

IN THE COURT OF Ms. SUKHVINDER KAUR, ADDL DISTRICT

JUDGE III, ROHINI COURTS: DELHI

Suit No.44/10

**ALLAHABAD BANK,
A Body Corporate, constituted
under the Banking Companies
(Acquisition and Transfer of
Undertaking) Act 1970, having
its head office at 2, Netaji Subhash Road,
Kolkatta**

**And amongst other branches
through one of its branch office known
as International Branch, 3rd floor,
17, Parliament Street,
New Delhi-110001.**

.....Plaintiff

Versus

**1. M/s Axiom Garments Pvt. Ltd;
Registered office at :
BP-19, MIG Flats,
Pitampura, Delhi-34.**

Corporate office at:

**A-41, Sector-7,
Noida, U.P.**

Also At:

**362, GI-I, Vikas Puri,
New Delhi-110018.**

Also At:

**B-87, Sector-6,
Noida, U.P.**

2. Sh. Devendra Dwivedi

**S/o Sh. R. K. Dwivedi,
Director,
M/s Axiom Garments Pvt. Ltd;
213, Varun Vihar, Sector-62,
Noida, U.P.**

Also at :

**A-001, Salora Vihar,
Sector-62, Noida, U.P.**

3. Sh. Satyendra Dwivedi,

**S/o Sh. R. K. Dwivedi,
Director,**

**M/s Axiom Garments Pvt. Ltd;
BP-19, MIG Flats, Pitampura,
Delhi-110034.**

Also At:

**R/o H. No. 444/166 KA,
Sarai Hasanganj,
Daliganj,
Lucknow-226020**

Also At:

**A-403, Garima Vihar,
Sector-35, Noida, U.P**

Also At:

**444/166 KA,
Sarai Hasanganj,
Daliganj,
Lucknow-UP.**

Also At:

**213, Varun Vihar,
Sector-62, Noida, UP.**

Also At:

**A-0001, Salora Vihar,
Sector-62, Noida, U.P.**

**4. Sh. Rama Kant Dwivedi,
Govind Sadan,
Sector-1, Adarsh Nagar,
Sitapur, U.P.**

Also At:

**H. No. 494/166 KA,
Sarai Hasanganj,
Daliganj,
Lucknow, U.P.**

**5. Ms. Madhuri Dwivedi,
H. No. 494/166 KA,
Sarai Hasanganj,
Daliganj,
Lucknow- U.P.**

.....Defendants

Suit filed on : 09.03.2009

Judgment on : 10.01.2013

JUDGMENT

1. Plaintiff has filed the present suit for recovery praying for a money decree of Rs. 8,04,983/- along with pendente lite and future interest @ 12.5% per annum with monthly rests. Suit

of the plaintiff is that the plaintiff is a body corporate constituted and carrying on its banking business under the banking companies Act (Acquisition & Transfer of Undertakings) Act, 1970 having its head office at Calcutta and branch office amongst others at the address mentioned in the plaint. Shri Sanjay Aggarwal is Assistant General Manager, Principal Officer and also General Attorney Holder of plaintiff bank having authority to institute and sign the pleadings and even otherwise is conversant with the facts of the case as per records and has filed the present suit. Defendant no.1 is Private Ltd. Company incorporated under Companies Act, 1956 and is dealing in the imports and exports of the readymade garments and other connected activities. Defendant no.1 through its Directors approached the plaintiff bank vide written request dated 06.10.2004 for grant of credit facilities to the extent of Rs. 12 lacs in order to run its business. The plaintiff bank processed the loan application of defendant no.1 and sanctioned the credit facilities in the shape of packing credit to the extent of Rs. 8

lacs and post shipment facilities to the extent of Rs. 4 lacs for manufacturing and exports of hi-fashion readymade garments. The said credit facilities were secured by pledging of KVPs of Rs. 8 lacs and FDRs to the extent of Rs. 2 lacs and further by guarantees of defendants no.2 & 3 being the directors of defendant no.1 company and personal guarantees of defendants no.4 & 5. Consequent upon the sanction of aforesaid facilities, defendants acknowledged the said sanction and accepted the terms and conditions of the same vide letter of acceptance dated 26.10.2004. The defendants executed the loan documents i.e D.P. Note for Rs. 12 lacs, agreement of general letter of hypothecation, agreement to special letter of indemnity for accepting bill of lading, agreement for shipping credit advances, agreement for packing credit advances, unconditional security agreement against security of post parcel receipts, bill of lading, railway receipts, documents of title etc, irrevocable letter of authority, undertaking, agreement of guarantee by defendants no.2 to 5, letter of set off and letter of continuity

