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Ref: 201951

Date: 25-07-2018

The Assistant General Manager; Mid Corporate Branch

Canara Bank Limited,

Bharat Nagar Chowk,

Ludhiana.

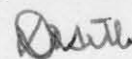
Sub: Claim for Guarantee Invocation of M/S Prabhakar Cycle Industries

Ref: Your Letter CB:MCB:08:2018-19 dated 11-07-2018

Sir,

With reference to your letter and the accompanied notice in this regard, I have gone through the details of the guarantee and the applicable provisions of The Companies Act, 2013. The following issues and facts are considered:

- Rolex Cycles Pvt Ltd is a Private Limited company under the Companies Act with Mr. Ashwani Kumar Prabhakar as Director and major shareholder.
- Prabhakar Cycle Industries is a proprietorship concern of Mr. Ashwani Kumar Prabhakar.
- Rolex Cycles Pvt Ltd has provided the Corporate Guarantee to Canara Bank for securing the loan of Rs. 4.40 Crores to M/S Prabhakar Cycle Industries.
- Rplex Cycles Pvt Ltd has created equitable mortgage of property owned and situated at Plot No. 718-B with MC No. B-XXI/1102 and 1102/1 admeasuring 777 square yards as a collateral security for te above stated loan of Rs. 4.40 Crores.
- The issue of providing guarantee and security to any person by a company in which the director is interested, is covered under Section 185 of the Companies Act, 2013.
- Section 185 of the Companies Act, 2013 was notified on 12-09-2013.
- The said guarantee was first executed on 13-09-2013 and later on 18-03-2016.
- Section 185 prohibits any company to, directly or indirectly, advance any loan to any of its directors or to any other person in which the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.



- On further examination, it was found that On 05.06.2015, the Central Government had issued a notification no. GSR 464(E) under Section 462 of the Companies Act, 2013 exempting the private companies from the application of Section 185 subject to the following three conditions :-
 - a) In whose share capital no other body corporate has invested any money;
 - b) If the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crores rupees, whichever is lower; and
 - c) Such a company has no default in repayment of such borrowing subsisting at the time of making transactions under this section.
- In view of this prohibition contained under Section 185(1), Rolex Cycle could not give any guarantee for the loan taken by M/s Prabhakar Cycle Industries, which is a proprietorship concern of Mr. Ashwani Kumar Prabhakar who is a director of Rolex Cycles Private Limited. Further, Rolex Cycles Pvt Ltd did not qualify for the exemptions as mentioned above due to the fact that the paid up share capital of Rolex Cycles Pvt Ltd as on 31-03-2015 as well as on 31-03-2016 was Rs. 1.97 Crores only while its total borrowings were Rs. 19.1 Crores and Rs. 29.2 Crores as on 31-03-2015 and 31-03-2016 respectively. Since the borrowings of Rolex Cycle Pvt Ltd was way above twice of its paid up share capital. Thus the exemption granted by the Central Government vide its notification ibid was not available to Rolex Cycles Pvt Ltd.

Therefore, the corporate guarantee and security provided by Rolex Cycles Pvt Ltd in favour of your bank for securing the loans provided to Prabhakar Cycle Industries is not valid. In view of this invalidity, your claim is rejected.

Regards

Rolex Cycles Pvt. Ltd.-in Liquidation



Liquidator