IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C M JOSHI

WRIT APPEAL NO. 237 OF 2025 (GM-RES)

C/W CIVIL CONTEMPT PETITION NO. 185 OF 2025

IN WRIT APPEAL NO. 237 OF 2025

BETWEEN:

1. UNION BANK OF INDIA
VILE PARLE (W) BRANCH
SHIV SHAKTI, 11
VITHAL NAGAR COOP. HOUSING SOCIETY
10TH ROAD, J.V.P.D SCHEME
VILE PARLE (W), MUMBAI - 400 049
NOW SHIFTED TO
UNION BANK OF INDIA
STRESSED ASSET MANAGEMENT BRANCH
MUMBAI, 104, GROUND FLOOR
BAHART HOUSE, M S MARG
FORT, MUMBAI - 400 001
REPRESENTED BY ITS
CHIEF MANAGER
MRSIDHARTHA S. MHADE

...APPELLANT

(BY SRI DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SMT. DIVYA PURANDAR, ADVOCATE)

AND:

1. M/S NHDPL SOUTH PRIVATE LIMITED
(FORMERLY KNOWN AS
NHDPL PROPERTIES PVT. LTD.
AND PREVIOUSLY KNOWN AS

NITESH HOUSING
DEVELOPERS PRIVATE LIMITED
HAVING ITS OFFICE AT NO. 110, LEVEL 1
ANREWS BUILDING, M.G. ROAD
BENGALURU - 560 001
ALSO HAVING OFFICE AT NO. 7
7TH FLOOR, NITESH TIMES SQAURE
M.G. ROAD
BENGALURU - 560 001
REPRESENTED BY ITS
AUTHORISED OFFICER

2. THE RESERVE BANK OF INDIA
NEW CENTRAL OFFICE BUILDING
SHAHID BHAGAT SINGH ROAD
FORT MUMBAI
MAHARASHTRA - 400 001
REPRESENTED BY DIRECTOR

3. THE BANKING OMBUDSMEN MUMBAI
C/O RESERVE BANK OF INDIA
4TH FLOOR, RBI BYCULLA
OFFICE BUILDING
OPPOSITE MUMBAI
CENTRAL RAILWAY STATION
BYCULLA-MUMBAI - 400 008

…RESPONDENTS

(SRI UDAYA HOLLA, SENIOR ADVOCATE FOR
SRI SIDDHARTH SUMAN, ADVOCATE FOR C/R-1)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 27.01.2025 PASSED BY THE LEARNED SINGLE JUDGE IN W.P. No. 2193/2021 (GM-RES) BY ALLOWING THIS APPEAL AND TO PASS SUCH OTHER AND FURTHER ORDERS AS MAY BE DEEMED JUST AND PROPER IN THE FACTS AND CIRCUMSTANCES OF THE CASE.

IN CCC NO. 185 OF 2025 (CIVIL)

BETWEEN:

1. NHDPL SOUTH PRIVATE LIMITED
(NOW KNOWN AS NORTHROOF
VENTURES PVT LTD.,

FORMERLY KNOWN AS NHDPL
PROPERTIES PRIVATE LIMITED EARLIER
NITESH HOUSING DEVELOPERS PVT LTD.,)
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT AND HAVING
REGISTERED OFFICE AT
NO.110, LEVEL 1, ANDREWS BUILDING
M.G. ROAD, BENGALURU - 560 001
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
VASUMATI H.K.

…COMPLAINANT

(BY SRI UDAYA HOLLA, SENIOR ADVOCATE FOR
SRI SIDDHARTH SUMAN, ADVOCATE)

AND:

1. SRI. GOYAL PRANAY HARIVANSH
CHIEF MANAGER / BRANCH MANAGER
UNION BANK OF INDIA
VILE PARLE (W) BRANCH, SHIV SHAKTI
II VITHAL NAGAR, CO-OP. HOUSING SOCIETY
10TH ROAD, J.V.P.D. SCHEME
VILE PARLE (W), MUMBAI - 400 049

…ACCUSED

THIS CCC IS FILED UNDER SECTION 11 AND 12 OF THE CONTEMPT OF COURTS ACT, 1971 R/W ARTICLE 215 OF THE CONSTITUTION OF INDIA, PRAYING TO INITIATE CONTEMPT PROCEEDINGS UNDER THE PROVISIONS OF THE CONTEMPT OF COURTS ACT AGAINST THE ACCUSED FOR HAVING WILLFULLY DISOBEYED THE ORDERS ORDER DATED 27.01.2025 IN W.P. NO.2193/2021 PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA, BENGALURU I.E. ANNEXURE-A AND TO PUNISH THE ACCUSED FOR WILLFULLY AND DELIBERATELY DISOBEYING THE SAID ORDERS PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA AND FURTHER ENFORCE THE ORDER PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA IN ACCORDANCE WITH LAW; AND ALSO AWARD COSTS OF THESE PROCEEDINGS.

