

**IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION**

Civil Action No: HBC 30 of 2019

BETWEEN: **BANK OF BARODA** a banking corporate duly incorporated in India with its head office at New Delhi, India and also registered in Fiji under the Companies Act having its registered principal place of business at 86/88 Mark Street, Suva.

Plaintiff

AND: **TULARAM JADURAM** of 29 Malau Street, Delailabasa, Labasa, in the Republic of Fiji.

1st Defendant

AND: **NILESH RICHARD JADURAM** of Yaka Street, Labasa in the Republic of Fiji.

2nd Defendant

Representation:

Plaintiff: Mr. A. Nadan (Neel Shivam Lawyers).

1st Defendant: Deceased – Proceedings Discontinued.

2nd Defendant: In Person.

Date of Trial: 28th May 2025.

Judgment

A. Introduction

- [1] Bank of Baroda filed a writ claiming from the Defendants as Directors of Jaduram Industries Limited for loan given to the company based on their personal guarantees for the company.
- [2] The company was wound up on 18th May 2018. The Bank realized some of the securities and a sum of \$130,000.00 remains outstanding.
- [3] The Defendants filed a statement of defence. A reply to the statement of defence was filed on behalf of the Plaintiff. Proceedings against the 1st Defendant was discontinued on 17th July 2023.

B. Witnesses

- [4] Mr. Ritesh Prasad (Bank Manager) gave evidence for the Bank. Mr. Nilesh Richard Jaduram, the 2nd Defendant gave evidence.

C. Determination

- [5] There is no dispute that loan was given by the Bank to Jaduram Investments Limited. Jaduram Investments Limited was a limited liability company.
- [6] The Bank is claiming \$134,953.83 from the 2nd Defendant, plus interests and costs. They rely on a personal guarantee executed by him on or about 27th March 2014. The

Bank relies on Part 4 headed “The Guarantee and the Indemnity” of the Consumer Guarantee. This was Plaintiff’s exhibit number 3.

- [7] The bank’s position is that through the personal guarantee the 1st Defendant agreed to guarantee the repayment on demand of the loans and advances to the company, which included all interest, commission and charges.
- [8] The loan fell into substantial arrears and the Defendants were informed by way of demand notice and were requested to rectify the default in payment which they failed to do. The company was subsequently wound up and is in liquidation. The Bank realized some securities and \$130,000.00 remains outstanding. The bank is now seeking from the 2nd Defendant as a guarantor the outstanding sum plus accruing interest and bank charges.
- [9] It is important to put into perspective the dealing with the bank by the company and the guarantors. This will include the dates, loans taken, other details and the relevant documents:

<u>Date</u>	<u>Document Name</u>	<u>Details</u> (some relevant details from the document)
4/9/2013	<u>Letter of Offer</u> – by BOB	<p><u>To:</u> Jaduram Industries (Borrowers) – Pg. 1.</p> <p><u>Guarantors:</u> Shalendra Jaduram, Nilesh Richard Jaduram, Shannon Thomas Sikander Jaduram, Kellan Tula Jaduram and Rosina Jaduram – Pg. 1.</p> <p><u>Facility:</u> \$655,000.00 – Overdraft, DL1 - \$220,000.00, DLII - \$4,500,000.00, G’tee - \$215,000.00 – Pg. 1.</p> <p><u>Security:</u> covered registered mortgage over number of properties... DP Note signed by the company.</p> <p><u>Personal Guarantee of all the Directors of the Company... – Pg. 1 & 2.</u></p> <p>12.0 Acceptance: “...This offer shall be deemed to be an offer not only to the borrower but also to each guarantor named therein. The borrower and any guarantor shall be deemed to have accepted the offer severally upon execution/acceptance by them of this letter and delivery of the same to the bank.” – Pg. 6.</p> <p>13.0 Other Conditions:</p> <p>13.12 Additional stipulations (if any for particular loan/scheme)</p> <p>“...d. Company to submit revised Particulars of Directors from Registrar of Companies</p> <p>e. Company to submit revised shareholding pattern after allotment of shares of Mr. Tula Jaduram to Mr. Shalendra Jaduram & Mr. Nilesh Jaduram.”- Pg. 7.</p> <p>14.0 Disbursements:</p> <p>14.1 The OD/Loan facility will be disbursed only</p>

