O.A.Nos.302 & 303 of 2019 and
A.Nos.2313 & 2323 of 2019

M.SUNDAR,J.

This common order will dispose of all these four applications. All these four applications were referred to the 'Tamil Nadu Mediation and Conciliation Centre' under the aegis of this Court (hereinafter 'TNMCC' for brevity) vide an order of referral dated 30.09.2019 made by Hon'ble Predecessor Judge. Thereafter, TNMCC has sent a mediation report dated 13.01.2020 to this Court. Under cover of this Mediation report, two agreements captioned 'MEMORANDUM OF UNDERSTANDING' (both dated 06.01.2020) entered into between the parties with regard to two loan agreements being loan agreement Nos.SLNMKAL0145962 & SLNMKAL0145881, both dated 27.06.2017 have been enclosed.

2. Before this Court proceeds further, learned counsel for applicant submitted that the Regional Manager of 'Bharat Petroleum Corporation Limited' (hereinafter 'BPCL' for brevity) has been arrayed as third respondent in all these four applications only in its capacity as Garnishee and there is no lis with BPCL. Saying so, in the light of settlement that has been arrived at between the parties at lis, learned counsel for applicant gave up the third respondent, BPCL in all four applications. Necessary endorsement has been made in the case file.

3. Mr.A.Damodaran, learned counsel on record for applicant and Mr. S.Senthil, learned counsel for respondents 1 and 2 who are before this Court submit that all these four applications may please be disposed of in terms of the aforesaid two Memorandum of Understandings which are as follows:

MEMORANDUM OF UNDERSTANDING.

This **MEMORANDUM OF UNDERSTANDING** executed at Chennai on this 6th Day of January 2020,

BETWEEN

M/s. **EQUITAS SMALL FINANCE BANK Ltd** Rep by its Authorised Signatory Mr.R.S.[illegible], S/o. Mr. R.Sundaram Hindu, aged 31 years, Manager - Legal of the Applicant Bank, having its Registered Office at Phase II, 4th Floor, Spencer Plaza, Anna Salai, Chennai – 600 002, the party of the first part, hereinafter referred to as the **APPLICANT**.

AND

Mr.N.SUKUMAR and **Mrs. S.VIJAYA**, both residing at D.No. 20-A, Sri Krishna Residency, 80, Feet Road, Sami Nagar, [illegible] Road, Namakkal- 637 001, the parties of the 2nd Part, hereinafter referred to jointly as the **RESPONDENTS**.

1. Whereas, the **Respondents** approached the **Applicant** for financial assistance by way of Loan for purchasing a TN 01 AO 3586 vehicle.
2. Whereas the **Applicant**, after considering the representation of the **Respondents** that they would repay the Loan together with applicable interest without any delay / default, disbursed a sum of Rs 20,00,000/- by way of loan to the **Respondents** on 27.06.2017 vide Loan Agreement No. **SLNMKAL0145962** (hereinafter referred to as the **said agreement**).
3. As per the Terms and Conditions of the said Agreement, the **Respondents** were liable to repay to the **Applicant** the Contract value of Rs 20,00,000/- in 48 equated monthly instalments of Rs. 54,1[illegible]/- commencing from 17.08.2017 and ending on 10.07.2021. It was further agreed under the said agreement that if the **Respondents** committed any delay or default in payment of any of the instalments under the said agreement, they were liable to pay additional finance charges by way of penalty for each day the account remained in default. It was also agreed under the said agreement that the **Applicant** would be entitled to repossess / seize the vehicle under loan and bring it to sale to realise their dues without any prior notice to

For EQUITAS SMALL FINANCE BANK LTD.
[signature]
Authorised Signatory

N. Sukumar
S. Vijaya

the **Respondents**, in the event of there being any amounts due and payable by the **Respondents** towards overdue instalments / default interest.

4. Whereas the **Respondents** not only committed default in payment of the instalments under the said agreement but also failed to regularise the account in question despite several requests, reminders and personal discussions, the **Applicant** with no choice but to initiate proceedings in line with the Arbitration clause provided under the said Agreement by filing a petition under Sec.9 of the Arbitration & Conciliation Act, 1996 before the Honourable High Court of Judicature at Chennai to restrain the Garnishee [illegible] (BRCL) from making any payment to the **Respondents** as prayed for in the said Sec.9 petition. Pursuant to such filing, the Hon'ble High Court was pleased to pass an interim order dated 20.03.2019 and also referred the matter to Mediation.