THIS WRIT APPEAL AND CCC, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C M JOSHI

CAV JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant – Union Bank of India [hereafter **UBI**] – is a scheduled bank. It has filed the present appeal impugning an order dated 27.01.2025 [hereafter **the impugned order**] passed by the learned Single Judge in Writ Petition No.2193/2021 (GM-RES) captioned ***M/s NHDPL South Private Limited v. Union Bank of India & Ors.*** Respondent No.1, M/s NHDPL South Private Limited [hereafter **NSPL**], had filed the aforementioned writ petition impugning the order dated 21.12.2020 passed by respondent No.3 (the Banking Ombudsman Mumbai) rejecting its complaint. Additionally, NSPL had also sought an order directing UBI to make payments against the Bank Guarantees bearing Nos.408101GL0001716 [**BG-1**] and 408101GL0001816 [**BG-2**] both dated 20.7.2016 [hereafter collectively referred to as '**the BGs**'], furnished by it. The learned Single Judge allowed the said writ petition in terms of the impugned order and, *inter alia,* directed UBI to make payment against the said BGs along with interest at the rate of 18% per annum from the date when they were invoked,

that is, with effect from 29.03.2019 in respect of BG-1 and with effect from 26.04.2019 in respect of BG-2. The court further directed that the said payments be made within a period of seven days from the date of receipt of the order.

2. There is no dispute that UBI had furnished the BGs for the benefit of NSPL. There is also no cavil that BGs were unconditional and UBI was liable to make payment against the same without protest or demur on NSPL invoking the same. The only ground on which UBI has declined to honour its obligation under the BGs is that invocation of the BGs was not as per their terms.

3. NSPL had invoked the BGs by sending the letter of invocation electronically and had thereafter served the hard copies of the letters at the office of UBI. According to UBI, invocation of BGs through e-mail was not compliant with the condition of invoking the BGs “in writing”. And, the hard copies of the letters of invocation were received after the time for invoking the BGs had expired. The learned Single Judge found that invocation of the BGs through e-mail was in terms of the BGs and UBI’s stand that the same were not in writing is unsustainable.

4. Thus, the principal question that arises for consideration of this court was whether the BGs were invoked in accordance with their terms.

PREFATORY FACTS

5. The company named M/s Alfara'a Infraprojects Private Limited [**the Borrower**] had availed certain financial assistance from UBI including the non-fund assistance by issuance of BGs. UBI had sanctioned an amount of ₹70 crores by letter dated 11.02.2015 to the borrower, which comprised of Cash Credit limit of ₹10 crores, Inland/Import Letter of Credit for a value of ₹20 crores, and bank gurantee facility to the extent of ₹40 crores. Subsequently, by a letter dated 28.06.2017, the said limits were significantly enhanced to ₹50.5 crores for Cash Credit Limit; ₹30 crores for Term Loan; ₹45 crores against Inland/Import Letter of Credit; and ₹130.05 crores towards BGs limits.

6. At the instance of the Borrower, UBI had issued the BGs (BG-1 for a sum of ₹2,78,75,127/- and BG-2 for a sum of ₹5,57,50,254/-) within the aforesaid sanctioned limits. BG-1 was renewed up to 31.03.2019 and BG-2 was renewed up to

30.04.2019. There is no dispute that term of BG-1 and BG-2 would expire on 31.03.2019 and 30.04.2019, respectively.

7. On 29.03.2019, NSPL sent an e-mail to UBI enclosing therewith the copy of a letter seeking renewal of BG-1. NSPL further stated that the hard copy of the letter communicated through e-mail was being separately sent through speed post / courier.

