

IN THE DISTRICT COURT OF COLOMBO

This Complaint is made in terms of the  
Provisions of the Debt Recovery  
(Special Provisions) Act No. 2 of 1990  
as amended.

-----PLC  
(Previously known as-----]  
-----,  
Colombo.

**PLAINTIFF**

Case No : DR  
Amount :  
Procedure : DR

**Commented [S1]:** Compliance with Section 2(2) of the Debt Recovery Act

1. -----  
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2. -----  
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**DEFENDANTS**

On this        day of        2018.

The Complaint of the Plaintiff abovenamed appearing by -----their registered Attorneys-at-Law states as follows:

1. The Plaintiff is a duly incorporated Banking Company with limited liability having its registered office and/or principal place of business at the aforesaid address and having its Foreign Currency Banking Unit at the aforesaid address.
2. The Plaintiff is a licensed Commercial Bank within the meaning of the Banking Act No.30 of 1988 and a Lending Institution within the meaning of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended. The Plaintiff was formerly known as -----and changed its name in compliance with the provisions of the Companies act No. 7 of 2007.

**Commented [S2]:** Compliance with Section 2(1) and 30 of the Debt Recovery Act

True copies of the Change of Name Certificate under the companies Act No. 7 of 2007, Amended Banking License of the Plaintiff are filed herewith marked "A1" and "A2" respectively and pleaded as part and parcel of this Complaint.

3. The 1<sup>st</sup> Defendant is a duly incorporated company with limited liability and having its registered office and/or principal place of business at the above address and is a Board of Investment Approved Licensed Enterprise authorized to maintain Foreign Currency Account.
4. The Defendants resides, the contract sought to be enforced was made and the cause of action hereinafter set out arose within the local limits of the Jurisdiction of this Court.
5. The Plaintiff states that, at all time material to this action,
  - [a] the 1<sup>st</sup> Defendant was a customer and constituent of the Plaintiff Bank;
  - [b] the 1<sup>st</sup> Defendant maintained a Foreign Currency Account bearing No. 9911-089528-001 with Head Office Branch of the Plaintiff situated at No.90, Galle Road, Colombo 03 within the local limits of the jurisdiction of this Court;
  - [c] the 2<sup>nd</sup> Defendant is the Managing Director of the 1<sup>st</sup> Defendant Company.
6. The Plaintiff states that in the ordinary course of business as a banker, at the request of the Defendants, the Plaintiff from time to time granted various financial facilities to the 1<sup>st</sup> Defendant.
7. The Plaintiff states that in the ordinary course of business as a banker, at the request of the 1<sup>st</sup> Defendant, the Plaintiff granted the 1<sup>st</sup> Defendant a Term Loan Facility, an Overdraft and a Packing Credit Loan Facility
8. The Plaintiff states that, however, the 1<sup>st</sup> Defendant defaulted the payment of the said facilities and by writing dated 28<sup>th</sup> April 2004, the 1<sup>st</sup> Defendant requested re-scheduling of the aforesaid facilities.

A true copy of the said Letter of the 1<sup>st</sup> Defendant date 28<sup>th</sup> April 2004 is filed herewith marked as “B” and pleaded as part and parcel of this Plaintiff.

#### FOR A CAUSE OF ACTION AGAINST THE 1<sup>ST</sup> DEFENDANT

9. The Plaintiff states that by Offer Letter dated 3<sup>rd</sup> January 2005, the Plaintiff, *inter alia* offered to re-schedule the said Packing Credit Loan, Term Loan and the excess overdrawn sum in the 1<sup>st</sup> Defendant’s Current Account into a Term Loan Facility of US\$ 423,654/-.
10. The Defendants duly accepted the said offer and signed the duplicate copy of the Offer letter and submitted the same to the Plaintiff.

A true copy of the said Offer Letter dated 3<sup>rd</sup> January 2005 is filed herewith marked “C” and pleaded as part and parcel of this Plaintiff.
11. By the said Offer Letter marked “C”, the 1<sup>st</sup> Defendant agreed to repay the said sum of US\$ ----- in 47 equal monthly instalments of US\$ ----- and a final instalment of US\$ ----- totalling to 48 monthly instalments, together with pay interest at the New York Prime Rate + 1% or such other or higher rate at may from time to time be fixed or charged by the Plaintiff.

**Commented [S3]:** Compliance with Section 2 of the Debt Recovery Act

12. The Plaintiff states that, the 1<sup>st</sup> Defendant also entered into the Loan Agreement dated 31<sup>st</sup> December 2004 whereby the 1<sup>st</sup> Defendant promised and/or agreed and/or undertook

[a] to repay the said Term Loan in 47 equal monthly instalments of US\$ ----- and a final instalment of US\$ -----

[b] to pay interest at the New York Prime Rate + 1% or such other or higher rate at may from time to time be fixed or charged by the Plaintiff;

[c] irrevocably authorized the Plaintiff without any notice to the 1<sup>st</sup> Defendant to debit the 1<sup>st</sup> Defendants account with the said monthly instalments on the due dates together with interest and taxes and other charges and commissions.

