IN THE DEBTS RECOVERY TRIBUNAL-I, CHANDIGARH

BEFORE: A S NARANG, PRESIDING OFFICER

OA No: 4593 of 2017
Date of Institution: 13.08.2010
Date of Decision: 01.08.2026

SBI (erstwhile State Bank of Patiala), Abohar Branch, District Ferozepur – 152116 and Stressed Assets Management Branch at SCO Nos.99-107, Sector 8-C, Madhya Marg, Chandigarh.

……..Applicant

Vs.

1. M/s Pure Foods Ltd., a public limited company incorporated under the Companies Act, 1956, having its registered office at 8th K.M. Mile Stone, Malout Road, (Post Box No.26) Abohar, District Ferozepur, Punjab through its Managing Director.
2. Sh. Ram Dayal Garg S/o Sh. Manohar Lal BV-1944, Basant Avenue, Street No.2, Hanumangarh Road, Abohar, District Ferozepur, Punjab.
3. Sh. Om Parkash Jindal S/o Sh. Kaur Chand, (since deceased), R/o Near Star Resorts, Bye Pass Road, Rampura Phul, District Bathinda, Punjab, through his Legal Heirs: -

   3.1 Rajinder Jindal s/o Late Sh. Om Parkash Jindal, R/o Near Star Resorts, Bye Pass Road, Rampura Phul, District Bathinda, Punjab.
4. Sh. Rajinder Jindal S/o Sh. Om Parkash Jindal, R/o Near Star Resorts, Bye Pass Road, Rampura Phul, District Bathinda, Punjab.
5. Sh. Ashok Kumar Verma S/o Sh. Sat Parkash Verma, Satya Kunj, Street No.5, First Chowk, Gobind Nagri Abohar, District Ferozepur, Punjab.
6. Sh. Vinod Kumar Goyal S/o Sh. Amar Nath, R/o House No.113, Ward No.15, Near Baba Khetu Ram Park, Gidarbaha, District Mukatsar, Punjab.
7. M/s Omji Macs Trade Private Limited a private limited company incorporated under the Companies Act, 1956 and having its Registered Office at Flat No.45, Bhagirathi Apartments, Plot No.20, Sector 9, Rohini, New Delhi, through its Managing Director.

……….Defendants

Argued by:

Mr. Rakesh Gupta and Mr.Yogesh Kumar, Counsel for the Applicant Bank.
Mr. C.S. Pasricha and Mr.Kamal Sharma, Counsel for defendant No.4/Rajinder Jindal.
None for other defendants.

OA for the Recovery of Rs.72,38,97,984/- with interest from 12.08.2010

JUDGMENT

SBI (earlier State Bank of Patiala) has filed this application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) for the recovery of Rs.72,38,97,984/- with interest as on 12.08.2010 against M/s Pure Foods Limited and others (defendants).

2. Earlier, in the year 2010, State Bank of Patiala had filed OA No.323 of 2010 before the Debts Recovery Tribunal-II, Chandigarh. Thereafter, there was change in the territorial jurisdiction of the Debt Recovery Tribunals at Chandigarh and this OA was transferred to Debts Recovery Tribunal-1, Chandigarh. Subsequently, there was merger of State Bank of Patiala with SBI and the name of the applicant was substituted as SBI.

3. During the pendency of the Original Application, defendant No. 3 (Sh. Om Parkash Jindal) died. On 11.01.2023, counsel for defendant No. 4 (Sh. Rajinder Jindal) made a statement that he is the legal heir of defendant No. 3. Later, an IA was also filed to bring on record other legal heirs. The other legal heirs of defendant No. 3 (Sh. Om Parkash Jindal) had also filed IA No. 193 of 2024 for deleting the names of legal heirs other than defendant No. 4 (Sh. Rajinder Jindal) on the ground that they had not inherited any property from defendant No. 3 (Sh. Om Parkash Jindal) and that defendant No. 3 (Sh. Om Parkash Jindal) had executed a 'will' dated 21.06.2018. After hearing the parties, the names of the other legal heirs were deleted and only Sh. Rajinder Jindal was impleaded as LR of defendant No. 3.

4. The case of SBI, as set up in the OA. is that initially defendant No. I was incorporated as a public limited company on 02.04.1993 and was named M/s Pure Food Agro Industries Private Limited. On 27.01.1994, the name of the company was changed to M/s Pure Foods Limited. The case of the bank is that whereas defendant No. 1 is the principal borrower, defendant Nos. 2 and 4 are the directors, guarantors, and mortgagors of defendant No. 1; defendant No. 3 (since deceased) and defendant Nos. 5 and 6 are also directors and guarantors of defendant No. 1; and defendant No. 7 is a private limited company which is also the corporate guarantor/mortgagor. SBI has alleged that in the year 1995 it had sanctioned a C.C. facility which, vide sanction letter dated 12.10.2006, was renewed for Rs. 15.00 crore. Defendant No. 1 had executed the following documents in favor of the bank: -

(i) Resolution dated 12.10.2006 of Defendant No.1 authorizing the Managing Director and other directors to sign the security documents as Ex.A-71
(ii) Agreement dated 12.10.2006 for overall limit, as Ex.A8.
(iii) Agreement dated 10.10.2006 of hypothecation of goods and assets for overall limit, as Ex.A9.
(iv) Agreement dated 12.10.2006 of Pledge of Goods and Assets, as Ex.A10.
(v) Agreement dated 12.10.2006 of hypothecation and Guarantee, as Ex.A11.
(vi) Agreement dated 12.10.2006 of hypothecation of Stocks/Existing machinery as collateral security, as Ex.A12.
(vii) Letter dated 12.10.2006 regarding grant of individual limit within the overall limit, as Ex.A-13.
(viii) Counter indemnity dated 12.10.2006 thereby undertaking to keep the bank indemnify from any loss/claim which may arise on account of invocation/payment of bank guarantee(s) or payment of bills received by the bank, as Ex.A-14.
(ix) Consent clause by Borrower/Guarantor, as Ex.A-15.

For the said facilities, initially defendant Nos. 2 to 4 were the guarantors along with Bharat Bhushan and Santosh Rani, who had also executed the guarantee agreement dated 12.10.2006.