8. UBI responded to the said e-mail on 30.03.2019 informing NSPL that the renewal or extension of the Bank Guarantee would be done only after receiving original letter through post or courier. Thereafter, NSPL sent a reminder on 05.04.2019, *inter alia,* stating that it had sent hard copy of the letter as required on 30.03.2019 through speed post and requested that extension letter be provided urgently. Thereafter, on 09.04.2019, NSPL once again sent an e-mail requesting a scanned copy of the extension letter and that a hard copy be sent to its office. On 17.04.2019, NSPL sent an e-mail stating that since it had not received any response regarding extension of the BG-1, they were revoking [*sic*] BG-1 and the hard copy of revocation letter would be forwarded to the office.

9. However, NSPL did not receive any response to the said e-mail. Accordingly, it sent another e-mail on 30.04.2019 complaining that it had not received any response to its letter dated 29.03.2019 requesting for extension of the BG-1 or its request for crediting its bank account with the proceeds. NSPL informed the Bank that if it did not send any response on or before 04.05.2019, it would be constrained to initiate action. Thereafter, on 03.05.2019, NSPL sent an e-mail to the Banking Ombudsman, Reserve Bank of India requesting that UBI be instructed to credit the proceeds of the BGs into their account. This was followed by another e-mail dated 13.05.2019 to the similar effect.

10. Similarly, NSPL sent an e-mail dated 26.04.2019 enclosing therewith a letter for BG-2 extension/invocation. The said letter was in similar terms as the letter dated 29.03.2019 sent in respect of BG-1.

11. Hard copies of the letters dated 29.03.2019 and 26.04.2019 invoking BG1 and BG2, respectively, were received by the UBI at its office on 01.04.2019 and 02.05.2019, respectively.

12. Since UBI had failed to make payments against BGs, NSPL attempted to lodge a complaint with the Banking Ombudsmen, RBI

(respondent No.3) during March/ April, 2020 but was unable to do so. NSPL finally lodged its complaint with respondent No.3 on 03.10.2020. Respondent No.3 rejected the complaint by communication dated 21.12.2020. Aggrieved by the rejection of the complaint and failure on the part of UBI to make payments against the BGs, NSPL filed the writ petition, being W.P No.2193/2021 praying that the order dated 21.12.2020 issued by respondent No.3 rejecting its complaint be set aside and directions be issued to UBI to invoke the BGs. The said petition was allowed by the impugned order.

SUBMISSIONS

13. Mr.Dhyan Chinnappa, learned Senior Counsel appearing for UBI advanced submissions on two fronts. First, he submitted that the words "in writing" would necessarily have to be construed as physically written. Thus, an electronic communication would not be compliant with the requirement of the invocation of the BGs. Second, he submitted that invocation was required to be received by UBI and the receipt of invocation must be construed to mean physically received at the office and not an e-mail sent to UBI. Additionally, he submitted that the said invocation is also required to be made by an authorized officer of NSPL and the e-mails sent

by NSPL were not through its authorized officer. He also contended that the learned Single Judge had erred in awarding interest on delayed payment. He submitted that there was no such prayer made in the writ petition and, therefore, the direction to pay interest at the rate of 18% is unsustainable

14. Mr.Udaya Holla, learned Senior Counsel appearing for NSPL countered the aforesaid submissions.

REASONS AND CONCLUSIONS

15. The controversy in the present appeal lies in a narrow compass. There is no dispute that the BGs were required to be invoked in their terms and UBI was entitled to decline payment against the BGs if the invocation was not compliant with its terms. The controversy centers around the question whether invocation of the BGs by the e-mail sent by NSPL on 29.03.2019 for invoking BG1 and 26.04.2019 for invoking BG2 could be ignored as non compliant with the terms of the BGs.

16. There is no dispute that the UBI had received the e-mails dated 29.03.2019 and 24.06.2019 enclosing therewith copies of the letters of invocation. We consider it relevant to set out the said letter dated 29.03.2019. The same is reproduced below:

"The Manager,
Union Bank of India,
10th Road, J V P D Scheme Branch
Shiv Shakti, 11, Vithal Nagar Co-op. Hsg. Soc.,
Vile-Parle (West)
Mumbai - 400 049.

