(2004) 09 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

AQUADEV INDIA LTD. APPELLANT

Vs

STATE BANK OF HYDERABAD RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:

Citation : 2004 0 NCDRC 23

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO , S.N.KAPOOR J.

Advocate : SUDHIR CHANDRA , S.MURLIDHAR , TRIDEEP PAIS , BHAGABATI PRASAD PADHY , R.P.VATS , B.R.NARANG

Judgement

1. THE grievance of the Complainant in this complaint is that the respondent banks which formed a consortium for grant of loan, have not released the sanctioned loan after having two appraisal reports and directing the Complainant to issue prospectus for issue of equity shares. It is contended that the banks, in blatant abuse of power and without giving any reasons, refused to disburse the loan. This has caused complete destruction of the whole project and placed the Directors and shareholders of the company in a precarious position. It is submitted that : (i) The denial of the loan facility after the same has been sanctioned by the Respondent Banks was not in the bona- fide exercise of discretion vested in the Banking Institutions. The lead bank has not informed any reason for non-release of the sanctioned loan. (ii) On the basis of the categorical promise by the banks and sanction of the loan for a sum of Rs.23.85 crores, complainant entered into various contracts for execution of the major works of the project. Large amount was spent and thereafter by non-release of the sanctioned loan, many satellite projects depending upon the complainant''s project were required to be closed. (iii) As one of the conditions for sanction of the loan of Rs.23.85 crores, Respondent No.1 Bank directed that the complainant company should go in for a public issue, designated itself as the lead Manager for the said issue, and got the prospectus prepared by the Merchant Banking Bureau of State Bank of Hyderabad who had made the complainant company to represent to the public at large that the said loan amounts were sanctioned and were available to the complainant company for its project, thereby inviting the

public at large to invest their funds in the project ; and believing such representations, the Public at large had invested their funds in the project which have been expended in the works of the project. (iv) In view of the latest appraisal report received as late as in January 1996, there remained no reason for non-release of the sanctioned loans by the Respondent Banks.

2. ON the basis of the aforesaid and other averments, it has been prayed that (a) the respondent banks be directed to release the sanctioned loan amount of Rs.23.85 crores to the complainant company, and (b) direct the respondents to pay damages to the complainant to the tune of Rs.79.20 crores with interest @ 24% per annum. The learned senior counsel Mr. Sudhir Chandra for the Complainant submitted that this case does not require any detailed enquiry and the complainant seeks to rely only upon facts which are mentioned in the documents filed by the complainant and the banks. He further submitted that the contention raised by the banks with regard to sanction and disbursement of the amount would not be covered by the C.P. Act, is absurd. Section 2(o) defines the word ''service'', which includes bank, and in the present case admittedly before sanctioning the loan, banks have charged a fee of Rs.6 lacs. Therefore, complainant is entitled to approach the Consumer Forum for redressal of his grievances. Facts and contentions of the Complainant: It has been pointed out that the complainant , Aquadev (India) Limited, was established with a view to start an Integrated Aquaculture Project. The said unit is a 100% export oriented for the production of processed Shrimp and proposed to have a hatchery for 100 million seedlings per annum, grow-out ponds on an extent of 120 hectares, a feed mill of 4500 MT p.a. and a processing plant of the capacity of 3000 MT p.a. and the estimated capital outlay was to the tune of Rs.32.40 crores. The break-up of the said outlay is as follows:

(Rs. in Crores) Promoters Equity 4.75 crores [Initially Promoters contribution was to be Rs.4.25 crores and APIDC and MPEDA were to contribute Rs.50.00 Lacs. However, Since APIDC did not participate, the promoter''s equity enhanced to Rs.4.75 crores]. Public Issue 3.55 crores Term Loan from Banks 23.85 crores Subsidy from the Marine Products 0.25 crores Export Development Agency (MPEDA) _______________ 32.40 Crores ============== In June 1993, the complainant approached a consortium of six banks led by the State Bank of Hyderabad for a Term Loan.

On 17.08.1993 the First Appraisal Report was prepared by the State Bank of Hyderabad and the State Bank of India in consultation with National Bank of Agriculture and Rural Development (NABARD) for the purpose of appraising project prior to grant of loan. For this appraisal report, Rs.6.00 Lacs was charged as fees by the State Bank of Hyderabad from the Complainant and further 1% of the proposed term loan was to be debited towards front end fee by the State Bank of India i.e. Rs.4.77 Lacs.

3. THE balance sheets of Ragunath Cotton and Oil Products Limited, a Company (hereinafter referred to as RCOPL) of which Shri G. Venakateswarlu was the

Managing Director, were submitted to the Banks along with application for this loan and all the banks have obtained Confidential Credit Reports from the relevant Institutions and Banks as part of their appraisal before sanction of the loan. Thereafter on 14.12.1993, sanction letter was issued by the lead bank. Other consortium Banks, i.e. State Bank of India (R-2), State Bank of Travencore (R-3), Dena Bank (R-4), Bank of Maharashtra (R-5) and Catholic Syrian Bank (R-6) issued similar letters on 18.06.1994, 08.03.1994, 04.01.1995, 21.04.1994 and 23.03.1994 respectively. The conditions stipulated in the said sanction letters were as follows: (a). Promoter''s equity to be raised and invested before disbursement of loan. (b). Sanction of Equity from the Marine Products Export Development Agency and Andhra Pradesh Industrial Development Corporation. (c). Public Issue to be completed before disbursement of loan. (d). Personal guarantee of the Directors. (e). Mortgage of the land purchased by the Company. (f). NOC under the Land Ceiling Act (Andhra Pradesh Government). (g). Hypothecation of all moveable and immoveable assets; and (h). Bio-Data of all the Promoters, and (i) State Bank of Hyderabad to be appointed as the Lead Manager to a Public Issue.

