IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated this the 24th day of July, 2026

TA No.1004/2016 (OA No.276/2015)

Between

The Federal Bank Ltd.,
Padmanabham,
Kazhakuttam Branch,
Thiruvananthapuram – 695 582. …Applicant

And

1. M/s.A & T Associates,
Partnership firm,
Represented by Arun S.S.,
Managing Partner,
T.C.48/253, Ambalathara,
Poonthura P.O.,
Thiruvananthapuram.
(BPCL retail outlet,
16th mile, Thonnakkal).

2. Jyothi Thomas,
W/o.Retired Major late P.G.Thomas Panicker,
K.V – 38, Kalavihar Lane,
Kunnukuzhy P.O.,
Vanchiyoor Village,
Thiruvananthapuram Taluk,
Thiruvananthapuram – 695 037.

3. Arun S.S.,
S/o.late N.Sethunath,
T.C. 48/253, Kayikkara House,
Ambalathara, Poonthura Post,
Muttathara Village,
Thiruvananthapuram Taluk,
Thiruvananthapuram – 695 026.

4. Subhadra A.,
W/o.late N.Sethunath,
T.C. 48/253, Kayikkara House,
Ambalathara, Poonthura Post,
Muttathara Village,
Thiruvananthapuram Taluk,
Thiruvananthapuram – 695 026. ...Defendants

This Original Application having been heard on 12.06.2026 in the presence of Advocate Ms.Arya Satheesh, representing counsel for Advocate Sri.Sunil Shankar for the applicant bank and Advocate Sri.Antony Tharian, representing counsel for Advocate Sri.M.P.Ramnath for defendants 3 and 4 and stood over to this day for consideration, the Tribunal delivered the following:

F I N A L O R D E R

This Original Application has been filed under S.19(1) of the Recovery of Debts and Bankruptcy Act, 1993 for recovery of a sum of Rs.85,37,206/- due under bank guarantee account together with future interest @20.95% per annum with monthly rests on the sum of Rs.83,07,299/- from the defendants and by sale of the schedule property.

Facts of the case:

2. The applicant is a banking company constituted under the Companies Act, 1956 having its registered office at Aluva and

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a branch among other places at Kazhakuttam in Thiruvananthapuram District.

3.1 The 1st defendant is a partnership firm carrying on the business of supplying labour to the outlet premises owned by Bharat Petroleum Corporation Ltd. (for short 'BPCL') and Retd. Major late P.G.Thomas Panicker, husband of the 2nd defendant, was the partner of the firm and the 3rd defendant is the managing partner. On behalf of the 1st defendant firm, husband of the 2nd defendant late P.G.Thomas Panicker applied for enhancement of the advance by way of bank guarantee in continuation of the initial sanction of Rs.25 lakhs in favour of BPCL and the applicant bank sanctioned a bank guarantee limit of Rs.62 lakhs as per sanction order dated 09.06.2012. Late P.G.Thomas Panicker as well as defendants 3 and 4 are co-obligants/guarantors to the loan transaction. In order to secure the facility, defendants 1, 3 and 4 along with late P.G.Thomas Panicker executed a counter guarantee dated 11.06.2012, demand promissory note for Rs.62 lakhs and security delivery letter in favour of the bank.

3.2 As primary security for the bank guarantee of Rs.62 lakhs, the 3rd defendant had given lien over fixed deposit to the tune of Rs.12.40 lakhs and towards collateral security, the 4th

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defendant created equitable mortgage over the schedule property and executed letter dated 12.06.2012 confirming the deposit of title deeds with the applicant bank. The applicant bank accepted the securities and issued bank guarantee for Rs.62 lakhs in favour of BPCL on 11.06.2012 undertaking to pay the amount under the guarantee merely on demand notwithstanding any dispute raised in any suit before any court or Tribunal or Arbitrator.

