

# Canara Bank vs M/S. Fedelity Infrastructure on 19 July, 2023

IN THE COURT OF SH. SANJEEV AGGARWAL  
DISTRICT JUDGE (COMMERCIAL)-02  
PATIALA HOUSE COURTS, NEW DELHI

CS (COMM) 648/2021  
CNR NO. DLND010091902021

CANARA BANK  
PASCHIMI MARG  
VASANT VIHAR  
NEW DELHI-110057

...Plaintiff

Versus

1. M/S. FEDELITY INFRASTRUCTURE  
TECHNOLOGIES PVT. LTD, H-2,  
PUSHPANJALI, DWARKA HIGHWAY,  
NEW DELHI-110061

AND ALSO AT:  
NO. 4, RAJIV GANDHI HANDICRAFT  
BHAVAN, BABA KHADAG SINGH MARG,  
CONNAUGHT PLACE, NEW DELHI-110001

PLOT NO. 146-P, SECTOR 44, INDUSTRIAL  
AREA, GURGAON-122001, HARYANA  
Work-crative@yahoo.com

2. MR. SHYAM SINGH, DIRECTOR, M/S. FEDELITY  
INFRASTRUCTURE TECHNOLOGY PVT. LTD, H-2,  
PUSHPANJALI, DWARKA HIGHWAY,  
NEW DELHI-110061

AND ALSO AT:

6281, B-9, VASANT KUNJ, NEW DELHI-110070  
MOBILE 9999005322

CS(COMM) 648/2021 (CNR No. DLND010091902021)

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PLOT NO. 4, RAJIV GANDHI HANDICRAFT  
BHAVAN, BABA KHADAG SINGH MARG  
CONNAUGHT PLACE, NEW DELHI-110001

PLOT NO. 146-P, SECTOR 44, INDUSTRIAL  
AREA, GURGAON - 122001, HARYANA

BC/5, WEA KAROL BAGH, NEW DELHI-110005

3. MR. VIKRAM SINGH CHAUDHRY DIRECTOR

M/S. FEDELITY INFRASTRUCTURE  
TECHNOLOGY PVT. LTD, H-2, PUSHPANJALI,  
DWARKS HIGHWAY, NEW DELHI-110061

AND ALSO AT:

W-5, C-2, WESTERN AVENUE,  
SAINIK FARM, KHANPUR, NEW DELHI-110062

PLOT NO. 4, RAJIV GANDHI HANDICRAFT  
BHAVAN, BABA KHADAG SINGH MARG,  
CONNAUGHT PLACE, NEW DELHI-110001

PLOT NO. 146-P, SECTOR 44, INDUSTRIAL  
AREA, GURGAON - 122001, HARYANA

...Defendants

Date of institution of suit : 18.12.2021 (21.12.2021)

Date of reserving judgment : 12.07.2023

Date of pronouncement : 19.07.2023

#### JUDGMENT

1. Vide this judgment, I shall dispose off the present suit filed by the plaintiff for recovery as well separate application filed on behalf of the defendant nos. 1 & 2 u/O 7 Rule 11 CPC for dismissal of the present CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 2 of 27 suit.

2. Brief facts as stated in the relevant para(s) of the plaint are as under :

1. That the Plaintiff-bank is a body corporate constituted and functioning under the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970, having its Head Office at BANGLORE, KARNATAKA and Branches amongst others, one at VASANT VIHAR, NEW DELHI, Sh.

Ramesh Chander Saini, is one of the Principal Officer and Chief Manager, of the Plaintiff-bank & hold Power of Attorney from the Plaintiff- bank having authority to institute the suit, sign & verify the pleadings and take such steps to recover any of the amount becoming due to the plaintiff-bank; and even otherwise, he is also one of the Principal Officer of the Plaintiff-bank and has also gone through the records of the bank, hence well aware about the facts of the case and as such is in a position to sign & verify the pleadings. In terms of RBI Circular No.RBI/2019-20/197 DATED March 30, 2020 that Syndicate Bank is amalgamated with Canara Bank w.e.f 01.04.2020 vide the Gazette of India Notifications G.S.R 153(E), CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 3 of 27 G.S.R 154(E), G.S.R 155(E), G.S.R 156(E) dated March 4, 2020. All banking by the banks, including the Plaintiff-bank, are regulated by the Reserve Bank of India, and all instructions, notifications, orders of the Reserve Bank of India, are binding on all the banks and have the force of law.