4. THE sanction letters issued by the above banks were approved by the Board of Directors of the company and the duplicate copies of the said sanction letters were signed and returned to the respective Banks as a token of acceptance. Thereby, a concluded contract came into existence between the parties and the consideration for the same was also paid by way of appraisal fees. The interest (@ 15.5% Quarterly compounded) on the loan amount was also the consideration. Based on the above commitment, the Complainant acquired 530 acres of land and started implementing the project by commencement of civil works, recruitment of senior officials, placement of orders for machinery and components, release of advance to various contractors, besides obtaining all Government clearances which were necessary as stipulated by the Banks. It is alleged that on 7.4.94, the respondents banks received an anonymous complaint in the name of one Sai Bhaskar, inter-alia, alleging that Shri G.Venkateswarlu had cheated Andhra Bank; that a CBI case pending in Pondicherry; that Raghunath Cotton and Oil Products Limited had mis-appropriated Rs.3.00 Crores; and that disputed lands were shown as acquired. The informant therein requested the banks to stop the loan. Thereafter consortium meeting of the Banks was held and their deliberations were recorded in letter dated 14.06.1994. The banks had, by this letter, unilaterally imposed additional conditions to be fulfilled even after the sanction letters were issued. Those additional terms were as follows: a) Title Deeds to be cleared by the Legal Advisor of the Bank. b) Public issue must be completed. c) Land to be acquired for the canal water intake system. d) Infusion of promoters'' equity. e) Approvals to be obtained from Government and public agencies. Additional terms and conditions stipulated by the first Consortium meeting were complied with by the Complainant Company.

5. THE banks were obviously aware of the ''anonymous complaint'' by this date, however, they agreed and proceeded with the implementation of the project. On

12.9.1994 the prospectus of the Public issue was issued by the State Bank of Hyderabad as Lead Manager for the Public Issue. Catholic Syrian Bank was one of the Bankers to the Issue. State Bank of Travancore and Bank of Maharashtra were the co-managers to the issue and necessary charges were paid for the same. Following details were mentioned in the prospectus: i) The complete background of one of the Directors Shri G.Venkateswarlu: That he was the Managing Director of Raghunath Cotton and Oil Products Limited; and that Andhra Bank had filed a suit against Mr. G.Venkateswarlu one of the Promoter Directors and Guarantor of Laxmi Oil Mills Pvt. Ltd. for recovery of certain amounts. ii) That the company had acquired the land held by the partners of a Registered Partnership firm. That firm dissolved and it conveyed its assets to the company and the partners of the said firm were allotted Equity in the complainant company as consideration for the contribution of the land. This procedure for acquiring lands was approved by the Advocate of the Bank. He gave opinion to the effect that the manner of acquisition of the land was valid and that the land was capable of being mortgaged.

On 30.9.1994, M/s. J.S. Rao and Associates, Chartered Accountants were appointed by the consortium banks to verify the capital expenditure incurred by the company, to verify the capital brought-in by the Promoters, to have scrutiny of transfer of funds between Aquadev and Raghunath Cotton and Oil Products Limited and to verify whether the company had obtained all necessary statutory clearances. M/s. J.S. Rao, in their report, clearly observed that: (a). Delay in implementation was leading to escalation in cost and recommended for acceleration of release of loan. (b). The company had acquired land in excess, (c). Most Government Clearances were obtained, (d). There was no direct transfer of funds between Raghunath Cotton and Oil Products Limited and Aquadev India Limited. As such, M/s. J.S. Rao and Company did not find any deficiencies on the part of the complainant. At the end of the said report it was recommended that:

"It may be pertinent to mention here that the disbursement may be accelerated to avoid further time and over-runs which may hamper the viability of the Project."

6. THEREAFTER , on 24.3.1995 consortium meeting of the Banks was held and in the meeting, the allegations made in the anonymous complaint were discussed wherein it was clarified by Shri G.Venkateswarlu that he was merely a guarantor in Laxmi Oil Mills Pvt. Ltd. and his name has been deleted from the array of parties, after he resigned as a Director from the company. All other allegations were also looked into and it was found that there was no merit in them. The Banks even required the complainant to pledge the shares of Raghunath Cotton and Oil Products Limited with them. Thereafter, following additional conditions were laid down in the consortium meeting: a). Shares of M/s.Raghunath Cotton and Oil Products Ltd. of the value of Rs.75 lacs which the company had agreed to pledge to State Bank of India and Dena Bank will now have to pledge to all

Consortium Banks on a pari-passu basis. (b). The shares held by the Promoters-Directors in Acquadev India Limited to be pledged to the Banks as collateral security subject to legal opinion. (c). Latest Encumbrance Certificates certifying that the land acquired/purchased by the Company was not encumbered, were to be submitted to the lead Bank. (d). Dena Bank would immediately release Rs.300 lacs which would be reimbursed by the other Banks later.

Therefore, it is obvious that the contents of the anonymous complaint were dealt with, and it was decided to proceed with the disbursement of the loan and support the project. Thereafter, to the shock of the complainant, on 6.4.1995, Dena Bank refused to release Rs.300 lacs, though they had taken all the collateral security for the same. Further, without assigning any reasons, the Catholic Syrian Bank and the State Bank of Travancore withdrew from the consortium on 18.08.1995 and 05.10.1995 respectively. This was illegal in-as-much as after having joined the consortium, an individual Bank cannot leave the consortium for a period of two years, as prescribed by the Reserve Bank of India. The Respondent Banks allege that they received another anonymous complaint dated 21.06.1995 wherein the principal allegations were that Shri G.Venkateswarlu had cheated State Bank of India and MMTC; that he had forged signatures of landowners and there was an Income Tax raid in his factory.

