

Bank of India Vs. M/s. Brindavan Agro Industries Pvt. Ltd.

Civil Appeal No. 1720 of 2020 arising out of SLP. (Civil) No. 2007 of 2019
2020-01-01 | Hemant Gupta, J.
Repository ID: F2J-C-1881

Full judgment text

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Hemant Gupta, J.

1. The challenge in the present appeal is to an order passed by the National Consumer Disputes Redressal Commission¹ on 10th May, 2018 whereby an appeal filed by the appellant² against the order of State Consumer Disputes Redressal Commission³ dated 13th July, 2016 remained unsuccessful.

2. The respondent⁴ was maintaining an account with the appellant Bank at its branch in Agra. The Consumer applied for a loan on 15th October, 2011. The Consumer sought the following credit facilities: crore to Rs. 20 crore;

2. Sanction of ECB/SCL/INR term loan of Rs. 40 crore; 3. Sanction of LC Limit of Rs. 25 crore."

3. As per the Bank, the application submitted by the Consumer was handed over to Credit Processing Unit⁵ at New Delhi on 4th November, 2011 pending submission of the valuation/search report of the properties to be mortgaged and Techno Economic Viability⁶ study. The officers of the Bank visited the site but on 6th December, 2011, the Consumer revised its credit requirement as under:

"1. Enhancement of Working Capital Limit from Rs. 10 crore to Rs. 20 crore;

2. Sanction of Term loan of Rs. 40 crore in the form of ECB;

3. Sanction of LC Limit of Rs. 25 crore for deferred payment credit for 3 years on withdrawn basis;

4. LC Limit of Rs. 4 crore for import of raw material from time to time."

4. Such request was also forwarded to CPU immediately. However, soon thereafter, on 17th December, 2011, the Consumer again revised its credit requirement reducing the LC limit to Rs.19 crores from Rs.25 crores. Such revised request is as under:

"1. Term Loan in form of ECB for Rs. 40 Crore.

2. Working capital limit enhancement from Rs. 10 Crore to 20 Crore.

3. LC Limit of Rs. 19 Crore Against Deferred payment credit of machine purchasing from SACMI for the Period of Three (3) years on drawn down Basis.

4. Regular LC Limit of Rs. 4 Crore for time to time import of Machinery/Raw Etc."

5. On 30th December, 2011, the Bank debited the account of the Consumer by an amount of Rs.27, 41,165/- being 50% of the applicable processing fees including the TEV study and service tax charges. On 24th January, 2012, the final proposal for sanction was submitted by the CPU at New Delhi to the Head Office at Mumbai which had the requisite authority to approve the sanction of such high value loans. But, on 9th February, 2012, the Consumer objected to the deduction of processing fees as the Bank could only do so after the loan was sanctioned.

The Consumer sought a refund of the said amount on the ground of suffering losses, owing to the alleged delay of the Bank in sanctioning the credit facilities and that the Consumer had got the credit facilities from other banks. Such request was reiterated vide e-mail dated 22nd February, 2012. However, on 17th March, 2012, the credit facilities were sanctioned within three months from the final modified request. When the officers of the Bank approached the Consumer with the sanction letter for the credit facilities requested, the Consumer showed the sanction letters issued by other Banks i.e. HDFC Bank and ICICI Bank.

6. On 6th August, 2013, the Consumer filed an application under Section 17 of the Consumer Protection Act, 1986. This application which was allowed by the SCDRC on 13th July, 2016 directing the Bank to pay a sum

of Rs.27,41,165/- along with interest @9% from the date of filing the complaint till the date of payment. The appeal before the NCDRC against such order remained unsuccessful.

7. Learned counsel for the Bank pointed out that the procedure for sanction of loan is detailed in the Bank's Circular dated 20th April, 2005 which is available on the website of the Bank as well. It is mandatory to obtain a TEV study report in all new industrial projects, diversification projects and accounts where restructuring (Other than CDR) is proposed and where the total fund based limits/exposure (including liabilities likely to get devolved in the case of existing accounts) is equal to and above the threshold limit of Rs. 500 lacs.

The term "Total Fund Based Limits" includes both term loan and Working Capital Limit. It is further submitted that in case of a new account with the Bank, the "Total Fund Based Limits", for the purpose of applicability of TEV study as well as for charging of Appraisal Fees, will be the "Aggregate Fund Based Limits" sought by the proponents vide their application. In the case of an existing account holder with the Bank, subject to the various clauses of exceptions listed herein below, the applicability of TEV study will be decided by:

(a) If the aggregate fund based facilities was below Rs500 lacs earlier (whereby no TEV Study had been carried out in the account so far) and on account of additional limit sought now the aggregate fund based limit is reaching Rs. 500 lacs or above, then a TEV Study would be necessary notwithstanding the extent of increase being sought at present.