2. That Defendant no.1 is a private limited company, represented by its Directors, Defendants no. 2 & 3. The Defendant no. 1, who is in the business of real estate and other activity wholesale or retail or otherwise of interior decorators and furnishers, upholsters and dealers in and hirer repairs, cleaners, stores and warehouse furniture, carpets lignums furnishing fabrics. The Defendants have approached the plaintiff-bank with a request for SOD limit & loan of Rs. 50 Lacs and a term loan for manufacturing and trading of handicrafts item purchased by the company to their corporate as well as individual clients, for renovation of the new showroom and purchase of furniture and fixture to be installed at the new showroom wherein Defendants no. 2 to 3, also agreed to stand as personal guarantors for the credit facility to be granted to Defendant no. 1 under SME. The plaintiff-bank considered the request to meet the CS(COMM) 648/2021 (CNR No. DLNDO10091902021) Page No. 4 of 27 working capital requirements of business of Defendant no. 1 and agreed to sanction SOD SYNDMSE Limit for Rs. 45.00 Lacs (Rs. Forty Five Lacs Only) against the hypothecation of stock and book debts of the company both present and future and for manufacturing and trading of handicrafts item an furniture and fixture purchased by the company to their corporate as well as individual clients, issue basis, and also Defendants no. 2 to 3 shall join as personal guarantors to the credit facilities. The normal rate of interest payable / applicable at present for SOD SYNDMSE is 13.50% p.a., all compoundable with monthly rests.

3. That Defendants no. 1, for availing the said sanctioned SOD SYNDMSE Limit of Rs. 45.00 Lacs executed the required loan documents, in favour of the Bank as borrower, represented by both the partners, i. e. Defendants no. 2 & 3 and Defendants no. 2 to Defendant no. 3, also stood as guarantors, in their personal capacities, to the credit facilities granted to Defendant no. 1, from time to time and executed required continued and subsisting separate guarantee agreements in favour of the bank, whereby Defendants all the Defendants, are jointly and severally liable for the outstanding CS(COMM) 648/2021 (CNR No. DLNDO10091902021) Page No. 5 of 27 amount of the credit facilities availed by Defendant no. 1, from time to time, for valuable consideration.

4. That in order to avail the sanctioned loan facility under OSD SyndMSME of Rs.45, 00,000/- (Rs. Forty Five Lacs Only), the defendants No. 1 & 2 had executed, signed and delivered the following required loan documents, on 21.01.2017, for valuable consideration, in favour of the Plaintiff-bank, which are as under:-

a) Composite Hypothecation Agreement (ASD-4) on Rs.100/- stamp paper duly executed on 21.01.2017.

b) Annexure - IX dated 21.01.2017

c) Undertaking not to withdraw unsecured loans on Rs.100/- stamp paper dated 21.01.2017

d) Power of attorney & Letter of Indemnity on Rs.100/- stamp paper dated 21.01.2017

e) Guarantee Agreement (ASD-6) on Rs.100 stamp paper dated 21-01-2017 executed by Sri Vikram Singh Chaudhary S/o Sri Shyam Singh

f) Guarantee Agreement (ASD-6) on Rs.100 stamp paper dated 21-01-2017 executed by Sri Shyam Singh S/o Sri Karan Singh That it is certified that copies of all the documents filed are authenticated.

That the above documents were duly filled, read over CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 6 of 27 & explained to the defendants and they put their signatures on these documents voluntarily and consciously after understanding their implications and delivered the same to the Plaintiff-bank. That all the terms & conditions of sanction and granting loan to Def. No. 1 through defendant No. 2 & 3 and terms and conditions applicable to the guarantor, were contained in the security documents executed by both the defendants.

5. That the Plaintiff-bank released the loan granted for business purpose on 21.01.2017.

6. That for securing the repayment of the credit facilities availed by Defendants, Defendant no. 1, the entire current assets of the company including stocks & receivables were hypothecated by Defendants, as prime security in favour of the bank. That the Defendant no. 1 availed & utilized aforesaid limits for its business, as per its business requirements, from time to time.