Dear Sir,

Sub: Extension Bank Guarantee against Mobilization Advance.
Ref: BG No-408101GL001716 Issued Date-20.07.2016 -
Expiry on 31.03.2019

We refer to the Bank Guarantee issued by you in our favour for Rs.2,78,75,127/- (Rupees Two Crores Seventy Eight Lakhs Seventy Five Thousand One Hundred and Twenty Seven only) on behalf of M/s Alfaraa Infraprojects Pvt Ltd having its registered office at 101/102, Baba House, Near Cinemax Theatre, Chakala, Andheri (East), Mumbai - 400 093. The Bank Guarantee is expiring on 31.03.2019. Kindly arrange to renew the same and send us the renewal letter.

In the event if the BG is not renewed we here by invoke the BG and we request you to kindly transfer the amount to below mentioned account.

Account No.	002281400002792
Bank Name	Yes Bank
Branch	Kasturba Road Branch
IFS Code	yesb0000022

In case the BG is renewed before the date of expiry, request you to kindly send the original renewed BG to us.

Yours truly,
For Nitesh Housing Developers Pvt Ltd.

Sd/-
DGM-Finance, Banking & Treasure

CC: M/s. Alfaraa Infroprojects Pvt Ltd
101/102, Baba House, Near Cinemax Theatre,
Chakala, Andheri (East),
Mumbai - 400 093"

17. The letter dated 26.04.2019 for invocation of BG2 was also in similar terms.

18. There is no dispute that the BGs are unconditional BGs and NSPL was not required to provide any reasons for invoking the same or comply with any other conditions. UBL was required to pay the amount as guaranteed without any "demur, cavil or argument". The relevant extract of the BG1 which clearly indicates that it is an unconditional BG is set out below:

> "NOW THEREFORE we Union Bank of India having our Head office at Union Bank Bhavan, 239, VidhanBhavan Marg, Nariman Point, Mumbai - 400 021 and acting through its branch office at Union Bank of India, 11, Vithal Nagar Co.op.Hsg. Society, 10Th Road, JVPD Scheme, Vile Parle (W) Mumbai - 400 049 (herein after referred to as 'the Bank', which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns] hereby affirm that we are the Guarantor and responsible for you, on behalf of the Contractor up to a total of Rs.2,78,75,127/- (Rupees Two Crore Seventy Eight Lakh Seventy Five Thousand One Hundred Twenty Seven Only) and we irrevocably and unconditionally undertake to pay you, upon your first written demand and without any demur, cavil or argument, any sum or sums within the limits of Rs.2,78,75,127/- as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein."

19. It is also relevant to refer to clause 14 of the BG-1 as well as the concluding portion of BG-1. The same are reproduced below.

"14. Any notice by way of request, demand or other communication given in connection with or required by this Guarantee shall be made in writing (entirely in the English language) may be sent by hand or post to the Bank addressed as aforesaid.

xxx

Notwithstanding anything contained herein above.

a) Our Liability under this Bank Guarantee Shall not exceed Rs.2,78,75,127/- (Rupees Two Crore Seventy Eight Lakh Seventy Five Thousand One Hundred Twenty Seven only)

b) This Bank Guarantee shall be valid upto and including **30th September, 2018.**

c) We Shall be liable to pay any amount under this Bank Guarantee or part thereof only if we receive (if you serve upon us) a written claim or demand under this Guarantee on or before **30th September 2018 at Union Bank of India, 11, Vithal Nagar Co.Op.Hsg. Society, 10Th Road, JVPD Scheme, Vile Parle (W) Mumbai - 400 049.**"

20. BG-1 was subsequently extended by UBI by letter dated 31.12.2018. The contents of the extension letter are set out below:

"At the request of our principal Alfara'a Infraprojects Pvt Ltd., 101/102, 1st Floor, Baba House, Near Cinemax Theatre, Chakala, Andheri (East) Mumbai - 400093 the above mentioned performance guarantee is extended as follows:

1. Extend the validity of the captioned guarantee upto **31st March, 2019**.

2. Extend the Claim period of the captioned guarantee upto **31st March, 2019**.

All other terms and conditions remain unchanged.

This extension is as integral part of the above referred guarantee and should be read with the original Bank Guarantee issued on 21st June, 2016.

Notwithstanding anything contained herein above

1. Our maximum liability under this Bank Guarantee shall not exceed INR 2,78,75,127/- (Rupees Two Crores Seventy Eight Lakhs Seventy Five Thousand One Hundred Twenty Seven Only).

