



2026:DHC:5073



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 16.03.2026
Judgment delivered on: 05.06.2026

+ CS(COMM) 493/2018 & I.A. 2150/2018

M/S. STEELBIRD HI-TECH INDIA LTD.Plaintiff

versus

M/S. GLOBAL FRAGRANCES PVT. LTD. & OTHERS
.....Defendants

Advocates who appeared in this case:

For the Plaintiff : Mr. Kamal Bansal and Ms. Bhumani Tyagi,
Advocates.

For the Defendants : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

I.A. 40886/2024 (Seeking Summary Judgment)

1. This is an application filed on behalf of the plaintiff under Order XIII A, Rules 3 and 6(1)(a) of the Commercial Courts Act, 2015 (“CC Act”) read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”), seeking a summary judgment.

BRIEF FACTS OF THE CASE:-

2. The plaintiff company i.e., Steelbird Hi-Tech India Ltd. is a company incorporated under the Companies Act, 1956, and has its registered office in Delhi and operates globally.



3. It is stated that the plaintiff and its sister concerns hold various trademarks, *inter alia*, STEELBIRD and allied wordmarks/labels in Class-12 *vide* application no.278745, application no.393607, application no.1180255, application no.1409654; STEELBIRD and allied wordmarks/labels in Class-24 *vide* application no.2565659; Steelbird Helmet design under no.241153 dated 01.12.2011 and design under no.271296 dated 10.04.2015. The plaintiff further states that the plaintiff holds other pending marks as well, *inter alia*, 'ORB' *vide* application no.3048174 in Class-3 and STEELBIRD *vide* application no.1992874 in Class-3; trademark 'R2K' *vide* application no.3053877 in Class-3 pending registration. Accordingly, it is asserted by the plaintiff that the plaintiff is the owner and proprietor of various wordmarks, labels, designs, etc., which have gained importance and the same are associated with the plaintiff and the customers recognize the same as products of the plaintiff.

4. The defendant no.1/M/s. Global Fragrance Pvt. Ltd. (hereinafter referred to as "GFPL") was incorporated under the Companies Act, 1956, and has its registered office in Delhi. It is stated that the authorised share capital of GFPL is Rs.2 Crores and paid up capital is Rs. 1,70,60,000/- and its directors are Mr. Somesh Chowdhary and Mr. Sumit Sarkar.

5. The defendant no.2/Xtreme Perfumes and Personal Care Pvt. Ltd. (hereinafter referred to as "Xtreme") was incorporated under the Companies Act, 1956, and has its registered office in Haryana with the authorised share capital of Rs.2 Crores and paid up capital of Rs.50 Lakhs and its directors are Mr. Somesh Chowdhary, Mr. Sumit Sarkar, Mr. Sanjeev Nair and Mr. Giani Ram.

6. Defendant no.3/Mr. Somesh Chowdhary is claimed to be the common director/promoter of GFPL and Xtreme. It is alleged that he



exercises his supervision and control over GFPL and Xtreme and has extended personal guarantee for the agreement dated 06.10.2015. It is alleged that defendant no.3/Mr. Somesh Chowdhary, has siphoned off funds received from plaintiff and therefore, is personally liable as a guarantor and that his role needs to be examined for possibly piercing the corporate veil.

7. It is stated that sometime in the month of August, 2015, the defendant no.3 approached the plaintiff with an offer to manufacture, source and market skincare, bodycare products and cosmetics under the plaintiff's trademarks. It is stated that defendant no.3 portrayed that its companies are competent and would commence manufacturing on receipt of an advance amount, launching products under the mark 'ORB' with assured quality conformity. It was also assured that in case defendant no.1 is unable to manufacture certain products, they would use third parties for such manufacture while assuring maintenance of quality. In pursuance thereto, the defendant no.3 *vide* the email dated 28.08.2015 sought authority letter from the plaintiff authorising GFPL to manufacture deodorants and perfumes under the brand name 'STEELBIRD'.

