and transportation of Tata vehicles sold under the said third Dealership Agreement to the place of the Authorised Dealer.

3.15 On 18th March, 2009, Tata Motors addressed a letter to Om Sai Motors thereby authorising Om Sai Motors to act as a dealer for sale and service of *Tata Nano*, also manufactured by Tata Motors, in addition to the Tata vehicles set out under the said third Dealership Agreement dated 31st July, 2008. The said letter for dealership of *Tata Nano cars* was duly accepted and signed by Gangadhar Shetty.

3.16 Vide Letter of Intent dated 2nd June, 2007, Om Sai Motors and its Directors Gangadhar Shetty and Uday Shetty were further allowed to start the Tata Passenger Used/Pre Owned Cars space business at Jyoti Plaza, S.V. Road, Kandivali (West), Mumbai, for the State of Maharashtra. Thereafter Tata Motors issued another Letter of Intent dated 23rd June, 2010 to Om Sai Motors and its Directors Gangadhar Shetty and Uday Shetty allowing them to start the Fiat Dealership in the City of Greater Mumbai, Maharashtra, for Fiat range of vehicles including *palio*, *linca* and *grante punto*. Thereafter Om Sai Motors entered into two separate extension

agreements both dated 21st May, 2010 with Tata Motors and TML wherein Om Sai Motors and Tata Motors and TML agreed to extend the Dealership and Logistic support on the same terms and conditions as were set out in the previous three Dealership Agreements and previous Distribution and Logistic Support Agreement dated 31st July, 2008. By virtue of the said extension agreements, the said three Dealership Agreements and the previous Distribution and Logistic Support Agreement dated 31st July, 2008, were extended for a further period upto 31st March, 2011.

3.17 In furtherance of the aforesaid extension agreements, Om Sai Motors issued Letters of Authority dated 6th March, 2012 and 12th March, 2012, authorising Tata Motors and TML respectively to act as Facilitators and assist Om Sai Motors by arranging transit insurance and transportation of the passenger vehicles sold to Om Sai Motors under the said three Dealership Agreements and the said Distribution and Logistic Support Agreement.

3.18 According to Tata Motors, pursuant to the aforementioned Agreements, Om Sai Motors placed various purchase orders and Tata Motors and TML sold, supplied and delivered to Om Sai Motors the products as per the demand raised by Om Sai Motors from time to time which were duly received and acknowledged by Om Sai Motors. Tata Motors and TML, pursuant to the purchase orders placed by Om Sai Motors, supplied cars, spare parts to Om Sai Motors at the price as notified by

Tata Motors in pursuance of the Dealership Agreement. After such sales, Tata Motors/TML raised appropriate invoices on Om Sai Motors. Upon delivery of the vehicles ordered, these invoices were signed by the person authorised by Om Sai Motors for taking delivery. According to the Plaintiffs, even after the expiry of the term of 31st March, 2011, as stated in the said extension agreement dated 21st May, 2010, the Dealership of Om Sai Motors with Tata Motors/TML continued on the same terms and conditions of the third Dealership Agreement and Distribution and Logistic Support Agreement by conduct and Tata Motors/TML continued to sell and deliver the vehicles to Om Sai Motors on the same terms and conditions as stipulated in the third Dealership Agreement and Distribution and Logistic Support Agreement.

3.19 According to Tata Motors, in pursuance of the Agreements, Om Sai Motors raised numerous requirements for Tata vehicles and the same were duly provided/supplied to Om Sai Motors within the time frame. Om Sai Motors never raised any demur/protest/objection on any issues relating to the supply of vehicles. Tata Motors/TML in good faith extended credit facilities to Om Sai Motors whenever they needed it. According to Tata Motors/TML, even though they were not bound to extend their help, as a goodwill gesture and in good faith, considering the representation of Om Sai Motors and Gangadhar Shetty, Tata Motors/TML agreed to deliver the Tata passenger vehicles to Om Sai Motors on credit.