5. On 20.03.2007, the credit facilities were renewed and sanctioned for Rs. 24.92 crore, which included Term Loan-1 and Term Loan-II. Defendants had executed the following documents in favor of the bank: -

(i) Resolution dated 07.09.2007 of Defendant No.1 authorizing the Managing Director and other directors to sign the security documents as Ex.A-72.

(ii) Agreement dated 20.3.2007 related to overall limits of Rs.24.92 Crore (including Term Loan-I and Term Loan-II as Ex.A-17.

(iii) Agreement of hypothecation of goods and assets dated 20.03.2007 as Ex.A-18.

(iv) Agreement of Pledge of goods and assets dated 20.03.2007 as Ex.A-19.

(v) Letter dated 20.03.2007 regarding grant of individual limit within the overall limit as Ex.A-20.

(vi) Counter indemnity dated 20.03.2007 thereby undertaking to keep the bank indemnified from any loss/claim which may arise on account of invocation/payment of bank guarantee(s) as Ex.A-21.

For the above said facilities, defendant Nos. 2 to 4 stood as guarantors along with Bharat Bhushan and Santosh Rani, who executed the guarantee agreement dated 20.03.2007 for Rs. 24.92 crores (Ex. A-22).

6. In the year 2008, these credit facilities were further enhanced to Rs. 66.92 crore, which included a C.C. limit of Rs. 35.00 crores (inclusive of Rs. 5.00 crores against hypothecation of book debts and a sub-limit of Rs. 0.50 crore). The interest agreed between the parties was 1% below the bank prime lending rate, i.e., @12.75% per annum with monthly rests, subject to change from time to time. In case of default, the bank was entitled to charge penal interest. Defendants were also granted Term Loan-1 of Rs. 1.34 crore for a physical refinery of rice bran and Term Loan-II of Rs. 0.58 crore for grading, storing, and waxing a unit. The interest rate in respect of the term loans was 0.5% below the bank prime lending rate, i.e. @12% per annum with monthly rests. Both Term Loan-I and Term Loan-II were repayable in twenty-six quarterly installments of Rs. 7.30 lacs each with interest. Defendants had executed the following documents:-

(i) Resolution dated 27.12.2008 of Defendant No.1 authorizing the Managing Director and other directors to sign the security documents as Ex.A-74.

(ii) Agreement dated 27.12.2008 related to overall limits of Rs.66.92 Crore (including Term Loan-I and Term Loan-II as Ex.A-24.

(iii) Agreement of hypothecation of goods and assets dated 27.12.2008 as Ex.A-25.

(iv) Agreement dated 27.12.2008 for hypothecation of stocks as Ex.A-26.

(v) Agreement of Pledge/hypothecation of goods and assets dated 27.12.2008 as Ex.A-27.

(vi) Letter dated 27.12.2008 regarding grant of individual limit within the overall limit as Ex.A-28.

For the increased facilities of Rs.66.92 Crore, Defendants No.2 to 4 were the guarantors along with one Bharat Bhushan and Smt. Santosh Rani who had executed the guarantee agreement on 27.12.2008, which is on record as Ex.A-29.

7. The aforesaid facilities were further renewed and the following documents were executed by the defendants on 29.05.2009 in favour of the bank:-

(i) Resolution dated 29.05.2009 of Defendant No.1 authorizing the Managing Director and other directors to sign the security documents as Ex.A-75.

(ii) Agreement dated 29.05.2009 relating to overall limit of Rs.66.92 Crore (including CC, TL-I & TL-II) as Ex.A-30.

(iii) Agreement dated 29.05.2009 for hypothecation of goods and assets as Ex.A-31.

(iv) Agreement dated 29.05.2009 for hypothecation of stocks as Ex.A-32.

(v) Agreement dated 29.05.2009 for pledge/hypothecation of goods and assets as Ex.A-33.

(vi) Letter dated 29.05.2009 regarding grant of individual limit within the overall limit as Ex.A-34.

(vii) Free access letter dated 29.05.2009 as Ex.A-35.

8. When the renewed facilities were sanctioned on 29.05.2009, a fresh set of guarantors came in. The facilities were secured through personal guarantees of defendant Nos. 2 to 6 and the corporate guarantee of defendant No. 7, which executed the guarantee agreement dated 29.05.2009 (Ex. A-36). Defendant No. 1 offered the following properties as collateral security by depositing the title deeds;-

(1) Land and building measuring 25 Acres 4 Kanals, 01 Marla comprised in Kheewat No.363, Khatanui No. Khatauni No.955 situated in Village Raipura, Tehsil Aboharas per jamabandi for the year 2006-07 mortgaged by Defendant No.1 through its authorized representatives.

(2) Agriculture Land measuring 24 Kanals, 08 Marlas, in Khewat No.163, Khatauni No.335, 336, 337, 338 together with construction thereon; and agriculture land measuring 23 Kanals, 12 Marlas (472/5429 share of total land measuring 271 Kanal 10 Marlas in Khewat No.164, Khatauni No.339min situated in village Gobindgarh, Tehsil Abohar as per jamabandi for the year 2006-07 mortgaged by Defendant No.1.

(3) Total land measuring 24 Acres, 5 Kanals and 10 Marlas together with construction thereon, which is detailed below:

(a) Land measuring 49 Kanal, 14 Marlas comprised in Killa No.128M/19(8-0), 206-0), 21(5-4), 22(8-0), 23(8-0), 151M/3(8-0), 4Min(6-10) situated at Village Bulluana, Tehsil Abohar mortgaged by Defendant No.1 through its authorized representative.

(b) Land measuring 46 Kanal, 16 Marla comprised in Killa No.128M/1(8-8), 2(8-0), 9(8-0), 10(7-12), 11(6-16), 12(8-0) situated in village Bulluana, Tehsil abohar mortgaged by Defendant No.1 through its authorized representative.