7. That Defendant no.1 is a private limited company, represented by its Directors, Defendants no. 2 & 3. The Defendant no. 1, moved another application dated 01.06.2017 for enhancement of quantum of loan for Rs. 120 lakhs. The Defendants have approached the plaintiff-bank with a request CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 7 of 27 for increase of SOD limit & loan of Rs. 1270 Lacs for manufacturing and trading of handicrafts item purchased by the company to their corporate as well as individual clients, for renovation of the new showroom and purchase of furniture and fixture to be installed at the new showroom wherein Defendants no. 2 to 3, also agreed to stand as personal guarantors for the credit facility to be granted to Defendant no. 1 under SME. The plaintiff-bank considered the request to meet the working capital requirements of business of Defendant no. 1 and agreed to sanction SOD SYNDMSE Limit for Rs. 70.00 Lacs (Rs. Seventy Lacs Only) and term loan of Rs. 28 lakhs (Rupes Twenty Eight Lakhs only) against the hypothecation of stock and book debts of the company both present and future and for manufacturing and trading of handicrafts item an furniture and fixture purchased by the company to their corporate as well as individual clients, issue basis, and also Defendants no. 2 to 3 shall join as personal guarantors to the credit facilities. The normal rate of interest payable / applicable at present for SOD SYNDMSE is 13.50% p.a., all compoundable with monthly rests.

8. That Defendants no. 1, for availing the said CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 8 of 27 sanctioned SOD SYNDMSE Limit of Rs. 70.00 Lacs and term loan of Rs. 28 Lakhs executed the required loan documents, in favour of the Bank as borrower, represented by both the partners, i. e. Defendants no. 2 & 3 and Defendants no. 2 to Defendant no. 3, also stood as guarantors, in their personal capacities, to the credit facilities granted to Defendant no. 1, from time to time and executed required continued and subsisting separate

guarantee agreements in favour of the bank, whereby Defendants all the Defendants, are jointly and severally liable for the outstanding amount of the credit facilities availed by Defendant no. 1, from time to time, for valuable consideration.

9. That for securing the repayment of the credit facilities availed by Defendants, Defendant no. 1, the entire current assets of the company including stocks & receivables were hypothecated by Defendants, as prime security in favour of the bank. That the Defendant no. 1 availed & utilized aforesaid limits for its business, as per its business requirements, from time to time.

10. That the Defendant no. 1 was required to keep the outstanding liability within its sanctioned limits and also to keep it regular by sticking to the financial CS(COMM) 648/2021 (CNR No. DLNDO10091902021) Page No. 9 of 27 discipline as per banking norms and practice for the credit facilities availed and as agreed by Defendants, all the Defendants, failed to stick to the financial discipline to keep the limits regular, with the result, the same have not only become highly irregular, overdrawn, sticky but also classified as NPA on 30.04.2018, and due to the passage of time & application of time to time interest / penal interest and other charges as per banking norms and practice and as agreed by Defendants.

Besides this, Defendants were to submit timely statements of stocks hypothecated every month and also to get the stocks inspected from the bank officials. But Defendants stopped submitting the stock statements despite repeated reminders by my aforesaid client bank.

11. That in order to avail the sanctioned loan facility under OSD SyndMSME of Rs.70, 00,000/- (Rs. Seventy Lacs Only) and FCC (term) Loan of Rs. 28,00,000/- (Twenty Eight Lacs only), the defendants No. 1 & 2 had executed, signed and delivered the following required loan documents, on 22.06.2017, for valuable consideration, in favour of the Plaintiff-bank, which are as under:-

a) Composite Hypothecation Agreement (ASD-4) on CS(COMM) 648/2021 (CNR No. DLNDO10091902021) Page No. 10 of 27 Rs.100/- stamp paper duly executed on 22.06.2017.

b) Annexure - IX dated 22.06.2017

c) Undertaking not to withdraw unsecured loans on Rs.100/- stamp paper dated 22.06.2017

d) Power of attorney & Letter of Indemnity on Rs.100/- stamp paper dated 22.06.2017

e) Guarantee Agreement (ASD-6) on Rs.100 stamp paper dated 22-06-2017 executed by Sri Shyam Singh S/o Sri Karan Singh

f) Guarantee Agreement (ASD-6) on Rs.100 stamp paper dated 22-06-2017 executed by Sri Vikram Singh Chaudhary S/o Sri Shyam Singh That it is certified that copies of all the documents filed are authenticated.