regarding credit facility of Rs. 12 lacs. After execution of loan documents a sum of Rs. 2 lacs was released by the plaintiff bank in favour of defendant no.1. Defendant no.1 at the relevant time was availing a cash credit facility in account no.399 and debit balance of Rs.5,30,000/-was existing against defendant no. 1 with Indian Overseas Bank, Noida wherein the collateral securities in the shape of KVP and FDRs was lying therein. The plaintiff bank accordingly took over the loan facility from Indian Overseas Bank, Noida and issued a banker cheques of Rs.5,30,000/-towards liquidation of the outstanding in the account of defendant no.1 favouring Indian Overseas Bank and requested the said bank to hand over the entire security in the account including KVPs which in return thereof released the KVPs and FDRs in favour of plaintiff bank which security in terms of sanction dt. 11.10.2004 stood pledged with the plaintiff bank. Defendant no.1 duly availed the cash credit facility in the shape of packing credit and post shipment facilities and were allowed inter changeability packing credit facility and foreign bill

negotiation loan facility into cash credit facility for running its business. The plaintiff also allowed transfer of Rs. 2.5 lacs on CC to FBL on 7.4.05 at the instructions of defendant. Defendant no. 1 again approached the plaintiff bank vide letter dt. 12.11.05 and requested for enhancement of loan facility from total aggregate amount of Rs. 12 lacs to Rs. 14 lacs i.e. by an adhoc enhancement of Rs. 2 lacs. The plaintiff bank allowed the adhoc enhancement of Rs. 2 lacs i.e. aggregate loan facility from Rs. 12 lacs to Rs. 14 lacs. The defendant in continuation thereof on 17.11.05 executed the loan documents including DP note for Rs. 14 lacs, agreement of general letter of hypothecation executed by defendants, agreement of guarantee by defendants and undertaking of consent by defendant no. 1 & 3 for disclosure of information and data by bank. Defendant no. 1 again vide its written requested dt. 10.3.06 approached the plaintiff bank for enhancement of existing cash credit facility of Rs. 14 lacs to Rs. 18 lacs and also vide letter dt. 13.3.06 requested the plaintiff bank to enhance the working capital

limit for realisation of order placed by the customers. The plaintiff bank processed the written request of defendant no. 1 and sanctioned the credit facility to the extent of Rs. 18 lacs on terms and conditions referred in the sanctioned letter. The defendant no. 1 duly acknowledged the sanction and accepted the terms and conditions of the same vide letter of acceptance dt. 14.3.06 and in consideration of same executed loan documents on 14.3.06 including demand promissory note for Rs. 18 lacs, agreement for packing credit advance, agreement of guarantees of defendant no. 2 & 3, agreement of guarantees by defendant no. 4 & 5, first supplementary general letter of hypothecation by defendant , letter of set of, letter pertaining to maintenance of margin money and letter dt. 14.12.06 by defendant no. 1 thereby submitting the FDRs and security for advance of Rs. 18 lacs.

Defendant no. 1 duly availed the loan facility from time to time but failed to observe the financial discipline and committed breach of terms and conditions of the agreement . The plaintiff vide various correspondence dt. 1.12.06, 17.7.07, 24.7.07 and also

upon personal meetings held by the official of the plaintiff bank from time to time called upon the defendant to regularise the loan account and repay the outstanding debit balance. The defendants despite their commitment and response to the written and verbal request made by the plaintiff utterly failed to regularise the loan account and repay the outstanding debit balance as a result loan account of defendant no. 1 became dormant. As a consequence thereof the plaintiff bank was constrained to recall the loan account of defendant no. 1 vide its registered recall notice dt. 1.12.07 . As per books of accounts maintained by plaintiff bank in its ordinary and usual course of business , the loan account of defendant no. 1 was declared as non performing assets on 30.3.07 with a debit balance of Rs. 4 lacs under packing credit account and with debit balance of Rs. 2,41,486.83 under postshipment credit account. Defendant no. 1 on the NPA debit balance of packing credit facility is also liable to pay recorded interest of Rs. 1,01,947.95 calculated w.e.f 1.4.07 to 28.2.09 which is born out by books of accounts maintained by plaintiff bank likewise the defendant no. 1 on the said NPA debit under