8. A draft of an agreement in the aforesaid context was prepared on 07.09.2015 and the plaintiff *vide* the email dated 08.09.2015 tendered the in-principle approval for use of the mark 'ORB' subject to the agreed terms. In terms thereof, the plaintiff remitted a sum of Rs.1 Crore to GFPL *vide* RTGS as advance on the insistence of defendant no.3.

9. A formal agreement incorporating all the relevant terms and conditions for 'ORB' was executed on 06.10.2015. On defendant no.3's proposal, Xtreme was required to market the products and in pursuance thereto, the defendant no.3 signed a new agreement as representative and



guarantor. The said agreement required the defendants to manufacture, advertise and distribute products under the plaintiff's trademarks 'ORB' and/or 'STEELBIRD'. Certain clauses of the said agreement which would be relevant to decide the present application are extracted hereunder:-

“..3.12 : Effect of termination on use of intellectual property SBHT:

a. Upon this Agreement terminating for any of the reasons provided herein, GLOBAL and XTREME shall forthwith cease and desist from using the Licensed Trademark in any manner whatsoever.

b. GLOBAL and /or XTREME shall also ensure that GLOBAL and/or XTREME shall at its own cost take all such steps that are necessitated and shall ensure that all promotional/advertising materials, labels, advertisements of any form and manner are removed from their respective manufacturing facilities (or facilities of any third party where the Licensed Products are being manufactured), storage/warehouse facilities (whether of GLOBAL or XTREME or any third party), any other sign boards and ensure that it is no longer used or displayed or advertised in any manner whatsoever from their respective manufacturing facilities (or facilities of any third party where the Licensed Products are being manufactured), storage/warehouse facilities (whether of GLOBAL or XTREME or any third party) and are destroyed where required by SBHT. SBHT may at its discretion require the GLOBAL and/or XTREME to carry out all such removal and destruction in the presence of its representative. GLOBAL and/or XTREME shall within One(1) month from the date of termination hereof confirm in writing to the SBHT about the compliance of the same. SBHT may appoint a Chartered Accountant/Auditor for the purpose of ensuring the aforesaid compliance by GLOBAL and/or XTREME. All the cost, fees and other associated expenditures of engaging the Chartered Accountant/Auditor shall be solely borne by SBHT for such audit.

c. Upon the expiration or termination of this Agreement, all rights of GLOBAL and/or XTREME under this Agreement in the Licensed Trademarks shall terminate immediately and revert to SBHT.

XXXXXXXX

5.3. Annual Minimum Guaranteed Payments (“AMG”): *GLOBAL and XTREME are liable (jointly and severally) to pay to SBHT, during the Term of this Agreement, Annual Minimum Guaranteed Payment (“AMG”), in accordance with the following terms:*

- i. AMG for the First Year: a sum of INR [75,00,000/-];*
- ii. AMG for the Second Year: a sum of INR [77,00,000/-];*



- iii. AMG for the Third Year: a sum of INR [85,00,000/-];
- iv. AMG for the Fourth Year: a sum of INR [95,00,000/-];
- v. AMG for the Fifth Year: a sum of INR [1,08,50,000/-];
- vi. AMG for the Sixth Year: a sum of INR [1,30,50,000/-];
- vii. AMG for the Seventh Year: a sum of INR [1,63,50,000/-];

It is agreed that the payments of the AMG to SBHT shall not be contingent upon the carrying on of the business under the present agreement. It is also agreed that GLOBAL and/or XTREME shall be jointly and severally liable to make payments of AMG to SBHT under the present clause, irrespective of: Losses in business/ failure of products launched/ non-achievement of projected sales/ closure of business under the agreement/ etc. and the same shall be no ground to refuse payment to SBHT under the present clause.

5.4. GLOBAL and XTREME shall be liable (jointly and severally) to make the payments to SBHT (as referred to in Article 5.2) on or before the 15th day of the next month immediately succeeding the quarter in question. It is further agreed that where any payments are to be made by GLOBAL and/or XTREME annually on account of AMG, to SBHT, such payments shall have to be made on or before the 30th day of the first month immediately succeeding...

