IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

SUMMONS FOR JUDGMENT NO.24 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO.482 OF 2019

Bank of Baroda .. Plaintiff
v/s.
Aban Offshore Ltd. .. Defendant

Mr. Prakash Shinde, a/w Niyati Merchant & Harsh Sheth i/b. MDP & Partners for the plaintiff.
Mr. Kunal Mehta a/w Robin Fernandes, Kayomars Kerawalla i/b. Vesta Legal for the defendant.

CORAM : A. K. MENON, J.
DATED : 14TH JUNE, 2022.

P.C. :

1. Called for dismissal. However, Mr. Shinde appearing on behalf of the plaintiff states that he is willing to proceed the hearing. I have therefore taken up the same for final hearing and disposal.

2. The Summons for Judgment seeks a decree in a sum of Rs.17,78,52,536.47 due as per particulars of claim Exhibit 'M' to

the plaint. Perusal of Exhibit 'M' to the plaint reveals that the plaintiff seeks to recover principal sum of Rs.10 crores with interest @ 12% p.a. The claim is based on the value of Non-Convertible Cumulative Redeemable Preference Shares ('NCRPS') The plaintiff is admittedly a shareholder having acquired these shares for a sum of Rs.10 crores. It appears that the terms and conditions of the issues are to be found in the Shelf Information Memorandum Exhibit 'A' to the plaint. The investment in preference shares was declared to be one which involves a degree of risk especially since it is the private placement.

3. The plaintiff bank has in accordance with the Information Memorandum proceeded to subscribe to one crore preference shares by an application dated 11th December, 2006. The application money of one crore was then paid as evidenced from Exhibit 'B'. It appears that the shares were not redeemed on maturity and according to Mr. Shinde the amounts were rolled over upon a maturity which date was initially 29th December, 2011. The defendants have failed and neglected to redeem the shares.

4. Mr. Shinde also pointed out that there was subsequent meeting

held amongst the preference shareholders and it was unanimously agreed that terms of the issue would be revised. Accordingly maturity date 29th December, 2011 and rate of dividend at 9% was agreed to be revised to a maturity date 29th December, 2014 with rate of dividend at 10% with effect from 29th December, 2011. Despite this, it is contended that the shares will not be redeemed on the date of maturity.

5. On a query from the court as to why the suit is filed in October 2018 despite the maturity being 29th December, 2014, Mr. Shinde submits that at meeting for all preference shareholders held on 7th September, 2016 it was agreed that there is an agreement that there would be open for preference shareholder to convert those preference shares into equity shares or going one time settlement. In view of this meeting and the minutes recorded and the unanimous agreement therein, the bank did not proceed to initiate any action or seek payment of the maturity value. It is contended that on 8th May, 2018 a notice was issued demanding a sum of Rs.17,01,33,598.42 towards the aforesaid value of the preference shares. As per Section 80(1) of the Companies Act, the value of preference shares would be paid only out of the profits. There is a statement that the company claims to have made profit

during the year 2015-16 and 2016-17, yet no demand was made till 2018 although the preference shares were said to have matured as of December 2014. There is no explanation whatsoever forthcoming for the plaintiff for this delay.

6. On a query from the court as to the record which indicates that company has been in the black and earning profits, Mr. Shinde relies upon a demand notice as also a letter dated 9th July, 2015 addressed to the Chairman of the defendant to the effect that the company is believed to be earning profits and in view thereof, Mr. Shinde submits that he is entitled to a decree in terms of the suit.

7. On behalf of the defendant, Mr. Mehta has opposed the application contending that there is no debt due and payable to the plaintiff. In terms of the Companies Act the defendant has been unable to pay the amounts of maturity values to any of the preference shareholders. He has relied upon the averments in the affidavit in reply filed in the Summons for Judgment of one S.N. Balaji dated 10th January, 2020 in which the defendant has categorically set out the fact that the suit is not maintainable as a Summary Suit. There is no undisputed debt that is owed as on date since the company is not a profit making company and that

the shares were initially to carry free tax dividend @ 9% p.a. Thereafter as admitted by the plaintiff the maturity date was revised. It is also contended that there is no liquidated sum of a money that can be claimed today and there is no creditor debtor relationship that has been established. Moreover, I have already find that it is also an issue of limitation even assuming the plaintiff's case to be correct in terms of the profitability of the defendant company. However, these are aspects that will be required to be gone into at a trial. Triable issues arise in the aforesaid terms.

8. I therefore pass the following order;

(I) Defendant is granted unconditional leave to defend.

Written statement to be filed within a period of eight weeks from today.

(ii) If written statement is filed, list for framing issues before the appropriate court.

(iii) Summons for Judgment is disposed in the above terms.

(A. K. MENON, J.)