7. ON 30.12.1995, the Consortium of Banks held a second meeting. All allegations made in the anonymous letter dated 21.06.1995 were looked into and were found without any merits. In the minutes drawn on 1.1.1996, it is observed: To verify whether the company has complied with all terms and conditions of sanction, as advised in the consortium meeting held on 24.03.1995. The expenses incurred by the company should be valued by an approved valuer of the Bank and any further expenses to be spent by the company should be disbursed on approval of disbursement committee which would be decided at the consortium meeting scheduled to be convened after the reappraisal of the project.

8. STATE Bank of Travencore and Catholic Syrian Bank ltd. have indicated their decision to opt out of consortium and did not attend the Banker''s meet. The company should, make alternate arrangements to tie-up the gap by inducting other banks into the consortium or impress upon State Bank of Travencore and Catholic Syrian Bank Ltd., to take up their share in the consortium for the limits originally sanctioned by them. The investing banks have indicated that they will not increase their exposure and the company should make alternate arrangements to tie-up the gap of State Bank of Travencore and Catholic Syrian Bank Ltd. It is submitted that despite the two Banks leaving the consortium, the remaining members of the consortium decided to go ahead with the project by requesting the complainant to impress upon State Bank of Travancore and the Catholic Syrian Bank to reconsider their decision or to induct two other banks in their place. It was also decided to do a quick appraisal of the project since the appraisal had been done earlier in the year 1993. It is obvious that even at this stage the Banks were keen on going ahead with the project. The Minutes of the

said Meeting revealed that the State Bank of India (Sole Bankers of RCOPL) had investigated the allegations made in anonymous complaint and found that there was no diversion of funds and that they were satisfied in respect of the dealings of MMTC with Raghunath Cotton and Oil Products Limited. Dena Bank also confirmed that they had made a detailed investigation about the land, ownership of 19 individuals and the affidavits submitted by them were in order.

9. PURSUANT to the second Consortium meeting, State Bank of Hyderabad, Dena Bank and Bank of Maharashtra conducted a quick appraisal and submitted its report on 05.01.1996. The quick appraisal went over the project and its status and found as under: i) No additional cost is required to be considered for implementation of the Project although there was delay. Incidentally, the delay has protected the company from being vulnerable to the climatic adversities and diseases as the company can now adopt protective measures as suggested from now-onwards. ii)The company will have to make revised plans and designs adopting water treatment technology, as already accepted. iii) The Feed Mill and the Processing Plant will have to be installed only after successful implementation and economic results from the Farm and Hatchery. Accordingly, the disbursement for these items was suggested to be taken up in the 2nd phase of Project implementation. iv) Although, all the required clearances viz. SADA, APPCB, APSEB, etc, have been obtained, these must be got revalidated before disbursement of loan, which the company has agreed. v) The interim Supreme Court direction do not adversely affect the Project. vi) The revised economics supports the financial viability of the Project. vii) The proposal is found technically feasible and economically viable and hence deserves "SUPPORT". In the absence of which the investment already made becomes non-productive and futile.

10. FROM this, it is clear that the original sanctioned amounts were sufficient; that there was compliance with terms and conditions laid down by the Banks as per the sanction letters and that the Banks were keen to go ahead with the disbursement of the loan. In concluding portion of the report it is stated that non-disbursement of loan will lead to financial ruin of the company and its promoters. From this it is contended that till January 1996 the Banks had not found any deficiency on the part of the complainant. Despite withdrawal of two Banks, remaining Banks decided to go ahead with the implementation of the project. On 8.2.1996, M/s. J.B. and Company, a firm of Chartered Accountants, was appointed by the lead Bank, which returned a report stating that the Public Issue was fully subscribed; investment was of Rs.793 lacs; that the land was properly acquired and the liability of Income Tax being paid by Mr.G.Venkateswarlu. Despite the aforesaid facts, for unknown and mala fide reasons, the banks refused to disburse the loan. Hence, this complaint. CONTENTIONS OF THE BANKS:

11. IT is submitted on behalf of the banks that the Complainant made various misrepresentations and concealed important facts which would have bearing and

effect on the decision for granting or not granting of loan. The complainant proposed to establish a fully integrated, semi-intensive shrimp (aqua culture) Farm comprising of a hatchery, processing plant and feed mill, in an area of 415 acres of land at Village Ethamukkala, Kothapatnam Mandal, Prakasam District, Andhra Pradesh. The following were the Board of Directors of the complainant company:- - Shri G. Venkateswarlu, Managing Director - Shri V. R. Pantulu, Director - Shri K. Gopalan, Director; and - - Shri N.V.S.S.S. Rao, Director.