(c) ½ share of total Land measuring 47 kanal 12 marla i.e. 23 Kanal, 16 Marla as pr jamabandi for the year 1995-96 situated in village Bulluana, Tehsil Abohar :

- 15 Kanal 18 Marla, Khasra No.125, Killa No. 20(8-0), 21/1(6-16), Khasra No.126, Killa No.25(1-2), Khewat No.124, Khatauni No.231 mortgaged by Defendant No.1 through its authorized representative.
- 15 Kanal, 17 marla, khasra No.125, Killa No.1(8-0), 10/1)3-8), khasra No.126, killa No.5(2-5), 6(2-4), khewat No.124 Khatauni No.232 mortgaged by Defendant No.1 through its authorized representative.
- 15 kanal, 18 marla, khasra No.125, Killa No. 10/2(4-12), 11(8-0), Khasra No.126, Killa No.15(1-16), 16(1-10), khewat

No.124, Khatuani No.233 mortgaged by Defendant No.1 through its authorized representative.

(d) ½ share of total Land measuring 37 kanals 13 marlas i.e. 23 kanal, 17 marla as per jamabandi for the year 1995-96 situated at Village Balluana, Tehsil Abohar:

- 15 Kanal, 18 marlas comprised in khasra No.125, Killa No.20(8-0), 21/1(6-16), khasra No.126, killa No.25(1-2), khewat No.124, khatauni No.231 mortgaged by Defendant No.1 through its authorized representative.
- 15 Kanal 17 marla, khasra No.125, killa No.1(8-0), 10/1(3-8), khasra No.126, Killa No.5(2-5), 6(2-4), khewat No.124, khatauni No.232 mortgaged by Defendant No.1 through its authorized representative.
- Khasra No.125 killa No.10/2(4-12), 11(8-0), khasra No.126, Killa No.15(1-16), 16(1-10), khewat No.124, Khatauni No.233 mortgaged by Defendant No.1 through its authorized representative.

e) Land measuring 40 Kanal, Killa No.125M/2(8-0), 9(8-0), 12(8-0), 19(8-0), 22(8-0) situated at village Balluana, Tehsil Abohar mortgaged by Defendant No.1 through its authorized representative.

f) Land measuring 09 kanal, 18 marla, khasra No.128, Killa No.21/2(4-2), 22/2(5-16), khewat No.123, khatuani No.228 situated at village Balluana, Tehsil Abohar as per jamabandi for the year 1995-96 mortgaged by Defendant No.1 through its authorized representative.

g) Land measuring 12 kanal, 13 marlas comprised in Rect. No.103, killa No.22Min (2-9), 23(4-4), 24(6-0), khewat No.39/2, khatauni No.117/2 as per jamabandi for the year 1995-96 situated at village Balluana, Tehsil Abohar mortgaged by Defendant No.1 through its authorized representative.

h) Land measuring 0-14 marla, khasra No.103, Killa No.22Min (0-14), khatauni No.117/2, khewat No.39/2 as per jamabandi for the year 1995-96 situated at village Balluana, Tehsil Abohar mortgaged by Defendant No.1 through its authorized representative.

(4) Total land measuring 12 Acre 4 Kanal and 3 marla as detailed below

a) Land measuring 49 kanal, 08 marla, i.e. 988/2003 share of 100 kanal 3 marla comprised in Rectangle No.125, Killa No.23(8-0), Rect. No.128, Killa No.3(8-0), 8(6-16), Rect. No.151, killa No.1(4-8), 2(8-0), 6(8-0), 7(8-0), 8(8-0), 9(8-0), 10(3-12), 11(2-14), 12(8-0), 19(-16), 22(8-12), Rect. No.152, killa No.2(0-5) as per jamabandi for the year 1995-96 together with construction situated in village Balluana, Tehsil Abohar mortgaged by Defendant No.1 through its authorized representative.

b) Land measuring 50 Kanal, 15 Marla i.e. 1015/2003 share of 100 kanals 03 marlas comprised in Rectangle No.125, Killa No.23(8-0), Rect. No.128, Killa No.3(8-0), 8(6-16), Rect. No.151, killa No.1(4-8), 2(8-0), 6(8-0), 7(8-0), 8(8-0), 9(8-0), 10(3-12), 11(2-14), 12(8-0), 19(-16), 22(8-12), Rect. No.152, killa No.2(0-5) as per jamabandi for the year 1995-96 together with construction situated in village Balluana, Tehsil Abohar mortgaged by Defendant No.1 through its authorized representative.

(5) Factory land and building measuring 32 kanal and 14 marla, as detailed below:

a) Land measuring 13 kanal 10 marla, khara No.147, killa No.16/1(3-4), 16/2(4-0), 17Min E(1-0), 25/1(4-6), khewat No.76, khatoni No.284 as per jamabandi for the year 1991-92 situated at village Gobindgarh, Tehsil Abohar mortgaged by Defendant No.1 through its authorized representative.

b) Land measuring 09 kanal, 12 marla, khasra No.170, killa No.6(7-0), 7/1 Min E(1-2), 5 Min S(1-10), khewat No.77, khatoni No.285, as per jamabandi for the year 1991-92 as per jamabandi for the year 1991-92 situated at village Gobindgarh, Tehsil Abohar mortgaged by Defendant No.1 through its authorized representative.

c) Land measuring 09 kanal, 12 marla, khara No.147, killa No.25/2(2-18), Rect. No.170, Killa No.4 Min E(1-0), 5 Min N(5-14), khewat No.76, khatoni No.284, as per jamabandi for the year 1991-92 situated at village Gobindgarh, Tehsil Abohar mortgaged by Defendant No.1 through its authorized representative.

9. Following properties were mortgaged by Defendants No.2 Shri Ram Dayal Garg and Defendant No. 4 Shri Rajinder Jindal as joint owners:

Total land measuring 24 Acre 2 Kanals as detailed below:

a) Agriculture river land measuring 20 kanal 01 marlas comprised in Rect. No.125, Killa No.17/1/2(4-17), 24/1(7-12), Rect. No.128, Killa No.4/1(7-12), khewat No.145, khatoni No.246 min together with construction thereon as per jamabandi for the year 2000-01 situated in village Balluana, Tehsil Abohar, Distt. Ferozepur.

b) Agriculture rival land measuring 36 kanal 15 marla together with construction(s) thereon situated in village Balluana, Tehsil Abohar details given as under:

- 02 kanal, 09 marlas, 1/6 share of 14 kanal, 13 marla, Rect. No.128, killa No.6(7-7), 7/1(3-6), 15/1(4-0), khewat No.228, khatoni No.389,
- 02 Kanal, ½ share of 04 kanal, 01 marla Rect. No.128, Killa No.7/2(4-1), khewat No.225, Khatoni No.386l
- 03 kanal, 60/240 share of 12 kanal, Rect. No.128, Killa No.15/2(4-0), 16(8-0), khewat No.348, khatoni No.610,
- 20 Kanal, 03 marla, Rect. No.129, killa No.11/2(7-12), 13(8-0), 18/1(4-11), khewat No.345, khatoni No.607,

- 07 kanal, 03 marla, 143/287 share of 14 kanal, 07 marla, Rect. No.129, Killa No.9(7-7), 10/1(7-0), khewat No.346, khatoni No.608,
- 02 kanal 40/1077 share of 53 kanal, 17 marla, khewat No.350 as per jamabandi for the year 2000-01.

c) Agriculture River land measuring 16 kanal, 15 marlas comprised in Rect. No.129, Killa No.21(8-0), 10/2(0-7), 11/1(0-8), 20(8-0), khewat No.233, 346, 345, khatoni No.374, 607, 608 together with construction(s) thereon as per jamabandi for the year 2000-01 situated at village Balluana, Tehsil Abohar.

d) Agriculture river land measuring 0-18 marlas Rect. No.124, Killa No.24/2(0-6), khewat NO.664, khatoni No.1080, Rect. No.129, Killa No.4/2(0-6), 7/1(0-6), khewat No.172, khatoni No.296 as per jamabandi for the year 2000-01 together with construction thereon situated at village Balluana, Tehsil Abohar, Distt. Ferozepur.

e) Agricultural River land measuring 42 kanal, 02 marla together with construction thereon as per jamabandi for the year 2000-01 situated at village Balluana, Tehsil Abohar details given below:

- 0 kanal, 06 marla, 6/293 share of land 14 kanal, 13 marla comprised Rect. No.128, Killa No.6(7-7), 7/1(3-6), 15/1(4-0), khewat No.228, khatoni No.389
- 01 kanal, 07 marla, 27/240 share of toal land 12 kanal comprised in Rect. No.128, killa No.15/2(4-0), khewat No.348, khatoni No.610,
- 07 kanal, 140/287 share of 14 kanal, 07 marla comprised in Rect. No.129, killa No.9(7-7), 10/1(7-0), khewat No.346, khatoni No.608,
- 16 kanal comprised in Rect. No.129, killa No.12(8-0), 13(8-0), khewat No.344, khatoni No.606.
- 09 kanal, 09 marla, 189/1077 share of 53 kanal, 17 marla, khewat No.350, khatoni No.612,
- 08 kanal, 1/12 share of 96 kanal, khewat No.223, khatoni No.374,

f) Agriculture river land measuring 78 kanal, 02 marla together with construction thereon as per jamabandi for the year 2000-01 situated in village Balluana, Tehsil Abohar as detailed below:

- 01 kanal, 07 marla, 1/3 share of 04 kanal, 01 marla, Rect. No.128, Killa No.7/2(4-1), khewat No.225, khatoni No.386,
- 16 kanal comprised Rect. No.128 killa No.24(8-0), 25(8-0), khewat No.223, khatoni No.374,
- 07 kanal, 13 marla, 153/240 share of 12 kanal, khewat No.348, khatoni No.610,
- 11 kanal 17 marla, 237/293 share of 14 kanal, 12 marla, Rect. No.128, killa No.6(7-7), 7/1(3-6), 15/1(4-0), khewat No.228, khatoni No.389,
- 09 kanal, 05 marla, Rect. No.124, Killa No.14/4/1(5-3), 17/1/2/1(4-2), khewat No.529, khatoni No.886,
- 16 kanal, rect. No.128, killa No.13(8-0), 14(8-0), khewat No.150, khatoni No.251,
- 16 kanal, Rect. No.128, killa No.17(8-0), khewat No.206, khatoni No.353.

10. The following properties were equitably mortgaged by Defendant No.4 Sh. Rajinder Jindal by deposit of original title deeds:

a) Commercial cum Residential Plot along with construction thereon measuring 01 kanal, 12-1/2 marlas, 65/1160 share of total land comprised in khasra No.660(29-0), khewat No.1921, khatoni No.2640 situated in Indira Nagari, Tehsil Abohar as per jamabandi for the year 2000-01.

b) Commercial cum Residential plot measuring 01 kanal, 7-1/2 marla, 55/1160 share of total land comprised in khasra No.660(29-0), khewat No.1921, khatoni No.2640 situated in Indira Nagari, Tehsil Abohar as per jamabandi for the year 2000-01 together with construction thereon.

11. Following property was equitably mortgaged by Defendant No.7 M/s. Omji Macs Trade Pvt. Ltd., Delhi through its authorized representative, by deposit of original title deeds:

> Commercial Plot No.26520 Sq.feet, situated at College Road, Abohar in the name of M/s. Omji Macs Trade Pvt. Ltd. Delhi out of total area measuring 10145 sq.mt. approx. comprised in Khatoni No.3505, khasra No.1503/2, together with construction therein situated at Kamla Kutir, Suraj Nagari, Abohar.

12. The original title deeds are (Ex. A-37 to A-61) and the letters confirming the equitable mortgage are (Ex. A-62 to A-69). The charges were duly registered with the Registrar of Companies. Further, on 06.10.2009, the bank filed a civil suit against the defendants for permanent injunction restraining them from alienating, transferring, or removing the hypothecated stocks/machinery or substituting any part thereof (Plaint Ex. A-82). As on 12.08.2010, a sum of Rs. 72,38,97,984/-was due.

13. Defendants filed separate written statements.

14. Defendant No. 1 in its written statement alleged that there had been variations in the contract from time to time and as such the company should be discharged. Defendant No. 1 also alleged that the statement of account is not correct and is not duly certified. Bank has not produced on the record the interest charged in various accounts and further the interest has been charged at an exorbitant rate. Further, bank has capitalized penal interest against the judgment of the Hon'ble Supreme Court of India in Central Bank of India vs. Ravindra. There was also delay on the part of the bank in releasing the sanctioned facilities, due to which the company suffered. It was also alleged that the OA was not filed by a duly authorized officer and that there are no lawful guarantees. Defendant No.1 alleged that the OA is barred by limitation. Defendant No. 1 denied the other averments. Defendant No. I also alleged that the bank had obtained signatures of authorized persons on blank papers. However, defendant No. 1 admitted that the financial facilities were enjoyed by the company.

