



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.06.2024

CORAM:

**THE HONOURABLE Mr. JUSTICE P.VELMURUGAN**

C.S. No.817 of 2014

1. V.T.Impex Limited  
rep. by its Managing Director,  
12 SBI Officers Colony,  
2nd Street, Arumbakkam,  
Chennai - 105.
2. Tamilnadu Forgings Private Limited  
Rep. by its Managing Director,  
1/103 Poonamallee High Road,  
Vanagaram, Chennai - 600 095.
3. Sundeep Kumar Gupta
4. K.K.Gupta

... Plaintiffs

Vs.

1. ICICI Bank Ltd.,  
Landmark, Race Course Circle,  
Vadodara - 390 007.
2. ICICI bank Limited,  
No.110, Prakash Presidium,  
Nungambakkam High Road,  
1st Floor, Commercial Branch,  
Nungambakkam,  
Chennai - 600 034.



3. ICICI Bank Ltd.,  
ICICI Bank Towers,  
4th Floor, West Wing, Plot No.24,  
Ambattur Industrial Estate,  
Chennai - 600 058.

... Defendants

(Second plaintiff merged with the first plaintiff as per the order of this Court dated 17.09.2014 in C.P.No.183 and 184 of 2014)

Civil Suit is filed under Order IV Rule 1 of Original Side Rules r/w.  
Order VII Rule 1 of Civil Procedure Code, to pass a judgment and decree:

a) directing the defendants to pay to the first plaintiff a sum of Rs.2,60,24,845/- (Two crores sixty lakhs twenty four thousand eight hundred and forty five only) together with interest at the rate of 19% per annum on the principal sum of Rs.2,16,33,041/- from the date of filing of the suit and until the suit is decreed and further directing the defendant bank to pay interest on the principal sum at a rate specified in the decree under Section 34 of C.P.C. and

b) directing the defendants to pay the cost of the suit including the advocate fees

For Plaintiffs : Mr.Nirmal Roy Sanjeevi  
for Mr.D.Anand  
For Defendants : Mr.V.Suresh  
for Mr.V.Shivakumar & Suresh



## JUDGMENT

This Civil Suit has been filed by the plaintiffs seeking direction directing the defendants to pay to the first plaintiff a sum of Rs.2,60,24,845/- together with interest at the rate of 19% per annum on the principal sum of Rs.2,16,33,041/- from the date of filing of the suit and until the suit is decreed and further directing the defendant bank to pay interest on the principal sum at a rate specified in the decree under Section 34 of C.P.C.

### **2. The averments made in the plaint are as follows:**

The first plaintiff is V.T.Impex Limited, a public limited company incorporated in the year 2004 which is engaged in the business activities of trading, export and import of vegetables like onion, garlic, spices, agro products and general commodities since the year 2004 with a turnover of Rs.250 Crores. The first plaintiff has wholly owned subsidiaries at China and Malaysia which are engaged in business of trading in the same agro products. The second plaintiff is Tamilnadu Forgings Private Limited, a private limited company which is engaged in business activities of import, export and trading of furniture, dies, tools and agriculture implements. The third plaintiff is the Managing Director of the first and second plaintiff



companies and the fourth plaintiff is the father of the third plaintiff. The defendants are various branches of ICICI Bank Limited situated at various places.

2.1 In the year 2011, the first plaintiff approached the second defendant bank seeking credit limits and after considering the request and the financial background of the first plaintiff, the second defendant sanctioned Cash Credit for a sum of Rs.27 Crores and Term Loan for a sum of Rs.2.659 Crores vide a Credit Arrangement Letter dated 22.09.2011 and a non-fund based limit for derivatives for a sum of Rs.1 Crore was also sanctioned. The sanction of the said credit limits was subject to mutually agreed terms and conditions which are duly reflected in the defendants' bank credit arrangement letter and the following loan documents were executed by both the plaintiffs and defendants:

- i) Corporate Rupee Loan Facility Agreement dated 29.09.2011 executed by the first plaintiff and the defendants;
- ii) Loan Facility Arrangement dated 29.09.2011 executed by the first plaintiff and the defendants
- iii) Deed of Guarantee dated 15.10.2011 executed by the first, second



and third plaintiffs.

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2.2 The Loan Facility Agreement document dated 29.09.2011 stipulates the rate of interest chargeable for grant of Cash Credit Facility of a sum of Rs.27 Crores as I-base and spread per annum, subject to a minimum rate of I-Base+3.5% p.a. with applicable interest or other statutory levies and the rate of interest for Term Loan of Rs.2.659 Crores was the I-Base and spread per annum with applicable interest tax or other statutory levy. During the time of sanction, the I-Base was 10% and spread was 2.5% and the defendants charged the plaintiffs a non-refundable processing fee of Rs.40,44,885/- exclusive of service tax and statutory levies which the plaintiffs paid. In consideration of the grant of the aforesaid credit facilities, the first plaintiff hypothecated its entire stocks of raw materials, semi-finished and finished goods, consumable stores, spares and other movables including book debts in favour of the defendants through a Deed of Hypothecation dated 15.10.2011. The second plaintiff had given a corporate guarantee in favour of the defendants for the repayment of the credit facilities extended to the first plaintiff. It had also offered a collateral security of an immovable property being an area of 4.125 acres located at



1/103 Poonamallee High Road, Sivabootham Village, Vanagaram, Chennai -

95 which is valued at Rs.45 crores, in favour of the defendants for the credit facilities availed by the first plaintiff. The said facilities were guaranteed by the third and fourth plaintiffs.

2.3 The Credit Arrangement Letter dated 22.09.2011 comprised the sanction terms and the defendants have also clearly stipulated about the defaults, reckoning of default interest and the exact default interest rates payable for the said credit facilities by the plaintiffs in an exhaustive list of Annexure I of the said letter. According to the said list the defendants were entitled to claim 1% of the sanctioned working capita facility as default fee for non-compliance of sanctioned terms. According to the plaintiffs, they have operated these credit facilities with the second defendant confirming with all the credit stipulations. However, the defendants addressed a letter to the plaintiffs vide letter dated 09.07.2012 stating that there was breach of three specific conditions stipulated in the Credit Arrangement Letter viz: (i) other unsecured loans advanced to the first plaintiff by relatives and directors should not be withdrawn (ii) the company had not routed 50% transaction through the Cash Credit Account and (iii) the first plaintiff had



transferred funds to its group companies. The said letter dated 09.07.2012 further called upon the first plaintiff to pay default fee of 1% of the sanctioned working capital facility without specifying an amount. The first plaintiff did not make the payment of 1% for each non-compliance since there was no such condition in the Credit Arrangement Letter dated 22.09.2011, Facility Agreement dated 29.09.2011 and the Loan Facility Agreement dated 29.09.2011.

2.4 On 09.10.2012 the defendants addressed a letter to the third plaintiff to repay a sum of Rs.42,27,211/- towards payment of interest towards the cash credit account and EMI towards the Term Loan Account. However in the said letter the defendants did not stipulate the exact percentage and amount of default charges levied by them but only stated that "default charges are levied on the overdue amount". Again on 12.12.2012 the defendants addressed a letter to the first plaintiff by stating that there was breach of sanction conditions and as per the sanction, non-compliance of sanction terms attract default fees of 1% and for three non-compliances, the default fee of 7% of total sanctioned working capital limits is payable. According to the plaintiffs, the defendants have made a wrong and false



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claim that the first plaintiff was liable to 7% towards default fee since there was no condition warranting payment of 1% of each default in any of the Agreements executed between the plaintiffs and defendants. On 19.12.2012 again the defendants addressed a letter to the plaintiff by stating that there were three instances of breach of sanction conditions and that as per the sanction, for three non-compliances, default fees of 3% on total sanctioned working capital limits is payable. However, the plaintiffs did not pay the 3% as demanded by the defendants since there was no such condition in the loan documents. Consequently, the defendants declared the first plaintiff's account as "Non-performing Assets" on 31.12.2012.