cash credit facility is liable to pay recorded interest of Rs. 61,547.72 calculated w.e.f. 1.4.07 to 28.2.09 which is born out by the books of accounts maintained by the plaintiff bank in the ordinary course of business. Thus the total debit balance under the packing credit facility inclusive of the recorded interest is Rs. 5,01,947.95 and the total debit balance under the cash credit facility inclusive of the recorded interest is Rs. 3,03,034.55 as on 28.2.09 . Thus the total debit balance under the packing credit facility and cash credit facility against defendant no.1 as on 28.2.09 is Rs. 8,04,982.45. Defendant no. 2 to 5 who stood as guarantors in the loan facilities against defendant no. 1 are jointly and severally liable to pay the outstanding amount. Hence the present suit.

2. The suit of the plaintiff has been contested only by defendant no. 4. Defendant no. 1,2 & 3 could not be served by ordinary process . They were ordered to be served by way of publication in the newspaper “ The Statesman” vide orders dt. 8.11.10. Defendant no. 5 also appeared in the

court through counsel but did not file any written statement despite repeated opportunities . Defendant no. 1,2 & 3 also appeared through their counsels after service by way of publication and filed their Vakalatnama. They were also given opportunity to file their w/s vide orders dt. 23.12.10 and again vide order dt. 22.1.11. Defendant no. 1,23 & 5 however failed to file their w/s and also opted not to contest the case. They were proceeded ex-parte vide orders dt. 24.2.11. Defendant no. 4 has contested the claim of the plaintiff and filed his w/s wherein he has taken the preliminary objections inter alia the fabrication of agreement of guarantee dt. 14.8.06 and suit being barred by law of limitation. On merits it is denied for want of knowledge that defendant no. 1 had made any request dt. 6.10.04 for grant of credit facility to the extent of Rs. 12 lacs as alleged. It is also denied that credit facility was secured by pledging of KVPs and FDRs . It has been specifically denied that agreement of guarantee was executed by defendant no. 4 on 26.10.04 and emphasised that he did not execute any

agreement of guarantee on 26.10.04. The other averments made in the plaint have also denied and it is specifically denied that agreement of guarantee was executed by him on 14.3.06 as alleged. It is stated that he was on official duty on 14.3.06 in Tehsil Leharpur and the agreement of guarantee filed by the plaintiff had not been signed by him and signatures appearing on said agreement of guarantee were not his signatures and the same did not resemble to his signatures. It is asserted that documents as such bears forged and fabricated signatures of the defendant and the documents relied by the plaintiff are manufactured documents. The defendant has also disputed the books of accounts maintained by plaintiff bank and asserted that the accounts maintained by the plaintiff bank are manipulated and do not reflect the true state of affairs . Certain entries in the statement of account filed by the plaintiff are unauthroised and have been deliberately entered to cause pecuniary loss to the defendant . It has therefore been prayed to dismiss the suit of the plaintiff.

3. On the pleadings of the parties following issues were framed for consideration on 24.02.2011:-

i) Whether the plaint is liable to be rejected for want of cause of action against defendant no.4 ?OPD4

ii) Whether the plaintiff is entitled to decree of the suit amount?
OPP

iii) Whether the plaintiff is entitled for pendente lite and future amount on the decreed amount? If so, at what rate?OPP

iv) Relief.

4. In order to establish its claim, the plaintiff has filed affidavit of Smt. Sneha Lata, Manager of plaintiff bank in evidence which has been tendered as Ex. P-1. On the other hand, defendant no.4 has filed his affidavit in defence which has been tendered as Ex. DW-1/A. Defendant no.4 also examined Shri Syed Faizal Huda, Forensic Expert as DW-4/2.