That the above documents were duly filled, read over & explained to the defendants and they put their signatures on these documents voluntarily and consciously after understanding their implications and delivered the same to the Plaintiff-bank. That all the terms & conditions of sanction and granting loan to Def. No. 1 through defendant No. 2 & 3 and terms and conditions applicable to the guarantor, were contained in the security documents executed by both the defendants.

12. That the Plaintiff-bank released the loan granted CS(COMM) 648/2021 (CNR No. DLNDO10091902021) Page No. 11 of 27 for business purpose on 22.06.2017.

13. That the defendants utilized the loan amount but did not bother to repay the loan amount even monthly payment of interest in time, as agreed; and the operation in the account was also stopped after 29th March 2019 in SOD SyndMSE & 3 rd June 2019 in FCC account, as reflected in the statement of account, maintained by Plaintiff-bank, in its ordinary and regular course of business. Therefore, the loan account of the defendants became irregular, sticky and overdue, for which defendants were reminded time & again. The outstanding amount continued to increase with the application from time to time of applicable interest & other charges, as per Banking Norms & Practice, and as agreed by the defendants.

14. That plaintiff-bank reminded all the Defendants time & again by making personal visits through its representatives and writing letters but all the Defendants did not bother, except making false promises, with the result, outstanding amount remained as such, and further increased with the application of interest and other charges, as per banking norms and practice, and as agreed, by Defendants all the Defendants.

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15. That the aforesaid credit limits availed by Defendant no. 1 is repayable with interest at the applicable rate chargeable and compoundable at monthly rests & variable from time to time as per the guidelines issued by RBI, from time to time, along with penal interest for overdrawn, inoperative, sticky account and the same was accordingly charged on the outstanding liability in the books of accounts maintained by the plaintiff-bank in its ordinary & regular course of business, for which all the Defendants are jointly and severally liable.

Therefore, the present suit for recovery of Rs.1,38,10,160/- along with interest has been filed by the plaintiff against the defendants.

3. Summons of the present suit were issued to the defendants, which were duly served upon them. Written statement was filed on behalf of defendant Nos. 1 & 2. However, since nobody had appeared on behalf of defendant no. 3, who was deemed to be served vide order dated 19.04.2022, therefore,

his defence was struck off vide order dated 24.08.2022 of the Ld. Predecessor of this Court. The relevant para(s) of the written statement filed on behalf of defendant nos. 1 & 2 are reproduced as under :

1. That the present suit filed by the Plaintiff is bad in CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 13 of 27 law on account of misjoinder / mis-description of parties. It is submitted that the Defendant no. 2 is no longer the Director Defendant no. 1. The defendant no. 2 vide reply dated 20.08.2020 to the legal notice dated 05.08.2020 sent by Plaintiff Bank has duly apprised the plaintiff bank that the defendant nos. 2 & 3 are no longer directors of defendant no. 1. The defendant no. 2 has duly submitted his resignation as a Director of defendant no. 1 on 17th November 2017 which has been duly accepted by the defendant no. 1 vide its Board Resolution dated 17.11.2017. Thus the suit deserved to be dismissed on this ground alone.

3. That the plaintiff has not come before this Hon'ble Court with clean hands and has suppressed material facts before this Hon'ble Court and the present suit deserves to be dismissed. It is submitted that the plaintiff has miserably concealed from this Hon'ble Court regarding various emails and meetings held between the defendants and the officials of the plaintiff bank whereby the defendants have earnestly requested the plaintiff bank for restructure proposal of the loans as per the RBI policy guidelines. Through various emails and meetings with the plaintiff bank, the defendants have given their genuine reasons for NPA since their retail shop and business activities almost CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 14 of 27 closed down due to sealing order of Govt. of India. The defendants have further communicated to the plaintiff bank, that due to sealing the defendants were confined to operate their business from warehouse which affected their sales and moreover the sales further reduced owing to demonetization and GST rules which resulted in heavy losses to the defendants. The defendants further communicated that due to Covid 19 as well, the defendants faced lot of business losses. For the reasons stated above, the defendants requested the plaintiff bank for restructure of loan account.