(b) If the aggregate fund based facilities is already Rs. 500 lacs or above, when an increase in fund based facility is sought, TEV study need to be carried out normally only when the additional quantum of limits is Rs. 500 lacs or above. Nevertheless, in restructuring cases the applicability will be irrespective of additional limit and in accounts with Credit Rating "A" or below the Zonal Manager/General Manager, HO may specifically seek TEV Study irrespective of the additional quantum.

8. It is further pointed out that upon receipt of Project papers from the proponents, the Branches should ensure the following before sending them to the designated TAC for techno economic appraisal:

(a) The Branch should decide on the acceptability of the proponents as well as the project in all other angles other than techno-economic angle and only if the proposition is otherwise found acceptable. TEV study should be sought. In other words, if the TEV study observes that the project is technically feasible and economically viable, the branch should be in readiness to submit a proposal for consideration at appropriate level. This pre-scrutiny on all other angles is necessary since TEV study involves time and cost not only to the proponent but for the Bank also.

(b) In cases where obtention of administrative clearance is a pre-requisite for consideration of a credit proposal as per extent policy/guidelines, such clearance should be obtained prior to making reference for TEV study.

(c) All normal terms and conditions of Bank for entertaining such credit business, such as rate of interest, security/collateral security, personal guarantees, margins, incidence of other processing costs, time frame for decision etc. should be discussed with the proponents and only upon their acceptance of the terms, TEV study should be resorted to.

(d) Upfront portion of Appraisal Fees, as explained in later paragraph, should be collected (or earmarked in the deposit account of a new proponent/existing advance account of an existing customer with us) and should be confirmed by the Branch while forwarding papers for TEV study.

(e) In order to avoid any time delay in the process of TEV study, all papers needed for such study should be preferably obtained from the proponents in one go, verified by the Branch for completeness, and then sent to TAC/TAD, as the case may be, for commencement of study.

9. It is further pointed out that appraisal fees for TEV study is different from the "Processing Fees" and is required to be charged in applicable cases over and above the processing fees. The appraisal fee is to be recovered from industrial constituents seeking aggregate fund based limits of Rs. 30 lakhs and above whether such cases are referred to TAD/TAC or fall under exempted category.

Appraisal being an internal matter, exemption from applicability of TEV study does not mean exemption from payment of appraisal fee because in such cases also there is always an implied appraisal/assessment at the Branch level. The appraisal fee is chargeable at the time of considering fresh/additional fund based

limits. The fee will be charged on the basis of aggregate fund based limits applied for by the proponent at the time of first appraisal. The same will be on the basis of only incremental fund based limits applied for in respect of subsequent appraisals. The appraisal fee is to be recovered as per fee structure given and is exclusive of out of pocket expenses like travelling/lodging/boarding etc. incidental to carrying out inspection(s).

10. It is also submitted that 50% of the appraisal fee should be collected upfront on the basis of aggregate fund based limits applied for (except in respect of restructure cases, where the collection can be back ended). The balance is to be paid/adjusted on the basis of actual fund based limits sanctioned thereafter. In case of non sanction of limits by the Bank after TEV appraisal for its own reasons, 60% of the upfront fee charged is to be refunded (60% of 50% applicable fee collected). Retention of 40% upfront fee is aimed at recovery of the cost of efforts put in by the Bank and its employees in getting viability study conducted.

11. Learned counsel for the Bank also refers to communication dated 22nd August, 2005 by its Head Office to the Branches. The letter is reproduced as under: "Revenue Loss due to delay in Recovery of Processing Charges As per extant guidelines processing charges are required to be recovered before the request for facilities is processed (50% of applicable charges in the cases involving TEV study and 100% in others. These processing charges are not refundable even if the requested limits are not considered by the Bank, except in case of Technical evaluation study.

2. Of late we are coming across instances wherein prospective borrowers are not paying the processing charges in the beginning. After obtaining a sanction letter, they are shopping around for better interest rates and availing credit facilities from the most banks offering at cheapest rates. This results in wasted efforts by our Bank at various levels. We are required to waive the completely such unpaid processing charges.

3. To avoid such possibilities, it has now been decided that branches should invariably recover the agreed processing charges at the time of accepting the request for consideration. In case of canvassed account, the processing charges may be recovered at least before handing over the sanction letter. In other words, the sanction letter should not be given to the customer without ensuring that Bank has received the processing charges. It, therefore, follows that Bank would not consider in future waiver of un-recovered processing charges, in the normal course. 4. Please bring the contents of this circular letter to the attention of all staff members for strict compliance."

12. Learned counsel for the Bank also refers to the letter dated 15th October, 2011 by the Consumer seeking credit facility with the request on behalf of the Consumer to give concession of 50% on LC charges, processing charges, inspection charges etc. and fully waive DD charges and commitment charges.

