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

% ***Date of decision***: 02.05.2018

\+ CS(COMM) 671/2017

STANDARD CHARTERED BANK ..... Plaintiff

Through Mr.Ateev Mathur and Ms.Jagriti Ahuja, Advs.

versus

M/S MULTIWAL PULP & BOARD MILLS PVT. LTD. & ORS. ..... Defendants

Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>JAYANT NATH, J.(ORAL)</u>

1. This suit is filed for recovery of USD 6,848,539.43 alongwith interest. The plaintiff is said to be a body incorporated in UK and having its principal office at London and is in the business of banking. Defendant No.1 is a company incorporated under the Companies Act, 1956, having its registered office in Delhi.

2. Defendant No.1 was a manufacturer of a variety of paper and paper related products. It had a borrowing facility worth USD 8,000,000/- from the plaintiff. Defendants No.2 to 6 are guarantors who executed Deed of Guarantee dated 28.9.2011 guaranteeing that they shall be jointly, severally and co-extensively liable to repay the due amount.

3. It is the contention of the plaintiff that defendant No.1 approached it for grant of certain credit facilities for financing of capital expenditure. An External Commercial Borrowing Facility Agreement dated 13.9.2011 was executed to the tune of USD 8 million. To secure the said credit facilities

defendant No.1 on 13.9.2011 executed an Unattested Memorandum of Hypothecation by way of first pari passu charge of its entire movable assets. The charge created on the current assets and movable fixed assets by defendant No.1 in favour of the plaintiff was duly registered with the ROC. Further, in order to secure the plaintiff defendant No.1 represented that it was willing to provide security in terms of a mortgage over immovable property at Chitoor. This was a property which defendant No.1 was in the process of purchasing from a third party called BVR Paper Mills. Defendant No.1 assured that it would create a charge in favour of the plaintiff as soon as it acquires the said title. Defendant No.1 was however unable to create an equitable mortgage on the Chitoor property in favour of the plaintiff. He therefore offered additional security of the Bazpur property. However, as Bazpur property was already charged to other bankers, defendant No.1 represented that plaintiff's charge would also be included in the list of charges over the Bazpur property. Accordingly, a supplement to Unattested Memorandum of Hypothecation was executed on 10.2.2012.

4. Since defendant No.1 started defaulting in repayment the plaintiff issued demand notices on 10.11.2016 to defendants No.2 to 6 asking them to make payment of the aggregate sum of USD 6,144,878.56 outstanding as on 26.8.2016. On 19.4.2017 the plaintiff also issued an acceleration notice in accordance with clause 5.7 of the Facility Agreement to the defendants. It was categorically mentioned in the notice that in case the defendant fails to comply with, the bank shall be constrained to initiate legal action. It is further pleaded that as per Statement of Account maintained by the plaintiff during the course of its banking business, as on 25.1.2017, an amount of USD 6,848,539.43 is due and payable by the defendants. Interest has been

calculated for the specific period at the stated rates.

5. Defendants were duly served as is noted by the order of 19.1.2018 of learned Joint Registrar. However, none appeared for the defendants nor written statement has been filed. On 22.03.2018 the learned Joint Registrar noted that the defendant was served by ordinary process on 16.11.2017. As none had appeared the right of the defendants to file written statement was closed.

6. The plea of the plaintiff remains unrebutted Under Order 8 Rule 10 CPC where a party from whom written statement is required fails to present the same within the time fixed, the Court may pronounce judgment against him. In my opinion, this is a fit case for pronouncing judgment against the defendant on account of default in filing of written statement. Accordingly, a decree is passed in favour of the plaintiff and against the defendant for USD 6,848,539.43. The plaintiff shall be entitled to *pendent lite* interest at 3% w.e.f. the date of filing of the suit till decree. Plaintiff shall also be entitled to 3% rate of interest from the date of decree till recovery. Plaintiff shall also be entitled to costs. Suit stands disposed off as above.

JAYANT NATH, J

MAY 02, 2018

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