4. That the plaintiff has arbitrarily charged interest charges and other additional charges which are against the RBI guidelines thus the alleged claim of the plaintiff towards the same is not maintainable.

On merits, it is stated as under :

2. That the contents of para 2-4 of the suit filed by the plaintiff are wrong and denied to the extent that the defendant no. 2 is the director of defendant no. 1. It is submitted that the defendant no. 2 is not longer the director of defendant no. 1. It is denied that the defendant no. 2 stood as personal guarantor for the credit facility to be granted to the defendant no. 1 under SME. It is denied that the defendant no. 2

stood as guarantor in his personal capacity to the credit facility CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 15 of 27 granted to the defendant no. 1. It is denied that the defendant no. 2 is jointly and severally liable for the outstanding amount of the credit facilities availed by the defendant no. 1.

3. That the contents of para 4-9 of the suit filed by the plaintiff are not denied. However, it is denied that the defendant no. 2 stood as guarantor in his personal capacity to the credit facilities granted to the defendant no. 1.

4. That the contents of para 10-12 of the suit filed by the plaintiff are not denied. However it is submitted that the interest charged by the plaintiff bank is highly exorbitant and not as per banking norms.

5. That the contents of para 13-16 of the suit filed by the plaintiff are not denied. It is submitted that the defendant nos. 1 & 2 have approached the plaintiff company on various occasions and have had several meetings with the officials of the plaintiff bank and have even sent various emails dated 29.12.2017, 30.06.18, 10.06.2019, 14.06.2019, 18.08.2020, 02.02.2021, 05.03.2021 and 18.11.2021 regarding restructuring of the Term Loan and working Capital Loan into 10 years EMI's. The reason for such earnest request for restructuring of loan arose on account of sealing of the retail shop of the defendants due to which the entire CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 16 of 27 business of the defendants suffered. The defendants were constrained to run their business only from their sole warehouse. The business of the defendants further suffered due to demonetization and new GST guidelines.

The defendants further requested to charge interest @8% per annum as the defendant no. 1 is MSME unit. The defendants through all the above emails have been time and again approaching the plaintiff bank to restructure the loan and have categorically informed the bank the reason for NPA since their retail shop and business activities have almost closed down because of sealing. It was the decision of Government of Delhi to seal shops and related shop business and there is no definite date when the Government will take final decision to remove the sealing. The defendants are already facing lot of problem due to lockdown of Covid 19 from March 2020 onwards as they were not able to do any business during the said period. The defendants have duly forwarded the proposal for restructure of the loan.

6. That the contents of para 17 of the suit filed by the plaintiff are wrong and denied. It is denied that the defendant no. 1 stood as a personal guarantor of defendant no. 1 and is jointly and severally liable for the outstanding liability of defendant no. 1.

CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 17 of 27 Therefore, it is stated that the suit of the plaintiff is liable to be dismissed.



4. Replication has been filed by the plaintiff to the above written statement of the defendant nos. 1 & 2, in which the averments made in the plaint have been reiterated and those made in the written statement have been denied.

5. From the pleadings of the parties, following issues were framed vide order dated 15.10.2022:-

1. Whether plaintiff is entitled for recovery of Rs.

1,38,10,160/- from defendant, as claimed? If so, from which of defendants? OPP.

2. Whether plaintiff is entitled for any interest from defendants ? If so, at what rate and for which period and from which of the defendants ? OPP.

3. Whether suit is bad for misjoinder of defendant no.

2, as alleged? If so, its effect ? OPD 1 and 2.

4. Relief.

6. Thereafter, the plaintiff in support of its case has examined one Sh. Ramesh Chandra Saini, its Chief Manager as PW1, whereas, in defence, the defendant nos. 1 & 2 have examined defendant no. 2 Sh. Shyam Singh as DW1. No other witness has been examined by either of CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 18 of 27 the parties.

7. I have heard Sh. Yudhister Sharma, Ld. Counsel for the plaintiff, Sh. Ajay Kumar along with Sh. C. S. Chauhan and Ms. Jasleen Singh Sandha, Ld. Counsel(s) for the defendant nos. 1 & 2 and perused the record. I have also gone through the written arguments filed on behalf of both the parties.

