A.No.3102 of 2024
in C.S.No.822 of 2017
& C.S.No.252 of 2019

Reserved on: 10.07.2024	Pronounced on: 02.08.2024

P.B.BALAJI, J.,

The present application has been filed under Section 73 of the Indian Evidence Act to appoint a qualified hand writing expert for comparison/examination of the disputed documents, namely Ex.P3 and Ex.P5, being alleged Promissory Note dated 01.04.2013 and alleged acknowledgement of debt dated 31.03.2015 with the admitted document, namely the Board Resolution dated 10.12.2013 (filed as suit Document No.4 by the defendant), for the purpose of identification and life of the handwriting as found in the disputed documents including the signature purportedly affixed thereof.

2.I have heard Mr.Vaibhav R.Venkatesh for Mr.Nithyaesh & Vaibhav, learned counsel for the applicant and M/s.Jayesh B.Dolia, learned Senior Counsel for M/s.Aiyar and Dolia, learned counsel for the respondent.

3.Mr.Vaibhav Venkatesh, learned counsel for the applicant/defendant would submit that the acknowledgement of debt document dated 31.03.2015 is forged document and the same has been created only for getting over limitation since even according to the plaintiff, the loan was advanced in February 2012. He would further submit that there is not a single document evidencing the loan transaction and even according to the plaintiff, the loan amount was transferred only through RTGS. He would further submit that the plaintiff has also relied upon the cheque dated 18.01.2016, which reflects the principal amount alleged to have been lent namely, Rs.1.25 crores and this itself creates a doubt since even according to the plaintiff, the borrowing was to be repaid together with 18% interest and if so, the plaintiff would have never received a cheque for the principal amount alone, in January 2016. He would therefore submit that in order to establish that the document, namely acknowledgment of debt as well as the Promissory Note were forged, the application has to be allowed and an expert opinion has to be obtained.

4.Per contra, Mr.Jayesh B.Dolia, learned Senior Counsel appearing for the respondent/plaintiff would submit that the very same document, namely the acknowledgment of debt and Promissory Note were filed before the National Company Law Tribunal. He would invite my attention to the compromise arrived at between the parties before the National Company Law Tribunal, where the applicant has admitted his liability to the entire tune of Rs.1.25 crores and in part satisfaction, he has also paid a sum of Rs.50 lakhs. The learned Senior Counsel would further submit that even though there was liberty granted to approach the CFC in the event of any default committed in respect of the balance of Rs.75 lakhs, in view of the pecuniary jurisdiction being enhanced to Rs.1 crore the plaintiff could not move the said forum and therefore, has/had to necessarily continue with the suit to recover the balance Rs.75 lakhs. He would further submit that trial has already commenced and the application is only to protract the proceedings. He would therefore seek for dismissal of the application.

5.I have carefully considered the rival submissions advanced by the learned counsel on either side.

6.It is seen from the records that the plaintiff/respondent herein moved the National Company Law Tribunal under Section 9 of the

Insolvency and Bankruptcy Code, 2016, pending the present suit, which was filed in 2017. As part of the documents before the National Company Law Tribunal, the respondent/plaintiff has filed the confirmation of balance by the applicant dated 31.03.2014 as Annexure – I(F), Promissory Note executed by the Corporate Debtor dated 01.04.2013, Annexure – I(J) confirmation of balance by the Corporate Debtor for Rs.1,25,00,000/- dated 31.03.2015 and Annexure – I(K) a copy of cheque dated 18.01.2016 along with the bank endorsement dated 19.01.2016 for return of the cheque.