2. This Bank Guarantee shall be valid only up to **31st March, 2019.**

3. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if we receive a written claim or demand on or before **31st March, 2019."**

21. The corresponding portions of BG-2 are identically worded as the extract of BG-1 set out above, except the value of BG-2 is ₹5,57,50,254/- and was valid till 30.04.2019.

22. It is material to note that the last portion of the BGs, as extracted above are couched under a non-obstante provision. Thus, notwithstanding anything contained in the BGs, UBI had acknowledged its liability to pay the guaranteed amount or in part thereof if it received "a written claim or demand" on or before the expiry date.

23. Thus, the quintessential question is whether the demand made by the communication sent through electronic mail to UBI constituted a "written claim or demand".

24. A plain reading of the letters dated 29.03.2019 and 26.04.2019 indicate that BGs stood invoked as the same were not extended. NSPL had stated in unambiguous terms that in the event the BG is not renewed, it invokes the same. This is clear from the plain reading of the sentence "in the event if the BG is not renewed, we hereby invoke the BG and we request you to kindly transfer the amount to the below mentioned account."

25. The contention that the letters dated 29.03.2019 or 26.04.2019 could not be construed as invocation of respective BGs is clearly unmerited. We may note that although UBI has made averments to the aforesaid effect in the memorandum of appeal, Mr.Chinnappa did not advance any submissions in support of the said stand.

26. Mr. Chinnappa had advanced submissions on essentially three fronts. The first that the demand made by an electronic communication could not be construed as "a written claim or demand". The second that the term of the Bank Guarantee, which

expressly provided that UBI would be liable to pay only if it receives a written claim or demand at the office address of UBI ought to be construed as physical service of a written claim at the office of UBI. The said condition would not be complied by an e-mail sent electronically. He contended that an electronic communication could not be construed as a service at the given address of UBI. And, thirdly, he submitted that reference made by the learned Single Judge to the provisions of the Information Technology Act, 2000 [**the IT Act**] to construe an electronic communication as a written demand under the Bank Guarantee, was misplaced. He submitted that under the provisions of IT Act, electronic communications could be substituted as written communications as required under any law. However, the provisions could not be read to substitute the terms of a contract between the parties.

27. The principal contention that the demand made through an electronic communication cannot be considered as a written demand, is premised on the assumption that an e-mail or a communication that is sent electronically is not a communication 'in writing'. Thus, the controversy essentially boils to the question whether the expression 'written demand' is confined only to a

demand, which is either hand written or typed on a physical medium.

28. We find no reason to confine the expression “written demand’’ as a demand written in hand on paper or physically engrossed on any other medium. The word 'written demand' must necessarily be construed as a demand, which is made in a language by words and alphabets that are visible to the eye and not an oral communication or a communication by other means. For instance, a demand communicated through morse code, by signals such as beat of drums or made through gestures by hand would clearly not qualify as a written demand or a communication 'in writing'. The expression “written” would necessarily imply expression by words and letters, which is visible to the eye.

29. The Black’s Law Dictionary defines expression 'writing' as “expression of ideas by letters visible to the eye”. It also refers to the decision in case of **Calson v. Bailey, 14 Johns (N.Y.) 491**. In that case, the Memorandum which was written in lead pencil was called into question on the ground that it was written with a lead pencil and not in ink. It is relevant to refer to the following extract of the said decision:

"The statute requires a writing. It does not undertake to define with what instrument, or with what material the contract shall be written. It only requires it to be in writing, and signed, &c.; the verdict here finds that the memorandum was *written*, but it proceeds further, and tells us with what instrument it was written, viz. with a lead pencil. But what have we to do with the kind of instrument which the parties employed, when we find all that the statute required, viz. a memorandum of the contract in *writing*, together with the names of the parties?

To write is to express our ideas by letters visible to the eye. The mode or manner of impressing those letters is no part of the substance or definition of writing. A pencil is an instrument with which we write without ink. The ancients understood alphabetic writing as well as we do, but it is certain that the use of paper, pen, and ink, was, for a long time, unknown to them. In the days of *Job* they wrote upon lead with an iron pen. The ancients used to write upon hard substances, as stones, metals, ivory, wood, See. with a style or iron instrument. The next improvement was writing upon waxed tables; until, at last, paper and parchment were adopted; when the use of the calamus or reed was introduced, The common law has gone so far to regulate writings, as to make it necessary that a deed should be written on paper or parchment, and not on wood or stone. This was for the sake of durability and safety; and this is all the regulation that the law has prescribed. The instrument, or the material by which letters were to be impressed on paper or parchment, has never yet been defined; This has been left to be governed by public convenience and usage; and as far as questions have arisen on this subject, the courts have, with great latitude