3.3 P.G.Thomas Panicker passed away on 27.10.2012. BPCL requested the applicant to invoke the bank guarantee – BG No.5/2012-33582 dated 11.06.2012 as per letter dated 14.11.2012. The applicant bank honoured the bank guarantee and issued a demand draft No.223805 dated 17.11.2012 for Rs.62 lakhs to BPCL on 17.11.2012. Thereafter, the applicant appropriated the fixed deposit amount of Rs.13,43,417/- in the loan account and issued a notice to the defendants on 21.11.2012 demanding repayment of the balance amount of Rs.48,56,583/- but they did not repay the dues. The defendants 3 and 4 filed a suit for injunction restraining the applicant bank from honouring the bank guarantee bearing OS No.907/2012 before the Sub Court, Ernakulam which was dismissed 18.06.2014. Against the said order, they filed RFA No.558/2014 before the Hon'ble High Court of Kerala which is pending. As the defendants did not take any steps to repay the dues, the applicant was constrained to file the OA claiming the following reliefs:

(i) To recover a sum of Rs.85,37,206/- together with *pendente lite* and post-decree interest on the sum of Rs.83,07,299/- from the defendants and by sale of the schedule property;

(ii) To recover the costs, charges and expenses from the defendants;

(iii) To issue Recovery Certificate to the Recovery Officer with a direction to recover the amount and pay it to the applicant bank.

4. All the defendants were duly served with summons. The 1st defendant neither appeared nor was it represented and hence the 1st defendant was set exparte on 10.10.2018. The 2nd defendant entered appearance in this case but she did not file written statement despite time granted and remained absent from the proceeding from 20.09.2016.

Written statement

5. The 3rd defendant for himself and as power of attorney holder of the 4th defendant has filed written statement denying the entire averments in the OA. It is contended *inter alia* that the 1st defendant firm had only two partners i.e., the 3rd

defendant and retired major late P.G.Thomas Panicker, who expired on 27.10.2012 and after his death, the firm automatically dissolved and *non-est.* The bank guarantee dated 11.06.2012 is issued on request of late P.G.Thomas Panicker in connection with his fuel agreement dated 01.02.2009 with BPCL. The 1st defendant firm as well as defendants 3 and 4 were only sureties for the bank guarantee and these defendants had offered their immovable property of an extent of 20 cents in Muttathara Village, Thiruvananthapuram and fixed deposits totalling to Rs.12,87,953/- with the applicant bank as collateral security for enabling late P.G.Thomas Panicker to furnish a bank guarantee to the tune of Rs.62 lakhs in favour of BPCL. After the death of late P.G.Thomas Panicker, bank guarantee dated 11.06.2012 stood *ipso facto* terminated and hence the question of invocation does not arise. On 27.10.2012, they submitted a request to the applicant bank for releasing the security i.e., landed property and fixed deposits but the bank informed that it received an objection in this regard from BPCL. Without considering their request, the applicant bank invoked the bank guarantee on 17.11.2012 and released payment upon the request of BPCL, which is illegal. Hence the applicant is not entitled to recover any amount from these defendants and there is absolutely no basis for the alleged claim.

<u>Proof Affidavit</u>:

6. To establish the claim on behalf of the applicant bank, one Mrs.Manju K.S., Senior Manager has filed proof affidavit and produced the loan documents marked as Exhibits A1 to A19. The availing of credit facility by way of bank guarantee and creation of mortgage over the schedule property are well established from the documents placed by the applicant bank.

7. The defendants 3 and 4 filed counter proof affidavit claiming that the bank guarantee was availed by late P.G.Thomas Panicker only in respect of any loss or damage arising out of fuel operatorship agreement dated 01.02.2009 executed between BPCL and late P.G.Thomas Panicker. Annexure-A6 counter guarantee was got executed trickly by the then Manager of the applicant bank at the time of process of the bank guarantee dated 11.06.2012. Annexure-A4 bank guarantee is illegally invoked and payments made in respect of matters not covered by the agreement dated 01.02.2009. The applicant bank has released payment to the tune of Rs.62 lakhs to BPCL upon illegal invocation of bank guarantee and it does not bind these defendants and also the security offered by them. Hence these

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defendants are not liable to pay any amount as claimed in this case and the OA may be dismissed with costs.