2.5 The plaintiffs submit that on 22.01.2013 the defendants addressed a notice to the plaintiffs calling for repayment of a sum of Rs.31,08,16,453.34/- as of 31.12.2012 together with further interest and other charges at a contractual rate within a period of 21 days from the date of notice. Though the defendants have claimed the aforesaid figure as due, there was no reference or mention about the interest rates and charges applied by them to arrive at the sums which are purportedly due. By an another notice dated 31.01.2013, the defendants gave the following break up



of figures:

Cash Credit Facility - Principal Rs.27,00,00,000/-, Simple Interest - Rs.1,44,84,138.75/-, Other charges - Rs.81,00,000/- (ii) Rupees Term Loan - Principal O/s.- Rs.1,74,93,778.51/-, Simple Interest - Rs.7,17,284.90/-, Other Charges Rs.21,251.14/-.

2.6 Both the aforesaid notices issued by the defendants have no reference about the exact interest rates for the Cash Credit Facility, Term Loan facility, the application of interest rates and statutory charges as per the sanction terms in the Credit Arrangement Letter dated 22.09.2013. The defendants have also issued a notice under Section 13(2) of the SARFAESI Act to the plaintiffs on 05.01.2013 by claiming a sum of Rs.31,08,16,453.34/- as due. The defendants issued another notice dated 04.02.2013 to the third and fourth defendants claiming the sum of Rs.31,08,16,453.34/- as due as on 31.12.2013. In addition to the notices, the defendants have filed an Original Application in O.A.No.26/2013 before the Debt Recovery Tribunal-I, Chennai, against the plaintiffs for recovery of the aforesaid sum with contractual interest of 20.25% p.a. and Rs.2,78,10,067.96/- with contractual interest of 18.25% as on 01.01.2013.



However, in the said application there was no averment with regard to any default charges for non-compliance. Consequently, the defendants initiated a series of proceedings and brought pressure on the plaintiffs seeking attachment of the properties.

2.7 On 11.03.2013, the defendants issued a possession notice by claiming a sum of Rs.31,08,16,453.34/- as due and payable and took possession of the properties of the plaintiffs. The plaintiffs contended that though substantial collateral security was mortgaged with the defendant and monthly rental receipts are being paid, the defendants have pressurized them to sell the immovable property having already taken possession by invoking the provisions of the SARFAESI Act. Thereafter, a sum of Rs.2,44,71,561/- was paid in respect of settlement of dues of an account of the second defendant and in all a sum of Rs.37,43,59,329.66/- was paid by the first and second plaintiffs in respect of sale proceeds of the mortgaged property in settlement of dues as claimed by the defendants. The defendants have filed a memo in O.A.No.26 of 2013 stating that a sum of Rs.37,43,79,429.56/- was paid by the first plaintiff in full and final settlement of claim of the accounts of the first and second defendants.



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2.8 According to the plaintiffs, the defendants have charged interest at the rate of 15.00% for the month of September, 2012, 14.60% for October, 2012, 14.20% for November, 2012, 19.50% for December, 2012 and 19.04% for January, 2013 to May, 2013. The plaintiffs would contend that without any contractual basis, the defendants have illegally levied an excess interest of 8% towards default charges when they are entitled to only 1%. The plaintiffs claim that the defendants bank has wrongly debited a sum of Rs.81 Lakhs from the first plaintiff's Cash Credit Account on 29.05.2013 as "Default Charges" in respect of 1% for quasi equity withdrawn, 1% for routing of turnover not been 50% and 1% for transfer of funds to group companies. They would further claim that the defendants have wrongfully claimed a sum of Rs.1,62,33,041/- showing default charges of 6% on the first plaintiff's cash credit limit of Rs.27 Crore. The defendants were entitled to claim only 1% on the sanctioned working capital facility as default fees for non-compliance by the first plaintiff which amounts of Rs.27 lakhs as stipulated under the Credit Arrangement Letter dated 22.09.2011. Hence the defendants are liable to refund the excess sum of Rs.2,16,33,041/- along with interest @ 19% p.a. on account of the first plaintiff's default charges.



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2.9 It is further claimed by the plaintiffs that the claim of defendants of 1% default on each default is illegal, contrary to the norms stipulated by Reserve Bank of India and the Credit Letter Agreement which govern the contractual credit arrangements. On 18.09.2013 the plaintiff addressed a letter to the defendants questioning the illegal levy of "Default Charges" at the rate of 9% over and above the Credit Arrangement Letter which stipulated only 1%. However, the defendants did not respond to the said letter nor clarify the levy of 9% due default charges. Vide notice dated 02.01.2014 the plaintiffs called the defendants to immediately refund the sum of Rs.2,43,33,041.56/- which was wrongfully debited towards interest and default charges with 24% per annum from the date of debit. However, the defendants' counsel in his reply dated 23.01.2014 did not address the levy of interest and default charges at the rate of 9% on sanction working capital limits. Aggrieved by the same, the plaintiffs have filed the present suit for recovery.



**3. Denying the averments made in the plaint, the defendants 1 to 3**

**have filed their written statement and in which it is stated as under:**

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The first plaintiff had approached the defendants for certain credit facilities like cash credit and term loan for its business purposes. On considering the proposal, the defendants have sanctioned the facilities of Cash Credit of Rs.27 Crores and Term Loan of Rs.2.659 Crores, in terms of the credit arrangement letter dated 22.09.2011. As per the said arrangement the facilities were to be secured by way of mortgage on commercial land and building with area comprising of 4.125 acres located at No.1/103, Poonamallee High road, Sivabootham Village, Vanagaram, Chennai - 600 095, owned by the second plaintiff and also by the personal guarantee of the third and fourth plaintiffs along with one Mrs.Indu Gupta and also by hypothecation of entire movables by the first plaintiff.

3.1 The first plaintiff had executed a Facility Agreement dated 29.09.2011 in respect of the cash credit facility of Rs.27 Crores and the defendants also sanctioned the facility to the second plaintiff by way of a term loan of Rs.3.75 Crores vide a sanction letter dated 26.09.2011 and



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according to which if any default is committed by the first plaintiff in terms of the said agreement, it shall be deemed to be an event of default by the second plaintiff and vice versa. The collateral security offered by the second plaintiff is for securing the limits provided to the first and second plaintiffs and the interest rates are charged as per the credit arrangement letter accepted by the plaintiffs.

3.2 The first plaintiff had also executed a Rupee Loan Facility Agreement dated 29.09.2011 related to the said term loan and the said term loan facility has to be repaid in 36 monthly installments payable commencing from September, 2011. As a security for the two facilities, the first plaintiff had hypothecated its movable and current assets by a Deed of Hypothecation dated 15.10.2011 and the third and fourth plaintiffs along with the said Indu Gupta had executed a Deed of Guarantee dated 15.10.2011 guaranteeing the due repayment of the above facilities availed by the first plaintiff. The first and second plaintiff have also given an undertaking for creation of permanent security dated 15.10.2011 agreeing to create mortgage on the said immovable property owned by the second plaintiff. On 29.12.201,1 the second plaintiff had deposited the original title



deeds related to the immovable property bearing No.1/103, Poonamallee High Road, Sivaboortham Village, Vanagaram, Chennai - 600 095 to secure the facilities to the first plaintiff.