5.5. Both GLOBAL and XTREME agree not to use the Licensed Products for any Related Party Transactions without obtaining Approval of SBHT. In case of any Related Party Transactions are entered into by GLOBAL and/or XTREME, it shall be deemed to be the Sale of Licensed Products and shall be subjected to the payment of Royalty, in accordance with the terms of this agreement.

5.6. Interest at the rate of 2% per month shall accrue in case of any delay in any payments as referred to in Article 5, when due under this Agreement till the date of payment. GLOBAL and XTREME shall be liable to pay such interest to SBHT. Further such act shall amount to an event of default and SBHT shall be entitled to take any further action as available under the agreement and law, over and above entitlement of interest under the present clause.

5.7. Investments/Contribution by SBHT:

(a) SBHT has paid and GLOBAL has acknowledged the receipt of Rs. 1,00,00,000/- [Rupees One Crore] as initial investment for the purposes of this Agreement;



(b) within Fifteen days of the Effective Date, SBHT shall pay to GLOBAL a further sum of Rs. 1,00,00,000/- [Rupees One Crore] as further contribution;

(c) SBHT agrees to make further contribution of Rs. 3,00,00,000/- [Rupees Three Crores] to GLOBAL towards media promotion of the Products, subject to the provisions of this Agreement and subject always to the audit approval of SBHT of the plans, strategies, budgets with regard to media promotion (as referred to in Article 4.10). It is further agreed that SBHT shall not be obliged to make the aforesaid payment or any part thereof, unless it has approved the Media Promotion Activities. However the said further payment of Rs. 3,00,00,000/- [Rupees Three Crores] shall be demanded or raised only after expiry of three months from launch of products and as required by the GLOBAL and/or XTREME'S marketing team, after the said three month period is over. Upon the demand being made and the same being approved by SBHT as aforesaid, the said amount shall be paid within the period of 30 days of the said approval. In case of delay in the aforesaid scheduled due payments by the SBHT to GLOBAL and/or XTREME, and SBHT failing to rectify such breach within 30 days from the date of the notice of such breach given in writing by GLOBAL and/or XTREME an interest of 2% per month on the due payment of SBHT shall be charged from SBHT for the period of delay from the date the due payment is being asked by GLOBAL and/or XTREME from SBHT.

(d) unless otherwise mutually agreed by all Parties in writing, the contribution of SBHT for the purposes of this Agreement shall not exceed Rs. 5,00,00,000/- [Rupees Five Crores] (hereinafter, "Maximum Investment"), and SBHT shall not be obligated to make any payments exceeding the Maximum Investment. However, nothing in this Agreement shall prevent each of the Parties to reach a mutual understanding for re-investing their profits for the purposes of this Agreement, on such terms and factors (including, without limitation, profits generated under this Agreement and the performance of the respective obligations by the Parties) as are mutually acceptable to all Parties."

10. Apart from the above, it was emphasised that Clauses 8.1(e), 9.4 and 12.4 of the agreement, which are in respect of default, damages and guarantee were relevant to the issue in hand. The failure to cure breaches within thirty days of such intimation was to construe as default. Apart from that, GFPL and Xtreme were to be liable for Rs.5 Crores as liquidated damages. Overall, the defendant no.3 had provided a personal guarantee.



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11. It is stated that in terms of the agreement dated 06.10.2015, the plaintiff remitted another sum of Rs.1 Crore to GFPL at the request of the defendant no.3 on 15.10.2015.

12. Despite assurances by defendant no.3, the GFPL and Xtreme failed to comply with the terms and conditions of the agreement dated 06.10.2015, which were to be met and completed from 15.10.2015 to 29.11.2015. The defendant no.3 *vide* the email dated 29.11.2015 extended an assurance to the plaintiff about restarting 'ORB' business activities. Despite the assurances, plaintiff claims that the defendants failed to launch the 'ORB' products and thereby breached the specific terms of the said agreement and simultaneously, defaulted in completing the commitments comprised therein. The plaintiff claims to have expressed displeasure over such delays and rescheduling launch, first to the period immediately after Diwali of the year 2015, and then finally to 07.01.2016. The plaintiff also sought the final plan for development, production, marketing and launch in terms of the said agreement.