3.20 According to the Plaintiffs, though Om Sai Motors continued to purchase vehicles and spare parts from Tata Motors/TML on the terms and conditions as contained in the said Agreements, Om Sai Motors failed and neglected to pay on one pretext or the other the legitimate amounts due to Tata Motors/TML. According to Tata Motors, till March, 2012, Tata Motors raised 38 invoices totalling to Rs. 2,21,88,162.20 (Rupees Two Crores Twenty One Lacs Eighty Eight Thousand One Hundred Sixty Two Twenty paise only) as listed in List-1 of paragraph 31 of the Complaint and TML raised 88 invoices totalling to Rs. 1,96,63,367.17 (Rupees One Crore Ninty Six Lacs Sixty Three Thousand Three Hundred Sixty Seven Seventeen Paise only) as listed in List-2 of paragraph 31 of the Complaint. Tata Motors/TML have submitted that as per clause 12 of the third Dealership Agreement and Distribution and Logistic Support Agreement, Tata Motors/TML were to issue guidelines on instructions for payment terms for the vehicles and spare parts sold to Om Sai Motors and the same were duly binding upon Om Sai Motors. In furtherance thereof, it was mutually agreed between Tata Motors /TML and Om Sai Motors that Om Sai Motors will be liable to pay interest at the rate of 14 per cent per annum upon its failure to pay the amounts due to Tata Motors/TML. According to Tata Motors/TML, the credit billing facility which was availed by Om Sai Motors changed from time to time and the same was conveyed to Om Sai Motors and its Directors. Though Om Sai Motors agreed to the changed/increased rate of interest upto 15 per

cent and the ledger account of Tata Motors/TML demonstrates the same, Tata Motors/TML have craved leave to rely upon the calculations done at the lower rate of interest i.e. 14 per cent per annum charged by Tata Motors/TML. Tata Motors/TML have also submitted that as per clause 12 (d) and 13 of the Dealership Agreement and Distribution and Logistic Support Agreement, Om Sai Motors are liable to bear all the taxes and dues and incidental expenses along with the payment of full price for the vehicles and spare parts sold. Om Sai Motors, however, did not provide Tata Motors with the C-form for the spare parts supplied and delivered at different locations for the Financial year 2013-2014 as required for sales tax purposes. On account of this Tata Motors had to bear an additional loss which is solely due to Om Sai Motors and Tata Motors/TML are entitled to claim the same from Om Sai Motors and its Directors. Tata Motors/TML have further submitted that they are entitled to claim from Om Sai Motors and its Directors the miscellaneous incidental expenses incurred by Tata Motors and Trust, pursuant to the aforesaid Dealership Agreements. Tata Motors/TML have submitted that voluminous correspondence pertaining to the outstanding amounts has been exchanged between the parties and several meetings were convened between Tata Motors/TML and Om Sai Motors and its Directors for clearance of its dues. Upon request of Om Sai Motors, Tata Motors/TML have been providing copies of the statements of the transactions pertaining to the sale of vehicles and outstanding amounts due from time to time by

Om Sai Motors. Exhibits BB-1 and BB-8 are the copies of various e-mails and letters sent to Om Sai Motors recording minutes of such meetings and demanding the outstanding dues. According to Tata Motors / TML, since in spite of repeated requests, reminders and demands sent to Om Sai Motors by Tata Motors/TML, Om Sai Motors has failed and neglected to make the payments of the total outstanding amount of Rs. 4,88,69,226.15 (which is a total sum of outstanding of Rs. 2,68,21,522.07 payable to Tata Motors and outstanding of Rs. 2,20,47,674.08 payable to TML) along with interest at the rate of 18 per cent thereon as prayed for.

3.21. That Gangadhar Shetty and Uday Shetty being Directors of Om Sai Motors are jointly and severally and personally liable to pay the entire outstanding amount to Tata Motors/TML under the deeds of guarantee entered into between Tata Motors and Gangadhar Shetty and Uday Shetty dated 15th March, 2005 and in pursuance of joint several and personal liability reinstated under the third Dealership Agreement dated 31st July, 2008 and the extension agreements dated 21st May, 2010.

3.22 That in all the agreements entered into between Tata Motors/TML and Om Sai Motors, it was clearly reflected that the Directors of Om Sai Motors admit and accept their personal and irrevocable liability to pay to Tata Motors and TML such amounts of money as may be due and payable and which may remain unpaid under or arise from the Dealership Agreements and that the guarantee shall remain effective and operative, notwithstanding that Gangadhar Shetty/Uday Shetty ceased

to be the Directors of Om Sai Motors. Gangadhar Shetty and Uday Shetty also agreed that the guarantee shall remain in force and shall be enforceable until the amounts due from Om Sai Motors are fully received by Tata Motors/TML notwithstanding the termination of the Dealership.

