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

SUMMONS FOR JUDGMENT NO. 15 OF 2024
IN
COMMERCIAL SUMMARY SUIT NO. 68 OF 2023

Sterling and Wilson Renewable Energy Limited and another ... Plaintiffs
Versus
Axis Bank Ltd ... Defendant

Mr. Sharan Jagtiani, Senior Advocate with Mr. Sunil Gangan and Mr. Swapnil Shikhare i/b RMG Law Associates for the Plaintiff.
Mr. Shiroz Rustomjee, Senior Advocate with Mr. Shyam Kapadia, Mr. Chaitanya D. Mehta, Ms. Sonali Aggarwal and Mr. Tanjul Sharma i/b Dhruve Liladhar & Co. for the Defendant.

CORAM : ABHAY AHUJA, J.
DATE : 1st DECEMBER, 2025

P.C. :

1. The Suit has been filed seeking recovery of Rs. 64,10,40,393/- being the principal amount together with interest at the rate of 11.25% per annum calculated from the due date of payment till 26th September 2023 i.e. Rs.34,19,13,212/- aggregating to Rs.98,29,53,605/- with further interest from 27th September 2023 at the rate of 11.25% per annum on the principal amount or at such other rate as this Court deems fit to grant till the payment and/or realization as set out in the Particulars of Claim at Exhibit GG on the basis of Irrevocable Letter of Credit.

2. Mr. Sharan Jagtiani, learned Senior Counsel, appearing for the Plaintiffs has submitted that the outstanding amounts involve the payment under an Irrevocable Letter of Credit (**"Letter of Credit"**) that was issued by the Defendant in view of the supply agreement between IL & FS and the Plaintiff No.2. That the material has been supplied and accepted without any demur or complaint. Mr. Jagtiani submits that under the terms of the said letter of credit, the Defendant-Bank had agreed to honour the drafts for payment of the invoices on the presentation within the terms of the credit at maturity. That although the Defendant-Bank has admitted the documents submitted by the Plaintiff No.2 and accepted the same for payment stating that the payments against the invoices would be made on the due date, however, in view of the Interim Order of the National Company Law Appellate Tribunal (**"NCLAT"**) dated 15th October 2018 which stays the acceleration, premature withdrawal/withdrawal, invocation of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits, guarantees, letter of support, commitment or comfort and other financial facilities or obligations availed by IL & FS and its 348 group companies whether in respect of the principal or interest or hedge liability or any other amount contained therein, the payment of the amounts claimed in this suit have not been made to the Plaintiffs.

The relevant portion of the said order is quoted as under :

> *"Taking into consideration the nature of the case, larger public interest and economy of the nation and interest of the Company and 348 group companies, there shall be stay of*
>
> *(i) The institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against IL & FS and its 348 group companies in any Court of Law/Tribunal/Arbitration Panel or Arbitration Authority; and*
>
> *(ii) Any action by any party or person or Bank or Company, etc. to foreclose, recover or enforce any security interest created over the assets of 'IL&FS' and its 348 group companies including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
>
> *(iii) <u>The acceleration, premature withdrawal or other withdrawal, invocation of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits, guarantees, letter of support, commitment or comfort and other financial facilities or obligations availed by 'IL&FS' and its 348 group companies whether in respect of the principal or interest or hedge liability or any other amount contained therein.</u>*
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> (emphasis supplied)

3. In support, Mr. Jagtiani, learned Senior Counsel, has also cited a relevant portion from the Structure Financial Messaging System (**"SFMS"**) of the Defendant to the Plaintiff No.2 as under :

> *"77A. Narrative*
> *LC No. 1394LCO-0011281*
> *Due Date : 14/12/2018*
> *We confirm the captioned documents has been accepted*

> *for payment. The payment will be made for bill amount less discrepancy charges if any as per LC Terms on the above mentioned due date. Please quote our IBC Reference No. in all future correspondence."*

4. It has been submitted on the basis of the aforesaid that the said SFMS amounts to an admission by the Defendant of its liability to pay the outstanding amount to the Plaintiffs. Mr. Jagtiani submits that the NCLAT order does not apply to the Defendant-Axis Bank, in as much as an Irrevocable Letter of Credit is an independent stand alone contract between the Defendant-Bank and has been invoked by the Plaintiff, therefore, the moratorium in favour of the IL & FS cannot protect the Defendant-Bank.

5. Mr. Jagtiani further submits that in a communication dated 9th May 2019 by the Defendant-Bank to the Plaintiff No.2, the Defendant has also admitted the liability but in view of the NCLAT order refused to make payments. The relevant admission from the said communication is extracted as under :

> *"Axis Bank had opened LCs to the tune of Rs.64.41 Crores on 17.10.2017. The bills drawn under the LCs were then discounted by ICICI Bank after obtaining our confirmation on acceptability of documents.*
>
> *...*
>
> *In view of the above NCLAT Order, <u>we are constrained to</u>*

> *honour the commitments under the LCs opened by us, despite having full capacity to do so. Hence the payments to ICICI Bank against the bills accepted under our LC and drawn by your company has remained unpaid. …"*
>
> (emphasis supplied)

6. Mr. Jagtiani submits that although the Defendant had sought a clarification from the NCLAT, however the NCLAT has reiterated its order dated 15th October 2018.