13. The defendant is stated to have admitted the delay, however, committed to and confirmed the launch on 07.01.2016. A number of correspondences were exchanged on this issue between the parties from 03.11.2015 to 03.12.2015. During this period, the defendant no.3 sought collaterals for 'ORB' launch, and claimed that maximum work had been completed by that time and promised to update the plaintiff about the progress. The plaintiff also sought clarification from defendant no.3 *vide* email dated 04.12.2015 about fragrance oil brand/company and percentage for 12-hour longevity while sharing six chosen fragrances and providing the ranking of the oil fragrance companies.



14. Though a number of correspondences were shared between the parties in respect of the purported progress made and achieved by the defendants, however, it is stated that the defendant no.3 failed to launch the 'ORB' products as promised and assured on 07.01.2016. A series of correspondences ensued thereon and despite the plaintiff's repetitive complaints, the defendant no.3 kept postponing the launch, and this time, to 15.03.2016. However, despite assurances, even on 15.03.2016, there was no launch of any products in terms of the agreement dated 06.10.2015.

15. Aggrieved by such non-performance and breach of terms of said agreement, the plaintiff *vide* email dated 23.04.2016 intimated defendant no.3 about the manner in which the plaintiff has been cheated and demanded the amounts so paid alongwith interest. It is stated that the defendant no.3 in his reply email dated 23.04.2016 admitted the delay, however, took an excuse that it was due to the requirement of more funds to be infused in the project that such delay had occurred. *Vide* the email dated 25.04.2016, the plaintiff denied the contents of the email dated 23.04.2016. After having waited for many months, the plaintiff finally issued a legal notice to the defendants on 18.10.2016 whereby the agreement dated 06.10.2015 was terminated and further, refund of the amounts transferred to defendant no.3 in terms of the agreement dated 06.10.2015 alongwith interest was sought. The defendant no.3 is stated to have sent a reply email dated 16.03.2017 denying that the delay which may have occurred was on their account and instead attributing losses to the plaintiff.

16. Aggrieved by the aforesaid, the plaintiff filed the accompanying suit seeking a money decree of Rs.4,68,00,000.00/- (Rupees Four Crore Sixty Eight Lakh only) in favour of the plaintiff and against the defendants,



jointly and severally, *pendente lite* and future interest @ 24% p.a. on the decretal amount till full and final recovery, damages for loss of reputation, mental trauma and monetary losses and a decree of permanent injunction in favor of the plaintiff restraining the defendants from manufacturing, distributing, selling, advertising and/or offering for sale any product bearing the plaintiff's trademark/trade name 'ORB' and/or 'STEELBIRD'.

PROCEEDINGS BEFORE THIS COURT:-

17. The suit was first listed on 15.02.2018 when summons were issued alongwith notice on the application for interim relief to the defendants. On 21.03.2018, the defendants' counsel sought time to file written statement, reply to the interim application, and affidavit of admission/denial.

18. *Vide* order dated 24.05.2018, learned Joint Registrar (Judicial) had directed the defendants to file written statement, Reply, and affidavit of admission/denial within three days, subject to costs of Rs.5,000/- payable to plaintiff. *Vide* the order dated 03.08.2018, the defendants' application of condonation of delay to take the written statement on record was allowed by the learned Joint Registrar (Judicial), subject to additional cost of Rs.10,000/- payable to the plaintiff.

19. *Vide* the order dated 08.08.2018, it was noted that the defendants' counsel had paid Rs.10,000/- out of Rs.15000/- of the total imposed costs with an undertaking of the defendants to pay the balance amount of Rs.5,000/- within three days to the plaintiff.

20. On 27.09.2018, it was noted that the affidavits of admission/denial of both parties are on record. *Vide* the order dated 22.01.2020, this Court allowed the defendants' new counsel to appear subject to costs of Rs.25,000/- payable to the plaintiff, while directing him to file his *Vakalatnama* during the day.



21. *Vide* the order dated 04.08.2022, this Court noted that the defendants had neither paid costs of Rs.25,000/- nor Rs.5,000/- as imposed earlier and that the defendants' counsel were changed frequently, with no *Vakalatnama* on record and as none had appeared for the defendants, default notices were issued to the defendants returnable on 14.12.2022.