> and liberality, left the parties to their own discretion. It has, accordingly, been admitted, (2 Black. Com. 297. 2 Bos. fy Pull. 238. '3 Esp. Rep. 180.) that printing was writing, within the statute, and (2 Bro. 585.) that stamping was equivalent to. *496signing, and (8 Vesey, 175.) that making a mark was subscribing within the act. I do not find any case in the courts of common law in which the very point now before us has been decided, viz. whether writing with a lead pencil was sufficient; but there are several-cases in which such writings were produced, and no objection taken. The courts have impliedly admitted that writing with such an instrument, without the use of any liquid, was valid. Thus in a case in *Comyrt's* Reports, (p. 451.) the counsel cited the case of Loveday v. Claridge. in 1730, where Loveday, intending to make his will, pulled a paper out of his pocket, wrote some things down with ink, and some with a pencil, and it was held a good' will. But we have a more full and authentic authority in a late case decided at doctors commons, (Rymes v. Clarkson, 1 Phillim. Rep. 22.) where the very question arose on the validity of a codicil written with a pencil. It was a -point over which the prerogative court had complete jurisdiction, and one objection taken to the codicil was the material with which it was written, but it was contended, on the other side, that a man might write his will with any material he pleased, quocunque modo velit, quocunque modo possit, and it was ruled by Sir *John Nicholl*, that a will or codicil written in pencil was valid in law."

30. Although the said decision was rendered more than a century ago, it illuminates the expression 'written'. The said

decision brings into focus that the meaning of the word 'written' is essentially to express ideas by letters that are visible to the eye. The manner in which the letters are impressed, is not relevant. It also recalls that instruments used for impressing letters and the medium used have evolved over the period of time. The use of pen and paper and writing in one's hand has over the years yielded to printing by using a typewriter. The communications are commonly written by keying the letters electronically in virtual medium and the record of the written word is maintained in digital files. But in our view, the instruments, the manner, and the medium in which words or letters are impressed and recorded would, to borrow the expression be "no part of substance or definition of writing".

31. It is also relevant to refer to Section 3(65) of the General Clauses Act, 1897 [**the 1897 Act**], which reads as under:

> "Expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form."

32. It is clear from the above that the aforesaid definition is an inclusive definition and an expression 'writing' includes references

to printing, lithography, photography and other modes of representing or reproducing words in a visible form.

33. Although the meanings of the words and expressions as defined under the 1897 Act are used for interpretation of the words and expressions in Central Acts, Regulations and Statutes; in given cases, they are also instructive for understanding the meaning of those words and expressions as used in common parlance.

34. In ***Rup Chand v. Mahabir Prasad : AIR 1956 Punj 173***, the Court had construed the expression 'in writing' as used in Section 145 of the Indian Evidence Act, 1872. The Court rejected the contention that the conversation on a tape-recorder could be regarded as a statement in writing or as reduced into writing. In the aforesaid context of the same, the Court observed as under:

> "The expression "writing" appearing in Section 145 refers to the tangible object that appeals to the sense of sight and that which is susceptible of being reproduced by printing, lithography photography etc. It is not wide enough to Include a statement appearing on a tape which car be reproduced through the mechanism of a tape recorder."

35. The Black's Law Dictionary, 9th edition 2009 also defines the expression 'writing' as under:

> "Any intentional recording of words that may be viewed or heard with or without mechanical aids.
>
> This includes documents, hard-copy electronic documents on computer media, audio and videotapes, e-mails, and any other media on which words can be recorded."

36. With the extensive use of electronic medium for writing communications, it would be erroneous to accept that the expression ‘writing’ or ‘written’ is confined to impressing words and letters on a physical medium and the expression excludes recordal of words or letters on a virtual medium.

37. Illustratively, we may consider the practice of lawyers furnishing written submissions electronically. It is not uncommon to find that the advocates read out their written submission from an electronic device. If one were to accept the contention that the words ‘written’ must necessarily be in physical form, it would be erroneous to accept submissions communicated electronically as 'written submissions'. However, in a common parlance, the words and alphabets keyed on digital files are understood to constitute 'writing'. And, the communications of the soft files or digital files would amount to communicating 'written' documents.