		after all the terms and conditions including the special conditions stated in this letter are satisfactorily complied with and all documents have been executed as per terms of sanction..."-Pg. 7.
27/11/2014	<u>Consumer Guarantee</u> - BOB	Guarantee to BOB by Guarantors – Tularam Jaduram and Nilesh Richard Jaduram, customer being – Jaduram Industries Limited. Limited Liability, guarantee sum -\$1,004,776.00 plus interest, costs and other amounts – Pg. 3. Part 4 The Guarantee and The Indemnity – Pg. 7, 8 & 9. Part 12 Miscellaneous Provisions 41 If not everyone signs. 41.1 Those who sign are bound. 41.2 If other intended to be guarantors do not sign 42 Joint and several liability.
24/10/2014	<u>Letter of Offer</u> – by BOB- Review with enhanced credit facilities	<u>To:</u> Jaduram Industries (Borrowers) – Pg. 1. <u>Guarantors:</u> Tula Jaduram, Shalendra Jaduram, Nilesh Richard Jaduram, Kellan Tula Jaduram and Shannon Thomas Sikander Jaduram– Pg. 1. <u>Facility:</u> \$120,000.00 – OD, DL1 - \$789,980.00, DLII - \$136,049.00, DL III - \$400,000.00 – Pg. 1. <u>Security:</u> covered various registered bill of sale over vehicles and equipment's and Registered Mortgage over Industrial Lease. – Pg. 2.
4/11/2014	<u>Consumer Guarantee</u> - BOB	Guarantee to BOB by Guarantors – Tularam Jaduram and Nilesh Richard Jaduram, customer being – Jaduram Industries Limited. Unlimited Liability, plus interest, costs and other amounts – Pg 3. Part 4 The Guarantee and The Indemnity – Pg. 7, 8 & 9. Part 12 Miscellaneous Provisions 41 If not everyone signs. 41.1 Those who sign are bound. 41.2 If other intended to be guarantors do not sign 42 Joint and several liability.

- [10] The evidence of Ritesh Prasad is that Nilesh Richard Jaduram was guarantor for the loan by Jaduram Industries Limited. Nilesh Richard Jaduram did not dispute he signed the guarantee. He stated that he accepted the terms. The issue from him is how he ended up signing the documents.
- [11] The issue of signing of the documents is raised by Nilesh Richard Jaduram. He **questions the bank's due diligence**. Nilesh argued that he should never have signed the documents. He was not a director or a shareholder of the company. It was put to him that none of these were put in statement of defence. His response was that the lawyers no longer represented him as they were not following instructions. I note from the statement of defence that none of this is specifically pleaded by Nilesh Richard

Jaduram. In paragraph 4 of the statement of defence the defendant denied that “... such execution of documents amount to any guarantee of the debts of the company.”