22. *Vide* the order dated 14.12.2022, this Court directed for the defendants to be proceeded *ex-parte* due to their persistent non-appearance and lack of representation, despite previous notices.

23. Thereafter, the present application being I.A. No.40886/2024 was filed by the plaintiff under Order XIII A of CPC for passing a summary judgment against the defendants.

PRELIMINARY OBSERVATIONS AND FINDINGS:-

24. Having regard to the aforesaid proceedings before this Court, it appears necessary to decide as to whether the written statement of the defendants is to be considered as taken on record.

24.1. At the outset it may be noted that the defendants had filed their written statement on 17.07.2018 and the same was directed to be taken on record *vide* the order dated 03.08.2018 while allowing an application seeking condonation of delay subject to additional cost of Rs.10,000/- to be paid by the defendant to the plaintiff. It is to be noted that *vide* order dated 24.05.2018, defendants were granted an extension of time to file written statement alongwith other replies subject to cost of Rs.5000/-. It appears that out of the total cost of Rs.15,000/-, the defendant had paid Rs.10,000/- and had undertaken to pay the balance sum of Rs.5,000/- to the plaintiff's counsel within three days, as recorded in the order dated 08.08.2018. It appears from the records that out of total costs of Rs.15,000/-, the balance sum of Rs.5,000/- has not been paid by the defendant till date which is



affirmed by the learned counsel appearing for the plaintiff before this Court.

24.2. Apart from the above, it appears that on 22.01.2020, a further sum of Rs.25,000/- was imposed as costs upon the defendants for the frequent change of counsel for the defendants. In the order dated 04.08.2022, the aforesaid defaults in payment of costs have been recorded. It is pertinent to note that *vide* order dated 14.12.2022, the defendants were proceeded *ex-parte* as they had not been appearing on the previous dates of hearing. Since then, none had been appearing for any of the defendants.

24.3. In view of the above and having regard to the provisions of Rule 4 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018, this Court is of the considered opinion that the written statement which was ordered to be taken on record, subject to payment of costs and the costs having not been paid in terms thereof, the same is directed to be taken off the record.

ANALYSIS AND FINDINGS:-

25. It is noted that the defendants had filed their common affidavit of admission and/or denial whereby 23 documents of plaintiff were admitted and marked as Ex.P-1 to P-23 and plaintiff had admitted four documents of the defendants which have been marked as Ex.D-1 to D-4. It is also pertinent to observe that the defendants had also placed the said agreement dated 06.10.2015 on record as Ex.D-4, which stands admitted by the plaintiff in its affidavit of admission and/or denial. The extract of the same is reproduced hereunder:-

DOCUMENTS OF PLAINTIFF ADMITTED BY THE DEFENDANTS			
S. No.	Documents	Pg. No.	Admit/Deny
A.	Certificate of incorporation of Plaintiff	3	Admitted
B.	Board Resolution of Plaintiff	4	Admitted



C.	TM Application No. 3048174 (ORB)	5-6	Admitted
D.	TM Application No. 3053877 (R2K)	7-8	Admitted
E.	MCA Details of Global Fragrances Pvt. Ltd.	9	Admitted
F.	MCA Details of Xtreme Personal Care Pvt. Ltd.	10	Admitted
G.	Email dated 26.08.2015	11	Admitted
H.	Email dated 03.09.2015 to 05.09.2015	12-16	Admitted
I.	Email dated 07.09.2015	17-18	Admitted
J.	Email dated 08.09.2015	19	Admitted
K.	RTGS dated 10.09.2015	20	Admitted
L.	Agreement dated 06.10.2015	21-118	Admitted
M.	RTGS dated 15.10.2015	119	Admitted
N.	Emails dated 29.11.2015	120	Admitted
O.	Emails dated 30.11.2015	121-124	Admitted
P.	Emails dated 01.12.2015 to 05.12.2015	125-137	Admitted
Q.	Emails dated 09.12.2015	138	Admitted
R.	Emails dated 18.12.2015	139-140	Admitted
S.	Emails dated 21.12.2015	141	Admitted
T.	Emails dated 26.12.2015	142-144	Admitted
U.	Emails dated 28.12.2015	145-146	Admitted
V.	Emails dated 25.01.2016	147	Admitted
W.	Emails dated 17.02.2016 to 25.04.2016	148-153	Admitted
X.	Legal Notice Dated 18.10.2016 along with postal receipts alongwith Tracking report of Postal Receipts	154-179	Wrongly Denied because admitted in WS
Y.	Emails dated 15.03.2017 to 16.03.2017	180	Admitted
Z.	Copy of Award dated 05.07.2018 passed by Sh. Justice (Retd.) K.S. Gupta in Arbitration case between the parties hereto arising out of another transaction.	Filed vide D. No. 316793 of 2018 date 18.09.2018	Cannot be denied being matter of judicial record.
DOCUMENTS OF DEFENDANTS ADMITTED BY THE PLAINTIFF			
AA.	Email dated 26.08.2015		Admitted
BB.	Email dated 07.09.2015		Admitted
CC.	Email dated 08.09.2015		Admitted