3.23 That Om Sai Motors and its Directors, Gangadhar Shetty and Uday Shetty have acknowledged its outstanding payable to Tata Motors/TML vide their e-mail dated 12th April, 2013, however, they have failed to make the said payment, instead after making certain allegations for the first time against Tata Motors/TML, Om Sai Motors by its e-mail dated 13th June, 2013 sent by Gangadhar Shetty to Tata Motors/TML, terminated the Dealership Agreement.

3.24 Since Om Sai Motors and its Directors failed and neglected to pay the outstanding amounts as agreed, Tata Motors/TML through their Advocates issued demand notice dated 8th April, 2014 to recover the outstanding amount and requested Om Sai Motors and its Directors to clear the same with further interest thereon charged at the rate of 18 per cent till the date of realisation thereof within a period of 21 days from the date of the demand notice. However, the said demand notice dated 8th April, 2014, was returned by the postal department with the remark 'left'.

3.25 Tata Motors/TML were therefore compelled to institute the present Suit under Order 37 of Code of Civil Procedure, 1908 for recovery of their outstanding dues of Rs. 4,88,69, 226.15 payable by Om Sai Motors along with interest arising from

a written contract.

4. As stated hereinabove, since Om Sai Motors entered appearance through their Advocates, Tata Motors/TML took out the above Summons for Judgment seeking an order and decree as prayed and set out hereinabove.

5. Om Sai Motors and its Directors have filed their Affidavit-in-Reply wherein they have raised the following defences :

(i) That there is no contract for payment of interest between Tata Motors/TML and Om Sai Motors and its Directors. They are therefore not liable to pay any interest;

(ii) Tata Motors/TML are also not entitled to claim the amount due on account of Form-C and amount due on account of other expenses as shown in Exhibits AA-1 and AA-2 to the Plaint as there is no contract between Tata Motors/TML and Om Sai Motors for the payment of the same;

(iii) That since the amount of interest, Form-C and other charges claimed by Tata Motors/TML are disputed amounts, the Summary Suit filed on the basis of such claims is not maintainable;

(iv) That Tata Motors/TML have relied upon the ledger account of Om Sai Motors maintained by them and a Summary Suit filed/based on the ledger account is not maintainable;

(v) That till March, 2012, Tata Motors raised 38 invoices totalling to Rs.

2,21,88,162.20. The invoices referred therein are for the period October, 2011 to February, 2012 and the last invoice raised by Tata Motors is of 29th February, 2012. The Suit is lodged by Tata Motors/TML on 27th October, 2015 and as such all the invoices referred to in List-1 of para 31 of the Complaint are hopelessly barred by the Law of Limitation as the same are beyond the period of three years.

(vi) Similarly the invoices referred in List-2 raised by TML in para 31 of the Complaint also pertain to the period prior to March, 2012 and the present suit is filed on 27th October, 2015 i.e. beyond the period of limitation and as such List-II invoices are also hopelessly barred by the law of limitation;

(vii) That Om Sai Motors have never confirmed the liability of the payment of the aforesaid invoices referred to in para 31 of the Complaint, on which the present suit is filed;

(viii) That Exhibit BB-8 on page 374 of the Complaint i.e. e-mail dated 12th April, 2013, relied upon by Tata Motors/TML is not an acknowledgement of the outstandings payable by Om Sai Motors to Tata Motors/TML. The said e-mail clearly states that Tata Motors/TML blocked their Code account for the purpose of carrying on regular business and by the said e-mail they requested Tata Motors/TML to open their Code to do regular business. However, the Code remained blocked by Tata Motors/TML and it was never opened and thus Om Sai Motors were not in a position to do regular business and also suffered huge loss in the said business;

(ix) That Om Sai Motors by their e-mail dated 13th June, 2013, addressed to Tata Motors/TML, informed them about their decision to close / terminate the Dealership Agreement and recorded therein that in the year 2011, they had placed orders for some specific vehicles but Tata Motors/TML delivered the vehicles which were in excess at Tata Motors/TML's yard and Om Sai Motors could clear and sell some vehicles only after great difficulty. In fact, Om Sai Motors had to give huge discount to the customers because of which they incurred heavy losses;

(x) That the delivery of the vehicles referred to in the aforesaid invoices for the period 2011 - 2012 were not as per the orders placed by Om Sai Motors but Tata Motors/TML had on its own delivered such vehicles which were not ordered by Om Sai Motors and which were in excess in their yard and as such Om Sai Motors cannot be made liable to pay the amounts referred to in the aforesaid invoices in para 31 of the Plaint.