3.3 The defendants contended that having availed the aforesaid facilities, the first plaintiff was irregular in complying the terms and conditions of the said loan agreements. The first plaintiff has transferred funds to its group company and also to the plaintiff which is contrary to the terms of the Facility Agreement entered into between them. Though as per the Facility Agreement the first plaintiff has undertaken that it will route minimum of 50% transaction through cash credit account maintained with the defendant, it had not routed 50% in the cash credit account during period November, 2011 to June, 2012. In terms of the said Facility Agreement executed by the plaintiff, the unsecured loan from the Directors of the first plaintiff to the tune of Rs.2.89 Crores as on 31.03.2011 was treated as quasi equity and it was stipulated that the same shall not be withdrawn during the currency of the facility. However, the first plaintiff had withdrawn the quasi equity without intimating or seeking permission from the defendants. Though the defendants have intimated the defaults committed by the first



plaintiff to its Directors vide letters dated 09.06.2012 and 12.12.2012, the Directors have failed to rectify or regularize the default. Hence, the defendants were entitled to claim 1% of the sanctioned working capital facility as default fee for non-compliance of each sanctioned term.

3.4 The defendants have informed the first plaintiff about its various irregularities vide its letter dated 12.12.2012 and to regularize the same. Since the first plaintiff failed to regularize the same and in view of the non service of interest and payment to the principal amount, the account of the first plaintiff was classified as Non-performing Asset on 31.12.2012 by the defendants in accordance with the RBI guidelines. The defendants vide letter dated 31.01.2013 have recalled the facilities and called upon the first plaintiff to repay the outstanding amount payable as on 31.12.2012 together with future interest. Despite several notices, the plaintiffs have failed to repay the said facilities. The defendants have invoked the personal guarantee given by the plaintiffs 2 to 5 and called upon them to repay the outstanding amount as on 31.12.2012 with future interest at contractual rates and other charges from 01.01.2013 vide letter dated 14.02.2013. The defendants have also filed an application in O.A.No.26/2013 for recovery of a sum of



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Rs.31,08,16,453.34 as on 31.12.2012 payable by the plaintiffs together with interest and costs in respect of facilities availed by the first plaintiff and a sum of Rs.2,78,10,067.96/- as on 31.12.2012 together with interest and costs in respect of facilities availed by the second plaintiff. The plaintiffs repaid the outstanding sums through sale of the mortgaged asset to the defendants towards full and final settlement of the suit claim payable by the plaintiffs and based on the said payment, the defendants have withdrawn the said Original Application.

3.5 It is claimed by the plaintiffs that the letter dated 09.10.2012 which was called for payment of interest on the Cash Credit account and EMI on the Term Loan Account, does not stipulate the percentage. However, no response / objection was communicated to the Defendants upon receipt of the aforesaid letter. The defendants claim that since it was already communicated to the first plaintiff by the defendant Bank vide letter dated 09.07.2012, it is unfair and baseless on the part of the plaintiffs to contend that they were unaware of the percentage of default interest being charged. The plaintiffs have not only misrepresented the facts but have also wilfully defaulted in payments that were due to the defendant bank. It is incorrect to



state that apart from the interest, there is no other charges / levy applicable.

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3.6 Since the plaintiffs committed default in the repayment of the facilities, their loan account has become Non-profitable Assets and it was duly communicated to the plaintiffs vide notice dated 31.01.2013. It is incorrect to state that the plaintiffs were servicing the principal and interest regularly. Despite the statement of principal, interest and other applicable charges were clearly communicated in Annexure III of the aforesaid letter, and providing notice on various occasions, the plaintiffs neither sought clarification nor raised any objections. Having entered into the contractual terms governing the Credit Arrangement Letter dated 22.09.2011, the Corporate Rupee Loan Facility Agreement dated 29.09.2011 and the Facility Agreement dated 29.09.2011, it is unwarranted on the part of the plaintiffs to raise these pleas at this juncture. Further, the liability of the plaintiffs is also admitted by the acts of the first plaintiff and second plaintiff by having paid a sum of Rs.37,43,79,429.56/- to the defendants bank as full and final settlement of claim in respect of the case in O.A.No.26/2013. It is to be noted that at the time of filing the above Original Application, the defendants have only calculated interest up to 31.12.2012 and claimed future



interest and other default charges in terms of various loan agreements executed by plaintiffs.

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3.7 Though the defendants have an option to bring the secured asset for auction under the SARFAESI Act, they have suspended such coercive action in order to help the plaintiffs to arrive at an amicable settlement of dues. Hence, it is incorrect to state that the defendants have brought tremendous pressure on the plaintiffs on various fronts to sell the secured assets. In this regard, the plaintiffs have sent a letter dated 06.03.2013 seeking time till 15.03.2013 to sell the property. However in the said letter, there is no mention about the pressure allegedly exerted by the defendants on the plaintiffs.

3.8 With regard to the allegation of production of false statement of accounts, it is contended by the defendants that when the plaintiffs have sought permission to the defendants to sell the mortgaged asset to a person identified by them, the defendants have agreed for the said agreement provided the entire dues payable to the defendants were fully paid out of the sale proceeds of the secured asset. Based on the mandate given by the



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plaintiffs, a sum of Rs.37,43,79,429.56/- was debited towards the repayment of the outstanding dues payable to the defendants. Thereafter the defendants have given a "No due certificate" to the plaintiffs by discharging the mortgage. Based on the Memo of Understanding entered into between the plaintiffs and the defendants, the case in O.A.No.26/2013 was withdrawn as settled out of Court. But thereafter the plaintiffs have sent a letter dated 18.09.2013 demanding certain amounts from the defendants. Hence, the defendants have sent a detailed notice dated 07.10.2013 denying its liability to pay any amount to the plaintiffs. The outstanding dues payable to the defendants were duly finalized between the plaintiffs and the defendants on 24.05.2013 which included the outstanding principal amount, pending interest and default charges. The debit mandate was also duly given by the plaintiffs to the defendants without any protest vide letter dated 24.05.2013. Hence, it is false to state that the defendants have insisted the plaintiffs to prepare a letter. No document has been filed by the plaintiffs to substantiate or support such allegation against the defendants. Only relying the due authorization, the defendants have debited the account and completed the settlement transaction. Hence it is false to state that the debts are illegal, contrary to the norms stipulated by the Reserve Bank of India and the Credit



Letter Arrangement. It is also false to state that the defendants have given a false statement of accounts.

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3.9 The defendants have noted that the plaintiffs have violated the terms of the loan agreements by fund diversion from and out of the facilities availed from the defendants to its sister concerns. Such diversion is nothing but misappropriation of funds allotted to the plaintiffs for working capital purposes only. The plaintiffs have not only misrepresented the facts to the defendants but have also wilfully defaulted the payments which are due to the defendants. Since the plaintiffs have breached the terms of loan agreement, the defendants were constrained to charge 3% default interest on the facility for every such breach pursuant to contractual terms entered into between them. A sum of Rs.81 Lakhs was consequently debited from the first plaintiff's Cash Credit account on 29.05.2013 as default charges and the same was explained to the plaintiffs through various notices. Only on the instructions received from the second plaintiff, the defendants debited a sum of Rs.37,43,79,429.56/- (including default charges of Rs.81 Lakhs) by way of its letter dated 24.05.2013. Having remained silent through this entire period, the plaintiffs are making frivolous claims towards unjustly enriching



themselves. Hence it is false to state that the debts are contrary to the norms stipulated by Reserve Bank of India.

