Neutral Citation Number: ***[2026] EWHC 1565 (Comm)***

Case No: LM-2018-000088

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 23 June 2026

Before:

Simon Tinkler
Sitting as a Deputy Judge of the High Court

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Between:

Bank of India	**Claimant**
- and –	
(1) Firestar Diamond FZE (a company incorporated in Dubai)	**Defendants**
(2) Firestar International Private Limited (a company incorporated in India)	
(3) Nirav Deepak Modi	

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Tom Beasley (instructed by **Fladgate LLP**) for the **Claimant**
Vivek Kapoor (instructed by **Kenton's Solicitors**) for the **Third Defendant**
The First and **Second Defendants** did not appear and were not represented

Hearing dates: 23, 24, 25, 26 and 31 March 2026

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JUDGMENT

This judgment was handed down remotely at 2.00pm on 23rd June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives

Simon Tinkler sitting as a Deputy High Court Judge:

Parties

1. The Claimant (the "**Bank**") is a bank incorporated in India with a branch office in London. The First Defendant is a company that is incorporated in Dubai. The Second Defendant is a parent company of the First Defendant and is incorporated in India. The Third Defendant ("**Mr Modi**") is a private individual who was resident in India but is currently in prison in England pending possible extradition to India. The First Defendant is a dormant company. The Second Defendant is insolvent.

The claim

2. The Bank lent money to the First Defendant. The Bank obtained summary judgment in 2024 against the First Defendant for the principal sum of USD $4,105,189.34 it lent to the First Defendant together with interest. That sum has never been paid. The Bank says that Mr Modi gave a personal guarantee (the "**Personal Guarantee**") that he would repay monies to the Bank if the First Defendant failed to do so. The Bank says that (a) Mr Modi is liable to them for that money and (b) it served a valid demand on Mr Modi in relation to that liability. The Second Defendant also gave a guarantee of the obligations of the First Defendant. As the Second Defendant is insolvent, the Claimant is not actively pursuing its claim against the Second Defendant.

3. Mr Modi denies the claim on several bases. He says that:

   i) the Personal Guarantee is legally unenforceable as a matter of Indian Law;

   ii) he has was not served with a valid demand under the Personal Guarantee; and

   iii) any demand that was validly served did not relate to a liability which he had to the Bank.

   He also says that even if he does owe money under the Personal Guarantee then the Bank has wrongly calculated the interest for which he is liable.

Background

4. I set out in this section a summary of the key facts. The full detail is set out later in the judgment in relation to each specific issue in dispute.

5. Mr Modi was the chairman of, and a significant shareholder in, a number of companies that operated in the diamond business. This included both retail and wholesale diamond businesses. The companies included the First Defendant and the Second Defendant.

6. In 2013 the Bank and the First Defendant entered into a facility agreement under which the Bank agreed to lend money to the First Defendant (the "**Facility Agreement**"). Around the same time, Mr Modi signed the Personal Guarantee.

7. In early 2018 allegations began to circulate regarding some of the companies with which Mr Modi was involved. These seem to have initially been allegations that

certain partnerships with which Mr Modi was involved had been the beneficiaries of Letters of Undertaking that had been fraudulently obtained from the Punjab National Bank. Within a matter of weeks, the allegations were made public by an announcement to the Indian Stock Exchange. By this time, it seemed that the scale of the fraud was alleged to be well in excess of $1 billion. The situation was said possibly to involve Mr Modi personally and many other companies with which he was involved. Criminal and regulatory investigations began in India into the situation. I should emphasise that no such fraud has been proved, and this case does not allege that Mr Modi or any of his companies was involved in any fraud. It does, however, involve assertions that in early 2018 the Bank took action because of these allegations.

8. In March and April 2018, the Bank served a number of demands for repayment on the First Defendant. Those demands for repayment to the First Defendant were on various bases including that (a) the Facility was repayable on demand (b) the First Defendant had also failed to pay monies due to the Bank on the relevant due date and (c) there was an "Event of Default" (as defined in the Facility Agreement) due to the circumstances and consequences of the alleged fraud involving Mr Modi and / or the First Defendant and / or the Second Defendant.

9. The Bank also purported in March and April 2018 to serve demands for payment on the Second Defendant and Mr Modi under their respective guarantees. After the Bank obtained judgment in this case against the First Defendant, the Bank served a further demand on Mr Modi in October 2025.

10. No payment has ever been made to the Bank by the First Defendant, the Second Defendant or Mr Modi. The Bank has, however, offset some assets it held in other accounts against the principal liability of the First Defendant to it thereby reducing the total amount owing.

11. Mr Modi has been in England since shortly after the fraud allegations were made. The Indian Government is seeking to extradite him to face criminal charges in India. Those charges relate to the alleged fraud. Mr Modi is resisting extradition. He has not been convicted of any criminal offence in England or India. He is currently being detained in custody in England as he is believed to be a flight risk. That detention, or more precisely, the failure of the prison service to assist with the administration of justice or comply with court orders, caused a number of issues before and during the trial, and indeed caused the initial trial date to be postponed. I address these at the end of this judgment.

12. The case began in 2018. Mr Modi was joined as a party shortly after that. The case went into abeyance from May 2020 until 2024 at which point it has actively moved forward to trial. There were a number of procedural and other issues during the period from 2024 until trial. All of them were resolved, or had become irrelevant for the purposes of the trial, by the time the trial began.

Evidence

13. This section includes an outline of the main evidence. The detailed evidence is set out later in relation to the section relating to each of the issues to be decided. I considered all evidence put before the court. This judgment contains the evidence which was

material in reaching my decision. If it does not include a reference to a particular piece of evidence or argument then, for the avoidance of doubt, that does not mean that it was not considered.

Documentary evidence

14. The principal documentary evidence comprised the Facility Agreement, the Personal Guarantee and the demands made for payment. Other relevant documentary evidence included emails and notes of meetings held in or around February to April 2018 when the material events in this case mostly occurred.

The Facility Agreement

15. This was an agreement between the First Defendant and the Bank. The initial agreement was entered into on 2 July 2012. It was amended and restated on 31 July 2013. A number of facility letters were issued pursuant to the Facility Agreement which set out amounts borrowed and interest payable. The Facility Agreement is governed by English Law.