5. During the Mediation proceedings, the **Respondents** have offered to settle the matter in the following manner.

6. The **Respondents** acknowledge that the [illegible] vehicle bearing Registration No.TN-[illegible] AG 3286, which had been taken on loan by the **Respondents** from the **Applicant** had been repossessed and sold by the **Applicant** for a sum of Rs.10,50,000/- owing to default committed by the **Respondents** under the relevant Agreement even before the matter was referred by the Honourable High Court for Mediation.

7. The statement of account in Agreement No. [illegible] of the **Applicant** which the **Respondents** admit and acknowledge, shows that the **Respondents** are due and liable to pay to the Applicant a sum of Rs.92,431/- which the Respondents have agreed to settle in the following manner:

   i) The **Respondents** have paid to the **Applicant** a sum of Rs. 50,000/- by way of Demand Draft on [illegible].2019 vide DD No. 003893 drawn on Tamil Nadu Mercantile Bank to prove their bonafide's and have requested the applicant to provide them with

For [illegible] FINANCE BANK LTD

Authorised Signatory

6 months' time to close the said account which the applicant has agreed to on or before 16.07.2020.

(4) The Respondents are in default in another account with the applicant under Agreement bearing no. SUNMKAL0145881 for which a separate AOC is being executed simultaneously. It is agreed and acknowledged by the Respondents herein that if they fail to keep up their commitment of settling the account bearing agreement No. SUNMKAL0145902 as mentioned above, the applicant shall be entitled to proceed against the vehicle taken under agreement No. SUNMKAL0145881 by seizing it and bringing it to sale to realise the amounts due under agreement no SUNMKAL0145902 and if there is still any shortfall, the applicant shall be entitled to legally proceed against the Respondents to recover the unrealised amounts until the last paisa stands recovered irrespective of whether the Respondent's account under agreement bearing No. SUNMKAL0145881 is in default or not.

[illegible]

Mr.K.S. PRAKASH
APPLICANT

Mr. R.SUKUMAR & Mrs. S.VIJAYA
RESPONDENTS

Witnesses

1. [illegible] (27/6/19)
[illegible]

2. [illegible]
[illegible]

MEMORANDUM OF UNDERSTANDING.

This **MEMORANDUM OF UNDERSTANDING** executed at Chennai on this 6th Day of January 2020.

BETWEEN

M/s. EQUITAS SMALL FINANCE BANK Ltd. Rep. by its Authorised Signatory **Mr.R.S.BHARATH**, S/o. Mr. R. Sundaram, Hindu, aged 31 years, Manager - Legal of the Applicant Bank, having its Registered Office at Phase II, 4th Floor, Spencer Plaza, Anna Salai, Chennai – 600 002, the party of the first part, hereinafter referred to as the **APPLICANT**.

AND

Mr.N. SUKUMAR and **Mrs. S.VIJAYA**, both residing at D.No. 20-A, Sri Krishna Residency, 80, Feet Road, Sami Nagar, Salem Road, Namakkal - 637 001, the parties of the 2nd Part, hereinafter referred to jointly as the **RESPONDENTS**.

1. Whereas, the **Respondents** approached the **Applicant** for financial assistance by way of Loan for purchasing a KA 01 AC-3596 vehicle.
2. Whereas the **Applicant**, after considering the representation of the **Respondents** that they would repay the Loan together with applicable interest without any delay / default, disbursed a sum of Rs 20,00,000/- by way of loan to the **Respondents** on 27.06.2017 vide Loan Agreement No. **SLEMKAL0145881** (hereinafter referred to as **the said agreement**).
3. As per the Terms and Conditions of the said Agreement, the **Respondents** were liable to repay to the **Applicant** the Contract value of Rs.20,00,000/- in 48 equated monthly instalments of Rs. 54,110/- commencing from 10.08.2017 and ending on 10.07.2021. It was further agreed under the said agreement that if the **Respondents** committed any delay or default in payment of any of the instalments under the said agreement, they were liable to pay additional finance charges by way of penalty for each day the account remained in default. It was also agreed under the said agreement that the **Applicant** would be entitled to repossess / seize the vehicle under loan and bring it to sale to realise their dues without any prior notice to