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3.10 The allegations that the defendants have furnished false statement with debit which were illegal and fraudulent to cause wrongful loss to the plaintiffs are baseless and are liable to be rejected. All the entries in the statement provided by the defendants to the plaintiffs are only in terms of the loan agreements and the same were duly accepted by the plaintiffs. Hence it is only an afterthought of the plaintiffs to make illegal claims. If the claim of the plaintiffs were genuine, the plaintiffs have the liberty to file a counter claim in O.A.No.26/2013. Instead, they chose to enter into a full and final settlement with the defendants and thereafter the proceedings in O.A.No.26/2013 were withdrawn by the defendants. Only with an intention to institute multiple suits with frivolous claims, the plaintiffs have approached this Court for a matter concerning the very same cause of action. Therefore, the defendants are not liable to refund any amount to plaintiffs and the claim of interest is also liable to be rejected and the suit has to be dismissed.



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3. On the basis of the above pleadings and materials available on record, this Court has framed the following issues:

*“(i) Whether the plaintiffs are entitled to seek refund of the default charges paid to the defendants after the settlement of the loan account and withdrawal of O.A. Proceedings as per the settlement ?*

*(ii) Whether the plaintiffs having failed to contest the O.A.proceedings before DRT-I, Chennai filed by the defendants, can be permitted to take defence in a separate Civil Suit proceedings against the Defendants ?*

*(iii) Whether the plaintiffs are entitled to make a joint claim against the defendants when the loan transaction of the first and second plaintiffs are different ?*

*(iv) Whether the above suit is maintainable in view of the MOU entered into between the plaintiffs and the defendants at the time of*



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*settlement of dues to the defendants ?*

*(v) Whether the plaintiffs are entitled to question the levy of penal charges, having accepted to pay penal charges for certain accounts in the sanction letter issued by the defendants ?*

*(vi) Whether the levy of 8% towards 'default fees' made by the plaintiffs was an illegal levy and not in accordance with any of the loan documents executed, governing the contractual Credit Arrangement as between the plaintiffs and defendants ?*

*(vii) Whether there was any term in the sanction terms of the Credit Arrangement letter that warranted payment of 1% fee for each default in any agreement between the plaintiffs and defendants ?"*

4. During the course of the trial, on the side of the plaintiffs, the Financial Controller of the first plaintiff's company has been examined as



PW.1 and Exs.P1 to P39 were marked. On the side of the defendants, the Chief Manager for the Defendants' Bank was examined and Exs.D1 to D18 were marked.

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5. Heard the submission made by the learned counsel for the plaintiffs and the learned counsel for the defendants and perused the materials available on record.

6. The learned counsel for the plaintiffs submitted that the first plaintiff had availed a Cash Credit Limit from the second defendant for a sum of Rs.27 Crores and also the Term Loan for a sum of Rs.2.659 Crores vide Credit Arrangement Letter dated 22.09.2011. Apart from the said Credit Arrangement Letter, three other documents i.e. Corporate Rupee Loan Facility Agreement, Loan Facility Agreement and a Deed of Guarantee.

6.1. The learned counsel for the plaintiffs further submitted that the rate of interest payable for the Cash Credit Facility was I Base + 3.5% P.A. along with applicable interest or other statutory levies and the rate of interest



payable for the Term Loan was I-base and spread per annum with applicable interest or statutory levies. It is further submitted that the plaintiff offered an immovable property as collateral security to the second defendant bank to secure the repayment of the Cash Credit and Term Loan facilities.

6.2 It is the submission of the learned counsel for the plaintiffs that according to the Annexure-I of the Credit Arrangement Letter, the second defendant is entitled to only 1% of the default fee for non-compliance of sanctioned terms. On 09.07.2012, the second defendant addressed a letter to the first plaintiff that it had committed breach of three conditions in the Credit Arrangement letter i.e. Advancing unsecured loans to directors, not routing 50% of the transaction through the Cash Credit Account and transferring funds to group companies. Hence, the second defendant demanded the plaintiffs to pay the default fees at the rate of 1% for each non-compliance. It is the contention of the learned counsel for the plaintiffs that the said demand made by the second defendant was not in accordance with the Credit Arrangement Letter or with the other loan documents as there was no clause in the said documents stipulating that “Default fees of 1% was chargeable for each default”. Accordingly, the plaintiffs did not make the



payment as demanded.

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6.3 The learned counsel for the plaintiffs submitted that on 12.12.2012 the second defendant called on the plaintiffs alleging various breach of the terms of sanction conditions and claimed that for three non-compliances the plaintiffs are liable to pay 7% as default fees on the total sanctioned limit of Rs.27 Crores. Again on 19.12.2012 the second defendant addressed the plaintiffs alleging that since the sanctioned limit was Rs.3.7 Crores, 3% of the default fees was payable for each condition. It is contended by learned counsel for the plaintiffs that the said claims are arbitrary, illegal and contrary to the settled terms of the contract between the parties and there was no such condition in the Credit Arrangement.

6.4 It is submitted by the learned counsel for the plaintiffs that since the plaintiffs did not make the payments as demanded by the defendants, the account of the first plaintiff was declared as “Non-performing Asset” and the defendant recalled the loan facilities by a demand notice dated 31.01.2013 and demanded to pay a sum of Rs.31,08,16,453.34/-. However the said demand notice has not stated about the rates of interest or charges applied as



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against the various amounts claimed. Since the plaintiffs did not make payments, the second defendant has initiated SARFAESI proceedings against the secured assets and also filed an Original Application in O.A.No.26/2013 before the Debt Recovery Tribunal-I, Chennai and initiated measures to bring the collateral property belonging to the first plaintiff for sale.

6.5 The learned counsel for the plaintiffs further submitted that second defendant had only furnished statement of accounts for the period from 22.05.2013 to 13.06.2013 showing a sum of Rs.34,09,87,768.66/- due from the first plaintiff and a sum of Rs.2,44,71,561/- was shown as due and payable by the first plaintiff (Previous second plaintiff having since merged with the first plaintiff). In all a sum of Rs.37,43,59,329.66/- was claimed by the second defendant from the plaintiffs. It is contended by the learned counsel for the plaintiffs that since the collateral property which was mortgaged was owned by the second plaintiff, the property was the subject matter of a subsisting lease agreement with 'Asian Paints'. A Memorandum of Understanding (MOU) dated 21.05.2013 was entered into between the second plaintiff, D.Sathiyamoorthy and the Defendants and the first plaintiff



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was not a party to the MOU. The said MOU pertains to the proposed sale of the property which was the subject matter of leasehold rights till 2015 and mortgaged to the defendants and it also pertains to the aspects of lease, release of mortgage and handing over of possession, remitting of sale proceeds, etc. According to the said MOU, out of the sale proceeds, a sum of Rs.36,81,38,500/- would be paid to the defendants. However, the defendants have debited the said sum and an excess sum of Rs.2.43 Crores as default charges by indicating the following:

- 1% for quasi equity withdrawn
- 1% for rerouting of turnover not been 50%
- 1% for transfer of funds to group companies and
- 6% as default charges for second letters

6.6 It is submitted by the learned counsel for the plaintiffs that the plaintiffs through a letter dated 18.09.2013 question the levy of 9% as against a levy of 1% per annum due as per the Schedule of Charges annexed to the Credit Arrangement Letter dated 22.09.2011 and called on the defendants to return the sum of Rs.2,43,00,000/- which was claimed as “Default charges”. However, the defendants in their reply dated 07.10.2013



stated that the outstanding dues was finalized on 24.05.2013 and the deducted amount is inclusive of outstanding principal amount, pending interest and default charges.