38. In the aforesaid context, the learned Single Judge had also referred to Section 4 of the IT Act. We consider it relevant to reproduce the same.

> "4. Legal recognition of electronic records.— Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is–
>
> (a) rendered or made available in an electronic form; and
>
> (b) accessible so as to be usable for a subsequent reference."

39. As noted above, it is the appellant's contention that reference to Section 4 of the IT Act is misplaced as the same is merely an aid for interpretation of statutes, which provide that any matter should be 'in writing'. It is contended that Section 4 of the IT Act would not control the ambit of the contract or the agreement between the parties. It is thus argued that if the agreement between the parties required a demand to be made in writing, the expression 'in writing' could not be construed with reference to Section 4 of the IT Act.

40. There is no cavil that import of Section 4 of the IT Act is to expressly clarify that where any law provides that information or

any other matter shall be (i) “in writing”; or (ii) in the typewritten form; or (iii) in printed form, it would be sufficient that if the information or matter is rendered or made available in an electronic form and is accessible so as to be useable for a subsequent reference. The said definition cannot necessarily be imputed to the expressions used in a contract between the parties, if the terms of the contract indicate otherwise. However, Section 4 of the IT Act does aid in understanding as to how the meaning of the expressions “in writing” or “typewritten” are now understood. Section 4 merely recognizes the meaning of the said expressions. Thus, unless the terms of the agreement indicate otherwise, the meaning of the given expressions under Section 4 of the IT Act can inform our understanding of those expressions.

41. It is relevant to refer to the statement of objects and reasons of the IT Act, which reads as under:

> "New communication systems and digital technology have made dramatic changes in the way we live. A revolution is occurring in the way people transact business. Businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages. It is cheaper, easier to store, retrieve and speedier to communicate. Although people are aware of

> the these advantages, they are reluctant to conduct business or conclude any transaction in the electronic form due to lack of appropriate legal framework. The two principal hurdles which stand in the way of facilitating electronic commerce and electronic governance are the requirements as to writing and signature for legal recognition. At present many legal provisions assume the existence of paper based records and documents and records which should bear signatures. The Law of Evidence is traditionally based upon paper based records and oral testimony. Since electronic commerce eliminates the need for paper based transactions, hence to facilitate e-commerce, the need for legal changes have become an urgent necessity. International trade through the medium of e-commerce is growing rapidly in the past few years and many countries have switched over from traditional paper based commerce to e-commerce."

42. A plain reading of statement of the 'objects and reasons' indicated that the Parliament had recognized that there was a change in the manner in which the business was being transacted. Undeniably, International trade, through the medium of e-commerce, has grown rapidly. It is thus apparent that Section 4 of the IT Act does not impute any artificial definition of the expression ‘in writing’, it merely recognizes the manner in which the trade understands it.

43. In the given circumstances, we find no fault with the learned Single Judge referring to the IT Act for understanding whether the electronic documents could be considered as documents 'in writing'.

44. We may also refer to Section 7 of the Arbitration and Conciliation Act, 1996 [**A&C Act**]. Sub-section (3) of Section 7 expressly provides that an arbitration agreement shall be in writing. This condition is satisfied if the arbitration agreement can be inferred by exchange of letters, telex, telegrams or other means of telecommunication which provided a record of the agreement.

45. In ***Trimex International FZE Limited, Dubai v. Vedanta Aluminium Limited, India: (2010) 3 SCC 1***, the Supreme Court examined a set of e-mails exchanged between the parties and concluded that the existence of an arbitration agreement in writing is satisfied, as the terms of the agreement were discernible from the exchange of e-mails.

46. Sub-section (4) of Section 7 of the A&C Act expressly provides that an arbitration agreement is in writing if it is contained in an exchange of letters, telex, telegrams or other means of telecommunication including electronic means. In our view, the

same merely recognizes that contracts contained in electronic form are well accepted as written contracts. The expression a communication made 'in writing' has to be understood as opposed to a communication made orally, in sign language, by conduct or other means. The principal feature of writing is maintenance of record in the form of written language in visual form. The essential feature of communication in writing is a record by written words; the medium on which the alphabets or written words are engrossed would not be determinative of the question whether the record is in writing. Once a record written in words and alphabets is maintained, either in physical or in electronic form, the record of such language is considered as one in writing.