- [12] The other evidence of Nilesh Richard Jaduram was that he believed that he was a director and shareholder of the company. This was based on what he was told by his father. He did not ask his father for confirmation that he was a director. He believed and trusted his father. This evidence of Nilesh Richard Jaduram has merit as the letter of offer by the bank of 4th September 2013 required the Company to submit revised shareholding pattern after allotment of shares of Mr. Tula Jaduram to Mr. Shalendra Jaduram & Mr. Nilesh Jaduram.”(Pg.7)
- [13] Plaintiff’s exhibit no. 24 was the company search of Jaduram Industries Limited. It contains the particulars of directors and secretaries. It shows that Tula Ram Jaduram, Helen Jaduram and Shalendra Jaduram were directors of the company. Shalendra Jaduram was the company secretary.
- [14] The letter of offer dated 4th September 2013 to Jaduram Industries Limited by BOB contained the names of guarantors to be Shalendra Jaduram, Nilesh Richard Jaduram, Shannon Thomas Sikandar Jaduram, Kellan Tula Jaduram and Rosina Jaduram. The security that was to be provided to the bank was registered mortgages over various properties and “Personal Guarantee of all the Directors of the Company” and “Personal Guarantee of Mrs. Rosina Jaduram (Joint owner of Property).
- [15] The personal guarantee dated 27th March 2014 for the Loan taken by the company is provided by Tularam Jaduram and Nilesh Richard Jaduram. The security required was personal guarantee from all the directors of the company. The only director who provided personal guarantee was Tularam Jaduram. Nilesh Richard Jaduram was not a director of the company. Why his personal guarantee was taken has not been explained. Nilesh for his part explained why he signed the documents. Which is that he was told he was a director and shareholder. Only later he found out that he was neither.
- [16] The Companies Act 2015 commenced on 1st January 2016. The relevant law in existence at the time the initial loans were taken was the Companies Act (Cap 247). A memorandum of the company contains the parameters of a companies, its structure, objectives and operational framework. That has not been placed before me.
- [17] The letter of offer dated 4th September 2013 of BOB required personal guarantee of all director of the company. It was part of the banks security requirement. It was something which the bank administered and required as part of the credit facilities it advanced to the company. Nilesh Richard Jaduram was not a director of the company. He being a guarantor is not in compliance with the bank’s security requirement. The bank has not shown otherwise or that the requirements were changed in due course.
- [18] The letter of offer dated 24th October 2014 by BOB to Jaduram Industries Limited contained the names of Tula Jaduram, Shalendra Jaduram, Nilesh Richard Jaduram, Kellan Tula Jaduram and Shanon Thomas Sikandar Jaduram as guarantors. The securities noted in the letter does not state any requirement for any guarantee by anyone. It required bill of sale over number of vehicles and machinery and registered mortgage over an agreement to lease. The consumer guarantee dated 4th November

2014 of Tularam Jaduram and Nilesh Richard Jaduram being unlimited liability guarantors on behalf of Jaduram Industries Limited is not in line with the letter of offer dated 24th October 2014. The said offer had no requirement for any guarantee, let alone unlimited liability guarantee.

- [19] The letter of offer dated 2nd March 2016 and 9th June 2017 by BOB both refer to Tula Jaduram, Shalendra Jaduram, Nilesh Richard Jaduram, Kellan Tula Jaduram and Shanon Thomas Sikandar Jaduram as guarantors. Both required as security personal guarantee of directors. No separate guarantees have been tendered by the Bank.
- [20] The evidence that is before me shows that Nilesh Richard Jaduram was not a director of Jaduram Industries Limited. He entered into a guarantee arrangement with the bank. The bank required the directors of Jaduram Industries Limited to guarantee the credit and loan facility.
- [21] It was incumbent upon BOB as a financial institution to carry out customer due diligence. It is one of the hallmarks of financial and lending institutions. A proper due diligence exercise prior to lending and execution of documents would have shown that Nilesh Richard Jaduram was not a director or shareholder of Jaduram Industries Limited. The bank would have noted that he had no say in Jaduram Industries Limited. The bank failed in the due diligence exercise. They are now after Nilesh Richard Jaduram, who was neither the director nor shareholder of Jaduram Industries Limited. The bank has not acted prudently. The securities required were personal guarantees of the directors. The only director who gave personal guarantee was Tulram Jaduram.
- [22] Nilesh Richard Jaduram is neither a director, nor, a shareholder of Jaduram Industries Limited. He cannot be held to account for the company's debts or liabilities. He has clearly stated why he signed the documents. If the bank had carried out proper due diligence exercise they would have noted that Nilesh Richard Jaduram was not a director and as such he should never have signed the documents. The bank required the directors of Jaduram Industries Limited as guarantors. Nilesh Richard Jaduram was not a director the company.
- [23] For the reasons given the claim against the 2nd Defendant, Nilesh Richard Jaduram is dismissed. The Plaintiff is to pay 2nd Defendant, Nilesh Richard Jaduram \$2000.00 as costs within 21 days. The costs have been summarily assessed.

D. Court Orders

- (a) The claim against the 2nd Defendant, Nilesh Richard Jaduram is dismissed.
(b) The Plaintiff is to pay 2nd Defendant, Nilesh Richard Jaduram \$2000.00 as costs within 21 days. The costs have been summarily assessed.

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Chaitanya S.C.A Lakshman
Puisne Judge

30th July 2025