6.7 The learned counsel for the plaintiffs submitted that the default charges levied and claimed were contrary and in excess of the sums due and payable. The Original Application was withdrawn unilaterally on a Memo filed by the defendants reporting to the Tribunal. The relevant Original Application proceedings have not been filed before this Court for determining the issues. There is no bar in refunding the sum of Rs.2.43 Crores which was deducted in excess of due and payable. The learned counsel for the plaintiffs further submitted that the default interest rates in the Credit Arrangement Letter does not provide for 1% fee for each default and hence the amount appropriated was an excess levy of 8% amounting to Rs.2,43,33,041/- contrary to the terms agreed. It is contended that the defendants have charged 20.25% interest and also appropriated a sum of Rs.2,43,33,041/- as default charges without disclosing the details in the sum of Rs.37,43,79,429.56/-. Hence the plaintiffs are entitled to seek the return of levy of default charges with interest @ 19% per annum.



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7. The learned counsel for the defendants submitted that the defendants have sanctioned a Cash Credit facility of Rs.27 Crores and another Term Loan of Rs.2.659/- Crores subject to the terms and conditions contained in the Credit Arrangement Letter dated 22.09.2011. It is further submitted that as per Clause 7 of the sanctioned terms, for every breach of sanctioned term and continuing beyond 15 days, the defendants are entitled to charge 1% on such non-compliance of sanctioned terms and it is to be levied on one time basis on the sanctioned limit for each default. Further in case of any delay in repayment of the principal installment or payment of interest charges, the same shall be levied at the rate of 6% p.a. payable on monthly basis from the due date till such time the overdue amount is paid. In terms of the said loan agreement and sanctioned terms, the fourth and fifth plaintiffs have executed a personal guarantee in favour of the defendants and the second plaintiff had created mortgage for the facilities availed by the first and second plaintiffs in respect of a property.

7.1 It is further submitted by the learned counsel for the defendants that out of the sale proceeds of the mortgaged property, a total sum of Rs.37,43,59,329.66/- was paid as settlement of outstanding dues of the first



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and second plaintiffs and thereafter a Memorandum of Understanding dated 21.03.2013 was entered into between the second plaintiff and thereafter the DRT proceedings in O.A.No.26/2013 on the file of the Debts Recovery Tribunal-I, Chennai which was initiated against the plaintiffs was withdrawn as “Settled out of Court”. It is contended by the learned counsel for the defendants that though in the said MOU it has been clearly stipulated that the plaintiffs will not seek refund of the said settled amount, after completion of settlement process, the plaintiffs have chosen to claim that they have paid excess amount to the tune of Rs.2,16,33,041/- and filed the present suit for recovery. In view of the signed MOU between the parties and subsequent settlement of the loan accounts of both the plaintiffs 1 & 2, the plaintiffs are estopped from seeking refund of any amount from the defendants.

7.2 It is submitted that the plaintiffs have stated in their letter that there is no mention that the defendants have not given any breakup of the outstanding. However, the plaintiffs have not filed any document to prove that the statement of accounts furnished by the second defendant is wrong.



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7.3 It is further submitted by the learned counsel for the defendants that the said recovered sum of Rs.37,43,79,429.56/- includes a sum of Rs.4,69,02,766.56/- which was paid by the plaintiffs towards settlement of the outstanding dues towards interest and default interest charges besides the principal outstanding amounts and this amount was transferred to the recovery account of the defendant. In view of the excess drawing by the first plaintiff over and above the sanctioned limit of Rs.27 Crores at 6% as one time basis as per the Credit Arrangement Letter dated 22.09.2011 and 3% on the sanctioned limit of Rs.27 Crores for the violation of three non-compliance of terms and conditions of sanction, the defendants have levied a sum of Rs.2.43 Crores and out of which Rs.1.62 Crores was paid by the plaintiffs towards the 6% default interest charges by way of additional interest of one time payment for overdrawing over the sanctioned amount and the balance amount of Rs.81,00,000/- was for the three defaults committed by the first plaintiff at the rate of 1% each on the sanctioned limit as one time charge.

7.4 It is submitted by the learned counsel for the defendants that the when the Original Application in O.A.No.26/2013 was pending, no defense



was taken by the plaintiffs. The plaintiffs chose to enter a full and final settlement with the defendant on their own volition without any pressure in order to sell the mortgaged property, settle the loan accounts and on receipt of the dues only the O.A. proceedings were withdrawn. Hence, it is submitted that the defendants are not liable to pay any amount to the plaintiffs.

7.5 The learned counsel for the defendants submitted that having availed the facilities, the first plaintiff was highly irregular in compliance with the terms and conditions of the said loan agreement. In the event of breach, the defendant bank is entitled to charge 1% on the sanctioned loan amount as one time basis as undertaken by the plaintiffs. As per Clause 1 of the special condition, the borrower was to submit an undertaking that the said entire sum of Rs.2.89 Crores as on 31.03.2011 will be treated as quasi equity and shall not be withdrawn during the currency bank facility. The reason for such an undertaking is that the borrowers should strictly utilize the bank's fund only for the said purpose. However, It is seen from the annual reports for the financial year ended 31.03.2012 and 31.03.2013 of the first plaintiff which was marked as Ex.D13 and D14 that the first plaintiff had



committed breach of the said undertaking and without the permission of the bank, it had repaid substantial amount to its directors and its relatives.

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7.6 It is submitted by the learned counsel for the defendants that as per Clause 11 of the Special Condition in the Credit Arrangement Letter dated 22.09.2011, the first plaintiff should undertake to route minimum 50% transaction through the cash credit account. This condition was incorporated in the sanctioned letter only in order to ensure that the receivables of the company is duly routed to the cash credit account and the bank could take cognizance of the financial status of the company and it would guide the bank to recover the principal and interest from such receivables. In this regard, the first plaintiff had also given the said undertaking on 15.10.2011. However, the first plaintiff failed to route 50% of the receivables to the working capital account with the defendant. As per the statement of account for the working capital facility for the relevant years filed by the defendants in Ex.D7, the revenue routed through the plaintiff's bank account with the defendant bank during the financial year ended on 31.03.2012 was Rs.8.21 Crores and for the financial year ended on 31.03.2013 was Rs.4.9 Crores. Accordingly, it is clear that the first plaintiff had committed breach of the



above undertaking and special condition in the sanctioned terms and hence the defendants are entitled to claim 1% for the said breach over and above the interest claim on the sanctioned limit as one time claim. It is contended by the learned counsel for the defendants that despite the defendants have sent a letter in this regard to the plaintiffs on 09.10.2012. there is no proper reply from the plaintiffs.

