# DEBTS RECOVERY TRIBUNAL : JABALPUR

(for the States of Madhya Pradesh and Chhattisgarh)

(Presiding Officer - Hon'ble Shri Ram Niwas Patel)

*Original Application No. - 813/23*

Indian Overseas Bank,
H.No.-253/2, Patwa Wali Gali,
Town Hall Ke Pass, Datia 475661 ..... Applicant

Versus

01) M/s Akhil Industries,
Through its Propreitor-
Mr. Nikhil Chourasiya

02) Mr. Nikhil Chaurasiya,
S/o Mr. Vipin Bihari Chaurasiya

03) Mrs. Indira Chaurasiya (since deceased)
Through Legal Heirs -
a) Mr. Nikhil Chauraisya,
S/o Mr. Vipin Bihari Chauraisya
b) Mr. Akhil Chaurasiya.
S/o Mr. Vipin Bihari Chaurasiya
c) Mr. Vipin Bihari Chaurasiya

(All at Barti ji Ka Bagicha,
Ganesh Ghat, Datia, M.P. 475661) ..... Defendants

Counsel for the Applicant : Shri Sanjeev Dubey, Advocate

Defendants : Ex-parte

**JUDGMENT**
**(Dated : 30th January, 2025)**

1. The Applicant-Bank has filed the present Original Application u/s 19 of Recovery of Debts and Bankruptcy Act on 10/07/23 against the Defendants for recovery of Rs. 41,85,866.67 (Rupees Fourty One Lakh, Eighty Five Thousand, Eight Hundred Sixty Six and Paisa Sixty Seven only) along with interest and other reliefs as stated.

2. The brief facts of the case are that on the request of Defendant No.-1 through its Proprietor Defendant No.-2, the Applicant Bank sanctioned Cash Credit Limit of Rs. 30 Lakh on 05/06/13, WCTL of Rs. 6 Lakh on 29/12/20 and WCTL of Rs. 1.50 Lakh on 24/03/22. In consideration of the sanction of credit facilities the Defendant No.-1 & 2 as borrower and Defendant No.-3 Indira Chaurasiya (since deceased) as guarantor in addition to execution of loan and guarantee documents have also created equitable

mortgage over the immovable properties of Defendant No.-3 (since deceased), i.e.,

i) Residential Plot 72/1, Ward No.-3, Rajgarh Ward (old) Mogiya Ka Pura, Datia (M.P.) 475661, admeasuring 1070 sq.ft.;

ii) Residential Plot 710/5, Rajgarh Ward (old) Mogiya Ka Pura, Datia (M.P.) 475661, admeasuring 1537 sq.ft.;

iii) Residential Plot 710/5, H.No.-23, Ward No.-3, Rajgarh Ward (old) Mogiya Ka Pura, Datia (M.P.) 475661, admeasuring 1070 sq.ft.

The Defendant No.-1 and 2 availed the credit facilities and also executed Revival Letters lastly on 29/12/21 but did not maintain satisfactory accounts. The Defendant No.-3 Indira Chaurasiya who was guarantor expired leaving behing Defendant No.-3(a) to 3(c) as her legal heirs who have acquired the entire estate including the mortgaged properties of the deceased. The accounts were classified as NPA and the Defendants failed to liquidate the outstanding dues despite issuance of Notice dated 20/08/22 u/s 13(2) of the Securitisation Act by the Applicant Bank. The Applicant-Bank has relied upon the documents at Ex. A-1 to A-21 which were proved by Ms Sulekha Pandey, Assistant Manager.

3. Despite service of notice, the Defendants neither appeared nor filed written statement. They were proceeded ex-parte vide order dated 23/02/24. After the Defendants were proceeded ex-parte Shri Ashish Tripathi, Advocate, filed his vakalatnama on behalf of Defendant No.-2 who is also the proprietor of Defendant No.-1 firm on 10/07/24 but has not taken any steps/filed application for setting-aside/recalling the order dated 23/02/24. The Advocate for the Defendant also did not appear in the later proceeding. There is therefore, no reason to disbelieve the contentions of the Bank. The Defendant No.-3(a) who is also Defendant No.-2 and is also the Proprietor of Defendant No.-1 concern as well as one of the legal heirs of deceased guarantor Indira Chaurasiya, has executed loan and security documents to secure the credit facilities. Therefore the liability Defendant No.-2 is co-extensive with the liability of Guarantor/Defendant No.-3 Indira Chaurasiya (since deceased). The Defendant No.-3(b) and 3(c) are impleaded being the legal heirs of deceased guarantor/Defendant No.-3 Indira Chaurasiya and have not executed loan documents in their personal capacities. Therefore the liability of Defendant No.-3(b) and 3(c) is restricted to the value of estate/assets inherited by them from the deceased guarantor. Considering the facts of the case, I opine that the Defendants

are jointly and severally liable to pay the claim amount together with interest and costs. The Applicant-Bank in its application has claimed interest at contractual rate but has not specified the prevailing rate of interest. However, I feel it fair and reasonable to grant interest @12% p.a. simple in cash credit account and interest @7.00% p.a. simple in both the WCTL accounts pendentelite and future till realization of the dues. The mortgaged properties are liable to be sold for recovery of amount due along with the personal properties and assets of the Defendant No.-1, 2 and deceased Indira Chaurasiya in the hands of Defendant No.-3(a) to 3(c).

4. The Original Application is allowed and it is ordered as under-

i) The Defendants do pay jointly and severally Rs. 41,85,866.67 (Rupees Fourty One Lakh, Eighty Five Thousand, Eight Hundred Sixty Six and Paisa Sixty Seven only) together with pendentelite and future interest @12% p.a. simple in cash credit account and interest @7.00% p.a. simple in both the WCTL accounts from the date of filing of the OA, i.e., 10/07/23, with costs till its realization. The liability of Defendant No.-3(b) and 3(c) is restricted to the value of estate/assets inherited by them from the deceased guarantor Indira Chauraisya.

ii) The Applicant Bank is entitled to sell the mortgaged as well as personal properties and assets of the Defendant No.-1, 2 and deceased Indira Chaurasiya in the hands of Defendant No.-3(a) to 3(c) for realization of its dues. The Defendants are hereby restrained by means of injunction from depleting, transferring, encumbering, alienating or in any way dealing with the respective properties/assets without first paying the claim of the Applicant Bank.

iii) A Recovery Certificate be issued u/s 19(22) of Recovery of Debts and Bankruptcy Act. The applicant bank may file a memo of cost within 7 days for preparing Recovery Certificate.

Judgment pronounced in the open court on this 30th Day of January, 2025.

30.1.25

(Ram Niwas Patel)
Presiding Officer