A true copy of the said Loan Agreement is filed herewith marked as “D” and pleaded as part and parcel of this Plaint.

**Commented [S4]:** Compliance with Section 2 of the Debt Recovery Act

13. The Plaintiff states that the said Term Loan was made available to the 1<sup>st</sup> Defendant.
14. The Plaintiff states that the 1<sup>st</sup> Defendant has defaulted the repayment in that the 1<sup>st</sup> Defendant failed to repay the loan in instalments, promised and undertook by the Offer letter and the Loan Agreement and therefore, the whole f the remaining unpaid portion of the loan became immediately repayable together with interest.
15. The Plaintiff states that giving credit for part payments as shown in the duly certified Foreign Currency Loan Account Ledger filed herewith marked “E” and pleaded as part and parcel of this Plaint, as at 20<sup>th</sup> April 2010, there is a sum of US\$ 350,940/44 due and owing from the 1<sup>st</sup> Defendant to the Plaintiff upon the said Term Loan.
16. The Plaintiff states that the Plaintiff, by letter dated 12<sup>th</sup> July 2010 demanded the said sum of US\$ 350,940/44 from the 1<sup>st</sup> Defendant together with further interest thereon at rate of 12.25% per annum from 21<sup>st</sup> April 2010.

True copies of the said Letter of Demand dated ----- and the relevant Registered Postal Article Receipt and the List of Names relevant to the said Registered Postal Article Receipt are filed herewith marked “F”, “F1” and “F2” respectively and pleaded as part and parcel of this Plaint.

17. The Plaintiff states that the interest rate applicable and determined by the Plaintiff Bank for similar transactions in pursuance to market rate and the Central Bank Guidelines, is 12.25% per annum.
18. The Plaintiff states that the 1<sup>st</sup> Defendant has, wrongfully, failed and neglected to repay the said sum US\$ ----- or any part thereof though thereto demanded and though thereto obliged.
19. The Plaintiff states that the said sum of US\$ ----- is justly, truly and lawfully due and owing from the 1<sup>st</sup> Defendant to the Plaintiff.

**Commented [S5]:** Compliance with Section 4(1) of the Debt Recovery Act

20. The Plaintiff states that a cause of action has thus accrued to the Plaintiff to sue the 1<sup>st</sup> Defendant for the recovery of the said sum of US\$ ----- together with interest thereon at the rate of 12.25% per annum from ----- till payment in full or alternative to recover a sum in Sri Lanka Rupees equivalent to the said of US\$ ----- and interest at conversation rate as at the recovery.

**Commented [S6]:** Compliance with Section 22 and 23 of the Debt Recovery Act

#### FOR A CAUSE ACTION AGAINST THE 2<sup>ND</sup> DEFENDANT

21. The Plaintiff reiterates the averments contained in paragraphs 1 to 20 above.
22. The Plaintiff states that, as security for the repayment of the said Term Loan Facility granted to the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant, as Guarantor entered into the Guarantee dated 27<sup>th</sup> April 2004.

**Commented [S7]:** Compliance with Section 30 of the Debt Recovery Act interpretation of Debt

A true copy of the said Guarantee dated 27<sup>th</sup> April 2004 is filed herewith marked “G” and pleaded part and parcel of this Plaint.

23. By the said Guarantee marked “G”, the 2<sup>nd</sup> Defendant *inter alia* agreed that
- [a] the 2<sup>nd</sup> Defendant would pay the Plaintiff at its Branch Office in Colombo all and every sum of money whether in Sri Lankan Rupees or foreign currency which shall at any time and from time to time become due or owing and remain unpaid to the Plaintiff by the 1<sup>st</sup> Defendant up to a total of US\$ ----- and interest thereon.
- [b] any Statement of Account in writing showing the amounts due to the Plaintiff from the Defendants and signed and certified by the General Manager, Assistant General Manager or the Accountant of the Plaintiff Bank or by any other person appointed by the Plaintiff for that purpose, shall be deemed sufficient in law and, the contents thereof shall be conclusive proof against the 2<sup>nd</sup> Defendant without any other documents and, shall be deemed to be conclusive proof against the 2<sup>nd</sup> Defendant of the fact that the amounts set out therein are due from the 1<sup>st</sup> Defendant to the Plaintiff.
- [c] the security created by the said Guarantee shall be a continuing security to the Plaintiff and shall extend to cover any sum of money which become due, owing and payable to the Plaintiff by the 1<sup>st</sup> Defendant at the time of execution of the said Guarantee, and from time to time.
- [d] the bank shall be at liberty, either in one action to sue the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant jointly and/or severally or to proceed in the first instance against the 2<sup>nd</sup> Defendant only.
- [e] the 2<sup>nd</sup> Defendant renounces the right to claim that the 1<sup>st</sup> Defendant should be excused or proceeded against by action in the first instance.
- [f] the 2<sup>nd</sup> Defendant is liable in all respects under the said Guarantee not merely as surety or guarantor but as sole or principal debtor, including the liability to be solely sued before recourse is had against the 1<sup>st</sup> Defendant or without any recourse whatsoever being had to the 1<sup>st</sup> Defendant for any reason or cause whatsoever and in the absolute discretion of the Plaintiff.