7.7 The learned counsel for the defendants submitted that the statement of accounts would also prove that the first plaintiff's account was overdrawn to the extent of a sum of Rs.33,37,562.75/- which is over and above the sanctioned limit on Rs.27 Crores. Hence, in view of the excess drawing by the first plaintiff over and above the sanctioned limit a sum of Rs.27 crores, the defendant bank is entitled to claim 6% on the sanctioned limit over the contracted rate as one time basis as per the terms of the Credit Arrangement Letter dated 22.09.2011.

7.8 It is further submitted by the learned counsel for the plaintiffs that the amount charged and grounds on which the default charges were being levied was explained to the plaintiffs on several occasions through various



notices issued by the first defendant bank dated 09.07.2012, 09.10.2012 and 31.01.2013. Having remained silent throughout the entire period, the plaintiffs have attempted to make frivolous claims against the defendants. It is contended by the learned counsel for the defendants that for all the defaults, the defendants is not only entitled to claim 1% default charges.

7.9 It is submitted by the learned counsel for the defendants that the said payments were made in the settlement of the loan account are legal and only in line with the credit arrangement letters which governs the contractual terms and the principle of estoppel will also apply. The contentions of the plaintiffs are contrary to the terms of the loan sanction terms and the defendants have only received the amount in terms of the said agreement by mutual settlement and no excess amount has been collected by the defendants. Hence, it is contended by the learned counsel for the defendants that the defendants are not liable to pay any amount to the plaintiffs and hence the suit is liable to be dismissed.



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8. The case of the plaintiffs is that the first plaintiff had availed a Cash Credit from the second defendant for a sum of Rs.27 Crores and also Term Loan for a sum of Rs.2.659 Crores and Credit Arrangement Letter dated 22.09.2011. The rate of interest payable for Cash Credit facilities was I Base + 3.5% P.A. along with applicable interest or other statutory levies and the rate of interest payable for the Term Loan I-base and spread per annum with applicable interest or statutory levies. On 09.07.2012, the second defendant addressed a letter to the first plaintiff that it had committed breach of three conditions in the Credit Arrangement letter. Hence, the second defendant demanded the plaintiffs to pay the default fees at the rate of 1% for each non-compliance. On 12.12.2012, the second defendant called on the plaintiffs alleging various breach of the terms of sanction conditions and claimed that for three non-compliances the plaintiffs are liable to pay 7% as default fees on the total sanctioned limit of Rs.27 Crores. Again on 19.12.2012 the second defendant addressed the plaintiffs alleging that since the sanctioned limit was Rs.3.7 Crores, 3% of the default fees was payable for each condition. Since the plaintiffs did not make the payments as demanded by the defendants, the account of the first plaintiff was declared as “Non-performing Asset” and the defendant recalled the loan facilities by a demand



notice dated 31.01.2013 and demanded to pay a sum of Rs.31,08,16,453.34/-.

Since the plaintiffs did not make payments, the second defendant has initiated SARFAESI proceedings against the secured assets and also filed an Original Application in O.A.No.26/2013 before the Debt Recovery Tribunal-I, Chennai.

9. The second defendant had only furnished statement of accounts for the period from 22.05.2013 to 13.06.2013 showing a sum of Rs.34,09,87,768.66/- due from the first plaintiff and a sum of Rs.2,44,71,561/- was shown as due and payable by the first plaintiff. In total a sum of Rs.37,43,59,329.66/- was claimed by the second defendant from the plaintiffs. The collateral property which was mortgaged was owned by the second plaintiff. Since he has given the guarantee, the property was the subject matter of a subsisting lease agreement with 'Asian Paints'.

10. A Memorandum of Understanding (MOU) dated 21.05.2013 was entered into between the second plaintiff and the defendants and the first plaintiff was not a party to the MOU. The said MOU pertains to the proposed sale of the property which was the subject matter of leasehold rights till 2015



and mortgaged to the defendants. According to the said MOU, out of the sale proceeds, a sum of Rs.36,81,38,500/- would be paid to the defendants.

However, the defendants have debited the said sum and an excess sum of Rs.2.43 Crores as default charges by indicating the following:

- 1% for quasi equity withdrawn
- 1% for rerouting of turnover not been 50%
- 1% for transfer of funds to group companies and
- 6% as default charges for second letters

11. The plaintiffs through a letter dated 18.09.2013 question the levy of 9% as against a levy of 1% per annum due as per the Schedule of Charges annexed to the Credit Arrangement Letter dated 22.09.2011 and called on the defendants to return the sum of Rs.2,43,00,000/- which was claimed as “Default charges”. However, the defendants in their reply dated 07.10.2013 stated that the outstanding due was finalized on 24.05.2013 and the deducted amount is inclusive of outstanding principal amount, pending interest and default charges. The Original Application was withdrawn unilaterally on a Memo filed by the defendants reporting to the Tribunal. The defendants have charged 20.25% interest and also appropriated a sum of Rs.2,43,33,041/- as



default charges without disclosing the details in the sum of Rs.37,43,79,429.56/-. Therefore, the plaintiffs are entitled to seek the return of levy of default charges with interest @ 19% per annum.

12. The case of the defendants is that the defendants have sanctioned a Cash Credit facility of Rs.27 Crores and another Term Loan of Rs.2.659/- Crores subject to the terms and conditions contained in the Credit Arrangement Letter dated 22.09.2011. The defendants are entitled to charge 1% on such non-compliance of sanctioned terms and it is to be levied on one time basis on the sanctioned limit for each default. In case of any delay in repayment of the principal installment or payment of interest charges, the same shall be levied at the rate of 6% p.a. payable on monthly basis from the due date till such time the overdue amount is paid.

13. Out of the sale proceeds of the mortgaged property, a total sum of Rs.37,43,59,329.66/- was paid as settlement of outstanding dues of the first and second plaintiffs and thereafter a Memorandum of Understanding dated 21.03.2013 was entered into between the second plaintiff and thereafter, the DRT proceedings in O.A.No.26/2013 on the file of the Debts Recovery



Tribunal-I, Chennai which was initiated against the plaintiffs was withdrawn as “Settled out of Court”. Though in the MOU it has been clearly stipulated that the plaintiffs will not seek refund of the said settled amount, after completion of settlement process, the plaintiffs have chosen to claim that they have paid excess amount to the tune of Rs.2,16,33,041/- and filed the present suit for recovery. In view of the signed MOU between the parties and the subsequent settlement of the loan accounts of both the plaintiffs 1 & 2, the plaintiffs are estopped from seeking refund of any amount from the defendants.

14. The defendants have levied a sum of Rs.2.43 Crores and out of which Rs.1.62 Crores was paid by the plaintiffs towards the 6% default interest charges by way of additional interest of one time payment for overdrawing over the sanctioned amount and the balance amount of Rs.81,00,000/- was for the three defaults committed by the first plaintiff at the rate of 1% each on the sanctioned limit as one time charge. The first plaintiff was highly irregular in compliance with the terms and conditions of the said loan agreement and in the annual reports for the financial year ended 31.03.2012 and 31.03.2013, it had committed breach of the said undertaking



and without the permission of the bank, it had repaid substantial amount to its directors and its relatives.