The Personal Guarantee

16. It was a requirement of the Facility Agreement that Mr Modi would provide a personal guarantee of certain of the obligations of the First Defendant under the Facility Agreement to the Bank. The guaranteed obligations included the payment of obligations of the First Defendant. The Personal Guarantee was entered into by Mr Modi on 3 August 2013. The Personal Guarantee is governed by Indian Law.

The Demands

17. The Bank provided copies of the demands it said it had made for repayment under the Facility Agreement and for payment under the Personal Guarantee. These were:

    i) A demand dated 5 March 2018 to the First Defendant as borrower and sent on 6 March 2018 by fax and registered post;

    ii) A demand dated 6 April 2018 to the First Defendant as borrower and sent that day by courier and by fax;

    iii) A demand dated 6 April 2018 to Mr Modi as guarantor and sent that day by post and which the Bank attempted to send by fax (the "**April 2018 Modi Demand**");

    iv) A demand dated 26 September 2025 to the First Defendant as borrower and sent that day by registered post and by fax; and

    v) A demand dated 2 October 2025 to Mr Modi as guarantor and sent that day by fax and registered post (the "**October 2025 Modi Demand**").

Documents from 2018

18. There were a number of emails, letters and notes of meetings from January to April 2018. Those were evidence of events that related principally to the alleged fraud, and the actions of the Bank and Mr Modi at that time.

Documentary evidence of amounts due

19. Various sums were advanced to the First Defendant pursuant to the Facility Agreement. The Bank provided documentary evidence of the amounts due at the relevant times. This claim is concerned with USD$9,833,000 that was drawn down by reference to 13 Bills of Sale/Eligible Receivables, which fell due for payment from February 2018 onwards. A sum in another account of $5,745,134.63 was on 1 March 2018 set off against the sums due. In June 2021 the sum of $25,469.71 was received from the liquidators of Fancy Creations Company Ltd. That further reduced the principal debt due. After deduction of these sums, the Bank says that the remaining capital debt was $4,105,189.34. This was the amount for which summary judgment was obtained against the First Defendant. Mr Modi accepted that this was the amount of principal which the First Defendant had failed to repay to the Bank.

20. The court was provided with documents that set out calculations provided by the Bank of the interest on that principal sum. The Bank provided the interest calculation in various different ways such that the court would have the correct figures after having decided which, if any, interest rate(s) were applicable. The parties disputed which rates, if any, should apply. There was, however, no dispute about the accuracy of the calculations provided by the Bank in relation to the various rates.

Witness evidence

21. The following witnesses gave evidence.

Jack Pestill

22. Mr Pestill was the associate solicitor acting for the Claimant in this litigation. He supervised the service of the various demands for payment under the Facility Agreement and the Personal Guarantee by the Claimant. This included putting the demands in the internal system to then be posted. He was unable to give direct evidence that the demands were actually delivered or received. He gave evidence, however, that a demand on the Second Defendant was returned as undelivered. His evidence was clear and largely uncontroversial.

Milan Kapadia

23. Mr Kapadia was the partner acting for the Claimant in this litigation. He supervised the service of the various demands for payment under the Facility Agreement and the Personal Guarantee by the Claimant. He was not involved in the physical act of posting the demands. He was also unable to give evidence that they were received. His evidence was clear and largely uncontroversial.

Santosh Mate

24. Mr Mate was an official of the Claimant. He had a role in reviewing for the purposes of this litigation documents regarding the steps the bank had taken in 2018. He was not, however, personally involved in those matters in 2018. He was also responsible

for the calculations proposed by the Bank for interest due. He was cross examined about, in particular, the demands. In essence, he confirmed his understanding of those documents. There was also some back and forth between him and Mr Kapoor about (a) whether certain amounts were "*outstanding*", "*due*" or "*overdue*" and (b) which Events of Default were referred to in the demands. Ultimately, these were not matters on which Mr Mate's evidence was relevant for the purposes of this judgment. He was not involved in the creation or service of those documents. The documents themselves were the relevant evidence.

Bharat Sahai

25. Mr Sahai was a Bank employee in 2018 in London. He gave evidence about the steps the Bank took in relation to the Facility Agreement and the Personal Guarantee, including as to internal Bank discussions.

Mr Modi

26. Mr Modi gave evidence. This was primarily evidence about:

    i) his recollection of the signing and the terms of the Personal Guarantee;

    ii) events in January and February 2018 as news of the alleged fraud became public;

    iii) the business and prospects of the First Defendant and the Second Defendant.

27. Mr Modi was unable to give evidence on a number of matters in dispute in the case as they were not disputes of fact, or did not involve him, or because he was not present when the matters occurred. His evidence was clear on the matters within his knowledge.

Expert evidence

28. There were two questions of Indian Law on which the court permitted expert evidence. Those were:

    i) Whether the Personal Guarantee was void/unenforceable pursuant to regulation 3 of the Foreign Exchange Management (Guarantees) Regulations 2000 ("**FEMA**") (the "**Enforceability Issue**"); and

    ii) Whether Mr Modi "*was released from his obligations pursuant to section 133 of the Indian Contract Act 1872 as raised in paragraph 26A of his Amended Defence*" (the "**Variation Issue**").

29. The Variation Issue only related to Mr Modi's obligation to pay interest from 30 September 2024 on the principal amount due following the end of publication of synthetic LIBOR.

30. The Bank called Sushmita Gandhi as their expert witness. She gave evidence in person. Mr Kapoor, on behalf of Mr Modi, questioned her credibility as an expert. She gave clear evidence about her experience analysing and advising on FEMA. She explained that many of the litigation cases in her CV contained FEMA issues. Mr

Modi said that Ms Gandhi was not listed on her firm's website as a FEMA expert. She explained that the people listed were transactional lawyers who advised on how to comply with FEMA, whereas she was a litigator who dealt with FEMA matters arising in litigation. In cross examination she was asked a number of technical questions about matters relating to Regulation 3 itself, as well as FEMA more broadly. She answered these clearly and without needing to look at notes or refer to texts. She also demonstrated a great familiarity with the details of the many cases she had cited in her opinion. I was satisfied that she had the necessary expertise on the Indian law issues in question.