12. IT is the say of the State Bank of Hyderabad that on the basis of representations made and information supplied by the complainant, the bank agreed to sanction a loan of Rs.477.00 lacs subject to various terms stipulated. The sanction letter dated 18-6-1994 was issued by the Bank. There was a clear understanding that it would be the responsibility of the complainant to arrange for balance requisite loan from the other proposed Consortium Banks and in no case, the State Bank of Hyderabad would release its share, unless all the other proposed Consortium Banks release their share subject to other terms and conditions. As per the arrangement, State Bank of Hyderabad, State Bank of Travancore, Bank of Maharasthra and State Bank of India have agreed to sanction the loan for a sum of Rs.477.00 lacs each, while Catholic Syrian Bank and South Indian Bank Ltd. have agreed to sanction Rs.238.50 lacs each. Thereafter, the Complainant failed to comply with the following conditions - a) Creation of equitable mortgage on the properties comprising of 532 acres of land -- The complainant had handed over to Answering Respondent the title deeds pertaining to 432 acres of land but the complainant had subsequently withdrawn the same on 14-9-1995. b) Pledge of shares held by the Promoter-Directors of M/s. Acquadev India Limited as collateral security -- However, it was never done. c) Extension of pari passu charge in favour of all the remaining Consortium member Banks on the shares of M/s. Raghunath Cotton and Oil Products Ltd. already pledged by the above-named Directors of the complainant with Ongole Branch of the Respondent No. 1 i.e. State Bank of India -- However, it was never arranged by the complainant. d) Furnishing of personal guarantee of 19 shareholders of the complainant. Whole land was to be mortgaged -- However, it was not done as some papers/documents of land were in the name of non-existing persons. e) Acquisition of land, especially the strip of land through which the water intake drain system was to be constructed. -- However, the said land had not so far been acquired for the purpose. f) Sanction and release of equity by APIDC and M/s. Marine Products Export Development Agency (MPEDA) was one of the conditions to release the Consortium loan and for that purpose the participation of APIDC and MPEDA in equity was to be treated as core Promoters equity. -- APIDC and MPEDA, though agreed, but never participated in the equity and so the level of core promoters equity was never achieved, as agreed, as a pre-condition for the release of consortium loan. g) As per the Project Report, a Jetty was to be constructed on the sea-shore and for that purpose, sea-shore Development Agency/Authority''s permission was required and the complainant Co. had to pay a compensation to the local fishermen for depriving them of their

livelihood because of large area covered by the jetty. -- However, the said permission had not been granted and even the local fishermen and farmers were not compensated by the complainant Co.

That the complainant was yet to fulfill the aforesaid terms and conditions. On 7th April, 1994, a telegram was received from one Mr. Sai Bhasker making serious allegations against Shri G.Venkateswarlu, the Managing Director of the complainant. On the basis of the telegram, respondent made investigations in the matter and the findings of the said investigation were as under:- .(a). It was found that Andhra Bank, Yanam Branch had filed a suit for recovery of Rs.1.18 crores in Pondicherry Court against M/s. Lakshmi Oil Mills Pvt. Ltd. of which Shri G. Venkateswarlu was the Executive Director and Promoter. Though Shri G.Venkateswarlu had resigned from the Executive Directorship, he continued to be one of the Directors in M/s.Lakshmi Oil Mills Pvt. Ltd. and he was also a Guarantor in the said account for the loan advanced by Andhra Bank. It was also found that the C.B.I. had registered a case in the matter. (b). Promoter Shri G. Venkateswarlu has concealed the following facts :-

1. He was promoter, one time Executive Director and continued to be Director in M/s. Lakshmi Oil Mills Pvt. Ltd. 2. Made incorrect statement of having invested a sum of Rs.151 lacs as capital by way of 432 acres of land bought by various persons who had been promised of allotment of shares in lieu thereof. 3. The said 432 acres of land was purchased only by 19 persons for just Rs. 20.86 lacs. Of this 19 persons were either family members, friends and/or employees of Shri G.Venkateswarlu. Further, acquisition of the land by the company was against the provisions of land ceiling applicable in the State of Andhra Pradesh. 4. Subsequently, it was revealed that most of the land acquired by the complainant was the land allotted to landless persons long back by the Government for cultivation purposes and the acquisition of land was on the basis of forged signatures of the real owners. 5. Shri G. Venkateswarlu had cheated the State Bank of India for a sum of Rs. 7.00 crores. 6. Income-tax Deptt. had raided the factory and the books of RCOPL were seized.

13. ON the basis of the said information Consortium Banks got the matter investigated by M/s. J. B. and Co., Chartered Accountants. Therefore, the Catholic Syrian Bank, the State Bank of Travancore and Bank of Maharashtra withdrew from Consortium on 18.8.1995, 5.10.1995 and 14.2.1996 respectively. On such withdrawal by the three banks complainant had to tie up with other banks to meet the gap between the required loan and the loan to be made available by the remaining three banks. However, the complainant took no initiative in this regard and thereafter requested the State Bank of Hyderabad to return the title deeds which were submitted by the complainant for verification and creation of mortgage. Thereafter, the documents were returned to the complainant on 14-9-1995. The Bank has also raised the following contentions: (1) .(a). the complaint is not maintainable under the Consumer Protection Act. (b). the Complainant is not a consumer within the meaning of the Consumer

Protection Act. (c). That the answering respondent Bank has not provided/ rendered any services to the complainant as such there is no question of any deficiency in the services and hence the present complaint is liable to be dismissed. In any case, the loan, to be advanced by the Answering respondent Bank was nothing but leasing/renting out of its money to the complainant and the said act/business does not constitute any service by any stretch of imagination. (2). Complainant has not fulfilled various terms and conditions before release of funds on the basis of sanction letter. (3). Granting or non-granting of a loan is purely a commercial decision to be taken by the banks and therefore the complaint is not maintainable.