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15. The first plaintiff had also given an undertaking on 15.10.2011 and failed to route 50% of the receivables to the working capital account with the defendants. The statement of accounts would also prove that the first plaintiff's account was overdrawn to the extent of a sum of Rs.33,37,562.75/- which is over and above the sanctioned limit on Rs.27 Crores. The defendant bank is entitled to claim 6% on the sanctioned limit over the contracted rate as one time basis as per the terms of the Credit Arrangement Letter dated 22.09.2011. Therefore the claim of the plaintiffs is not sustainable and as per the terms and conditions of the loan agreement the recovery of money. Therefore the suit is liable to be dismissed.

16. The transaction between the plaintiffs and defendants are not in dispute. All the agreements between the parties have been admitted and due to the overdue and non-payment of dues, the first plaintiff's account was declared as Non-performing Asset. The defendants have also filed a recovery application in O.A.No.26/2013 on the file of Debt Recovery Tribunal – I,



Chennai. Pending the application the parties have entered into a Memorandum of Understanding. Subsequently, they withdrew the Original Application and the property was brought for sale by invoking SARFAESI Act. The MOU is also marked as Ex.P29 and they did not deny the same. Under these circumstances, all the issues which are framed in this suit are taken together and separate discussion and separate answer for each issue is not necessary in this case.

17. The said MOU would clearly state that the liability of the plaintiffs is fixed as Rs.36,81,38,500/- which is a full and final settlement and also it is agreed that the plaintiffs have to handover the property to the third party purchaser and both the defendants have to appropriate the amount of Rs.36,81,38,500 /- in the account of the plaintiffs and the balance amount has to be paid to the plaintiffs and the plaintiffs should not ask for any refund from Rs.36,81,38,500/- which was credited to the account of the plaintiffs. Therefore, subsequent to the loan transaction and recovery application before DRT, they entered into the Memorandum of Compromise.



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18. Now the claim is only based on Ex.P29 (MOU). According to the plaintiffs, though the plaintiffs, defendants and also the third party purchaser have agreed for the sale consideration of the property for a sum of Rs.53 Crores and out of which Rs.36,81,38,500/- alone to be appropriated in the account of the plaintiffs and the remaining to be refunded to the plaintiffs. Whereas, subsequent to the agreement, the defendants retain amount of Rs.2,43,33,041.56/- which is over and above the full and final settled amount of Rs.36,81,38,500 /- by saying that for all the default and over due payment and diversification of funds, the plaintiffs are entitled to the pay the said amount.

19. Since the defendants have admitted Ex.P29 (MOU) and defendants are also a party to that agreement, the defendants have been shown as 'Fourth Part' in the said agreement. In the Memorandum of Understanding it is stated as under:

*“ And whereas on the basis of the assurance given by the Party of the SECOND PART, the party of the THIRD PART agreed to pay a sum of Rs.36,81,38,500/- (Rupees Thirty Six Crores Eighty One Lakhs Thirty Eight Thousand Five Hundred Only) from and out of the total sale consideration Rs.53,00,00,000/- (Rupees Fifty Three Crores Only), to the party of the FOURTH PART towards the discharge of*



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*the outstanding amount due and payable to the party of the FOURTH PART (dues of the party of the FIRST PART and VT IMPEX PRIVATE LIMITED) as fully and finally, and the balance amount of Rs.16,18,61,500/- (Rupees Sixteen Crores Eighteen Lakhs Sixty One Thousand Five Hundred Only) to the Party of the FIRST PART; on or before 24<sup>th</sup> May 2013; and the Party of the FIRST PART and THIRD PART agree and confirm to the party of the Fourth Part that they shall not seek refund of such amount of Rs.36,81,38,500/- (RUPEES THIRTY SIX CRORES EIGHTY ONE LAKHS THIRTY EIGHT THOUSAND FIVE HUNDRED ONLY) for any reason whatsoever and the Part of the Fourth Part hereby confirms that it shall not return the funds for any reason whatsoever. The Party of the First Part and Third Party mutually agreed to execute sale deed.”*

In point No.9 of the said MOU it is stated as hereunder:

*“ 9. The Party of the FOURTH PART has initiated action against the Party of the FIRST PART before DRT in O.A.No.26 of 2013 which is still pending. The Party of the FOURTH PART and FIRST PART jointly agree to withdraw the same from DRT immediately on payment of the outstanding amount of Rs.36,81,38,500/- (Rupees Thirty Six Crores Eighty One Lakhs Thirty Eight Thousand Five Hundred Only Lakhs Thirty Eight Thousand Five Hundred Only) due and payable to the party to the Fourth Part.”*



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Further, in Point No.18 of the MOU it is reiterated as under:

*“ 18. The party of the FIRST Part and THIRD PART agree and confirm to the party of the Fourth Part that they shall not seek refund of such amount of Rs.36,81,38,500/- (Rupees Thirty Six Crores Eighty One Lakhs Thirty Eight Thousand Five Hundred Only) for any reason whatsoever and further Party of the Fourth part is not liable to the parties of the first, second and third parties regarding the sale of the schedule mentioned property for any reason whatsoever.”*

20. As per Agreement No.9 of the MOU, the outstanding amount of the plaintiff was fixed as only Rs.36,81,38,500/- and the total sale consideration for the property was fixed at Rs.53,00,00,000/-. Therefore, the proposed purchaser has to pay the above said Rs. 36,81,38,500/- to the bank which is the full and final settlement and the remaining amount of Rs.16,18,61,500/- has to go the plaintiffs. But the defendants have withhold the same. After declaring the first plaintiff's account as “Non-Performing Asset”, filing recovery proceedings, invoking SARFAESI proceedings and the property was brought on sale and the same was settled with terms, the defendants cannot claim over and above the settled amount i.e. a sum of Rs.36,81,38,500/- . Admittedly, the defendants have claimed the over and



above amount and therefore the plaintiffs are constrained to file the present suit for recovery.

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21. After the full and final settlement, the defendants cannot claim that there was default in dues. Once the defendants arrive at a settlement and also withdrew even the DRT proceedings, they cannot withdraw the credited over and above settlement amount. Hence, the plaintiffs are entitled to the suit claim. Accordingly, all the issues are answered against the defendants and the plaintiffs have proved their case and Ex.P29 (MOU) is evident for the same.

22. In the result, this Civil Suit is decreed. However, considering the facts and circumstances, there is no order as to costs. The respective parties shall bear their own costs.

**05.06.2024**

Index: Yes / No  
Speaking order / Non-speaking order  
Neutral Citation : Yes / No  
bkn

**ANNEXURE****Plaintiff side witness:** P.W.1 – Mr.A.Gopal Rao

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**Documents exhibited by the plaintiff:**

| SNo | Exhibit | Description of the document                                                                                                                        |
|-----|---------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | Ex.P1   | Original of the credit arrangement letter dated 22.09.2011 issued by the defendant bank to the first plaintiff.                                    |
| 2   | Ex.P2   | Certified copy of the facility agreement dated 29.09.2011 executed by the plaintiff in favour of the defendant.                                    |
| 3   | Ex.P3   | Certified copy of the loan facility agreement dated 29.09.2011 executed by the first plaintiff in favour of the defendant.                         |
| 4   | Ex.P4   | Certified copy of the deed of hypothecation dated 15.10.2011 executed by the first plaintiff in favour of the defendant.                           |
| 5   | Ex.P5   | Certified copy of the deed of hypothecation dated 15.10.2011 executed by the first plaintiff in favour of the defendant.                           |
| 6   | Ex.P6   | Certified copy of the personal guarantee dated 15.10.2011 executed by the third and fourth in favour of the defendant.                             |
| 7   | Ex.P7   | Original of the credit arrangement letter dated 26.09.2011 issued by the defendant bank to the second plaintiff.                                   |
| 8   | Ex.P8   | Certified copy of the corporate rupee loan dated 29.09.2011 facility agreement executed by the second plaintiff                                    |
| 9   | Ex.P9   | Photocopy of the deed of hypothecation dated 15.10.2011 executed by the second plaintiff in favour of the defendant                                |
| 10  | Ex.P10  | Certified copy of the personal guarantee dated 19.10.2011 executed by the 3 <sup>rd</sup> to 5 <sup>th</sup> plaintiffs in favour of the defendant |
| 11  | Ex.P11  | Certified copy of the letter dated 10.11.2011 issued by the                                                                                        |