31. Mr Modi had been given permission at the CCMC in October 2024 to also provide expert evidence by June 2025 (later extended to August 2025) on the Enforcement Issue. Mr Modi did not obtain any expert evidence on the Enforcement Issue at this stage. In October 2025, permission was granted for expert evidence on the Variation Issue. Mr Modi seemed at this stage to have formally instructed Mr Jain as a proposed expert. A report was provided by Mr Jain dated 2 February 2026.

32. There was no joint report between Mr Jain and Ms Gandhi identifying areas of agreement and disagreement.

33. Mr Jain was not called by Mr Modi to give evidence in person either in London or via video link from an approved location. Accordingly, his expert evidence was untested in cross-examination. I therefore attached less weight to it than the weight I attached to the tested expert evidence of Ms Gandhi.

Issues

34. The legal issues to be considered by the court were proposed by the Bank ahead of the first pre-trial review. Mr Modi did not dispute that those were the issues. In the skeleton argument provided shortly before the trial Mr Kapoor suggested for the first time a different set of legal issues. In reality, these were largely a re-framing of the existing issues. There was also an attempt to introduce some new issues. As these had not been pleaded, they were not taken into consideration. In addition, during the course of the trial some issues were admitted by Mr Modi, notwithstanding that they had previously been disputed.

35. At its heart, this is a simple case of whether Mr Modi (a) had been validly served (b) with a demand for a liability that he had to the Bank (c) pursuant to a Guarantee that was enforceable.

36. I will consider these issues first in relation to the October 2025 Modi Demand.

October 2025 Modi Demand

Was Mr Modi validly served?

37. Clause 24 of the Personal Guarantee sets out how a demand must be served on Mr Modi. The clause in the Personal Guarantee included an address for service on Mr Modi which was in India.

38. Clause 24 cross-referred to clause 18.3 (Notices) of the Facility Agreement. That clause 18.3 said that every:

> "*notice….shall be in writing and may be delivered personally or by letter, by facsimile or other electronic communication (forthwith confirmed by letter)*"

39. The documentary evidence showed the October 2025 Modi Demand was (a) in writing and (b) sent by registered post to the address in the Personal Guarantee.

40. Notwithstanding his personal absence from India, Mr Modi has never served a notice identifying another address for service. The address in the Personal Guarantee therefore remains his contractual address for service. I am satisfied that the October 2025 Modi Demand was validly served at his Indian address as required by the Personal Guarantee.

41. Mr Modi denied that he had received the demand sent to India as he had not been back to India since 2018. Mr Modi had in fact been sent the October 2025 Modi Demand at HMP Thameside. Both he and his legal team seemed very well aware of its contents. It was not, however, a requirement of the document that Mr Modi actually received the demand. I am, in any event, also satisfied from the delivery to HMP Thameside and his possession of it that as matter of fact Mr Modi had received the demand.

Was the October 2025 Modi Demand a demand for a liability of Mr Modi to the Bank?

42. The October 2025 Modi Demand required payment by Mr Modi as follows:

> *"13. At the date of this demand, the Borrower owes BOI the principal sum of USD$4,105,189.34 (the "Principal Sum") plus interest as ordered under the Judgment or as due under the Facility. Interest has accrued on the Principal Sum in accordance with paragraphs 11 and 12 above. As at the date of the Judgment and as ordered in the Judgment this interest amounted to the sum of USD$4,370,083.61 up to and including 8 March 2024. Interest has continued to accrue in accordance with paragraphs 11 and 12 above from 8 March 2024 and the amount due as at 30 September 2025 is USD $10,740,111.88. Therefore, the Borrower is indebted to BOI in the total sum of USD $10,740,111.88 ("the* ***Financial indebtedness")*** *which we hereby demand*
>
> *14. BOI demands all interest under the Facility however so due and without prejudice to the above calculation of interest being incorrect and/or the Court determining a different basis of interest and/or amount of interest to be owing.*
>
> *15. In accordance with the terms of the Guarantee, this is a FORMAL DEMAND for repayment by you of the Financial Indebtedness".*

43. Mr Modi accepted that the summary judgment against the First Defendant was incontrovertible evidence of the principal amount of USD $4,105,189.34 owed by the First Defendant to the Bank.

44. Given that acceptance, Mr Modi's defence on this issue was unclear. Mr Modi did not, for example, deny that the Peronal Guarantee required him to pay monies owing to the Bank if the First Defendant was in default.

45. The wording in Mr Modi's Defence at paragraph 28 was:

> *"The amended statements incorporated in paragraphs 29, 30, 31, 32, 33 and 34 neither constitute any effective demand against Mr. Modi, nor give rise to any legal right to the Bank to recover the amount under the said Summary Judgment Order from Mr. Modi. The Bank has not even established, by any cogent evidence, its effort to recover the amount under the Summary Judgment Order from Firestar Diamond FZE or the outcome of any such effort, if so made. The Summary Judgment Order dated 8 March 2024 was made solely against the First Defendant and gives rise to no issue estoppel or cause of action estoppel against the Third Defendant. A judgment debt does not constitute 'Financial Indebtedness' or 'Guaranteed Indebtedness' under the Modi Guarantee and cannot enlarge Mr. Modi's liability…..This is without prejudice to the basic contention that since 2017 Mr. Modi has not executed any guarantee to secure the liability of the Borrower and therefore, the said Summary Judgment Order is not enforceable against him. Mr. Modi would categorically submit that for the payment of the said Summary Judgment Order, there is no subsisting legal liability against him, joint, several or co-extensive. Mr. Modi would further submit that the Bank does not have any contractual entitlement to recover any amount from Mr. Modi, whether to recover the sums pleaded in paragraph 25 above, or alternatively, the sums ordered to be paid under the Summary Judgment Order."*

46. None of the points made in this paragraph were maintained in a meaningful way at trial. I record that in my judgment:

    i) the Bank was not under an obligation under any document which Mr Modi put before the court to make efforts to recover money from the First Defendant before claiming against him;

    ii) Mr Modi did not explain why it was relevant that the summary judgment was against the First Defendant, given that he had guaranteed the obligations of the First Defendant to the Bank;

    iii) there was no explanation of the relevance of the references to claims in estoppel against Mr Modi; and

    iv) there was no explanation of why it was relevant that Mr Modi had not executed a further guarantee since 2017.

47. In other words, there was nothing in this paragraph of the Defence which in my judgment provided any defence for Mr Modi to the claim in relation to the monies claimed in the October 2025 Modi Demand.

48. Mr Modi argued that it was a condition precedent to him being liable to the Bank that the Bank had given notice to the First Defendant of a demand for repayment. Clause 7 of the Personal Guarantee said the opposite:

> *"The Lender shall not be obliged to make any claim or demand on [the First Defendant] or to resort to any other means of payment now or hereafter held by or available to it before enforcing this Personal Guarantee*"

Even if that clause had not existed, the Bank had as a matter of fact made valid demands of the First Defendant, as set out in detail below. Mr Modi did not dispute that those demands had been validly served on the First Defendant. There was therefore nothing in Mr Modi's argument on this point.

49. The Financial Indebtedness set out in the October 2025 Modi Demand was plainly indebtedness of the First Defendant to the Bank. Mr Modi had agreed under the Personal Guarantee to pay the Bank those sums to the extent that the First Defendant had not done so. Mr Modi has not provided any defence to explain why the Bank was not entitled to demand that sum. I am satisfied that the Bank was entitled to demand the Financial Indebtedness of the First Defendant in the adjudged sum of USD 4,105,189.34 from Mr Modi.

Enforceability of the Personal Guarantee as a matter of Indian Law

50. Mr Modi says that the Guarantee has been executed in breach of regulation 3 of FEMA. He says that the consent of the Reserve Bank of India is required to make the Personal Guarantee enforceable. He says that no such consent has been obtained and therefore the Personal Guarantee is void/ unenforceable as a matter of Indian law.

51. This is a question of Indian Law which the English court will determine as a matter of fact based on evidence put before it.

52. This was a matter on which Indian law experts gave evidence. For the purposes of their evidence, they assumed that there had been no consent obtained from the RBI pursuant to Regulation 3.

53. Regulation 3 is as follows:

> *"Save as otherwise provided in these regulations, or with the general or special permission of the Reserve Bank, no person resident in India shall give a guarantee or surety in respect of, or undertake a transaction, by whatever name called, which has the effect of guaranteeing, a debt, obligation or other liability owed by a person resident in India to, or incurred by, a person resident outside India."*

54. Both experts agreed that the Regulation applied to the Personal Guarantee. This is despite, on at least one reading of the regulation, the Personal Guarantee being of the obligations of a non-Indian entity (the First Defendant) rather than it being a guarantee of obligations of a person resident in India to a person resident outside India.

55. Both experts agreed that it was Mr Modi who was obliged to obtain any consent from the RBI. There was no evidence that Mr Modi had ever taken any steps to obtain that consent. It was not clear from the evidence when the Bank first became aware of Mr Modi's failure to obtain the consent.

Sushmita Gandhi's expert evidence

56. Ms Gandhi's evidence was clear. Her conclusion was that the Personal Guarantee was at all times, and remained at the time of trial, capable of being approved by the RBI. It followed, she said, that as a matter of Indian Law the Personal Guarantee remained a

valid and binding legal document, albeit that performance of obligations under it may require specific or general approval of the RBI in order not to breach Regulation 3. The Personal Guarantee was therefore not void/unenforceable.

57. Ms Gandhi set out in her opinion a number of authorities from courts in India from which her expert opinion was derived. These included:

> (i) *Vijay Karia v Prysmian Cavi E Sistemi SRL* (2020) 11 SCC 1 – the Supreme Court, with reference to *Cruz City 1 Mauritius v Unitech* [2017] SCC Online Del 7810, which held generally that "*a rectifiable breach under FEMA can never be held to be a violation of the fundamental policy of Indian law*";
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> (ii) *Banyan Tree Growth Capital LLC v Axiom Cordages* [2020] SCC Online Bom 781 - High Court of Bombay including the observation in that paragraph that the mere fact that future permissions may be required under FEMA did not mean that enforcement of an award should be refused; and
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> (iii) *Arun Kumar Jagatramka v Ultrabulk A/s* [2023] SCC OnLine Guj 3152. This concerned a judgment given by Teare J in England against an individual who had given a guarantee in relation to a cooperation agreement between two foreign parties. The claimant looked to enforce that judgment in India. The High Court of Gujarat at Ahmedabad considered the findings of the court below in India together with the findings of the English court (which had determined not only that the payments were due under the guarantee but that the failure to get RBI consent under FEMA did not void the guarantee). That consideration included express reference to Regulation 3, and *SRM Exploration v N & S & N ConsultantsSRO [2012] 129 DRJ 113 (DB) , Videocon Industries v Intesa Sanpaolo Spa* {2014] SCC Online Bom 1276 and *Vijay Karia*. Permission to appeal to the Supreme Court of India was refused.

58. There was specific consideration of the point by Teare J in the English courts in *Ultrabank v Jagatramka* [2017] EWHC 2792 (Comm) at [8-9] who formed the same view as Ms Gandhi.

59. Ms Gandhi considered the question of whether the knowledge of the Bank that Mr Modi had not obtained the required consent would cause the Personal Guarantee to be void/unenforceable. She was clear that in her opinion this would not make a difference. Regulation 3 expressly places the obligation on the "*person resident in India*" ie Mr Modi. The Personal Guarantee itself also placed the obligation on Mr Modi. The Bank's knowledge was, she said, irrelevant. She opined that the default was Mr Modi's and he cannot take advantage of his own wrong. A similar issue was, she said, addressed in *Arun Kumar Jagatramka v. Ultrabulk A/S* [2023 SCC Online Guj 3152]. The court summarised the first instance court's analysis by reference to this exact same question:

> *"Issue II (d) Would the guarantee be invalid if both sides were aware that the guarantor did not have approvals? As stated earlier the requisite approvals can be obtained from by the Guarantor from the RBI even after the guarantee has been issued per Life Insurance Corporation of India v. Escorts Ltd. (1986) 1 SCC 264 as followed in Vitol S.A. v. Bhatia International Limited (2015) 1 Bom CR 100 and Texmaco Ltd. v. Deputy Director, Enforcement Directorate, (1997) 88*

> *Comp Cas 228. It follows that a guarantee will not be invalid even if both sides are aware that the guarantor does not have the requisite approvals when it is executed."*

She explained that the claimant's argument that this was wrong was rejected. This was confirmed by the High Court of Gujarat in general terms at and permission to appeal was refused by the Supreme Court.

60. She explained that the High Court of Calcutta in *Eurometal Limited v Aluminium Cables & Conductors* [1983 53 CompCas 744 Cal] dealt with a similar situation. The creditor (Eurometal Ltd) was aware of the debtor company's non-compliance with FERA (pre-FEMA legislation) and that the debtor had not obtained RBI permissions for remittance of certain amounts. Since the debtor failed to remit the amount, Eurometal Ltd initiated a petition for winding up against it, before the High Court of Calcutta. Even though the creditor was aware of the non-compliance, the High Court held that it was the debtor's obligation to obtain such permissions. The High Court further held that the debtor (having failed to obtain the permissions) could not now take advantage of its own wrongdoing to avoid the winding up petition. The debtor's argument based upon non-compliance with FERA was rejected. It was held that it was the debtor's obligation to obtain permission and he could not take advantage of his own default. The creditor's knowledge therefore was not relevant either to validity or the ability to take action against the debtor. *Eurometal* was, she said, referred to in a number of the above FEMA cases with general approval, including in *Arun Kumar Jagatramka v. Ultrabulk A/S*, *Intesa v Videocon* at first instance and on appeal and *Punjab National Bank (International Ltd) v M/Superior Industries Ltd* (Company Petition (1B) No 1032/ND/2018, 23 March 2023)

61. Ms Gandhi's conclusion was:

> "*In summary, knowledge of the Bank or Mr Modi regarding a lack of RBI approval under Regulation 3 of non-compliance of any FEMA provisions will not impact the enforceability of the Modi Guarantee*."

62. In cross-examination Ms Gandhi was further asked if the position was different if the party relying on it was an authorised person (and thus regulated by the RBI). She explained that the obligation to obtain consent was on Mr Modi and not the Bank. Even if the London Branch of the Bank was an authorised person (which was a question of fact on which she had no information) she opined that the RBI would be entitled to give consent, either prospectively or retrospectively, in relation to entering into and performance of the Personal Guarantee. The RBI might take the knowledge and responsibilities of the parties into account when making that decision, but the RBI had the lawful entitlement to grant consent if it so determined.

Mr Jain's expert evidence

63. Mr Modi argued that the failure to obtain the approval rendered the Personal Guarantee void. Furthermore, he said the fact that the Bank knew that the approval had not been obtained meant that the RBI would never approve the Personal Guarantee or payments under it. Accordingly, even if the Personal Guarantee was not void when executed, it became void/unenforceable when the Bank knew that approval had not been obtained.

64. No copy was provided to the court of the instructions given to Mr Jain. A significant part of his opinion addressed matters on which no permission had been granted for expert evidence to be given. This was highly unsatisfactory. I ignored those sections of his report.

65. Mr Jain was not called by Mr Modi to give evidence. That reduced the reliance to be placed on his expert opinion.

66. Mr Jain also did not refer in his report to any Indian or English cases to support a conclusion that the Personal Guarantee was void/enforceable. This further reduced the relative weight to be attached to his opinion when compared to that of Ms Gandhi.

67. Most importantly, the opinion from Mr Jain did not actually give an explicit answer to the question raised. The most he opined (at paragraph 33) was that "*it appears that no such permission [under Regulation 3] was sought from the RBI and hence, there is prima facie non -compliance of Regulation 3*". He then considers various other Indian regulations and clauses in the contract (but no authorities) and expresses the opinion that "*[the Bank] might have…rendered itself vulnerable to live without the benefit of the [Personal Guarantee]*". That is very far from expressing an opinion that the Personal Guarantee is either void or unenforceable.

68. He also contemplates the Bank being estopped from claiming "*any right to enforce the same against the Guarantor*". That appears to be on the assumption that no RBI consent is ever obtained and fails to address the fact that Mr Modi is the person obliged to obtain the consent. His evidence, at its highest is that the Bank "*runs the risk of being estopped*".

69. Thus, even on Mr Modi's own expert evidence, which was not tested under cross examination and in relation to which the court does not have evidence of the instructions actually given, the expert evidence provided on behalf of Mr Modi does not support the assertion that the Personal Guarantee is void/unenforceable as a matter of Indian law.

70. I accept Ms Gandhi's evidence generally, as it is derived from the authorities to which she referred, and as it was tested under cross-examination. The limited evidence from Mr Jain did not materially undermine the evidence of Ms Gandhi and where it conflicts I accept her evidence. I am therefore satisfied as a matter of fact that the answer to the question of the Enforceability Issue is that the Personal Guarantee is not void/unenforceable, because the RBI can at any point grant consent, which can be retrospective.

The October 2025 Modi Demand being time-barred

71. Mr Kapoor raised in his skeleton argument a purported defence that the claim under the October 2025 Modi Demand was time-barred. This had not been pleaded and would fail on that basis. In any event, even if (a) Mr Modi had pleaded that a three year period of limitation applied and (b) he was right that this limitation period was indeed three years, his argument was doomed to failure on the facts. The October 2025 Modi Demand referred to a failure to pay the amount due on the summary judgment. A demand for payment of that judgment debt was made on the First Defendant on 26 September 2025 some 18 months after the date of judgment. A

demand on Mr Modi under the Personal Guarantee for non-payment by the First Defendant was made on 2 October 2025.

72. Accordingly, even (a) if the pleadings had been amended (which they had not been) and (b) the court was satisfied that as a matter of Indian law the limitation period was 3 years (on which there was no evidence at all, let alone expert evidence) then (i) the October 2025 Modi Demand had been issued within 3 years of the non-payment by the First Defendant of its liability arising under the summary judgment and (ii) the claim had been amended to include a claim in relation to that demand within 3 years of it being made. The limitation point had, in my judgment and for each of these three reasons, no merit.

Conclusion

73. Mr Modi was validly served with the October 2025 Modi Demand. That was a valid demand for a liability to the Bank under the Personal Guarantee. The Personal Guarantee is not, as a matter of Indian law, void/ unenforceable. Mr Modi is therefore liable under the Personal Guarantee to the Bank for the principal amount due of USD $4,105,189.34.