FINDINGS: (I) Whether the Complainant is ''consumer''? And, whether the complaint is maintainable? In our view the contention of the banks that complaint is not maintainable under the Consumer Protection Act, 1986 is misconceived. The Complainant has availed the services of the banks by paying charges/fees. As stated above, at the initial stage, for appraisal report, the Complainant was required to pay Rs.6 lakhs to the State Bank of Hyderabad and Rs.4.77 lakhs, i.e. 1% of the proposed term loan to be sanctioned, to the State Bank of India. Section 2(o) gives the meaning to the word ''service'' and it, inter alia, includes, service in connection with the banking. Similarly, consumer would mean [(2(d)(ii)] any person, inter alia, who avails of any service for consideration. For this purpose, we would refer to the following facts:

(i). The Complainant approached the Opposite Party Banks for sanction of loan in June, 1993. (ii). On 17.8.93 first appraisal report was prepared. (iii). On 14.12.93 to 4.11995 - sanction letters were issued by different banks. Conditions were imposed. (iv). Basing on the said sanction letters the Complainant acquired 530 acres of land and also all the clearances as required by the banks. (v). On 7.4.94 there was an anonymous letter. (vi). 14.6.94 Consortium meeting. Additional conditions were imposed. (vii). 12.9.94 : Prospectus of public issue was issued for Rs.3.55 crores.

14. THE Banks imposed conditions twice, i.e. once on 14.12.1993 and again on 14.6.1994. And, after a considerable period of three months, they allowed the Complainant to go for public issue. Surprisingly, Dena Bank, a Member of the Consortium has issued a sanction letter after the public issue, i.e. on 04.01.1995. Aforesaid facts would certainly establish that the Complainant availed of the services of the Respondents for taking loan from them. The Complainant was asked to go ahead with the project on the basis of the appraisal reports and was also asked to issue prospectus of public issue. Hence, If there is deficiency in service by the bank in disbursing the loan despite it being sanctioned the complaint will be maintainable. After sanction of the bank loan, if the loan is not disbursed, the Complainant may suffer irreparable loss. Because, on the promise of the bank to sanction and disburse the loan amount, the Complainant will proceed in establishing his business or the contemplated activity. That would be frustrated if the loan is not disbursed on due dates or at

appropriate time and that the Complainant may suffer irreparable loss. Therefore, the contention of the Banks that Petitioner is not a consumer within the meaning of Sec.2(d)(ii) or that the complaint is not maintainable under the Act is without any substance. The aforesaid question is dealt with by the Apex Court in Viswalakshmi Sasidharan (Mrs.) and Ors. Vs. Branch Manager, Syndicate Bank, Belgaum, (1997) 10 SCC 173. In that case, Petitioners have taken loan from the Syndicate Bank, on two accounts : one for a sum of Rs.1,50,000/- and the other for Rs.3 lakhs; bank disbursed a sum of Rs.1.47 lakhs and the balance amount was not released in favour of the Petitioner. For deficiency in service a complaint was filed for damages. That complaint was finally dismissed by the National Commission. Against that order an S.L.P. was filed. In that backdrop, the Apex Court observed that, if pursuant to the contract the bank did not disburse the amount, it furnishes right to complaint of deficiency in service and to seek redressal under the Consumer Protection Act. The Court also observed that mere filing of suit by the bank for recovery of the amount may not be an absolute bar on the Commission to go into the question of deficiency in service for the reason that the issue before the Civil Court is not the deficiency in service unless that is specifically raised as a defence in the suit.

15. FURTHER , in the case of Gujarat State Financial Corporation Vs. M/s. Lotus Hotels Pvt. Ltd. (1983) 3 SCC 379, M/s. Lotus Hotels Pvt. Ltd. approached the Gujarat State Financial Corporation for a loan of Rs.30 lacs for business of hotels. Loan of Rs.29.93 was sanctioned on certain terms and conditions. The terms and conditions were accepted by the Company. The Corporation thereafter resolved not to disburse the loan to the Company. Hence, the Company filed a Writ Petition for mandamus to the Corporation to disburse the promised loan to the Company. In that petition mandamus was issued directing the Gujarat State Financial Corporation (G.S.F.C.) to disburse the promised loan to the Company in accordance with the agreement. While dismissing the appeal, the Apex Court held that the agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created. The Court observed that on solemn promise by the GSFC Respondent incurred expenses, suffered liabilities to set up a hotel and presumably, if the loan was not forthcoming Respondent may not have undertaken such a huge project. The Court therefore held that the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from the solemn promise. The officer of the G.S.F.C. cannot arbitrarily on his mere whim ignore his promise on some undefined and undisclosed ground of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.

16. NODOUBT , the aforesaid case is with regard to jurisdiction of the High Court to issue writ of mandamous but similar principle would be applicable to find out deficiency in service by a bank in not disbursing the loan which was sanctioned and on such promise the Complainant has proceeded further and has invested a large amount. The officers of the Banks cannot commit breach of the contract or

promise to give loan arbitrarily or mala fide or oblique motive. In view of the above discussion we hold that the complaint is maintainable. II. Services for Commercial Purposes: The learned Counsel for the Banks submitted that even if the complaint for deficiency in service is maintainable, the present complaint is not maintainable because the loan was sanctioned or the services of the banks were hired for commercial purpose, i.e. for establishing aqua culture. It is true that after amendment of the Act there is an exclusion in the definition of the word ''consumer'' in Section 2(1)(d)(ii) to the effect that hiring of services does not include a person who hires of such services for any commercial purpose. But, the said exclusion clause came into force w.e.f. 15.3.2003 and would not have any retrospective effect. The complaint, in the present case, was filed in the year 1996. Therefore, the effect of Amendment, in the facts of the present case, is not required to be dealt with in this complaint.