5. I have thoroughly gone through the testimony of witnesses and perused the record. I have also given the thoughtful

consideration to arguments addressed by Id. Counsel for the parties. My findings on various issues are as under:-

Finding on Issue No. 1&2

6. For the sake of brevity and convenience, both the issues shall be decided together. PW-1 in her affidavit has mainly reiterated the contents of the plaint and exhibited power of attorney in favour of Shri Sanjay Aggarwal, the then Asstt. Manager and Principal Officer as PW-1/1. The memorandum of article of association of defendant no.1 company is PW-1/2, the credit information report of defendant no.2 & 3 is Ex. PW-1/3 (collectively). The sanction letter of credit facility to the extent of Rs. 12 lacs is Ex. PW-1/4. The acceptance of the terms dated 26.10.04 is Ex. PW-1/5. Demand promissory note for Rs. 12 lacs executed by defendants is Ex. PW-1/6. Agreement of general letter of hypothecation is Ex. PW-1/6A. Agreement to special letter of indemnity for accepting the bill of lading is Ex. PW-1/7. Agreement for packing credit advance is Ex. PW-1/8. Unconditional security agreement against security of post, parcel, receipts, bill of lading, railway receipt, documents of title

etc. is Ex. PW-1/9. Irrevocable letter of authority is Ex. PW-1/10. Undertaking to the effect that none of defendant are relative to any executive of the plaintiff bank is Ex. PW-1/11. Agreement of guarantee by defendant no.2 to 5 along with undertaking of consent for disclosure by the plaintiff bank is Ex. PW-1/12 (colly). Letter of set off is Ex. PW-1/13. Letter of continuity regarding credit facility of Rs. 12 lacs is Ex. PW-1/14. The letter of request of defendant no.1 for enhancement of loan facility dated 12.11.2005 is Ex. PW-1/15. Copy of resolution is Ex. PW-1/16. Demand promissory note for Rs. 14 lacs is Ex. PW-1/17. Agreement of general letter of hypothecation dated 17.11.05 is Ex. PW-1/18. Agreement of guarantee by defendants is Ex. PW-1/19. Undertaking and consent by defendants no.1 to 3 for disclosure of information and date by the bank is Ex. PW-1/20 (colly). Copy of request letter of defendant no.1 dated 10.03.2006 for enhancement of existing cash credit facility of Rs. 12 lacs to 18 lacs is Ex. PW-1/21 and request letter dated 13.03.2006 for enhancement of working capital limit for realisation of the orders placed by its customers

is Ex. PW-1/22. Copy of resolution of company is Ex. PW-1/23. Letter of acceptance executed by defendant no.1 dated 14.03.2006 is Ex. PW-1/24, demand promissory note for Rs. 18 lacs is Ex. PW1/25, agreement for packing credit advance is Ex. PW1/26, agreement of guarantee by defendant no. 2 & 3 alongwith undertaking of consent for disclosure by plaintiff bank is Ex. PW1/27, agreement of guarantee by defendant no. 4 & 5 is Ex. PW1/28, first supplementary general letter of hypothecation by defendant is Ex. PW1/30, letter of set off is Ex. PW1/31, letter pertaining to maintenance of margin money to the extent of 35% on all stock is Ex. PW1/32, letter dt. 14.3.06 by defendant no. 1 thereby submitting FDR dt. 6.1.05 for Rs. 1 lac and FDR dt. 14.3.06 for Rs. 106660/- as security for advance of Rs. 15 lac is Ex. PW1/33, copies of letters dt. 1.12.06, 17.7.06, 24.7.06 calling upon defendant to regularise the loan account and repay the outstanding debit balance are Ex. PW1/34 (colly), recall notice dt. 1.11.07 is Ex. PW1/35, postal receipt and UPC receipts are collectively Ex. PW1/36, certified copies of statement of accounts of various facilities are