7. Mr. Jagtiani also submits that there is another issue raised by the Defendant and that is, on the interest claimed by the Plaintiffs, however, fairly submitting that although there is no contractual rate of interest specified in the Letter of Credit, the interest is being claimed on the basis of the underlying contract, although he could persuade his clients to give up pre-suit interest and claim interest only from the date of the decree.

8. On the other hand, Mr. Rustomjee, learned Senior Counsel, appearing for the Defendant has submitted that although pursuant to an application sought by the Defendant before the NCLAT, the NCLAT has observed that the order dated 15th October 2018 has already been confirmed on 12th March 2020 and closed the applications seeking

clarification/modification/exemption of the order dated 15th October 2018, thereby refusing to interfere with the moratorium order passed by the NCLAT, the issue does remain whether the moratorium applies only to IL & FS or to the Defendant herein as well in as much as the Interim Application Diary No. 15182 of 2019 in Company Appeal No. 346 of 2018 filed by the Plaintiffs seeking clarification before the NCLAT with respect to the applicability of the moratorium order to the Defendant is still pending and although the liability is admitted, in view of the language of the moratorium order, the Defendant is constrained not to honour the commitments under the Letter of Credit deposit having full capacity and the bills accepted under the Letter of Credit have remained unpaid to the Plaintiffs and therefore, this Court may grant leave to the Defendant to file written statement in view of the pendency of this issue.

9. Mr. Rustomjee further submits that there is no rate of interest prescribed in the Letter of Credit, although, the Plaintiffs have claimed interest at the rate of 11.25% p.a. which cannot be permitted and this also raises a triable issue entitling the Defendant leave to defend.

10. Mr. Rustomjee, learned Senior Counsel appearing for the Defendant-bank further clarifies that the principal amount that has been admitted to be due is not 64.41 Crs. but Rs. 61,40,32,471/- and in the event this Court is inclined to pass a conditional order, this Court may consider the said figure. In support, Mr. Rustomjee draws this Court's attention to the rejoinder filed on behalf of the Plaintiffs and in particular to paragraph 3(e), where it has been stated on behalf of the Plaintiffs that the principal amount under the four invoices is Rs. 61,40,32,471/-, but since the Plaintiffs availed the bill discounting facility with its banker i.e., the ICICI Bank and the ICICI Bank has charged Rs. 2,70,07,922/- towards interest, the said amount has been added to the outstanding principal amount and therefore, the figure of Rs. 64,10,40,393/- has been arrived at and claimed by the Plaintiffs as the principal amount. Mr. Rustomjee, learned Senior Counsel for the Defendant-bank submits that his client disputes the addition of this interest to the principal amount.

11. Mr. Rustomjee submits that, therefore, in view of the decision of the ***IDBI Trusteeship Services Ltd Vs.Hubtown Ltd***[1], as well as ***BL Kashyap and Sons Ltd Vs. M/s. JMS Steels and Power Corporation and***

1 MANU/SC/1490/2016

Anr[2], where it has been held that grant of leave to defend is the rule and denial of the same is an exception, this Court may grant leave to defend the suit.

12. I have heard the learned Senior Counsel.

13. It is not in dispute that the Defendant has admitted its liability, however the Defendant has submitted that it is constrained not to honour its commitments to make payment, in view of the moratorium under the NCLAT order, extracted above.

14. It has also been submitted that the Interim Application Diary No. 15182 of 2019 filed by the Plaintiff in the NCLAT seeking clarification as to the applicability of the aforesaid moratorium to the Defendant is pending. This in my view raises a triable issue.

15. Further admittedly, the Letter of Credit on the basis of which this summary suit has been filed does not provide for any interest which has been claimed by the Plaintiffs. Even the principal amount as claimed by the Plaintiffs has been disputed by the Defendant, when Mr. Rustomjee

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has submitted that the amount of interest of Rs. 2,70,07,922/- charged by ICICI Bank cannot be added to the principal amount admitted by the Defendant-Bank, which also raise triable issues.

16. Therefore, although the liability has been admitted, however the Defendant has expressed its inability to honour the commitment under the Letter of Credit and the Plaintiff's Interim Application for clarification as to the applicability of the moratorium to the Defendant also pending, in view of the principles laid down by the Hon'ble Supreme Court in the case of *IDBI Trusteeship Services Ltd Vs. Hubtown Ltd. (supra),* as well as in the case of *BL Kashyap and Sons Ltd Vs. M/s. JMS Steels and Power Corporation and Anr. (supra),* I am inclined to grant conditional leave to defend to the Defendant.

17. Accordingly, the following order is passed :-

<u>ORDER</u>

(i) Leave to defend the present Suit is granted to the Defendant subject to their depositing a sum of Rs.61,40,32,471/- (Rupees Sixty One Crores Forty Lakhs Thirty-Two Thousand Four Hundred and Seventy One Only) within a period of six weeks from the date of this Order.

(ii) If the aforesaid deposit is made within the stipulated period, this suit shall be transferred to the list of Commercial Causes and the Defendant shall file written statement within a period of four weeks from the date of deposit.

(iii) If this conditional order of deposit is not complied with within the aforesaid period, the Plaintiffs shall be entitled to apply for an *ex-parte decree* against the Defendant after obtaining a Non-deposit Certificate from the Prothonotary and Senior Master of this Court.

(iv) Summons for Judgment stands disposed in the aforesaid terms.

(ABHAY AHUJA, J.)