15. Defendant Nos. 2 and 5, in their joint written statement, have taken the same stand as set up by defendant No. 1.

16. Defendant No. 7 has alleged that the OA is not maintainable. It is also alleged that the guarantee-deed dated 20.05.2009 is not a valid document. Defendant No. 7 has further alleged that it had never mortgaged the property and that no approval of the AGM was given. No resolution was passed by the Board of Directors to give the corporate guarantee. However, it admitted that financial facilities were enjoyed by defendant No. 1. It is admitted that the guarantee agreement was signed by Sh. Ram Dayal Garg on behalf of defendant No. 7. However, it is stated that he was not authorized to sign the same. It is admitted that the original title deeds of defendant No. 7 are lying with the applicant. Defendant No. 7 also alleged that the bank charged has interest in contravention of the judgment in Central Bank of India vs. Ravindra.

17. The written statement filed on behalf of defendant No. 7 has been signed by one Mr.PK Kansal. However, no resolution of Board has been placed on the record that he has been authorized to file the written statement.

18. Applicant Bank in the replication to the written statements filed by defendant No. 1, 2, 5 and 7 has reiterated its case as set up in the OA and denied the case of defendant No. 1, 2, 5 and 7.

19. Defendant Nos. 3 and 4 have filed a joint written statement as well as counterclaim. They have alleged that the bank has not approached the Tribunal with clean hands. They have further alleged that, due to the questionable conduct of defendant No. 2 in connivance with bank officials, there was erosion of primary security in the form of stocks and receivables. However, they have admitted that they were guarantors for the credit facilities granted to defendant No. 1. They have alleged that with effect from 18.06.2009 they had ceased to be directors and at that time the credit facilities were within permissible limits. They have further alleged that the account of defendant No. 1 had started showing irregularities after June/July 2009. Bank did not get the stock audit conducted and remained a mute spectator to the siphoning of funds by defendant No. 2 through operation of a current account with HDFC Bank. However, they have admitted that the account of defendant No. 1 had turned NPA in October 2009. They further alleged that, in view of Sections 139 and 141 of the Indian Contract Act, they stood discharged as guarantors as the bank failed to discharge its obligations regarding charged properties and hypothecated stocks. Defendant Nos. 3 and 4 also filed a counter-claim-cum-set-off. It is alleged that the bank allowed siphoning of the primary security to the extent of Rs. 40.14 crores and permitted siphoning to the extent of Rs. 31.01 crores through conduit entities. They have also pleaded various financial irregularities and set up a counter-claim of Rs. 79.74 crores. They have further alleged that the Bank Officers, in connivance with defendant No. 2, had allowed defendant No. 2 to transfer the funds of defendant No. 1 to the account of Umesh Impex; Krishan Fabricators; SK Engineering and Paradise Multiplexes, on different dates and also allowed withdrawals in cash to defendant No. 2, which the bank should not have done. In this manner, the Bank caused loss to them (defendants No. 3 and 4) and on account of this, they are not liable to pay any money to the Bank. It is further pleaded that they had written many letters to the Bank for the protection of securities. However, the bank did not respond to these letters. Accordingly, the Bank is estopped from fastening any liability on them and they stood absolved of their liability by virtue of Section 139 and 141 of Contract Act. They further alleged that the OA is bad for misjoinder of parties as the entire liability is of defendant No. 1 and 2. It is further alleged that the Debts Recovery Tribunal has no jurisdiction to entertain the claim of the bank as it is based on the fraudulent act of defendant No. 2, who was Incharge of the company. Further, the DRT is not a court. Accordingly, it is not competent to adjudicate the present dispute because of the fraudulent act and criminal conspiracy of the company with the bank officials. They further alleged that they are residents of Rampura Phool. They were not involved in the day-to-day working of the company which is based at Abohar. They have further alleged that on 13.04.2009 bank had issued a certificate stating that the account of M/s Pure Foods Limited was running satisfactory. However, they were shocked to know from the bank's letter dated

19.08.2009 that the account of M/s Pure Foods Limited was irregular since July, 2009 and the account had turned NPA on 01.10.2009. The company had sufficient primary security in the form of stocks of more than Rs. 30 crores apart from debt and other receivables. They have further alleged that on discreet investigation that had come across many instances of gross negligence, complexity and connivance of the bank officials with Ram Dayal Garg. They have further alleged that the amount which was due to M/s Pure Foods Limited from Paradise Multiplexes-cum- Villas Private Limited, which was conceived by Ram Dayal Garg was having its registered office at the residence of Ram Dayal Garg, got its liability reduced through a book entry of Rs. 85 lacs on 27.08.2009. It is further alleged that the credit facilities enjoyed by Umesh Impex Private Limited from SBOP were paid from the credit limit of M/s Pure Foods Limited on 22.04.2009 through the bank transfers. Umesh Impex Private Limited is company owned by the family members of Ram Dayal Garg. Again, it is alleged that the account of M/s Krishna Fabricators and Supply Limited and M/s SK Engineering were opened with the applicant bank by showing the address of the premises of M/s Pure Foods Limited, in violation of settled principles of banking. In this manner, Rs. 30 crores was misappropriated by Ram Dayal Garg, which was in the knowledge of the bank as the recipients of those accounts were maintaining the account in the same branch.