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|    |        |                                                                                                                              |
|----|--------|------------------------------------------------------------------------------------------------------------------------------|
|    |        | second plaintiff to Asian Paints Limited.                                                                                    |
| 12 | Ex.P12 | Original of the letter dated 09.07.2012 issued by the defendant to the first plaintiff                                       |
| 13 | Ex.P13 | Original of the letter dated 09.10.2012 issued by the defendant to the first plaintiff                                       |
| 14 | Ex.P14 | Original of the letter dated 12.12.2012 issued by the defendant to the first plaintiff                                       |
| 15 | Ex.P15 | Original of the letter dated 19.12.2012 issued by the defendant to the second plaintiff                                      |
| 16 | Ex.P16 | Photocopy of the recall letter dated 31.01.2013 issued by the defendant bank to the first plaintiff                          |
| 17 | Ex.P17 | Original of the invoking personal guarantee deed dated 04.02.2013 issued by the defendant to the third and fourth plaintiffs |
| 18 | Ex.P18 | Original of the demand notice dated 05.01.2013 issued under Sec.13(2) of the SARFEASI Act by the defendant bank              |
| 19 | Ex.P19 | Original of the demand letter dated 22.01.2013 issued by the defendant to the plaintiff                                      |
| 20 | Ex.P20 | Original of the demand letter dated 31.01.2013 issued by the defendant to the plaintiff                                      |
| 21 | Ex.P21 | Photocopy of the demand letter dated 04.02.2013 issued by the defendant to the plaintiff                                     |
| 22 | Ex.P22 | Original of the recall letter dated 11.02.2013 issued by the defendant bank to the plaintiff                                 |
| 23 | Ex.P23 | Original of the demand letter dated 14.02.2013 issued by the defendant to the plaintiff                                      |
| 24 | Ex.P24 | Original of the reply letter dated 08.03.2013 by the defendant bank to the plaintiff                                         |
| 25 | Ex.P25 | Original of the possession notice dated 11.03.2013 issued by the defendant.                                                  |
| 26 | Ex.P26 | Photocopy of the lawyer notice dated 11.03.2013 issued by the counsel for the defendant bank to the plaintiff                |



|    |        |                                                                                                                           |
|----|--------|---------------------------------------------------------------------------------------------------------------------------|
| 27 | Ex.P27 | Photocopy of the lawyer notice dated 12.03.2013 issued by the counsel for the defendant bank to the third plaintiff       |
| 28 | Ex.P28 | Photocopy of the order dated 15.03.2013 passed in I.A.No.40/2013 in O.A.No.26/2013.                                       |
| 29 | Ex.P29 | Photocopy of the Memorandum of Understanding dated 21.05.2013 between the plaintiff and the defendant                     |
| 30 | Ex.P30 | Photocopy of the statement of accounts dated 30.05.2013 for the period 01.06.2012 to 29.05.2013                           |
| 31 | Ex.P31 | Photocopy of the letter dated 24.05.2013 from the first plaintiff to the defendant bank                                   |
| 32 | Ex.P32 | Original of the letter dated 24.05.2013 from the defendant bank to the first plaintiff                                    |
| 33 | Ex.P33 | Certified copy of the letter dated 18.09.2013 from the first plaintiff to defendant                                       |
| 34 | Ex.P34 | Certified copy of the legal notice dated 07.10.2013 issued by the counsel for the defendant bank to the first plaintiff   |
| 35 | Ex.P35 | Office copy of the legal notice dated 02.01.2014 issued by the plaintiff's counsel to the defendant.                      |
| 36 | Ex.P36 | Original of the reply notice dated 23.01.2014 issued by the defendant's counsel to the plaintiff's counsel                |
| 37 | Ex.P37 | Certified copy of the board resolution dated 19.06.2014 given by the first plaintiff in favour of Mr.Sundeep Kumar Gupta  |
| 38 | Ex.P38 | Certified copy of the board resolution dated 19.06.2014 given by the second plaintiff in favour of Mr.Sundeep Kumar Gupta |
| 39 | Ex.P39 | Certified copy of the letter of authorization and board resolution dated 19.06.2014.                                      |



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**Plaintiff side witness:**

D.W.1 – Mr.Shankar Balasubramanian

**Documents exhibited by the plaintiff:**

| Exhibit | Description of the document                                                                                                                                                                                  |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ex.D3   | Photocopy of the power of attorney dated 22.03.2012 given by the defendant bank to Mr.Shankar Balasubramaniam, Chief Manager for present (Marked after comparing and verifying with the original)            |
| Ex.D4   | Photocopy of the power of attorney dated 27.11.2017 given by the defendant bank to Mr.V.Sundararajan, Chief Manager to verify the written statement (Marked after comparing and verifying with the original) |
| Ex.D5   | Photocopy of the Credit Arrangement Letter dated 22.09.2011 issued by the defendant bank to the plaintiff.                                                                                                   |
| Ex.D6   | Original undertaking dated 15.10.2011 given by the first plaintiff pursuant to the loan sanction                                                                                                             |
| Ex.D7   | Original statement of account in relation to the first plaintiff's cash credit account from 01.11.2011 to 13.06.2013                                                                                         |
| Ex.D8   | Original statement of account in relation to the first plaintiff's Term Loan account from 01.04.2011 to 30.06.2013                                                                                           |
| Ex.D9   | Original statement of account in relation to the second plaintiff's Term Loan account from 01.04.2011 to 30.06.2013                                                                                          |
| Ex.D10  | Original statement regarding routing of receivable done in the cash credit account by the first plaintiff                                                                                                    |
| Ex.D11  | Original statements regarding the amounts diverted from the cash credit account by the first plaintiff to its Group Companies                                                                                |



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|        |                                                                                                                                                        |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ex.D12 | Original Letter issued to the first plaintiff on Review of performance of the first plaintiff                                                          |
| Ex.D13 | Photocopy of the Balance sheet of the first plaintiff for the year 2011-2012                                                                           |
| Ex.D14 | Photocopy of the Balance sheet of the first plaintiff for the year 2012-2013                                                                           |
| Ex.D15 | Original Current Account Statement No.000905024523 for the period from 01.04.2013 to 30.06.2013 maintained by the second plaintiff with the defendant. |
| Ex.D16 | Original Current Account Statement No.000905024523 for the period from 01.04.2013 to 31.12.2013 maintained by the second plaintiff with the defendant. |
| Ex.D17 | Original certificate under Bankers Books of Evidence Act 1891 for all the bank statements                                                              |
| Ex.D18 | Certified copy of order passed by the DRT-I, Chennai in O.A.No.26/2013 on 17.06.2013                                                                   |

**05.06.2024**  
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**P.VELMURUGAN, J.**

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