III. Regarding deficiency in service, it can be divided into three parts: (a). whether refusal to release the sanctioned loan was arbitrary or is based on undisclosed ground? (b). whether in the facts of the case, refusal to release the loan amount is deficiency in service? (c). Even if it is justifiable, whether the Complainant is entitled to damages for the loss suffered by him, as for two years he was asked to proceed ahead with the project? (a) Whether refusal to release the sanctioned loan was arbitrary or is based on undisclosed ground? For deciding the first part, we would refer to the submission made by the learned Counsel for the Complainant that the Complainant had complied with all the conditions laid down by the Banks for grant of the loan. However, for mala fide and extraneous considerations the loan was not disbursed. It was a wilful and deliberate act of malice on the part of the concerned officers of the bank. The investigative and appraisal report and the minutes of the meeting held by Consortium no where suggested for withdrawal of the sanctioned loan. It is contended that -

1. The promoters who had originally contributed the land transferred the same to the Company and the Title Deeds were pledged to the Banks. 2. The promoters equity of Rs. 4.75 crores was invested. 3. The Public Issue was completed and shareholders contributed a sum of Rs. 2.30 Crores. The Manager to the Public Issue was the lead bank; i.e. State Bank of Hyderabad. Respondents 3 and 5 acted as Co managers for a fee. 4. No Objection certificate from the Land Ceiling Authorities and the Pollution Control Board were duly obtained and furnished to the Banks. 5. The sanctions from the Marine Product Export Development Agency was duly obtained and submitted. 6. The land for the canal was duly purchased and a canal for the intake of water was constructed. 7. The buildings for the hatchery and feedmill were duly constructed and the complainant incurred an expenditure of Rs. 8.5 crores on the project which had under its employment 120 personnel at the relevant time, just when the loan was to be released.

Therefore, the learned Senior Counsel Mr. Sudhir Chandra submitted that doctrine of res ipsa loquitor (facts speak for themselves) would be applicable and that from the admitted and irrefutable facts which are borne out by admissions and documents of the Respondent Banks, it can be held that the act of refusal to disburse was utterly malicious intent. For damages, he referred to :- (1) The Appraisal Report and the Prospectus issued by the State Bank of Hyderabad to the public issue show that loss of profits for the year 2001 would amount to Rs. 46.03 crores. (2) The cost of overrun in order to complete the project would come to Rs. 27.72 crores. (3) Advances forfeited for other contracts come to Rs. 2.18 corres; and (4) Complainant has incurred expenditure of Rs. 1.78 crores for administration.

As against this, on behalf of the banks, it was pointed out that a number of proceedings were pending against Shri G.Venkateswarlu, the Managing Director. He had suppressed the material facts at the time of applying for the loan. In the written version filed by the State Bank of Hyderabad, it has been averred that on the basis of the said information, the proposed Consortium Banks got the matter investigated by M/s. J. B. & Co., Chartered Accountants. The relevant part of the written version is reproduced below: (i) The land to be used for Aqua culture was still agricultural land and permission had not so far been granted by the Government/concerned authorities to convert the use thereof for aqua-culture. (ii) Certain portion of land to be mortgaged with the proposed Consortium Banks was Benami and since all 19 Shareholders in whose name the land stood were to be made as Guarantors, the said condition could not be fulfilled by the complainant. (iii) Investigations revealed existence of 5 more Associate firms/ Companies about which none of the proposed Consortium Banks had any information/knowledge as the same was never provided by the complainant and its promoters. (iv) I.D.B.I./I.C.I.C.I. had large overdues and they had decided to recall the advances from RCOPL. A copy of I.D.B.I. letter dated 11.4.1996 addressed to the Govt. of India is produced on record. (v) As a consequence of Income Tax raid the complainant Company and its Managing Director were required to pay a large capital gains/stamp duty to the extent of Rs.115.00 lacs out of which only a small amount had been paid so far. (vi) M.M.T.C. had informed that RCOPL was not reliable and M.M.T.C. had initiated criminal proceedings against the said firm.

17. M /s. J.B. and Co., Chartered Accountants, have further pointed out that the R.B.I. vide its letter dated 10.6.1996 (R-1/4) had informed all the Banks and Financial Institutions about the interim order dated 24th August, 1995 passed by Hon''ble Supreme Court in a Public Interest Litigation in Writ Petition No. 561 of 1994 whereby all the State Governments and Union Territories were directed not to give fresh licences/permission for setting up/establishment of any Aqua Farms in their respective territories till further orders. It is also pointed out that : (i). 432 acres of land was purchased only by 19 persons for just Rs. 20.86 lacs and those 19 persons were either family members, friends and/or employees of Shri G.Venkateswarlu. Further, acquisition of the lands by the company was against the provisions of land ceiling applicable in the State of Andhra Pradesh. (ii). Subsequently, it was revealed that most of the land acquired by the complainant

was the land allotted to landless persons long back by the Government for cultivation purposes and the acquisition of land was on the basis of forged signature of the real owners. (iii). Shri G. Venkateswarlu had cheated the State Bank of India for a sum of Rs. 7.00 crores. (iv). Income-tax Deptt. had raided the factory and the books of RCOPL were seized.

Further, by letter dated 19.1.1996 the State Bank of Hyderabad requested to carry out special audit (i) to inquire into the purchase of lands; and (ii) to inquire into the details of the raid conducted on the Promoter, its two Directors, etc. The Auditors have, inter alia, reported as under: "The investigation Department of Income Tax, Hyderabad conducted search and seizure operations during February 1995, on the offices and premises of the Promoter Directors of the Company and also M/s. Raghunath Cotton and Oil Products Ltd. Shri G.Venkateswarlu appears to have admitted and made a disclosure of concealed and unaccounted income under Sec.132(1) of the Income Tax Act, 1961 in his name and also in the names of his family members, relatives and friends to the tune of Rs.249 lacs. The consequent tax liability on Shri G.Venkateswarlu is estimated to be of the order of Rs.115 lacs including interest accrued and due thereon."

