Paradise Papers: Construction major DSC defaulted, ICICI bank turned to Appleby

Appleby sent ICICI Bank Ltd, NBCC Place, New Delhi an invoice for $3026.41 on January 26, 2012. This invoice was for “professional services” provided by Appleby to ICICI with regard to “review of the documents” Facility Agreement.
Records show that a Non-Disposal Undertaking (NDU) was signed in New Delhi between H S Narula, Elsingham Holdings Ltd and ICICI Bank Ltd (Bahrain Branch) on December 28, 2006.

Construction major DSC Ltd (DS Construction Ltd), which bagged several road and railway projects including the Delhi-Gurgaon Expressway, obtained a loan of $135 million from ICICI Bank in 2006. Of this, $100 million was disbursed within 20 days of the agreement, according to records of offshore legal firm Appleby.

DSC Ltd later defaulted on loan repayment and Appleby documents show that ICICI Bank took the advice of the legal firm on the outstanding loan amount — it was settled in 2016. DSC Ltd was incorporated on October 13, 1978 to acquire the businesses of M/s Thakur Enterprises, New Delhi and M/s DS Narula & Company, New Delhi. At the time it was being incorporated, Darshan Singh Narula and his four sons — Balbir Singh, Varinder Singh, Narinder Singh and Harpinder Singh — were its shareholders.
According to documents with Appleby, Elsingham-DSC Mauritius Private Ltd, one of the holding companies of DSC Ltd, borrowed $135 million from ICICI Bank Ltd on December 26, 2006. Of this, $35 million was disbursed on December 29, 2006; $10 million on January 9, 2007; and $55 million on January 16, 2007. In all, records show, $100 million was disbursed within 20 days of the agreement.

Records show that a Non-Disposal Undertaking (NDU) was signed in New Delhi between H S Narula, Elsingham Holdings Ltd and ICICI Bank Ltd (Bahrain Branch) on December 28, 2006. Another NDU was signed in New Delhi between British Virgin Islands-based Alphamatic Investments Ltd, Delhi Gurgaon Super Connectivity Ltd and ICICI Bank Ltd (Bahrain Branch) on December 28, 2006. Elsingham Holdings Ltd signed a Power of Attorney in Port Louis, Mauritius in favour of ICICI Bank Ltd (Bahrain Branch) on December 27, 2006.

A Lenders’ Agreement was signed on March 17, 2007 between ICICI Bank UK PLC and ICICI Bank Ltd (Bahrain Branch). It stated that ICICI Bank Ltd (Singapore Branch) was Arranger, Standard Bank (Mauritius) the Mauritian Security Agent and ICICI Bank Ltd (Bahrain Branch) the Facility Agent. The Depository Participant for the $135 million loan was Alankit Assignments, a Delhi-based company.

There was also an Amendment Agreement dated April 3, 2007 between Elsingham DSC Mauritius Private Ltd (Borrower), Elsingham Holdings Ltd, Elsingham Holdings Mauritius Ltd, DS Constructions Ltd, H S Narula (Coventants) and ICICI Bank Ltd
Bahrain Branch (as Facility Agent) in relation to the $135 million loan agreement dated December 28, 2006.

But when a problem arose in loan repayment, ICICI Bank began consulting Appleby on the issue. On February 7, 2011, records show, Abhijeet Das of ICICI Bank wrote to Deep Roy of Economic Laws Practice to “engage” him for “conducting a review of certain documents…”

ICICI Bank requested him to “conduct a review of the documents with regard to Facility Agreement and the various security agreements and to confirm to ICICI Bank the enforceability of the various securities/contractual comforts and to clearly indicate the steps required to enforce such security/contractual comforts in case of an event of default under the financing documents”.

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Das made another request: “Issue a memorandum incorporating the views of the counsel in such other jurisdictions (as may be required) regarding the enforceability of the above mentioned security/contractual comforts and the steps to be taken for enforcement of such security.”