8. Ld. Counsel for the plaintiff has relied upon the judgment cited as Vodafone Idea Cellular Ltd. Vs. Ajay Kumar Agarwal Civil Appeal No. 923 of 2017 (Arising out of SLP(C) No. 28615 of 2016) dated 16.02.2022 in support of his contentions.

On the other hand, Ld. Counsel for the defendant has relied upon the judgment(s) cited as Class India Limited And Another Vs. A. K. Chopra And Others AIR 2008 )&H 116; Radha Singh Vs. Madhusudan Tulsyan LQ/ChatHC/2019920 and Selection (partnership Firm) Vs. Chief Manager, Central Bank Of India, 2011(2)JLJ40 besides the Notification of Ministry of Finance S.O. 4312(E) dated 06.09.2018 in support of his contentions.

9. The defendant nos. 1 & 2 had also moved an application u/O 7 Rule 11 CPC, which somehow kept on pending. In the application, it is stated that the jurisdiction of this Court is barred by Section 18 of The Recovery of Debts and Bankruptcy Act, 1993 and also by Section 34 of CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 19 of 27 the SARFAESI Act, 2002. It is also stated that the plaintiff being a bank should have filed an application for recovery against defendant no. 1 (borrower) before the concerned Debt Recovery Tribunal (DRT) instead of filing the present suit

before this Court, as by virtue of the provision cited above, this Court has no jurisdiction to try the present suit. Therefore, it is stated that the plaint is liable to be rejected u/O 7 rule 11 CPC, as the jurisdiction of civil court is expressly barred.

10. Reply has been filed to the present application by the plaintiff stating that the said contention is without any substance. It is stated that this Court has very much jurisdiction to try the present suit. It is further stated that the present suit has been rightly filed under The Commercial Courts Act, 2015, therefore, this Court has the jurisdiction to try the present suit. Further the defendants have no right to direct the plaintiff to file the case, which has been rightly filed before the Court of competent jurisdiction.

Further the plaintiff has option to either file the case before the DRT or the Commercial Court, therefore, the Commercial Court in view of Section 6 and Section 2(1)(c) of The Commercial Courts Act, 2015 has the jurisdiction to try and adjudicate the present suit, therefore, it is stated that the application u/O 7 Rule 11 CPC is misconceived and is liable to be dismissed.

11. My issuewise findings and discussion on the application u/O 7 Rule 11 CPC are as under :

CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 20 of 27 Issue(s)  
no. (1), (2) & (3)

1. Whether plaintiff is entitled for recovery of Rs.

1,38,10,160/- from defendant, as claimed? If so, from which of defendants? OPP.

2. Whether plaintiff is entitled for any interest from defendants ? If so, at what rate and for which period and from which of the defendants ? OPP.

3. Whether suit is bad for misjoinder of defendant no.

2, as alleged? If so, its effect ? OPD 1 and 2.

12. All these issue(s) are taken up together, as they are all interconnected with each other and are being disposed off vide common discussion.

13. PW1 who is the Chief Manager of the plaintiff bank namely Sh. Ramesh Chandra Saini has appeared in the witness box and has proved various documents, which are Ex. PW1/1 to Ex. PW1/18. PW1/7A is the guarantee agreement executed by the Director Sh. Shyam Singh and PW1/15A is the guarantee agreement executed by Sh Vikram Singh Choudhary, who are defendant nos. 2 & 3 respectively.

14. Nothing has come out in the cross-examination of the said witness carried out on behalf of defendant nos. 1 & 2 and the defendant no. 3 did not chose to cross-examine the said witness despite opportunity and despite awaiting till 2:45 PM. In fact in the written statement filed on CS(COMM)

648/2021 (CNR No. DLND010091902021) Page No. 21 of 27 behalf of defendant nos. 1 & 2, they have not disputed the factum of availing of the loan by defendant no. 1 company or the execution of the said documents.

The only ground taken was that defendant no. 2 never stood as guarantor in his personal capacity to the credit facility availed by defendant no. 1 and the interest charged by the plaintiff bank was very exorbitant. In the absence of any material cross-examination on behalf of defendant nos. 1, 2 & 3 on the above aspect, the assertions made by PW1 on oath, which are duly supported by loads of documents executed by defendant nos. 1, 2 and 3 have gone uncontested and unchallenged.