18. OUR verification of documents and also access to the appraisal report of the Investigation Department of Income Tax reveal that the promoter director, Shri G.Venkateswarlu appears to have acquired the lands for the then market value against cash payments and managed to register them quoting a lower value as apparently he could not explain the sources of the said investment. In order to account for his investment in the Company and to match the required promoters'' contribution to quantify for the Public Issue, the promoter has chosen to employ this method of admission and dissolution of partnership to transfer the immovable properties at the market value. We have in fact secured a copy of the Registered Document bearing Docu. No. 3215 of 1994 which justifies that the current market value is about Rs.50,000/- per acre in Maddipadu Village. Also the market value of the land at Ethamukkala Village is estimated at Rs.40,000/- per acre as certified by the Sub-Registrar of Assurances, Ongole. Manifestly the Promoter Director has chosen this method of utilise the unaccounted money for buying the above mentioned lands and for more fully securing the title to the property. He has also attempted to avoid capital gains tax under the pretext of classifying them as agricultural lands and incidental stamp duty arising out of the transfer of immovable property". The balance tax liability of about Rs.91 lacs is in arrears to the Department. The bank may have to ascertain the sources of Shri G.Venkateswarlu to meet the arrears of tax liability before granting any disbursement from the loan under consideration" Thereafter, it gave the following findings: (i) We are of the view that the Promoter Director, Shri G.Venkateswarlu, with a view to introduce his unaccounted cash into the business, has chosen to adopt the colourable exercise of understating the market value of the lands and also transferred them through the partnership process discussed above. However, the Encumbrance Certificates secured by us, establish that the lands are free from encumbrance apart from

conveying a clear, valid and marketable title to the Company. The allotment of shares done to meet the consideration for acquiring the lands also appears to be reasonable. (ii) We are of the opinion that the Bank must be cautious to ascertain the sources of Shri G.Venkateswarlu to meet the balance tax liability of Rs.91 lacs arising out of his disclosure of Rs.250 lacs as concealed income. The bank also has to verify the credentials of either sister concerns to avoid any possible diversion of funds in future".

19. FROM the aforesaid audited report and the allegations made it would be difficult to hold that the decision taken by the Banks not to disburse the sanctioned loan was in any way arbitrary or unjustified. In short, from the Special Audit and the submissions, it appears that the Banks were asked to be cautious and to ascertain the source of Shri G.Venkateswarlu to meet the balance tax liability and has to verify the credentials of other sister-concerns to avoid any possible diversification of funds in future; (ii) there was use of unaccounted cash for purchase of the lands; (iii) there was income tax raid and disclosure of unaccounted income; (iv) unverified allegation was with regard to cheating of SBI to the tune of Rs.7 crores by Shri Venkateswarlu; (v) allegation was that land was allotted to landless people long back by the Government for cultivation purposes; (vi) information given by MMTC with regard to the concern, RCOPL; (vii) interim order passed by the Supreme Court in Public Interest Litigation whereby State Governments were directed not to give fresh licences/permissions for setting up of any aqua forms and hence, the R.B.I. vide letter dated 10.9.1996 directed the Banks to keep in view the orders of the Supreme Court and await its final decision on new aqua-culture units; (viii) large overdues of IDBI and ICICI from RCOPL; and (ix) after the first appraisal report, State Bank of Travencore and Catholic Cyrian Bank have withdrawn from the Consortium indicating the Banks were having doubt at that stage. From the audit report it is apparent that : (i). the entire dealings of the main Promoter of the Company, Shri G.Venkateswarlu have become suspecious. (ii). From the admitted facts it is apparent that the term loan agreed to be disbursed by the banks was to the tune of Rs.23.85 Crores. It is virtually 75% of the total estimated outlay for making the project functional. Contemplated equity was Rs.8.30 Crores (i.e. Rs. 4.75 Crores + Rs.3.55 Crores). Admittedly the Marine Products Export Development Agency (MPEDA) has not released the subsidy. So, before releasing such a large amount if the Banks have carried out special audit of the functioning of the Company wherein Mr.G.Venkateswarlu was the Managing Director, and arrived at the conclusion that loan is not required to be disbursed, it cannot be said to be unjustified one. That decision is based upon various factors including the viability of the project and recovery of such large funds. (b) The next question is whether in the facts of the case refusal to release loan amount is deficiency in service?

20. CONDITIONS stipulated, as pointed out by the Complainant, inter alia, provide for personal guarantee of Directors, mortgage of land purchased by the Company, NOC under the Land Ceiling Act, bio-data of all promoters and additional conditions, such as, approval to be obtained from the Government and