Records show that two days later — February 9, 2011 — Roy wrote to Matthew Stocker of Appleby: “We have received a request for a fee quote from ICICI Bank Limited for a loan documentation review for two existing loan transactions and for preparation of a memorandum with the details of the enforcement steps in case of
an event of default... Borrower is Elsingham DSC Mauritius Private Ltd. Elsingham Holdings Mauritius Ltd (EHML, which holds 90 per cent of the shareholding of the borrower) and Elsingham Holdings Ltd (EHL, a BVI company, which holds 100 per cent of EHML) have provided corporate guarantees...

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Accordingly, Appleby sent a three-page Memorandum to ICICI Bank Ltd, NBCC Place, New Delhi on May 4, 2011. It stated: “It is not necessary in order to ensure the legality, validity, enforceability or admissibility in evidence in proceedings of the obligations of the BVI Shareholder under the Subject Agreements that the Subject Agreements or any other document be notarised, filed, registered or recorded in the British Virgin Islands.”

Appleby quoted a Reciprocal Enforcement of Judgments Act, 1922 and advised, among other things, that a judgment may be registered under the Act where “the foreign court had jurisdiction in the matter and the BVI Shareholder either submitted to such jurisdiction or was resident or carrying on business within such jurisdiction and was duly served with process”.

For this memorandum, Appleby sent ICICI Bank Ltd, NBCC Place, New Delhi an invoice for $3026.41 on January 26, 2012. This invoice was for “professional services” provided by Appleby to ICICI with regard to “review of the documents” Facility Agreement; Elsingham Holdings Ltd, HS Narula, Alphamatic Investment Ltd, etc.

RESPONSE from DSC

DSC Ltd’s director Narinder Singh Narula said: “H S Narula is a British Citizen and is holding a British Passport. His investments are governed by British Laws. He does not have any income in India. Except for owning 10% shares i.e. 2500 shares of US$ 01 each (Rs 1,12,200) of Elsingham DSC Mauritius (Pvt) Ltd, DSC Limited does not own any assets or Companies anywhere outside India. Subsequent to Demerger, these 2500 shares are presently owned by DSC Engineering (Pvt) Ltd.

EXPLAINED: Why the Paradise Papers matter
“DSC Limited has not taken any loan from any Bank outside India, including any Indian banks in Bahrain and Mauritius. H S Narula, who is a British Citizen, has no direct/indirect role/interest in Elsingham DSC Mauritius Private Limited, Alphamatic Investment Limited, Elsingham Holding Limited and Apollo Enterprises. Balbir Singh Narula is a Director of Apollo Enterprises Limited. However, he does not have any Shareholding and/or investment in Apollo Enterprises. Besides aforementioned, none of the other Narula family has any role/interest in above stated Companies.

“Elsingham DSC Mauritius Private Limited (previously known as Alphamatic Investments (Mauritius) Limited) was never a Holding Company of DSC Limited. Previously Elsingham Holdings Mauritius Limited was the holding Company, however presently Apollo Enterprises Ltd is the Holding Company. US $135 million loan was granted by ICICI Bank-Bahrain, Singapore & UK branches to Elsingham DSC Mauritius (Pvt) Ltd for the purposes of investment in the Infrastructure Projects/Companies in India. The said loan amount was invested by Elsingham DSC Mauritius (Pvt) Ltd in the Optionally Convertible Debentures (OCD) of DSC Limited. DSC Limited have as on date, already redeemed 97% of the said OCDs and now 03% is only balance.

“The entire loan of ICICI Bank has been settled by Elsingham DSC Mauritius (Pvt) Ltd and as on date there is no outstandings whatsoever towards ICICI Bank. The investment in 2500 shares of Elsingham DSC Mauritius (Pvt.) Ltd. has been duly reported to RBI through Authorized Dealer Bank by DSC Limited vide letter dated 15.12.2006.

“As regards OCD reporting to RBI, the same was duly done and the RBI had confirmed the same vide its order dated 21/7/2010. DSC Limited have duly reported the investment of 2500 shares and aforesaid OCD is in its Returns and Balance Sheets to all Authorities including Income Tax Department. H S Narula does not have any income from India, thus he is not required to file any Income Tax Return in India.”

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