collectively Ex. PW1/37. DW-1 on the other hand has tendered his affidavit as Ex. DW1/A wherein he mainly reiterated the contents of its written statement. He categorically denied having signed the guarantee letter dt. 14.3.06 Ex. PW1/28. DW4/2, Forensic Expert in his testimony exhibited his report Ex. DW4/2A and testified that as per his definite opinion that disputed signatures mark D1 to D14 were not written by the writer of the specimen signatures marked as S1 & S2. So far as the advancement of credit facilities to defendant no. 1, 2 & 3 is concerned, there is no material cross examination of PW-1. DW-1 also in his cross examination admitted that defendant no. 2 & 3 are his sons and that his sons had taken a loan in the name of their company from the plaintiff. He also admitted the case of the plaintiff that he had deposited KVPs with Indian Overseas Bank but expressed his ignorance that the loan facility availed by defendant no. 1 from Indian Overseas Bank had been transferred to the plaintiff bank. He also expressed his ignorance that the loan facility availed by his sons was never adjusted by them. He also admittedly never made objection

with the bank or post office regarding his KVPs and FDRs kept with the bank as a security in the loan account of defendant no. 1 which were encashed by plaintiff bank towards the part discharge of liability of defendant no. 1. In view of the testimony of PW-1 and the documents exhibited by PW-1 as well as considering the admission made by defendant no. 4 in his cross examination it is sufficiently established that defendant no. 1 was advanced credit facility through defendant no. 2 & 3 by the plaintiff. So far as the execution of agreement of guarantee by defendant no. 4 is concerned defendant no. 4 categorically denied his signatures on the agreement Ex. PW1/28. The plaintiff has failed to establish the signatures on the agreement of guarantee Ex. PW1/28 are the signatures of defendant no. 4. Though PW-1 in her testimony deposed that agreement of guarantee Ex. PW1/28 was executed by defendant no. 4, however, in her cross examination she could not tell as to when she had seen defendant no. 4 signing. She also could not tell the month and year when defendant no. 4 had signed in his presence. She also could not tell how many

papers defendant no. 4 had signed and even the date when the loan was sanctioned. The plaintiff has also not examined any hand writing expert to prove the signatures of defendant no. 4. Thus the plaintiff has failed to establish that defendant no. 4 has stood guarantor for repayment of loan. There is no dispute so far as execution of guarantee by defendant no. 5, who is ex-parte is concerned. From the statement of account Ex. PW1/37 it is established that a sum of Rs. 8,04,982.49 (including interest) was outstanding against defendant no. 1 on 28.2.09. Since the plaintiff has failed to establish that the agreement of guarantee Ex. PW1/28 has been signed by defendant no. 4, issue no.1 is decided against plaintiff and in favour of defendant no. 4 and issue no. 2 is decided in favour of plaintiff and against defendants no. 1,2,3 & 5.

Finding on Issue No.3

7. The plaintiff has claimed pendente lite and future interest @ 12.5% pa . As per the sanction letter Ex. PW1/4, the credit facility has been sanctioned with minimum amount of interest @ 7.5% pa. Thus plaintiff is entitled to interest @ 7.5 % pa. Issue

no. 3 is decided accordingly in favour of plaintiff.

Relief.

8. In view of my findings on above issues suit of the plaintiff is decreed for a sum of Rs. 8,04,982.49 alongwith pendente lite and future interest @ 7.5%pa on the principal amount of Rs. 6,41,486.83 (Rs. 2,41,486.83 being the principal amount outstanding against cash credit account plus Rs. 4 lacs being principal amount against the packing credit account) w.e.f the date of filing the suit till its realisation jointly and severally against defendant no. 1,2,3 & 5. Decree sheet be prepared accordingly. File be consigned to record room.

**Announced in open court
dated 10.1.2013**

**(SUKHVINDER KAUR)
ADDL. DISTRICT JUDGE:III
ROHINI COURTS: DELHI**

Suit No. 44/10

10.01.2013

Present: None.

Vide separate judgment, suit of the plaintiff is decreed for a sum of Rs. 8,04,982.49 alongwith pendente lite and future interest @ 7.5%pa on the principal amount of Rs. 6,41,486.83 (Rs. 2,41,486.83 being the principal amount outstanding against cash credit account plus Rs. 4 lacs being principal amount against the packing credit account) w.e.f the date of filing the suit till its realisation jointly and severally against defendant no. 1,2,3 & 5. Decree sheet be prepared accordingly. File be consigned to record room.

(SUKHVINDER KAUR)
ADDL. DISTRICT JUDGE:III
ROHINI COURTS: DELHI.