20. Defendant No. 3 and 4 have further given a chart and alleged that an amount of Rs. 13.39 crores was transferred to M/s Umesh Impex; an amount of Rs. 14.05 crores was transferred to the personal account of Ram Dayal Garg; an amount of Rs. 1.22 crores was transferred to M/s Paradise Multiplexes and Rs. 1.35 crores was transferred to Piccadilly. Accordingly, an amount of Rs. 30.01 crores was transferred by defendant No. 1. Defendant No. 2/Ram Dayal Garg also falsified different sets of balance sheets. One balance sheet was filed with Registrar of Companies and an entirely different balance sheet, for the same period, showing inflated figures, was filed with the bank. The primary securities i.e. stocks and investments were siphoned off by defendant No. 2, in connivance with the bank officials. On 06.10.2009, they had filed a petition before the Company Law under Section 397 and 398 of the Companies Act against defendant No. 2, bearing CP/95(ND)/ 2009 seeking investigation. Bank was party in that petition. They have also placed on the record a copy of the judgment dated 04.06.2018 passed in CS/64/2018, titled Omparkash Jindal versus State of Punjab, which shows that they had filed the suit for declaration that they were wrongly declared willful defaulter. However, there is no need to mention of the same. They have admitted that on 26.10.2010, Bank had issued the notice under Section 13(2), calling upon them to pay Rs. 68,44,83,044/-. They had responded to this notice by stating that no proceedings can be initiated against them under Section 139 and 141. They had filed CWP No. 8861 of 2010. However, the same was disposed of as the bank had withdrawn the notice dated 28.04.2010 and they were given liberty to seek their remedy in accordance with law. They had received letter dated 20.12.2011 by registered post from the bank. However, their objections were not decided in the proper prospective. The account had been declared NPA on account of negligent conduct of the bank officials, who were in connivance with Ram Dayal Garg. Defendant No. 3 and 4 in their set off-cum- counter claim have alleged that the bank had allowed the principal borrowers to siphon of the funds. The bank had permitted the erosion of a sum of Rs. 31.01 crores by conduit entities. The sum of Rs. 85 lacs was adjusted by defendant No. 2 towards Paradise Multiplexes. The bank had permitted defendant No. 1 to divert the funds.

21. Bank, in order to establish its case, has relied upon the security documents executed by the defendants. Defendants had executed the last documents on 29.05.2009. Bank has produced original documents on record. Counsel for the bank argued that the defendants have admitted execution of the documents. Defendant Nos. 3 and 4 have admitted execution of the security documents but alleged that they had resigned on 18.06.2009. They have made allegations against defendant No. 1 and 2. However, it is admitted that the C.C. limit was granted and operated through authorized signatories.

22. I have heard Mr Rakesh Gupta, Counsel for the applicant bank. Defendant No. 1, 2 and 7 have filed their written submissions. Mr. Pasricha, counsel for defendant No. 3 and 4 has made oral submissions and also filed written submissions.

23. Mr Gupta, drawing my attention to the documents and written statements filed by defendant No. 1, 2, 3, 4, 5 and 7, has submitted that the defendants had admittedly executed the documents. They have admitted that credit facilities were sanctioned to defendant No. 1, on the guarantee of defendant No. 2 to 6. Further, defendant No. 7 was a corporate guarantor. Mr.Gupta further submitted that there is no material on the record that the person who had filed the written statement on behalf of defendant No. 7 had been authorized. Accordingly, the written statement on behalf of defendant No. 7 has to be ignored. Mr. Gupta submitted that the written statement and counter claim filed by defendant No. 3 and 4 are liable to be ignored as they were filed beyond time. Mr. Gupta submitted that the bank had filed the OA on 13.08.2010. Defendant No. 3 and 4 had appeared on 04.05.2011 and sought time to file the written statement. The limitation to file the written statement had started on 04.05.2011. Defendant No. 3 and 4 should have filed the written statement within 30 days. The limitation for the same expired on 04.06.2011. Even if defendant No. 3 and 4 had been given another 15 days to file the written statement, the limitation expired on 19.06.2011. However, defendant No. 3 and 4 filed the written statement alongwith counter claim on 10.05.2012. It has been held in *Kaur Sales Spinners versus DRT, reported as 2021(4) recent civil report page 698*, that the written statement cannot be read. The bank had filed written statement to the counter claim on 03.09.2012 wherein it had alleged that the counter claim was barred by limitation. Even on 25.07.2011, defendant No. 3 and 4 had not disputed that they had been served with a copy of OA. Defendant No. 3 and 4 have alleged that they had filed the written statement and counter claim within limitation as the matter was pending in the Hon'ble High Court. Mr.Gupta submitted that challenge to the SARFAESI action was pending in the Hon'ble High Court and no issue pertaining to OA was pending in the Hon'ble High Court. Accordingly, the written statement-cum-counter claim filed by defendant No. 3 and 4 is liable to be ignored. Mr Gupta submitted that defendant No. 3 and 4 have taken the plea that the bank was negligent. There was connivance between the branch manager and defendant No. 2. The bank had allowed the siphoning of funds. It had allowed erosion of security. It had allowed defendant No. 1 to open a separate account with HDFC Bank. Mr. Gupta submitted that all these contentions are of no avail to defendant No. 3 and 4 as the written statement-cum-counter claim has to be ignored. Again, the bank was not in possession of stocks. There was only hypothecation agreement with the bank. The physical stock and its control was with defendant No. 1. The bank had also filed civil suit against the defendants. This shows that there was no connivance between bank officers and defendant No. 2. Mr. Gupta submitted that the bank has proved its case. Accordingly, the OA be allowed against all the defendants. Mr.Gupta has placed reliance upon the judgment passed in *Crest Steel and Power versus Punjab National Bank reported as 2019(1) MPLJ page 703 and Kaur Sales Spinners versus DRT reported as 2021(4) recent civil reports page 698*.

24. *Per contra*, in the written submissions filed on behalf of defendant No. 1, 2, 5 and 7, it is submitted that the bank after initiating the SARFAESI action was not entitled to file the OA. Accordingly, OA filed by the bank is not maintainable. Reliance has been placed upon the judgment passed by the Hon'ble Supreme Court in M/s Transcore versus Union of India and another, Civil Appeal No. 3228/2006, decided on 29.11.2006. It is alleged that in fact defendant No. 3 and 4 had played fraud. Defendant No. 3 and 4 have sold land measuring 1 kanal 7-1/2 marla and land measuring 1 kanal 12-1/5 marla, situated at Krishna Nagri, Kirpa Ram Marg, Abohar. Both these properties had been mortgaged with the bank. Accordingly, they had committed offences under Section 420 and 421 IPC. Defendant No. 2 had intimated this fact to the bank. It is stated that since there was variations in the agreement, defendant No. 1, 2 and 7 stand discharged. There could not be any mortgage by just deposit of title deeds. The mortgage requires registration. However, in the case in hand, there was no registered mortgage. Again, the pleadings on behalf of defendant No. 3 and 4 are not supported by an affidavit.