8. Heard arguments advanced by the learned counsel for the applicant bank and defendants 3 and 4.

9. The sole issue arises for consideration is whether the applicant bank is entitled to get the relief as claimed in this case?

10. On a conspectus of the pleadings and evidence available on record, it appears that the dispute centres around the invocation of bank guarantee i.e., BG No.5/2012 – 33582 dated 11.06.2012 for Rs.62 lakhs. There is no dispute that applicant bank sanctioned the credit facility by way of BG-financial of Rs.62 lakhs to the 1st defendant partnership firm vide Ext.A2 sanction order dated 09.06.2012 for the purpose of security deposit for BPCL and late P.G.Thomas Panicker as well as defendants 3 and 4 are co-obligants/guarantors to the facility. It is also admitted by defendants 3 and 4 that they had offered the subject matter property of an extent of 20 cents and fixed deposits totaling to Rs.12,87,953/- with the bank as collateral security to furnish the bank guarantee for Rs.62 lakhs to BPCL.

11. The records would show that pursuant to the application dated 11.06.2012 submitted by defendants 1, 3 and 4 and late P.G.Thomas Panicker, bank guarantee for Rs.62 lakhs

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was issued by the applicant bank in favour of BPCL on 11.06.2012 which is valid upto 31.05.2013, wherein the applicant bank undertook to pay to the BPCL an amount not exceeding Rs.62 lakhs against any loss or damage caused or suffered by the BPCL by reason of breach of any terms and conditions contained in the agreement dated 01.02.2009. As security for the bank guarantee facility, defendants 1, 3 and 4 and late P.G.Thomas Panicker had executed demand promissory note for Rs.62 lakhs and security delivery letter in favour of the applicant on 11.06.2012. Admittedly, the bank guarantee was further secured by fixed deposits of Rs.12,78,458/- and the 4th defendant had deposited partition deed No.1024/1985 dated 16.03.1985 marked as Ext.A6 with the applicant bank towards collateral security and executed Ext.A7 letter dated 12.06.2012 confirming the deposit of title deeds with the applicant bank on 11.06.2012 with the intention to create mortgage.

12. In addition to the above, defendants 1, 3 and 4 along with late P.G.Thomas Panicker had executed counter guarantee dated 11.06.2012 marked as Ext.A3 wherein it is averred that the applicant bank (surety) having at their request and for their sole benefit and on behalf of Shri.Major P.G.Thomas Panicker furnished a guarantee dated 11.06.2012 favouring BPCL

(beneficiary) for the purpose of providing security deposit for getting appointment as OSTTS service provider at the retail outlet of BPCL at Thonnackal, Thiruvananthapuram. In Ext.A3 counter guarantee, it is stated as follows:

> *……… The surety shall be entitled, at its discretion and without any reference to me/us and without obtaining my/our consent to make payment of all or any part of the sum or sums guaranteed by you under or by virtue of the said guarantee on a request or demand by the beneficiary or otherwise and any such payment shall be conclusive and binding on me/us and upon such payment made by the surety, the moneys payable under this counter guarantee shall forthwith become due and payable and I/We shall, on a demand by the surety pay to the surety all sums that may be paid by the surety (whether towards principal or interest) to the beneficiary under the said guarantee or any continuation, extension, renewal or enhancement thereof.*
>
> *I/We agree to pay interest @21.40% per annum with monthly rests or at such other rates that the surety may decide from time to time on such amounts from the date of respective payment by the surety to the beneficiary or from such other date that the surety may direct. I/We have separately furnished/offered the securities detailed in the Schedule below and the Surety shall be entitled to recover the amounts due under this counter guarantee from these securities or any other securities furnished/offered by me/us and from all or any of my/our assets and/or properties…..*

13. Apparently, BPCL (beneficiary) issued a letter dated 14.11.2012 to the applicant bank marked as Ext.A8 requesting the bank to invoke the bank guarantee – BG No.5/2012 – 33582 dated 11.06.2012 for Rs.62 lakhs with immediate effect. According to the applicant bank, pursuant to the aforesaid letter, they made payment of the guaranteed amount of Rs.62 lakhs to BPCL on 17.11.2012 by way of demand draft No.223805 dated

17.11.2012 in terms of the BG No.5/2012 – 33582 dated 11.06.2012. Thereafter, the applicant has appropriated the fixed deposits charged to the bank guarantee liability amounting to Rs.13,43,417/- towards the dues and issued a letter to the defendants on 21.11.2012 requesting them to pay the balance amount of Rs.48,56,583/- due as on that date but they did not make the payment.