74. I set out in paragraphs 110 to 118 below my findings in relation to the interest on that sum for which Mr Modi is liable.

Other issues

75. I set out below my findings on other matters in dispute (i) for the purposes of any costs application that will follow and (ii) in case they are relevant should my principal findings be challenged.

Was Mr Modi validly served with the April 2018 Modi Demand?

76. The Bank says that it served a valid demand on Mr Modi for payment under the Personal Guarantee on 6 April 2018. Mr Modi says it was not validly served on him.

77. The Personal Guarantee contains the following requirements for service:

> ***"24. Notices***
>
> *24.1 The provisions of Clause [18.3] (Notices) of the Facility Agreement shall apply mutatis mutandis as if set out in full in this Deed, save that all references therein to the " Firestar" shall be interpreted as a reference to the Guarantor.*
>
> *24.2 Any notices, requests, demands or other communication required or permitted to be given under this Personal Guarantee to the Guarantor shall be addressed as follows:*
>
> ***Guarantor***
> ***To : Mr Nirav D Modi***
> *Address : 4, Grosvenor House,*
> *Peddar Road, Mumbai 400 026*
> *Telephone: +91 22 30010000*

Fax: +91 22 30010200"

78. The Facility Agreement contained the following clause:

> ***"18.3** (a) Every notice or communication under this Agreement shall be in writing and may be delivered personally or by letter, by facsimile or other electronic transmission (forthwith confirmed by letter) dispatched as follows:*
> *(i) if to the Bank…*
>
> *Or*
>
> *(ii) if to the Borrower, at its address specified at. the head of this Agreement or its registered or principal office for the time being or to the following numbers facsimile: 00 9714 6091949~*
> *for the attention of Mr. V Srinivasan or (in any case) to such other address and/or facsimile number as may be duly notified in accordance with this Clause by the relevant party to the other patty for such purpose.*
>
> *(b) every notice or other communication shall, subject as otherwise provided in this Agreement be deemed to have been received (if sent by registered post) 24 hours after dispatch and (if delivered personally or by facsimile transmission) at the time, of delivery or dispatch if during normal business hours in the place of intended receipt on a Business Day in that place and otherwise at the opening of business in that place on the next succeeding such Business Day, provided that any notice or communication to be made or delivered to the Bank shall be effective only on actual receipt by the Bank"*

79. Mr Modi argued that the clause required service of a demand on him to be by registered post.

80. The clause in the Facility Agreement is governed by English law. The service clause in the Personal Guarantee is governed by Indian law. The drafting of the Personal Guarantee did not make it clear whether the service clause from the Facility Agreement was to be incorporated and interpreted under English law, or whether it was to be incorporated and the interpreted under Indian law. There was, however, no evidence that the interpretation of the service clause under Indian law would differ from the interpretation under English law. I therefore interpreted the clause under English law. If the clause was indeed to be interpreted under Indian Law as a matter of fact then I would have assumed, in the absence of evidence to the contrary, that Indian Law was the same as English law.

81. The principles of contractual interpretation are well known and set out, for example, in *Chartbrook Ltd v Persimmon Himes Ltd* [2009] AC 1101. The court has the task of ascertaining the objective meaning of the contract. That involves ascertaining "*what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean*".

82. Clause 18.3(a) refers to the ways in which service can be undertaken.

83. There is no requirement in clause 18.3(a) for service by post to be by "registered" post and there is no need to imply the word "registered" in order for the clause to make sense. I reject Mr Modi's argument that service must be by "registered" post. The contract means, in my judgment, that service may be by any of the methods in clause 18.3 (a). The address to which a letter to Mr Modi must be served was that in clause 24 of the Personal Guarantee.

84. Mr Kapadia gave evidence that he directed service of the April 2018 Modi Demand. He gave evidence that he created the demand and accompanying letter. Mr Pestill gave evidence that he amended the letters and demand and then placed them in his firm's tray for posting. He gave evidence that items in that tray would then be posted by the firm. I accept their evidence, which Mr Modi did not particularly challenge.

85. Mr Modi invited the court to conclude that the court could not be satisfied that the demand actually was delivered to his address. There was no evidence of any reason why the demand would not have been delivered, such as a postal strike. Mr Modi speculated that it might have been undelivered because his property in India had been "sealed" by the Enforcement Directorate as part of their investigation into his affairs. There was no witness or documentary evidence to underpin this speculation. The October 2025 Modi Demand had been delivered to the same address in India. That undermined Mr Modi's speculation about the lack of delivery of the April 2018 Modi Demand.

86. I am satisfied on the evidence that the April 2018 Modi Demand was properly posted, via a normal posting route. I am satisfied on the balance of probabilities that it was therefore delivered as addressed. My conclusion is reinforced by the fact that a different demand, sent at the same time, was returned as "undelivered", whereas the April 2018 Modi Demand was not so returned.

87. Mr Modi also argued that even if the letter was delivered, that did not constitute valid service as there was a requirement for the demand to have been actually received by Mr Modi. Mr Modi was not in India during the relevant time in 2018 when events were unfolding. He had been asked by the Indian banks to return but had not done so. It seems that he has not been back to India since. He says that he therefore never actually received the demand.

88. Clause 18.3(b) deals with when service is deemed to occur if a notice is sent by registered post, delivered personally or by facsimile. It does not, however, set out when a notice would be deemed served if sent by "letter" or "other electronic communication" as permitted by clause 18.3(a). In the absence of a deeming provision, the logical conclusion is that a letter or other electronic communication would be served when it was delivered. That would be consistent with the final words of clause 18.3(b) in which it is clear that the deeming provisions in 18.3(b) do not apply to any notice sent to the Bank unless and until it is received. Those words would not be necessary if actual receipt, rather than delivery, was required under the main clause.

89. I have already determined that on the balance of probabilities the letter was delivered to the correct address for service in India.