(xi) That it is within the knowledge of Tata Motors/TML that due to them not opening the Code they were not able to do any business, therefore, the Defendants suffered heavy losses in the business with the result that they closed down all the showrooms and Om Sai Motors have till date not recovered from such financial loss which was caused to them due to the aforesaid act of Tata Motors/TML.

(xii) That Om Sai Motors are, therefore, entitled to unconditional leave to defend the suit.

6. Tata Motors/TML have filed Affidavits in Rejoinder and have, after repeating and reiterating the facts set out hereinabove, denied and disputed the submissions advanced on behalf of Om Sai Motors. In support of their contention that the e-mail dated 12th April, 2013, constitutes an acknowledgement and therefore the suit filed by them is not barred by the law of limitation, Tata Motors/TML have relied on the decision of the Hon'ble Supreme Court in the case of *Khan Bahadur Shapoor Fredoon Mazda vs. Durga Prasad Chamaria and others*¹ and the decision of this Court in *Temal Bishamal Sidhai vs. Amar Mohandas Sindhi*². Further, Tata Motors / TML in support of their contention that Om Sai Motors are not entitled to conditional or unconditional leave but Tata Motors/TML are entitled to a decree at this stage have relied on the decision of the Hon'ble Supreme Court in the case of *IDBI Trusteeship Service Ltd. vs. Hubtown Ltd.*³

7. I have considered the submissions on behalf of Tata Motors/TML and Om Sai Motors and the case law relied upon by Tata Motors/TML. The Hon'ble Supreme Court has in the case of Khan Bhadur Shapoor Fredoon Mazda (supra), after considering the essential requirements of Section 19 of the Limitation Act which provides for the effect of acknowledgement in writing has explained in paragraph 6 of the judgment as follows:

“6. It is thus clear that acknowledgment as prescribed by Section 19

¹ (1962) 1 SCR 140 : AIR 1961 SC 1236

² (1972) 74 Bom LR 644

³ AIR 2016 SC 5321

merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in Section 19, and there is really no substantial difference between the parties as to

the true legal position in this matter."

8. Again, a learned Single Judge of this Court in his decision in *Temal Bishamal Sidhai* (supra) has also explained how Section 18 of the Limitation Act pertaining to acknowledgement should be construed. Paragraph 7 of the said judgment is reproduced hereunder:

"7. In Megh Raj v. Mathura Das, ILR (1913) All 437, it has been observed that a liberal construction should be placed upon documents purporting to be acknowledgments. It is sufficient if the statement on which a plea of acknowledgment is based relates to a present subsisting liability though the exact nature or the specific character of the said liability is not indicated in words. All that is necessary is that the words used in acknowledgment must indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expression in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission need not be express but must be made in circumstances and in words from which the Court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. Stated generally, courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to

admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. As the law of limitation restricts a man from enforcing his rights it must receive strict construction, and if there be any doubt, the interpretation placed upon the law should be in favour of the right to proceed. As has been stated in Anantram v. Inayat Ali Khan, AIR 1920 Lah 447, the tenor of the section is certainly strongly against a narrow interpretation of what constitutes an acknowledgment. A narrow interpretation should not be put on what constitutes an acknowledgment under Section 18. It is but just and reasonable that the section should be construed, so as to afford every possible support to a just and lawful claim, against an unjust and unconscionable resistance to that claim."

9. In the instant case, Om Sai Motors have in paragraph 5 of their Affidavit-in-reply taken a stand that the invoices referred to in List-1 pertain to the period from October, 2011 to February, 2012 and the invoices referred to in List-2 pertain to the period prior to March, 2012 and therefore the present suit filed on 27th October, 2015 is barred by the Law of Limiation. Tata Motors/TML has relied on the e-mail dated 12th April, 2013 (Exhibit BB-8 at page 374 of the Complaint), the relevant paragraph of which is reproduced hereunder:

"Since last 2 years we had diversified our business in other fields, this in turn has hampered our concentration in selling of vehicles. Our outstanding amount had gone upto Rs. 10 crores with you till January 2012, this amount has been reduced to Rs. 5 crores. We were able to

clear approximately Rs. 5 crore as our Code was not blocked by you. We have learnt our follies, we wish to again revive our original business and for this we want your full support. We request you to open our Code and give us a chance to do regular business, we assure you that in no time we will bring the business to normal and clear all our pending dues with you.”