7.It is seen that pending the said Insolvency and Bankruptcy proceedings, the parties have reached a compromise vide an Agreement to settle financial debt dated 16.09.2019. In the said agreement to settle financial debt, the parties have agreed upon the following terms:

> "*4.Both parties have agreed a settlement of Rs.1,25,00,000/- towards Full & Final Settlement for all their disputes and the Corporate Debtor hereby agrees to pay an upfront sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) on _09.2019 being the date on which the withdrawal of the CIRP proceedings under Section 12A is being decided upon by the Hon'ble National Company Law Tribuna, Chennai Bench by way of Two Demand Drafts dated 15.09.2019 (a) bearing No.000912 for Rs.45,00,000/-*

(Rupees Forty Five Lakhs only) drawn on Axis Bank and (b) bearing No.509180 for Rs.50,00,000/- (Rupees Five Lakhs only) drawn on ICICI Bank, both payable at Chennai. Subsequently, the Parties hereby agree to the payment plan as mentioned below:

S.No.	Date	Mode of Payment	Amount (in INR)
1.	31/03/2020	Post Dated Cheque bearing No.001113 drawn on ICICI Bank	Rs.75,00,000/-
Total Full & Final Amount Payable		Rs.1,25,00,000/- (including upfront payment of Rs.50,00,000/-	

5.M/s.Karisma Foundations Private Limited agrees to make the payments to M/s.Narendra Properties Limited associated with the dates as listed in the payment plan mentioned above. The Parties agree that the Settlement Amount of Rs.1,25,00,000/- includes a component of "time value for money" as defined under Section 5(8) of the IBC.

6.The Parties hereby agree that in case of any delay or defaults in payments by the Corporate Debtor, as per the agreed repayment schedule mentioned hereinabove by the Corporate Debtor, then the Corporate Debtor shall be liable to pay penal interest at 10% per annum on the balance default amount only from the date its due.

7.The Parties hereby agree that in case of any default on part of the Corporate Debtor in making the *payments as per the aforementioned payment plan then M/s.Narendra Properties Limited will be entitled to pursue its legal remedies available under law including but not limited to filing a fresh application before the Hon'ble National Company Law Tribunal, Chennai against the Corporate Debtor with respect to the default under this Agreement which provides a fresh cause of action to M/s.Narendra Properties Limited.*

8.Upon signing of the Agreement both parties will necessarily withdraw all cases filed against each other which includes but not limited to the cases filed in the NCLT, High Court and The Chief Metropolitan Magistrate Court, Egmore.

9.Nothing in this Settlement Agreement is meant to release M/s.Karismaa Foundations Private Limited from its obligation to pay the Settlement Amount according to the Payment Plan herein or limit the rights of M/s.Narendra Properties Limited in recovering the said Settlement Amount."

8.The said settlement agreement has also been taken on file by the National Company Law Tribunal and an order also came to be passed on 16.09.2019, giving liberty to the respondent/plaintiff to initiate Corporate Insolvency Resolution Process (CIRP) against the applicant\defendant in the event of the post dated cheque for Rs.75 lakhs being dishonoured.

9.In view of the above, it is clear that the applicant has admitted liability for the entire principal amount of Rs.1.25 crores and he has also made a part payment of Rs.50 lakhs. The remaining sum of Rs.75 lakhs was also admitted for which a cheque was issued. However, the said cheque was dishonoured on presentation and it is only for recovery of this amount together with any interest accrued and payable, the respondent / plaintiff is proceedings with the present suit. The applicant cannot deny the fact that these documents which are now alleged as forged documents were filed by the respondent/plaintiff before the National Company Law Tribunal and without any protest or demur the applicant has accepted his liability to the entire sum of Rs.1.25 crores, which only implies that the documents furnished by the respondent/plaintiff were admitted on the side of the applicant/defendant.

10.Today after entering into a compromise with the respondent/plaintiff and having parted with substantial portion of the settlement amount, it is not open to the applicant to turn around and disown the signatures in the acknowledgment of debt and the Promissory Note. It is clearly an attempt to delay payment of the amounts lawfully due and payable to the respondent / plaintiff and since the suit is now in the trial stage, it is a clear attempt and abuse attempted by the applicant/defendant to protract the proceedings. There is absolutely no necessity for allowing the present application seeking an expert opinion since the question of the applicant / defendant even disputing the liability does not arise in view of the settlement voluntarily reached by the applicant/defendant before the National Company Law Tribunal. I see no justifiable reason to entertain the present application. Accordingly, the application is dismissed.

02.08.2024

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P.B.BALAJI, J.
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