14. Meanwhile, defendants 3 and 4 approached the Hon'ble High Court of Kerala by filing W.P.(C) No.25643/2012 for restraining the applicant bank from honouring the bank guarantee and to release the security furnished by them. The Hon'ble High Court dismissed the writ petition vide Ext.A11 judgment dated 14.11.2012 leaving open their remedy to approach the civil court. Thereafter, defendants 3 and 4 filed OS No.907/2012 before the Sub Court, Ernakulam which was also dismissed vide Ext.A14 judgment dated 18.06.2014 by holding that there is substantial compliance regarding the demand for invocation of the bank guarantee and hence release of amount by the applicant bank cannot be held illegal. Aggrieved by the same, defendants 3 and 4 filed RFA No.558/2014 before the Hon'ble High Court of Kerala which is pending. It is submitted by the learned counsel for the applicant that the Hon'ble High Court has not granted any stay of

the recovery proceeding initiated by them under the provision of the Recovery of Debts and Bankruptcy Act, 1993.

15. While adjudicating an application under S.19(1) of the Recovery of Debts and Bankruptcy Act, 1993, the Tribunal cannot delve at depth the legality or otherwise of the action taken by the applicant in invoking the bank guarantee. Besides, defendants 3 and 4 failed to prove that invocation of the bank guarantee is illegal. The defendants 3 and 4 raised the similar issue before the Sub Court, Ernakulam and their claim was not accepted. Consequently, the civil suit was dismissed vide judgment dated 18.06.2014. The said judgment is not yet set aside or stayed by any forum. Claiming contrary to the finding of the civil court by defendants 3 and 4 is not legally sustainable, particularly in this Tribunal.

16. In the application for bank guarantee submitted by the defendants, it is agreed that any demand made by the beneficiary is sufficient authority for paying the amount guaranteed by the bank without enquiring whether any amount is in fact due. Further, in Ext.A3 counter guarantee dated 11.06.2022, they have agreed that the bank shall be entitled to make payment without obtaining their consent. In view of the execution of the security documents by defendants 1, 3 and 4

along with husband of the 2nd defendant late P.G.Thomas Panicker, the defendants are bound to repay the amount due under the bank guarantee account. The evidence available on record would show that an amount of Rs.85,37,206/- is outstanding in the account which is clearly established from the account statement marked as Ext.A18. In the above backdrop, the applicant is entitled to recover the said amount from the defendants. The issue is answered in favour of the applicant bank.

17. Considering the amount advanced, interest and penal interest applied, default committed and substantial amount was already appropriated in the account by closing the fixed deposits, I am of the view that the applicant bank is entitled to get *pendente lite* and post decree interest @12% per annum on the sum of Rs.83,07,299/- (i.e., after excluding the penal interest of Rs.2,29,907/- from the OA claim amount of Rs.85,37,206/-), which is reasonable in the facts and circumstances.

18. The applicant bank, therefore, is entitled to get a final order on the following lines:

In the result, the applicant bank is given a final order allowing it to recover:

(i) the sum of Rs.85,37,206/- (Rupees eighty five lakhs thirty seven thousand two hundred and six only) due

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under the bank guarantee account from defendants 1, 3 and 4 and by sale of the schedule property and also from the assets inherited by the 2nd defendant from late P.G.Thomas Panicker;

(ii) *pendente lite* and post-decree interest @12% per annum on the sum of Rs.83,07,299/- (Rupees eighty three lakhs seven thousand two hundred and ninety nine only) from 09.06.2015 till realization from defendants 1, 3 and 4 and by sale of the schedule property and also from the assets inherited by the 2nd defendant from late P.G.Thomas Panicker; and

(iii) costs and expenses borne by it for realization of the amount from the defendants.