10. Om Sai Motors have in the said e-mail clearly admitted as follows:

- (i) That the outstanding amount due to Tata Motors/TML had accumulated upto Rs. 10 crores and by January, 2012, the amount had been reduced to Rs. 5 crores;
- (ii) Om Sai Motors were able to clear the outstandings of approximately Rs. 5 crores as their Code was not blocked by Tata Motors/TML;
- (iii) That Om Sai Motors have learnt their follies and they wish to revive the original business for which they want the full support of Tata Motors/TML;
- (iv) That Om Sai Motors requested Tata Motors/TML to open the Code and give a chance to Om Sai Motors to do their regular business and that Om Sai Motors assured Tata Motors/TML that in no time they will bring the business to normal and clear all the pending dues (which according to Om Sai Motors is Rs. 5 crores) of Tata Motors/TML.

11. In view of the above decisions of the Hon'le Supreme Court and this Court, it is clear beyond any doubt that the above paragraph in the e-mail dated 12th April, 2013 (Exhibit-BB-8 at page 374 of the Complaint) constitutes an acknowledgment on the

part of Om Sai Motors that they are liable to pay Rs. 5 Crores to Tata Motors/TML. Om Sai Motors, therefore, cannot be now heard to say that the paragraph from the e-mail dated 12th April, 2013 cannot be treated as an acknowledgement by Om Sai Motors and that the suit is barred by the law of limitation.

12. The learned Advocate appearing for the Plaintiffs has submitted that though no separate agreement is required to be executed for charging the interest under the main contract, the Plaintiffs are pressing for interest on delayed payments only from the date of filing of the Suit. The contention of Om Sai Motors that there is no contract for the payment of dues owed for withholding Form-C and other expenses are not payable cannot be accepted since, as per clause 12 of the first Dealership Agreement dated 2nd April, 2002, clause 12 (d) of the second and third Dealership Agreements dated 31st May, 2004 and 31st July, 2008 respectively, Om Sai Motors were liable to bear all the taxes and duties and incidental expenses along with the payment of full price for the vehicles and spare parts sold. Again under clause 9 (d) of the Distribution and Logistic Support Agreement dated 31st July, 2008, Om Sai Motors were liable to pay all the taxes and duties and incidental expenses along with the payment of full price for the vehicles and spare parts sold. Further, charges towards taxes and duties would also include charges towards Form-C under the provisions of the Sales Tax laws. It also cannot be accepted that the Summary Suit is not maintainable because Tata Motors/TML have relied upon a ledger account

maintained by Tata Motors/TML. The claims of Tata Motors/TML is based on the invoices raised against Om Sai Motors for vehicles supplied by Tata Motors to Om Sai Motors and for Logistic support provided by TML to Om Sai Motors. The claim, as submitted by Tata Motors/TML is based on a written contract and, therefore, the Summary Suit is maintainable. After accepting all the vehicles from Tata Motors/TML and acknowledging the same on the invoices submitted to them by Tata Motors/TML and also acknowledging their liability to pay the balance dues of Rs. 5 crores, Om Sai Motors have thereafter for the first time by its e-mail dated 13th June, 2013 tried to raise the defence that Tata Motors/TML had handed over the vehicles to Om Sai Motors despite Om Sai Motors not having ordered for the same only because the same were lying in their yard. The defence on the face of it appears to be false and is not bonafide and has no merit.

13. The Hon'ble Supreme Court of India in its decision in IDBI Trusteeship Service (supra) in paragraph 18 held as under:

"18. Accordingly, the principles stated in paragraph 8 of Mechelec? case will now stand superseded, given the amendment of O.XXXVII R.3, and the binding decision of four judges in Milkhiram? case, as follows:

(a) If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to

leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit;

(b) If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend;

(c) even if the defendant raises triable issues and if a doubt is left with the trial judge about the Defendant's ? good faith, or the genuineness of the triable issues, the trial judge may impose conditions both, as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

(d) if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires;

(e) if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or

vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

(f) if any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.

14. In my view, the present case is covered under clauses (e) and (f) of para 18 of the decision in IDBI Trusteeship Services Ltd. (supra) and Tata Motors/TML are entitled to a judgment forthwith. Even otherwise, the learned Advocate appearing for the Defendants has informed the Court that the Defendants are not in a position to even deposit in Court any amount whatsoever.

15. The above Summons for Judgment is therefore allowed in terms of prayer clause (a) with a modification to the extent that the Plaintiffs shall be entitled to interest on unpaid invoices only from the date of filing of the Suit. The Suit alongwith the Summons for Judgment therefore, stand disposed of.

(S.J. KATHAWALLA, J.)