13. In this background, the final proposal for sanction was submitted by the CPU on 24th January, 2012 to the Head Office of the Bank. Soon after the letter was sent by the CPU, the Consumer communicated that it was promised that the sanction would be received by 4th February, 2012 but since the Consumer had not received the sanction letter, it sought reversal of the amount debited in view of the fact that it got sanctions from other banks with attractive rate of interest and the other terms and conditions. The credit facilities were sanctioned on 17th March, 2012.

14. Learned counsel for the Consumer, on the other hand, contended that the Circular of the Bank dated 20th April, 2005, to which the reliance has been placed by the learned counsel for the Bank, was never brought to the notice of the Consumer, therefore, the conditions mentioned in such Circular will not bind the Consumer. It is also contended that the Bank had taken extra-ordinarily long time to sanction the loan which compelled the Consumer to take credit facilities from the other Banks. It is also contended that amount of Rs.27,41,165/- was debited to the account of the Consumer without its consent and knowledge and, therefore, the order passed by the SCDRC and NCDRC does not warrant any interference in the present appeal.

15. The learned NCDRC held that the services of the Bank availed for cash credit limits do not disentitle the respondent/complainant from becoming a 'consumer' under the Act. It further held that even though the Consumer had changed its loan demand three times, the Consumer had requested to pay 50% processing and other charges, and the total amount of Rs.27,41,165/- that was debited including PPC charges and Rs.18.25 lakhs as TEV study charges.

Further, as the Bank had agreed to refund Rs.9.16 lakhs, it meant that the Bank had considered to take only Rs.18.25 lakhs as TEV charges. Additionally, the Consumer had requested for 50% discount on processing and other charges to which the Bank never disagreed, hence it was presumed that the Bank had agreed to the concession sought.

Therefore, the Bank should have charged only 1/4th of the TEV charges i.e. Rs.4,56,250/-. Similarly, with regard to PPC charges, the Bank at one time agreed to waive off these charges of Rs.9.16 lakhs subject to the Consumer paying the TEV charge in full. But now, it was found that the Bank was entitled to only Rs.4,56,250/- as TEV charge, therefore, on the same analogy, 1/4th of the PPC charge i.e. Rs.2,29,000/- was found to be allowed to be deducted by the Bank. Hence, the Bank was entitled to debit total of only Rs.6,85,250/- (Rs.4,56,250/- + Rs.2,29,000/-). Resultantly, the Bank was directed to refund Rs.20,55,915/- to the Consumer and the interest rate was modified from 9% p.a. to 7% p.a.

16. We find that the reasoning given by the learned NCDRC is de hors the proposal as well as Circular of the Bank and is, in fact, based on ipse dixit of the NCDRC. The Consumer had sought a waiver of 50% of all charges in the request letter dated 15th October, 2011. As per the sanction letter dated 17th March, 2012, the following were the charges claimed from the Consumer:

17. The total charges, thus, payable were Rs.68,83,000/- plus service tax. Even if, the 50% concession is conceded to the Consumer, still the amount to be charged is much more than Rs.27,47,165/-. As per the tariff mentioned in the sanction letter, TEV charges are Rs.18,25,000/- whereas processing charges are to the tune of Rs.49,63,000/-. Obviously, the Consumer had to pay charges for availing credit facilities of which the Consumer was in knowledge of and, therefore, sought a waiver of 50% of the charges. It is the Consumer who revised the requirement of credit facilities three times and the Bank sanctioned credit facilities on 17th March, 2012 i.e. within almost three months from the final modified request.

18. The Consumer admittedly was an old customer of the Bank who applied to avail credit facilities of more than Rs.40 crores and it is unbelievable that it was unaware of the procedure and the Circulars of the Bank. The ignorance of the procedure and the Circular of the Bank dated 20th April, 2005 cannot be accepted. The Consumer was aware of the processing charges and had sought a waiver of the processing charges, therefore, the processing charges had been debited by the Bank on 30th December, 2011 in terms of authority given by the Consumer on 19th January, 2011 (Annexure P/3 in the appeal paper-book).

19. Thus, we find that orders passed by the NCDRC and SCDRC are liable to be set aside. We may say that though, the Bank agreed to refund Rs.9.16 lakhs from the processing charges through email dated 29th June 2012 but the Consumer had not accepted such proposal in its e-mail dated 24th July, 2012. Therefore, we find that the Consumer is entitled to refund of Rs.9.16 lakhs only in terms of the decision of the Bank communicated to the Consumer rather than waiver of TEV charges in its entirety. The request was to give concession of 50% of all charges, therefore, it is the cumulative amount of charges which is to be taken into consideration and not the charges under a particular head.

20. Consequently, we find that the orders of SCDRC and NCDRC suffer from patent illegality and, thus, are set aside. Accordingly, the appeal is allowed. However, the Bank is directed to refund a sum of Rs.9.16 lakhs within two months from the date of this order.

1. for short, 'NCDRC'
2. for short, 'Bank'
3. for short, 'SCDRC'
4. for short, 'Consumer'
5. for short, 'CPU'
6. for short, 'TEV'
7. for short, 'Act'

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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