15. In rebuttal, one Sh. Shyam Singh appeared in the witness box as DW1, who was cross-examined on behalf of the plaintiff. In cross-examination, he stated that there was no person namely Vikash Chaudhary i.e. D-3. He was also confronted with the guarantee agreement Ex. PW1/7A, to which he admitted that the said agreement dated 21.01.2017 bears his signature, but he stated that his signatures were taken on blank papers. However, he has not examined any witness other than him, who could say that the said signatures were taken on blank papers. Besides his self serving statement in this regard, no other evidence has been adduced.

16. The document Ex. PW1/7A is the guarantee agreement executed by defendant no. 2 Sh. Shyam Singh with regard to the availing of the loan by defendant no. 1 in his personal capacity as guarantor CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 22 of 27 executed on 21.01.2017. Similarly Ex. PW1/15A is personal guarantee agreement executed by another director Sh. Vikram Singh Chaudhary qua the loan of defendant no. 1 in his personal capacity duly signed on 22.06.2017.

17. The other defendant i.e. defendant no. 3 did not step into the witness box probably due to the fear that he will also be confronted with the said document Ex. PW1/15A as was DW1 i.e. the defendant no. 2. Therefore, the plaintiff bank has been able to prove that defendant nos. 2 & 3 stood as personal guarantors with regard to the availing of loan by defendant no. 1 company in their personal capacity, therefore, defendant nos. 2 & 3 are proper and necessary parties and the suit is not bad for mis-joinder of defendant nos. 2 & 3. Consequently, issue no. 3 is answered accordingly.

18. For the reasons discussed above, the plaintiff bank has been able to make out a case in its favour for recovery of an amount of Rs. 1,38,10,160/- along with simple interest @ 9% p.a. from the date of filing of the suit till realization.

Relief With regard to the application u/O 7 rule 11 CPC, Ld. Counsel for defendant nos. 1 & 2 have taken the objection that the present suit is barred u/S. 18 of The Recovery of Debts and Bankruptcy Act, 1993 and CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 23 of 27 also by Section 34 of the SARFAESI Act, 2002. On the other hand, Ld. Counsel for the plaintiff has relied upon the judgment Vodafone Idea Cellular Ltd. Vs. Ajay Kumar Agarwal (supra), more specifically para 20, which is reproduced as under :

20. The above position was reiterated in IREO Grace Realtech (P) Ltd. v. Abhishek Khanna, 2021 SCC OnLine SC 277 by a three-judge Bench of this Court, of which one

of us (Justice DY Chandrachud) was a part. Justice Indu Malhotra, speaking for the Bench invoked the doctrine of election, which provides that when two remedies are available for the same relief, the party at whose disposal such remedies are available, can make the choice to elect either of the remedies as long as the ambit and scope of the two remedies is not essentially different. These observations were made in the context of an allottee of an apartment having the choice of initiating proceedings under the Act of 1986 or the RERA. In the present case, the existence of an arbitral remedy will not, therefore, oust the jurisdiction of the consumer forum.

It would be open to a consumer to opt for the remedy of arbitration, but there is no compulsion in law to do so and it would be open to a consumer to seek recourse to the remedies which are provided under the Act of 1986, now replaced by the Act of 2019. The insertion of the expression 'telecom services' in the definition which is contained in Section 2(42) of the Act of 2019 cannot, for the reasons which we have indicated be construed to mean that telecom services were excluded from the jurisdiction of the consumer forum under the Act of 1986. On the contrary, the definition of the expression 'service' in Section 2(o) of the Act of 1986 was wide enough to comprehend services of every description including telecom services.