25. Defendant No. 1, 2 and 7 in their written submissions have placed reliance upon the following judgments:

26. *Judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 908 of 2006, titled Transcore versus Union of India and another, decided on 29.11.2006; judgment passed by DRT, Nagpur in Appeal No. 10 of 2004, titled Arun Jagannath Gedam versus State Bank of Hyderabad, decided on 03.12.2004; Writ Petition No. 21987 of 2010, titled Palpap Ichinichi Software International Limited versus Indian Bank, decided on 16.09.2011 (Hon'ble Madras High Court); judgment passed by Privy Council in case Privy Council Appeal No. 89 of 1915, titled Pranjivandas Jagjivandas Mehta versus Chan Ma Phee, decided on 21.03.1916, judgment passed by the Hon'ble Supreme Court in Rachpal Mehraj versus Bhagwan Dass Daruka and others, deicided on 05.05.1950; judgment passed by Hon'ble Bombay High Court in Sir Hari Shankar Paul Kt versus Kedar Nath Saha, decided on 25.04.1939; judgment passed in United bank of India Limited versus Lekhram Sonaram and co. and others, decided on 01.02.1965 (Hon'ble Supreme Court); judgment passed by the Hon'ble Madras High Court in Indersain versus Mohammed Raza Gowher and another, decided on 26.07.1960; judgment passed by the Hon'ble Supreme Court in case Deb Dutta Seal versus Raman Lal Phumra, decided on 06.11.1969; judgment passed by the Hon'ble Madras High Court in LPA No. 194 of 1996, titled Swadharma Swarajya Sangha versus Indian Commerce and Industries Private Limited, decided on 21.10.1997; judgment passed by the Hon'ble J&K High Court in case University of Kashmir versus Ghulam Nabir Mir, decided on 18.05.1977; judgment passed by the Hon'ble J & K High Court in Civil Revision No. 49 of 2009, titled Seth Kirpal Chand versus The Traders Bank Limited, decided on 11.12.1953; judgment passed by the Hon'ble Punjab and Haryana High Court in Civil Revision No. 543 of 1976, titled Food Corporation of India versus Baldev Kaur and another; judgment passed by the Hon'ble Delhi High Court in case Nibro Limited versus National Insurance Company Limited, decided on 06.03.1990; judgment passed by the Hon'ble*

Karnataka High Court in Writ Petition No. 3139 of 1997, titled VR Kamath versus Divisional Controller, decided on 19.02.1997 and judgment passed by the Hon'ble Delhi High Court in Civil Revision No. 434 of 1991, titled Vidya Sagar versus Shankuntla Devi, decided on 07.11.1991.

27. On the other hand, Mr. Pasricha, counsel for defendant No. 3 and 4 has submitted that the account of defendant No. 1 was regular till June, 2009. Defendant No. 3 and 4 had resigned from the directorship of the company on 18.06.2009. There was diversion of funds by defendant No. 2, in connivance with the bank officers. A complaint regarding the same was also moved to the bank. The bank has sanctioned prosecution to prosecute the branch manager. It is stated that there was siphoning of funds by defendant No. 2. Mr. Pasricha submitted that the bank had allowed defendant No. 2 to transfer the funds to the account of Umesh Impex; Krishan Fabricators; SK Engineering and Paradise Multiplexes, on different dates. Again, the bank had allowed defendant No. 2 to open an account in the name of defendant No. 1 with HDFC Bank. Defendant No. 2 had transferred the sale proceeds of the stocks of defendant No. 1, to the account of HDFC Bank, which could not be done and as a result of this there were dues to the bank. Winding up his arguments, Mr. Pasricha submitted that there is no merit in the case of the bank and the same be dismissed and the counter claim filed by defendant No. 3 and 4 be allowed. Mr. Pasricha has placed reliance upon the following judgments:

28. *Judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 1058 of 1970, titled The State Bank of Saurashtra versus Chitranjan Rangnath Raja and another, decided on 30.04.1980; Civil Appeal No. 930 of 1965, titled Amrit Lal Governdhan Lalan by his legal representatives versus State of Bank of Travancore and others, decided on 11.04.1968 and the judgment passed by the Hon'ble Orissa High Court in First Appeal No. 311 of 1990, titled Gopal Chandra Bagaria versus State Bank of India and another, decided on 27.01.1994.*

29. I have perused the documents and considered the rival contentions canvassed at the Bar.

30. The case of SBI is that defendant No. 1 was banking with it since 1995. On 12.10.2006, it had renewed the credit facility for Rs. 15 crores. In the year 2007, it had renewed the credit facilities for Rs. 24.92 crores. In 2008, it had renewed the credit facilities for Rs. 66.92 crores. On 29.05.2009, there was again renewal. The bank has proved on the record the documents in respect of the same. As against this, the case of defendants No. 1, 2 and 5 is that there were variations in the agreement from time to time and they stand discharged. The statement of account produced by the bank is not correct. Bank has capitalized penal interest. There was delay in disbursing the loan. The OA has not been filed by the authorized person. The OA is beyond limitation. SBI had obtained signatures of authorized person on blank papers. Defendant No. 1, 2 and 5 have relied upon the judgment passed in M/s Transcore versus Union of India (*supra*) and admitted that SBI initiated the SARFAESI action and the bank should have filed the OA under Section 13(10). However, I am of the considered view that this does not support the case of defendant No. 1, 2 and 5. It has been held in Transcore case that the bank can simultaneously take action under the SARFAESI Act as well as RDB Act. Defendant No. 1, 2 and 5 have made allegations against defendant No. 3 and 4. However, this has nothing to do with this case. They have alleged that the equitable mortgage in this case was not registered. Accordingly, the same cannot be enforced. Reliance has been placed upon the judgments passed in *Arun Jagannath Gedam (supra); M/s Palpap (supra); Pranjivandas Mehta (supra); Rachpal Maharaja (supra); Sir Hari Shanker Paul (supra); Lakharam Sonaram (supra) etc*. However, I am of the considered view that these judgments have no applicability. The law is well settled that the equitable mortgage can be created by deposit of title deeds with an intention to create mortgage and the memorandum of equitable mortgage does not require registration. I am of the considered view that the bank has proved its case that it had advanced the credit facilities. The last sanction was in the year 2009 and the OA was filed in 2010. Accordingly, the OA is within limitation.