24. The Plaintiff states that as pleaded above, as at 20<sup>th</sup> April 2010, there is a sum of US\$ ----- due and owing and payable from the 1<sup>st</sup> Defendant to the Plaintiff upon the said Term Loan.

25. The Plaintiff by Letter of Demand dated 12<sup>th</sup> July 2010 demanded the said sum of US\$ 350,940/44 from the 2<sup>nd</sup> Defendant together with interest thereon at the rate of 12.25% per annum from 21<sup>st</sup> April 2010.

A true of the Letter of Demand is filed herewith marked as “H” and pleaded as part and parcel of this Plaintiff.

True copies of the Relevant Postal Article Receipt and the List of Names relevant to the said Registered Postal Article Receipt are already filed herewith marked “F1” and “F2” respectively.

26. The Plaintiff states that the 2<sup>nd</sup> Defendant has, wrongfully, failed and/or neglected to repay the said sum of US\$ ----- or any part thereof, though thereto demanded, though thereto obliged to.

27. The Plaintiff states that the said sum of US\$ ----- is justly, truly and lawfully due and owing from the 2<sup>nd</sup> Defendant to the Plaintiff.

28. The Plaintiff states that a cause of action has thus accrued to the Plaintiff to sue the 2<sup>nd</sup> Defendant jointly with the 1<sup>st</sup> Defendant, for the recovery of the said sum of US\$ ----- together with interest thereon at the rate of 12.25% per annum from ----- or alternative to recover a sum in Sri Lanka Rupees equivalent to the said of US\$ ----- and interest at conversation rate as at the recovery.

29. The Plaintiff states that the Plaintiff relies on the documents marked “A1” to “H” to establish the Plaintiff’s claim against the Defendants.

30. The Plaintiff files herewith an affidavit from Mr. -----who is a Senior Manager – Corporate Banking Unit of the Plaintiff Bank and who has been specifically authorized by the Plaintiff Bank, to make an affidavit in these proceedings.

31. The Plaintiff values this action at Rs.----- .

WHEREFORE the Plaintiff prays for judgment and decree against the Defendants, jointly and/or severally:-

[a] in a sum of US\$ ----- (or a sum equivalent in Sri Lankan Rupees as at the conversion rate at the date of payment) together with interest thereon at the rate of 12.25% per annum from ----- or alternative to recover a sum in Sri Lanka Rupees equivalent to the said of US\$ ----- and interest, at conversation rate as at the date of recovery.

**Commented [S8]:** Compliance with Section 4(1) of the Debt Recovery Act

**Commented [S9]:** Compliance with Section 22 and 23 of the Debt Recovery Act

**Commented [S10]:** Compliance with Section 4(1) 4(4) and 30 of the Debt Recovery Act

[b] for costs;

[c] for a Decree *Nisi* in terms of paragraphs [a] and [b] above in the first instance and thereafter, the Decree *Nisi* be made absolute; in terms of the provisions of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended; and

[f] grant such other and further relief as to this Court shall seem meet.

ATTORNEYS-AT-LAW FOR THE PLAINTIFF

Documents annexed to the Plaint:-

- A1 - Change of Name Certificate under the Companies Act No. 7 of 2007
- A2 - Amended Banking License of the Plaintiff
- B - Letter of the 1<sup>st</sup> Defendant dated 28/04/2004
- C - Offer letter dated 03/01/2005
- D - Loan Agreement
- E - Certified Foreign Currency Loan Account Ledger
- F - Letter of Demand dated 12/07/2010
- F1 - Registered Postal Article Receipt
- F2 - List of Names relevant to the said Registered Postal Article Receipt
- G - Guarantee dated 27/04/2004
- H - Letter of Demand dated 12/07/2010

ATTORNEYS-AT-LAW FOR THE PLAINTIFF