20. It has been held by the Hon'ble Supreme court in State Bank of Patiala Vs. Mukesh Jain & Anr. Civil Appeal No. 210 of 2007, decided on 08.11.2016 in para 21 as under :

21. The DRT Act mainly pertains to institution of proceedings by a bank for recovery of its debt when the debt is not less than Rs.10 lakh. If the debt is less than Rs.10 lakh, no suit can be filed by the creditor bank in the Tribunal under the provisions of the DRT Act. So, when the jurisdiction of the Tribunal has been CS(COMM) 648/2021 (CNR No. DLND010091902021) Page No. 24 of 27 referred to in Section 1(4) of the DRT Act, which limits the jurisdiction of the Tribunal to Rs.10 lakh, prima facie, the intention of the legislature is to limit the original jurisdiction of the Tribunal. If any claim is to be made before the Tribunal, the amount must be more than Rs.10 lakh and if the amount is less than Rs.10 lakh, the creditor bank will have to file a suit in a Civil Court. So, one can safely interpret the provisions of Section 1(4) of the DRT Act to the effect that it deals with original jurisdiction of the Tribunal under the provisions of the DRT Act.

21. Further Ld. Counsel for the defendant nos. 1 & 2 has relied upon a Notification of Ministry of Finance S.O. 4312(E) dated 06.09.2018, whereby the jurisdiction of the Debt Recovery Tribunal with regard to the recovery of the debts due to the banks has been raised with regard to the cases, where debt is more than Rs. 20 Lakhs and for the debts due to the banks and financial institutions, where it is less than Rs. 20 Lakhs, the Civil Courts have the jurisdiction. Further vide Section 18 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the jurisdiction of the civil court or any other court is expressly barred with regard to the cases in which the Debt Recovery Tribunal has the jurisdiction.

22. Once the Debt Recovery Tribunal has been established, the jurisdiction of the civil courts has been expressly barred and the application for recovery of debts due to the banks and financial institutions can only be filed before Debt Recovery Tribunal and not before the civil courts i.e. in

cases where recovery of debts due to the banks and financial institution is more than Rs. 20 Lakhs, then the same can only be filed before the Debt Recovery Tribunals or the DRTs, as they CS(COMM) 648/2021 (CNR No. DLNDO10091902021) Page No. 25 of 27 are called. The Civil Courts have only jurisdiction to try cases with regard to the recovery of debts due to the banks and financial institutions for less than Rs. 20 Lakhs. Further Section 11 of The Commercial Courts Act, 2015 reads as under :

11. Bar of jurisdiction of Commercial Courts and Commercial Division. - Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

23. Further on reading of Section 11 of The Commercial Courts Act, 2015 in conjunction with Section 18 of The Recovery of Debts and Bankruptcy Act, 1993 and sub-section (4) of section 1 of The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993), the jurisdiction of Commercial Courts related to the above dispute is barred and same is exclusively within the domain of Debt Recovery Tribunal. As the present suit filed for recovery of Rs. 1,38,10,160/- i.e. for (Rs. One Crore Thirty Eight Lakhs Ten Thousand One Hundred & Sixty Only), therefore, this Court has no jurisdiction to try and adjudicate the same.

24. With regard to the afore judgment Vodafone Idea Cellular Ltd. Vs. Ajay Kumar Agarwal (supra) relied upon by Ld. Counsel for the plaintiff, more specifically para 20, the same in my respectful view is not applicable to the peculiar facts and circumstances of the present case, as the party can elect when he has two or more remedies available for the CS(COMM) 648/2021 (CNR No. DLNDO10091902021) Page No. 26 of 27 same relief, then the party has choice for either of the remedies, however, in the present case, the jurisdiction of the Civil Court is expressly barred, therefore, there is no question of electing the remedy before this court, as the jurisdiction of this court is expressly barred and only the Debt Recovery Tribunal has the jurisdiction to try and adjudicate the lis in question.

25. In view of the above discussion, no relief, as prayed in the suit can be granted, as the plaint filed by the plaintiff is hit by provisions of Order 7 Rule 11(d) CPC. As a consequence, the present plaint is rejected u/O 7 Rule 11(d) CPC.

Resultantly, the application u/O 7 Rule 11 CPC filed on behalf of defendant nos. 1 & 2 is allowed and the plaint is rejected u/O 7 Rule 11(d) CPC. The suit stands disposed off accordingly. Parties to bear their own cost(s).

Decree be made.

File be consigned to record room.

Announced in the open court today on 19.07.2023.

(Sanjeev Aggarwal) District Judge (Commercial)-02 Patiala House Courts, New Delhi CS(COMM)  
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