DD.	Agreement dated 06.10.2015	Admitted
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26. From the records, the plaintiff has been able to demonstrate that it is the proprietor of the registered trademark 'STEELBIRD' with pending registrations *qua* the marks 'ORB' and 'R2K'. It also appears that all the three defendants jointly signed and executed the agreement dated 06.10.2015 agreeing to manufacture, source and market cosmetic products under the aforesaid trademarks. There is no denial to the fact of having received a sum of Rs.1 Crore on 10.09.2015 *via* RTGS by the defendant no.1. Another sum of Rs.1 Crore was remitted by the plaintiff to the defendant no.1 *via* RTGS on 15.10.2015. Thus, as on 15.10.2015 the plaintiff had already invested a total sum of Rs.2 Crores in defendant no.1, in terms of the agreement dated 06.10.2015, out of a total sum of Rs.5 Crores to be invested by the plaintiff.

27. Plaintiff has stated that the balance amount of Rs.3 Crores was subject to audit approval of the plans, strategies, budgets, which never got approved or finalised by the defendants. In other words, not only did the defendants default in getting the aforesaid necessary audit approvals from the plaintiff but also defaulted in the launch of products despite promises, assurances and extensions of time sought from the plaintiff from time to time. Thus, according to the plaintiff, the defendants completely failed to honour and comply with the terms of the agreement dated 06.10.2015.

28. From the record, it is also established that the plaintiff, upon observing the repeated defaults and breach of the terms of the agreement dated 06.10.2015, had *vide* the e-mail dated 23.04.2016 and 25.04.2016 read with the legal notice dated 18.10.2016 terminated the said agreement dated 06.10.2015 and sought return of all the monies due and payable by the defendants to the plaintiff with interest. The receipt of this e-mail/legal



notice has been admitted by the defendants. Despite having received the said emails and legal notice, though the defendants appear to have corresponded with the plaintiff and offered some explanation, however, the defendants, particularly defendant no.3, admitted delay in launch of the product but simultaneously, evasively denied any default of the terms of the agreement. Moreover, the defendants did not refund even a single penny from the date of demand till the date of filing of the suit or thereafter.

29. Apart from the above, it is relevant to note that the defendant no.3 is the common Director/promoter of GFPL and Xtreme and has admittedly furnished his personal guarantee in respect of both the aforesaid defendant nos.1 and 2. Thus, the defendant no.3 also would become liable to repay the monies extended under the agreement dated 06.10.2015 as also any sum which may be liable to be paid and made good by GFPL and Xtreme in terms of Clauses 5.3 to 5.7 of the agreement dated 06.10.2015. It is pertinent to note that the defendants have specifically admitted the agreement dated 06.10.2015. Clauses 5.3 to 5.7 have been extracted hereinabove to which there is no denial by the defendants. The said clauses refer to something called “Annual Minimum Guaranteed Payments” (hereinafter referred to as ‘AMG’). Clause 5.3 of the said agreement provides that “*GLOBAL and XTREME are liable (jointly and severally) to pay to SBHT, during the Term of this Agreement, Annual Minimum Guaranteed Payment (“AMG”).*....” and Clause 5.6 of the said agreement provides that “*Interest at the rate of 2% per month shall accrue in case of any delay in any payments....*”.