31. Defendant No. 7 has alleged that Ram Dayal Garg was not authorized by AGM, who had executed the guarantee deed. Moreover, the bank has charged interest in contravention of the judgment passed in Central Bank of India versus Ravindra. This deserves to be mentioned that there is nothing on the record as to who had authorized Mr. PK Kansal, who filed the written statement on behalf of defendant No. 7. That part, defendant No. 7 had given guarantee to create security interest in favour of the bank to secure the loan. Defendant No. 7 had also deposited title deeds with the bank. Accordingly, the plea set up by defendant No. 7 is liable to be ignored.

32. Coming to the case of defendant No. 3 and 4. It has already been mentioned that defendant No. 3 and 4 had filed the written statement-cum-counter claim beyond limitation and the same cannot be taken into consideration. Still I have considered the contentions of defendant No. 3 and 4. Defendant No. 3 and 4 have admitted the execution of security documents. They have admitted that they were directors and had resigned from the company on 18.06.2009. Defendant No. 3 and 4 have primarily made allegations against defendant No. 1 and 2. Though they alleged that there was connivance between the bank officials and defendant No. 1 and 2, yet, they have failed to prove the same. SBI had granted the credit facilities to defendant No. 1. The said account was being operated by the authorized signatory who had been duly authorized by the resolution of board of directors of the company. Defendant No. 3 and 4 were the signatories to the said resolution. In these circumstances, defendant No. 3 and 4 cannot be heard to say that the bank had allowed unauthorized person to operate the account. The other contention of defendant No. 3 and 4 is that the bank did not take adequate precaution regarding siphoning off the stocks. The same is also without any basis. In the case in hand, defendant No. 1 hypothecated the stocks. In the case of hypothecation, the possession is with the borrower. The bank had no control over the same. Accordingly, the bank cannot be made liable. There is no force in the contention of defendant No. 3 and 4 that since there were variations in the terms and conditions, they stood discharged. Defendants No. 3 and 4 have failed to show as to what variations were made by the bank. Even otherwise, as per the terms and conditions of the guarantee-deed, defendants No. 3 and 4 had waived off this contention. The law is well settled that the liability of guarantor is co-extensive with that of the borrower. In the company petition filed before the Company Law Board, defendants No. 3 and 4 had categorically admitted that they are guarantors and their guarantee is co-extensive with that of the borrower. Counsel for the bank has referred to the order dated 10.11.2009 passed by Company Law Board in CP No. 95(ND)/2009 in which defendant No. 3 and 4 have admitted before the Company Law Board that they had given personal guarantee for the credit facilities advanced to defendant No. 1. Counsel has further referred to the reply filed by defendant No. 3 and 4 to the notice under Section 13(2) wherein they admitted that they were the guarantors and also mortgagors. On the basis of above overwhelming evidence, I am of the considered view that there is no doubt that defendant No. 3 and 4 were the directors, guarantors and mortgagors.

33. Coming to the counterclaim filed by defendant No. 3 and 4. Defendants No. 3 and 4 in the counterclaim have alleged that the bank, in connivance with defendant No. 2, had allowed him to siphon off the funds. The money was transferred to the account of Umesh Impex; Krishana Fabricators; SK Engineering and Paradise Multiplexes, on different dates. Defendant No. 3 and 4 have alleged that the bank had allowed defendant No. 2 to withdraw the money in cash and also allowed him to transfer the sale proceeds to the account of HDFC Bank.

34. Be that as it may, it is admitted on the record that vide resolution of the board of directors, it had authorized defendant No. 2 to operate the account. Once, the account was operated by the authorized signatory, defendant No. 3 and 4 cannot be heard to complain. The duty of the bank is to ensure that the transactions are carried out by the authorized signatory. The Branch Manager is not an Income Tax Officer or ED Officer. It is not expected of him to say whether the authorized signatory is mis-utilizing the funds or not. In case the contention of defendant No. 3 and 4 is allowed, it would become really difficult for any Branch Manager to work. Thousands of borrowers obtain loan from the banks and it is not practically possible for any Branch Manager to see whether the borrower is utilizing the money for the purpose of the company or not. The Branch Manager has simply to see that the authorized signatory is operating the account. Accordingly, the contention is misconceived and the same is hereby repelled. However, it is made clear that this judgment will not come in the way of defendant No. 3 and 4 in case they have any claim against defendant No. 1, 2 and 7 in respect of any transactions carried out by defendant No. 1, 2 and 7, which they feel were not for the business of the company.

35. In view of the above, the OA for the recovery of Rs. 72,38,97,984/- (Rupees Seventy Two Crores Thirty Eight Lacs Ninety Seven Thousand Nine Hundred Eighty Four only) is hereby allowed with costs, against defendant No. 1, 2, 4 to 7. Defendants would be liable to pay interest @ 12.25% per annum with monthly rests on the sum of Rs. 70,98,71,077/- due in the CC account; interest @ 11.75% per annum with monthly rests on the sum of Rs.96,73,845/- due in Term Loan-I and Rs.43,53,062/- due in Term Loan-II, from the date of filing, till its realization. The liability of defendants No. 1, 2, 4 to 7 will be joint and several. The liability of LRs of defendant No. 3 would be to the extent of the property inherited by them from defendant No. 3. The counterclaim filed by defendant No. 3 and 4 is hereby dismissed. Bank would be entitled to recover its dues by sale of mortgage properties and hypothecated stocks. It appears that the bank has sold some of the mortgaged properties under the SARFAESI Act. Bank would file revised statement of account before the Recovery Officer.

36. Pending IAs, if any, stand disposed of.

37. Recovery Certificate be issued accordingly.

38. Parties are directed to appear before Recovery Officer on **02.09.2026.**

A Copy of this order along with Recovery Certificate be sent to the Recovery Officer as well as the parties.

Pronounced in the open court
Dated: 01.08.2026

(A S Narang)
Presiding Officer
DRT-1, Chandigarh