90. In any event, even if Mr Modi is right that a notice that has been delivered to the correct address but has not been "received" has not as a matter of fact been served Mr Modi has, as a matter of fact, actually received the notice. He provided a copy of it to his solicitors in 2019. He did not explain how he came by that copy of it if it was not through it having originally been delivered to his address in India. I am satisfied that it came to him having being delivered to the address in India, although I cannot be sure by what route it was forwarded to him from there.

What liability of the First Defendant to the Bank was the Bank entitled to Demand from Mr Modi under the April 2018 Modi Demand?

91. The Bank argued that in April 2018 amounts were due from the First Defendant under the Facility Agreement for 3 separate reasons. These were that:

    i) all amounts were repayable on demand and it had demanded repayment;

    ii) an Event of Default had occurred under clause 141(a) and/or (n2*)* of the Facility Agreement *[clause 14.1(a) has 2 sub clauses (n) which are referred to as n1 and n2 in this judgment]* because the First Defendant had failed to pay monies to the Bank when due; and

    iii) an Event of Default had occurred under clause 14.1 (n1) of the Facility Agreement because the Bank had formed the opinion that an event had occurred that may have a material adverse effect on the First Defendant or its ability or willingness to perform or comply with its obligations due to the allegations surrounding Mr Modi in India in early 2018.

92. Mr Modi asserted in his defence that the Facility Agreement was not repayable on demand. This was notwithstanding the following clause in the Facility Agreement:

> *"6.1 The Borrower, shall on demand, pay to the Bank all Financial Indebtedness under the Facility whether actual, certain or contingent, which now or at any time after the date of the Agreement may be due, owing or incurred by the Borrower to the Bank under the Facility*".

93. There was no explanation of what this clause could mean, other than that the facility was repayable on demand. This position was maintained until trial. At the trial Mr Kapoor, on behalf of Mr Modi, conceded that clause did indeed mean that the Facility Agreement was repayable on demand.

94. It follows that the Bank was entitled to demand repayment of Financial Indebtedness of the First Defendant both in March 2018, and in April 2018, and indeed in October 2025. This is what it did.

95. Given that concession, it is no longer determinative whether the Bank was also entitled in March 2018 and April 2018 to demand repayment on other bases.

96. Those other bases were, however, the subject of submission and evidence before the concession was made that the Financial Indebtedness was repayable on demand. I will therefore briefly set out my findings on them.

Material circumstances Event of Default

97. The Bank also relied on an Event of Default under clause 14.1(n1) due to the occurrence of:

> *"any other event or series of events or circumstances whether related or not (including but without limitation any adverse change in the business, assets or financial condition of the borrower or the Guarantor) occur(s) or arise(s) which in the opinion of the Bank, may have a material adverse effect on the Borrower, or its ability or willingness to perform or comply with any of its obligations under this Agreement and/or any Finance document*".

98. The Bank contends that by the date of the 5 March 2018 demand, and by each subsequent demand, it had rationally formed the opinion that events and circumstances had arisen which met the requirements of this clause. The demand referred to the criminal investigations into Mr Modi as being the reason why it had formed that opinion. In other words, it clearly set out that the Bank had as a matter of fact formed that opinion.

99. Mr Sahai's witness evidence, both written and oral, was consistent with the conclusion that the Bank formed its opinion on the basis of the developing circumstances in early 2018. The Bank took some time between circulating a legal action memorandum about the desire to call for repayment of the facility and making the demand on 5 March 2018. That is not, as Mr Modi invited the court to find, suspicious. Rather, it indicated that the Bank wanted to make sure it had correctly assessed the legal position before proceedings.

100. I am satisfied that the Bank had formed the opinion by the time of the demand on 5 March 2018 that the circumstances in clause 14.1(n1) had arisen.

101. Mr Modi disputed that the Bank was entitled to form that opinion.

102. The key documents that provide evidence of events at that time include: the CBI First Information Report of 29 January 2018; newspaper articles in early February 2018; emails from Mr Modi on 4, 15, 17 and 26 February 2018; PNB consortium meeting minutes of 7 and 8 February 2018; PNB's announcement to the stock exchanges on 14 February 2018; and the Bank's legal action memorandum first produced on the same date.

103. From mid-February 2018, it was reasonable to infer that the Borrower and every company in the Firestar Group was likely to be materially and negatively affected. This was demonstrated by the due diligence reports obtained by he Bank and the Borrower's lack of cooperation with that process, the Borrower's failure to pay the Eligible Receivables as they fell due, and its failure to respond to the Bank's attempts at contact. The value of the guarantees provided by Mr Modi and the Second Defendant was very likely substantially impaired.

104. Given the size and seriousness of the allegations at this time it is difficult to see how Mr Modi could successfully argue that there was no material adverse effect on the Borrower. Any such argument was, however, fatally undermined by Mr Modi's own written evidence from this time. On 17 February 2018 he sent an email to the Bank which said:

> *"….a media frenzy [has] led to immediate search and seizure of operations, which has in turn resulted in Firestar International Private Limited and Firestar Diamond International Private Limited effectively ceasing to be going concerns. This has thereby jeopardized our ability to discharge the dues of the group to the banks."*

105. This was a plain and unequivocal confirmation that there had already been a material adverse effect on the ability of the First Defendant to perform its obligations under the Facility Agreement.

106. Mr Modi also argued that it was important that the Bank seemed to have made its decision in India and not in London. The Personal Guarantee was given by him to the Bank. The Bank was an Indian legal entity with a branch office in London. The events relating to Mr Modi occurred and/or came to prominence in India. Given that, and the scale of the alleged fraud, it is not surprising that this matter got attention within the head office in India of the Bank. The London branch however was involved in the discussions, as evidenced by the documents and evidence of Mr Sahai. The notices were issued by the correct legal entity. There was nothing, in my judgment, in Mr Modi's line of argument that undermined any element of the claim.

Event of Default for failing to pay sums when due

107. The underlying facts are largely undisputed. The Bank advanced $9,833,000 to the First Defendant by reference to 13 receivables, which fell due for payment between February and June 2018. None were paid on their due dates. Two were overdue in February 2018. By 5 March 2018, 6 of the receivables were overdue; by 6 April 2018, 9 were overdue. The Bank specifically referenced the failure to make principal and interest payments in the demand made on the First Defendant dated 6 April 2018. The Bank referred to that being an Event of Default under clause 14.1 (a) of the Facility Agreement. That clause stated that an Event of Default would occur if "*the Borrower fails to pay on the due date…any sum payable by it under this Agreement*".

108. Mr Modi asserted that because the demand of 5 March 2018 did not refer to the monetary default the Bank was not entitled to rely on that particular default against him. The subsequent demand sent by facsimile to the First Defendant in early April 2018 was, however, deemed served on 9 April 2018. The April 2018 Modi Demand was sent by post. I am satisfied that on the balance of probabilities it would have arrived after 9 April 2024. Accordingly, Mr Modi has been served with a demand for payment which the Bank had already validly demanded from the First Defendant. In any event, clause 7 of the Personal Guarantee as set out in paragraph 48 above makes it clear that service on the Bank is not a pre-requisite of a demand on Mr Modi.

109. Finally, Mr Modi argued that the 5 March 2018 demand from the Bank to the First Defendant was not valid because it had been marked for the attention of Mr Mehta and not Mr Srinivasan. He accepted that the notices had been sent to the correct legal entity, at the requisite address. Mr Srinivasan had left the employment of the First Defendant some time previously. Mr Mehta was the person with whom the Bank had been corresponding. To the extent that the clause required a named individual to be identified (which I doubt in any event), I am satisfied that the correspondence from the First Defendant constituted notice for the purpose of that clause of the change of

name to Mr Mehta. The other demands were in any event also marked for the attention of Mr Srinivasan so were unequivocally correctly addressed.

The interest due on the principal amount

110. The parties agreed that interest was payable on the basis of LIBOR until 30 September 2024. After that date, the rate of synthetic LIBOR was no longer published.

111. The Facility Agreement provided in the definition of LIBOR that if the LIBOR rate was not available then the rate would be the rate "*determined by the Bank to be [an equivalent rate] from whatever sources it may select*". The Bank used the SOFR rate from 30 September 2024 onwards.

112. Mr Modi argued that this was a variation of the Facility Agreement (to which he had not consented) or was a variation of which notice had to be given to the First Defendant. Those arguments have, in my judgment, no merit. The Facility Agreement as drafted, and in relation to which Mr Modi gave his Personal Guarantee, plainly set out in the definition of LIBOR how the rate was to be calculated if no such rate was published. The Bank has calculated the rate in line with that agreed contractual position.

113. Mr Modi argued as an alternative defence that the change of interest rate on 30 September 2024 constituted a variation under Indian law of the Facility Agreement or the Personal Guarantee which under section 133 of the Indian Contract Act 1872 removed any obligation he had to pay interest after that date.

114. Ms Gandhi gave clear evidence that in her opinion the Bank charging the interest it did after 30 September 2024 was not, as a matter of Indian law, a variation of the Facility Agreement. It was exercising its rights in accordance with the contract as agreed between the parties. Accordingly, s133 was not even engaged.

115. Mr Jain said that "….*if the contract provided the lender an entitlement to claim interest on multiple alternative models, its enforceability remains intact".* He did not express any clear opinion that Mr Modi was released from his obligations in relation to the interest rate charged after the date when synthetic LIBOR was no longer published.

116. I found Ms Gandhi's evidence clear and logical. Mr Jain's evidence was untested in cross-examination and, even at its highest, did not answer the question in Mr Modi's favour. I accept Ms Gandhi's evidence, that as a matter of Indian law, s133 is not engaged. Accordingly, the interest rate from 30 September 2024 was the rate charged by the Bank based on SOFR in accordance with definition of LIBOR in the Facility Agreement.

117. Mr Modi also said that the Bank had not actually charged interest to the First Defendant and it could not therefore recover that amount from him. This assertion appeared to stem from a fundamental misunderstanding. Mr Mate had explained in evidence that the Bank was not allowed to record the interest due under the same account number as the principal amount owing. He confirmed that the amount was still owing by the First Defendant; the amount was just recorded elsewhere. I am

satisfied from his evidence and the document itself that the interest was properly payable by the First Defendant and that Mr Modi has guaranteed payment of it.

118. The interest calculated on the basis set out by the Bank is to be added to the principal sum in calculating the total amount due.

Prison authorities

119. Mr Modi was detained to HMP Thameside for some years awaiting extradition until October 2025. As he was an unconvicted person, he was detained in a single cell. He also had reasonably full access to his papers in this case and other cases in which he was involved. In October 2025 he was brought to court for the CCMC. He, his lawyers, and the court were told part way through the CCMC that he would not be returned to Thameside but would instead be taken to HMP Pentonville.

120. Unfortunately, HMP Thameside seems to have made no attempt at that time to move his papers to HMP Pentonville. Mr Modi and his legal team made applications to both prisons to arrange for the papers to be transferred and for him to have access to these. No transfer seemed to have been made nor did HMP Thameside provide any explanation as to what they had done or would do with the papers. This court ultimately issued a third-party order requiring both prisons to provide Mr Modi with access to which he was entitled. This was not, however provided promptly. The overall result was that the trial scheduled for January 2026 was postponed. This caused significant disruption to the court, to Mr Modi and to the Bank. The impression given to the court was that the prison service operations took no account of the impact of their decisions or delays on the administration of justice in the civil court system. This was highly unsatisfactory.

121. The situation was compounded by HMP Pentonville failing on two occasions to produce Mr Modi to court despite there being a valid court order for them to do so. On both occasions the court and the Bank's legal team attempted to liaise with the prison to make urgent arrangements on the day for Mr Modi to be produced. The prison failed to respond either on the telephone or by email to those urgent enquiries.

122. I directed the Governor of HMP Pentonville to provide sworn evidence explaining (a) how the failure to produce Mr Modi had occurred and (b) why the prison had failed to respond to urgent enquiries on the day.

123. The Governor provided a full statement that recognised, and apologised for, the errors made. It also identified changes to training and processes that the Governor would put in place to ensure that these incidents were not repeated. I express the court's gratitude for the statement provided and the steps that the Governor will take.

Consequential matters

124. This judgment was provided in good time ahead of hand down in draft to the parties to enable consequential matters to be agreed, failing which to set out a timetable and process for agreement or decision. An order reflecting the matters that have, and have not, been agreed will be sealed and issued shortly after the remote handing down of this judgment.