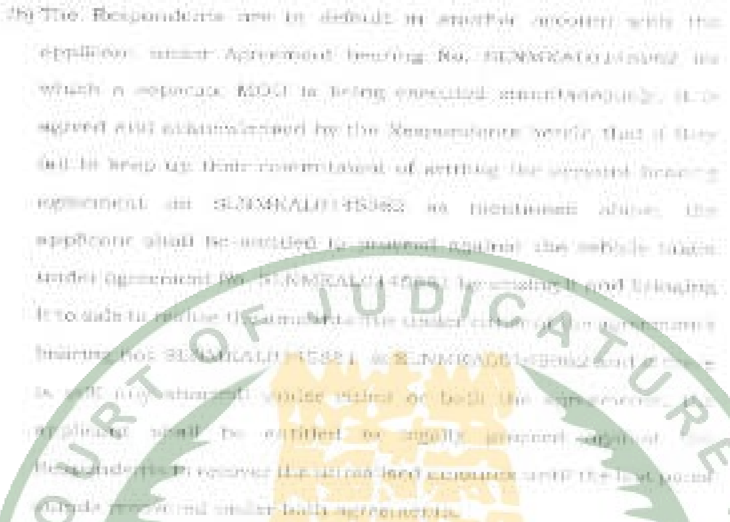
the **Respondents**. In the event of there being any amounts due and payable by the **Respondents** towards overdue instalments / default interest.

4. Whereas the **Respondents** not only committed default in payment of the instalments under the said agreement but also failed to regularise the account in question despite several requests, reminders and personal visits leaving the **Applicant** with no choice but to initiate proceedings in tune with the Arbitration clause provided under the said Agreement by filing a petition under Sec.9 of the Arbitration & Conciliation Act 1996 before the Honourable High Court of Judicature at Chennai interalia the Garnishee [illegible] (BPCL) from making any payment to the **Respondents** as prayed for in the said Sec.9 petition. Pursuant to such filing, the Hon'ble High Court was pleased to pass an order vide orders dated 20.02.2019 and [illegible] the matter to Mediation.

5. During the Mediation proceedings, the **Respondents** have offered to settle the matter in the following Manner.

6. The statement of Account [Agreement No. SLNVKAL01-[illegible]] of the **Applicant** which the **Respondents** admit and Acknowledge, shows that the **Respondents** are due and liable to pay to the Applicant a sum of Rs.1024[illegible]/- as on [illegible].2020 which the Respondents have agreed to settle in the following manner.

(a) The **Respondents** have paid to the **Applicant** a sum of Rs.2,50,000/- by way of Demand Draft on [illegible].11.2019 Vide DD. No. 002957 drawn on Tamil Nadu Mercantile Bank to prove their bonafides and have assured and undertaken to the applicant that they shall regularise the said account within 6 months, i.e., the respondents will pay every month EMI with Rs.1,20,000/- towards the arrears / pending EMI dues from January 2020 to May 2020 and will regularise the entire pending dues by June 2020 and regularise the said account and will continue the regular EMI without any default in future.



(b) The Respondents are in default in another account with the applicant under Agreement bearing No. [illegible] for which a separate MOU is being executed simultaneously. It is agreed and acknowledged by the Respondents herein that if they fail to keep up their commitment of settling the account bearing agreement no. [illegible] as mentioned above, the applicant shall be entitled to proceed against the vehicle taken under agreement No. [illegible] by seizing it and bringing it to sale to realise the amounts due under either of the agreements bearing Nos. [illegible] & [illegible] and [illegible] is [illegible] under either or both the agreements, the applicant shall be entitled to legally proceed against the Respondents to recover the unrealised amounts until the last point of [illegible] under both agreements.

4. To be noted, both learned counsel submit that the parties were present before TNMCC for signing the aforesaid Memorandum of Understanding in the presence of one another and on this basis, learned counsel made a request that the presence of parties may please be dispensed with. This prayer is acceded to.

5. In the light of the aforesaid trajectory, all these four applications are disposed of by this common order in terms of the aforesaid two Memorandum of Understandings (both dated 06.01.2020) both of which shall form part of this order. There shall be no order as to costs.

21.01.2020

sli

M.SUNDAR,J.

sli

O.A.Nos.302 & 303 of 2019 and
A.Nos.2313 & 2323 of 2019

21.01.2020