19. The schedule to the OA shall be appended to this final order.

20. The applicant bank shall file memo of costs within ten days from the date of this final order.

21. Recovery Certificate shall be drawn up and issued to the Recovery Officer in terms of the final order.

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22. Communicate copy of this order to both parties as provided in R.16 r/w R.2(c) of the Debts Recovery Tribunal (Procedure) Rules, 1993.

(Dictated to my PA, corrected and pronounced by me in the open Tribunal on this the 24th day of July, 2026)

[SOVAN KUMAR DASH]
PRESIDING OFFICER

A P P E N D I X

Witness for Applicant:

AW1: Smt.Manju K.S., Senior Manager of the applicant bank.

Witness for Defendant(s): Nil

Applicant's Exhibits

Ext.No	Date	Particulars of documents
A1	...	Partnership letter of the 1st defendant firm.
A2	09.06.2012	Sanction order issued by the applicant bank sanctioning BG-financial of Rs.62 lakhs to the 1st defendant firm.
A3	11.06.2012	Counter guarantee executed by defendants 1, 3 and 4 along with late P.G.Thomas Panicker.
A4	11.06.2012	Demand promissory note for Rs.62 lakhs executed by defendants 1, 3 and 4 along with late P.G.Thomas Panicker.
A5	11.06.2012	Security delivery letter executed by defendants 1, 3 and 4 along with late P.G.Thomas Panicker.
A6	16.03.1985	Partition deed No.1024/1985 of Thiruvananthapuram SRO.
A7	12.06.2012	Letter executed by the 4th defendant confirming the deposit of title deed with the applicant bank.
A8	14.11.2012	Letter issued to the applicant bank by BPCL for invocation of the bank guarantee.
A9	21.11.2012	Copy of notice issued to the defendants by the applicant bank.
A10	07.12.2012	Reply to Ext.A9 notice sent by the 2nd defendant.
A11	14.11.2012	Copy of judgment in W.P.(C) No.25643/2012 of the Hon'ble High Court of Kerala.
A12	15.11.2012	Copy of plaint in OS No.907/2012 filed before the Sub Court, Ernakulam.
A13	01.03.2013	Copy of judgment in FAO Nos.75, 77 & 78/2013 of the Hon'ble High Court of Kerala.

A14	18.06.2014	Certified copy of judgment in OS No.907/2012 of the Sub Court, Ernakulam.
A15	08.08.2014	Copy of RFA No.558/2014 filed by defendants 3 and 4 before the Hon'ble High Court of Kerala.
A16	30.04.2013	Copy of notice under S.13(2) of the SARFAESI Act issued to the defendants by the applicant bank.
A17	25.05.2013	Reply to Ext.A16 notice sent by the 2nd defendant.
A18	…	Certified copy of the statement of account relating to the bank guarantee facility.
A19	…	Certificate showing the rate of interest applied in Ext.A18 account from time to time.

Defendants' Exhibits – Nil

PRESIDING OFFICER

SCHEDULE OF PROPERTY

District	: Thiruvananthapuram		
Sub District	: Thiruvananthapuram		
Taluk	: Thiruvananthapuram		
Village	: Muttathara		
Sy. No.	: 1391	-	1392
Extent	: 5.46 ares (13.500 cents)	-	2.63 ares (6.500 cents)

Description of property

All that part and parcel of land having an extent of 8.09 ares equivalent to 20 cents consisting of 5.46 ares equivalent to 13.500 cents in Sy. No. 1391 and 2.63 ares equivalent of 6.500 cents in Sy. No. 1392 of Muttathara Village, Thiruvananthapuram Taluk and all improvements and rights thereon covered by Partition deed No.1024/1985 of Thiruvananthapuram S.R.O.

Boundaries

South : Road

North : Property of Brijitha

West : Property of Saraswathy

East : Property of Saraswathy

PRESIDING OFFICER

IN THE DEBTS RECOVERY
TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated the 24th July, 2026

TA No.1004/2016 (OA NO.276/2015)

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F I N A L   O R D E R