47. P Ramanatha Aiyar, The Major Law Lexicon, 4th Edition 2010 Volume 6 also sets out the meaning of "written contract" drawn from the commentary on Section 95 of the Restatement (Second) of Contracts. The relevant extract from the said definition is reproduced below:

> "Written contracts are also commonly signed, but a written contract may consist of an exchange of correspondence, of a letter written by the promisee and assented to by the promisor without signature, or even of a memorandum of printed document not signed by either party."

48. We reject the contention that the demand for invocation of BGs sent through e-mails was not a "written claim or demand" or a demand lodged "in writing (entirely in English language)".

49. The next question to examine is whether decision of the learned Single Judge in awarding interest can be faulted. It is material to note that the BGs were furnished as a part of the commercial transaction. And, compensation by way of interest for withholding money in commercial transaction is the norm. Thus, unless there are reasons to deny interest on amounts due to a party under a commercial contract, interest as a rule ought to be granted to compensate the time value of the money to the party so denied of its dues.

50. In ***Union of India v. Tata Chemicals Ltd.:*** **(2014) 6 SCC 335**, the Supreme Court granted interest on excess income tax paid to the Government notwithstanding that the portion of it was not covered under any statutory provision. The Supreme Court observed thus:

> "The Government, there-being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention

> of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course." (emphasis added)

51. In ***Authorised Officer, Karnataka Bank v. M/s. R.M.S. Granites Pvt. Ltd. and Ors. :*** **Civil Appeal No.12294/2024,** the Supreme Court observed as under:

> "It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say ten years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B ten years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B. [See: Alok Shanker Pandey v. Union of India: AIR 2007 SC 1198]"

52. In ***Dr. Poornima Advani and Anr. v. Government of NCT and Anr.:*** **2025 INSC 262**, the Supreme Court referred to the decision of the ***Authorised Officer, Karnataka Bank*** *(supra)* and observed as under:

> "Thus, when a person is deprived of the use of his money to which he is legitimately entitled, he has a right to be compensated for the deprivation which may be called interest or compensation. Interest is paid for the deprivation of the use of money in general terms which has returned or compensation for the use of retention by a person of a sum of money belonging to other."

53. In a recent decision in ***I.K. Merchants Pvt. Ltd. and Ors. v.*** . ***State of Rajasthan and Ors. :*** **2025 SCC OnLine SC 692**, the Supreme Court referred to a catena of decisions and observed as under:

> "Thus, it is abundantly clear that the Courts have the authority to determine the appropriate interest rate, considering the totality of the facts and circumstances in accordance with law. That apart, the Courts have the discretion to decide whether the interest is payable from the date of institution of the suit, a period prior to that, or from the date of the decree, depending on the specific facts of each case."

54. It is well recognized that in commercial disputes the award of interest on money legitimately due, must be granted as a matter of course.

55. We also note that the NSPL has been pursuing its grievance before the Banking Ombudsman since 03.10.2020. Writ Petition

No.2193/2021 was instituted on 30.01.2021 and was pending before the learned Single Judge till its disposal on 27.01.2025.

56. We may also note that it is equally well settled that award of *pendente lite* interest is at the discretion of the Court. The following observations of the Supreme Court in ***Clariant International Ltd. v. Securities & Exchange Board of India*, (2004) 8 SCC 524**, are of some significance:

> "Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory."

57. In view of the above, we find no fault with the decision of the learned Single Judge in awarding interest on the amounts withheld by the UBI in disregard of its obligations under the BGs. However, we find that the rate of interest of 18% per annum is high. There is no material to justify the said rate of interest as reasonable.

58. We also note that the interest awarded by the Supreme Court in the recent decision in ***Dr. Poornima Advani*** *(supra)* is ranging from 6% to 9% per annum. We, accordingly, consider it

apposite to reduce the rate of interest awarded by the learned Single Judge from 18% to 9% per annum. UBI shall pay the amount due within a period of two weeks from date. The impugned order is modified to the aforesaid extent.

59. The appeal is disposed of in the aforesaid terms.

60. Since the impugned order is modified, the complaint–CCC No.185 of 2025 – is closed. The complainant is at liberty to initiate appropriate proceedings if the impugned order as modified is not complied with.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C M JOSHI)
JUDGE

AHB/KPS