30. It would be relevant to note that the aforesaid stand of the plaintiff and the covenants of the agreement dated 06.10.2015 are unrebutted.



31. It is on account of the aforesaid development, that the plaintiff had filed the application under Order XIII A of the CPC as applicable to the commercial suits seeking summary judgment. It is pertinent to note that Rule 3 of Order XIII A CPC provides for grounds which are required for passing a summary judgment by a Court. Clause(a) of Rule 3 therein provides that a summary judgment may be passed in case a Court considers that *“the defendant has no real prospect of successfully defending the claim”* and Clause (b) provides *“there is no other compelling reason why the claim should not be disposed of before recording of oral evidence”*. Sub-Rules (2) & (3) of Rule 4 of Order XIII A of CPC provide that the respondent/defendant must be given notice of the said application and be provided thirty (30) days to file reply in the manner set forth in Clauses (a) to (f) specified thereunder.

32. In the present case, no reply has been filed by the defendants to the said application. Having regard to the absence of any reply or response to the present application, coupled with the fact that the written statement so filed by the defendants has been directed to be taken off the record in view of violation of and non-payment of costs as directed by this Court, there hardly seems to be any ground to consider as to whether the defendant has any real prospect of defending the claim.

33. Additionally, it is noted from the records that the defendant has, in its affidavit of admission and/or denial admitted all the relevant and crucial documents placed on record by the plaintiff. In such a situation, there being no defence at all as also in the absence of a specific reply in the present application, this Court finds no compelling reasons why the claim should not be allowed even before recording of oral evidence.



34. In view of the aforesaid analysis and findings, the present application is allowed.

35. The plaintiff has sought refund of Rs.2 Crores invested in the month of October, 2015, in pursuance of the agreement dated 06.10.2015 with interest. That apart, it is also seeking damages in the form of AMG calculated from the period commencing from October, 2015 till October, 2017 alongwith interest calculated at the rate of 24% per annum, as stipulated in Clause 5.6 of the said agreement and as the transaction was purely commercial in nature. More specifically, in para 2 of the present application, the plaintiff has sought refund of investment as also damages in the following manner:-

“2. The Plaintiff has instituted the present commercial suit against the Defendants, jointly and /or severally; inter alia, for recovery of liquidated amounts, injunctions, etc. in terms of the covenants of the Agreement dated 06.10.2015; ₹4,32,24,999.00 to the Plaintiff on account of refund of the advance payment of ₹2.00 Crore that was received as advance/ investment by the Defendants and payment of ₹1,32,74,999.00 towards the AMG (Annual Minimum Guaranteed Payments and ₹99,50,000.00 towards the interest accrued thereupon @ 24% pa being the contractually agreed rate of interest.”

36. The interest stipulated at the rate of 24% appears to be excessive and it would be just and fair to grant interest of 18% per annum. Therefore, the plaintiff is found entitled to refund of a sum of Rs.2 Crores with interest at the rate of 18% per annum from 18.10.2016 till the date of filing of the suit, payable jointly and severally by the defendants. The plaintiff is also entitled to a sum of Rs.1,32,74,999/- towards AMG for the period commencing from October 2015 till October 2017 and interest at the rate of 18% per annum from the dates due, up to the date of filing of the suit, payable jointly and severally by the defendants.



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37. The plaintiff shall also be entitled to interest *pendente lite* and future interest at the rate of 12% per annum till the date of realisation on the decretal amount, payable jointly and severally by the defendants.

38. In view of the aforesaid analysis, the application is allowed. Consequently, the suit is hereby decreed in favour of the plaintiff and as against the defendants, in terms of prayer clause (d) of the plaint as well as para nos.36 and 37 of this judgment.

39. Let a decree sheet be drawn up accordingly.

40. The suit stands disposed of alongwith pending applications.

**TUSHAR RAO GEDELA
(JUDGE)**

JUNE 05, 2026

Sumit/anj/rl