public agencies. It would be difficult in this case to arrive at the conclusion that the aforesaid conditions are complied with by the Complainant. The word "deficiency" is defined under Sec. 2(1)(g) to mean "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service". Considering this provision it cannot be held that there was any fault or shortcoming in the nature and manner of performance which was undertaken to be performed by the banks in pursuance of a contract in relation to disbursement of loan. Further, if the banks arrive at the conclusion that it would be difficult to recover the disbursed loan, it cannot be compelled to disburse the same. Therefore, presuming that there was breach of contract by the banks, direction to release the funds on the basis of sanctioned loan cannot be issued. This would be in conformity with Section 14 of the Specific Relief Act, 1963, which, inter alia, provides that contracts for non-performance of which compensation is an adequate remedy cannot be specifically enforced. Clause (b) of Section 14 further provides that a contract, which is in its nature determinable, also cannot be specifically enforced. In this view of the matter, the first prayer for a direction to the banks to release the funds on the basis of the sanctioned loan is required to be rejected. It was next contended that after second appraisal report, there was no question of obtaining the auditors report in January 1996. In our view, considering various allegations made against Mr.G.Venkateswarlu this submission is unjustified. If there is an error, intentional or unintentional, in the previous appraisal reports, or the decision taken by the Banks, subsequent finding of error would not debar the banks to reconsider the decision or would not prevent the banks in refusing to disburse the loan. (c) Even if it is justifiable, whether the Complainant is entitled to damages for the loss suffered by him, as for two years he was asked to proceed ahead with the project? Lastly, it is contended by the learned Senior Counsel for the Complainant that for one or the other reasons, the bank officers assured the Complainant that loan would be disbursed. On the basis of their assurances, the Complainant Company was required to invest large amounts by constructing canals and they were also required to spend large amount in purchasing the land and to get the necessary certificates from the Revenue Authorities. The Banks were having the first appraisal report on 18.8.1993. The Banks were knowing about the financial position of RCOPL. Despite this, the project was cleared for sanctioning the loan. The Complainant was asked to proceed ahead with the public issue. Because of the withdrawal after two years by the banks not only the Complainant but also the subscribers of the public issue have suffered. For this deficiency in service, the banks should be directed to pay the costs incurred by the Company in making construction as well as paying wages to the labourers.

21. WE find much force in the aforesaid contention, as it is blow hot and cold attitude of the officers of the banks. In the present case, it cannot be disputed

that after having appraisal reports banks have decided to sanction the loan. Thereafter, again, on verification of the allegations, the banks decided to proceed ahead with the grant of loan and the Complainant was asked to proceed further in purchasing the lands as well as in proceeding ahead with the project. In these circumstances, Complainant has suffered loss. For this loss, whether banks should compensate the Complainant or not?

22. IN our view, there is no reason why the concerned officers who submitted the first appraisal report have not bothered about the financial position of RCOPL. Thereafter, sanction letters were issued from 14.12.1993 onwards by various banks. An anonymous letter was received on 7.4.1994 stating that the various irregularities alleged to have been committed by Shri G.Venkateswarlu. Those were considered by the Consortium Meeting which are recorded in letter dated 14.6.1994. Firstly, on 30.9.1993 M/s. J.S.Rao and Associates, Chartered Accountants were appointed by the Consortium Banks to have scrutiny of transfer of funds between the Complainant and the RCOPL. Again the Consortium meeting was held on 24.3.1995. The allegations were looked into and banks decided to proceed further with the grant of loan. Thereafter, further Consortium meeting was held on 30.12.1995. There also the banks have decided to go ahead with the project. Nodbout, the State Bank of Travencore and the Catholic Syrian Bank withdrew their decision to grant loan. But, the banks were expected to verify at the initial stage whether the project was viable; if viable, whether the Directors could be relied upon before sanctioning the loan. That was not done. These facts indicate that for one or other reasons, the bank officers cleared the project and asked the Complainant to proceed further. It is apparent that they have failed to discharge their duties for the reasons best known to them. It is the allegation of the Complainant that refusal to release the sanctioned loan was mala-fide. As such, in these proceedings, though it will be difficult to arrive at the conclusion that the said decision was mala-fide, but it certainly reveals serious lapses and deficiency on the part of the officers of the concerned banks in discharge of their duties. It is quite possible that public at large might not have subscribed to the shares if it was not stated that State Bank of Hyderabad was the lead bank. Hence, even though we have arrived at the conclusion that the banks were entitled to repudiate the contract for justifiable reasons, the delay in taking such decision and in the meantime asking the Complainant to proceed ahead with the project has caused heavy loss to the Complainant. The loss claimed by the Complainant is for implementing the project, for commencing the civil works, for recruitment of senior officers, for placement of orders for machinery and components, for release of advances to various contractors, besides spending large amount for obtaining Government clearances and the amount incurred for public issue. On this account, the Complainant has claimed large amount of Rs.8.5 crores, which we are not inclined to grant in view of various facts stated above. It is also quite possible that public at large might not have subscribed for the shares if it was not stated that the State Bank of Hyderabad was the lead bank and the State Bank of Travencore and the Bank of

Maharashtra were Co-Managers to the public issue. Hence, even though this is not a fit case for grant of compensatory compensation/damages, but grant of nominal compensation is fully justified for the deficiency in service arising out of repeatedly obtaining appraisal reports/verifications and giving assurances, and thereafter not disbursing the funds. Hence we direct the State Bank of Hyderabad which has accepted to be the lead Bank as mentioned in the prospectus by the Complainant to pay Rs.10 lakhs as nominal compensation and also refund the amount of Rs.6 lakhs which was charged as fees for appraisal report, because the appraisal report was in favour of the Complainant. Respondent Nos. 2 and 4, i.e. the State Bank of India and the Dena Bank are directed to pay Rs.2 lakhs and the Respondent Nos. 3, 5 and 6 are directed to pay Rs.1 lakh each to the Complainant towards nominal compensation. It would be for the Banks to recover the aforesaid amounts from the concerned officers who have committed faults or who were deficient in discharge of their duties, for known or unknown reasons. The original petition is disposed of in the above terms. The State Bank of Hyderabad is directed to pay Rs.10,000/- by way of costs to the Complainant.

