

Bank of Baroda, N.Y. Branch v Gems Chicago, Inc.

2022 NY Slip Op 31933(U)

June 16, 2022

Supreme Court, New York County

Docket Number: Index No. 656343/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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BANK OF BARODA, NEW YORK BRANCH	INDEX NO.	<u>656343/2021</u>
Plaintiff,	MOTION DATE	<u>11/04/2021</u>
- v -	MOTION SEQ. NO.	<u>001</u>
GEMS CHICAGO, INC. et al		
Defendant.	DECISION + ORDER ON MOTION	

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 20, 21, 22, 23

were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Reference is made to (i) a certain Credit Agreement (NYSCEF Doc. No. 5), dated January 24, 2014, by and between Gems Chicago Inc. (the **Borrower**) and Bank of Baroda, New York Branch, as the lender, facility agent, and security agent (the **Lender**) and ICICI Bank Limited, New York Branch as a lender (**ICICI**), (ii) a certain Project Loan Agreement (NYSCEF Doc. No. 6), dated January 24, 2014, by and between the Borrower, ICICI and the Lender for a certain \$35,000,000 loan, (iii) a certain Term Promissory Note (the **Lender Promissory Note**, NYSCEF Doc. No. 7), dated January 24, 2014, by the Borrower in favor of the Lender in the amount of \$17,500,000, (iv) a certain Term Promissory Note (NYSCEF Doc. No. 7), dated January 24, 2014, by the Borrower in favor of ICICI in the amount of \$17,500,000, (v) a Security Agreement (NYSCEF Doc. No. 8), dated February 27, 2014 by the Borrower in favor of the Lender and ICICI, (vi) a Guaranty Agreement (the **Individual Guaranty**; NYSCEF Doc. No. 10), dated February 27, 2014 by Sunny Varkey (the **Individual Guarantor**) in favor of the Lender and ICICI, (vii) a Corporate Guaranty (the **Varkey Corporate Guaranty**; NYSCEF Doc. No. 11)

dated February 27, 2014 by the Varkey Group Limited (the **Varkey Group**) in favor of the Lender and ICICI, (viii) Corporate Guaranty (the **Gems Corporate Guaranty**; NYSCEF Doc. No. 12; the Gems Corporate Guaranty, together with the Varkey Corporate Guaranty and the Individual Guaranty, hereinafter, collectively, the **Guaranties**), dated February 27, 2014, by Gems Menasa Topco (Cayman) Limited (**Gems Menasa**; the Varkey Group and Gems Menasa hereinafter, collectively, the **Corporate Guarantors**), (ix) a Pledge Agreement (NYSCEF Doc. No. 13), dated February 27, 2014, by Gems Americas Inc. (the Pledgor) in favor of the Lender and ICICI, pursuant to which the Pledgor pledged its stock to the Lender as security, and (x) a letter default notice (the **Default Notice**; NYSCEF Doc. No. 14), dated September 24, 2021, by the Lender to defendants demanding payment in the amount of \$10,504,051.29. Pursuant to the Guaranties, the guarantors absolutely and unconditionally guaranteed the payments due (NYSCEF Doc. Nos. 10-12). The Guarantees are instruments for the payment of money only (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch, v Navarro*, 25 NY3d 485, 492 [2015]).

It is undisputed that on December 2020, the Borrower defaulted on its obligations under the Credit Agreement and Promissory Note to pay \$17,500,000 (NYSCEF Doc. No. 7). The Lender demanded payment from the guarantors on December 29, 2020 and September 24, 2021 (NYSCEF Doc. No. 14). The guarantors breached their obligations under the Guaranties and the amounts due remain outstanding. Therefore, the Lender is entitled to summary judgment pursuant to CPLR 3213 for the Borrower's default under the Credit Agreement and Promissory Note and for the guarantors' breach of the Guaranties.

Accordingly, it is

ORDERED that the motion for summary judgment in lieu of complaint pursuant to CPLR 3213 is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Bank of Baroda, New York Branch, and against Gems Chicago, Inc. Sunny Varkey, Varkey Group Limited, and Gems Menasa Topco (Cayman) Limited, in the amount of \$10,608,581.92, plus interest at the rate of 9.5% per annum from October 31, 2021 to the date of judgment and thereafter at the statutory rate, plus costs and disbursements as allocated by the Clerk, for a total amount of \$ _____; and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to determine the issue of reasonable attorneys’ fees, which is hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link),

shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

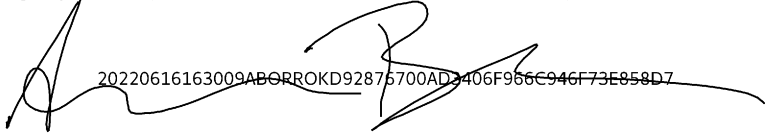
ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until

completion and counsel must arrange their schedules and those of their witnesses accordingly;
and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).



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6/16/2022

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE