(2012) 02 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

AQUADEV INDIA LTD APPELLANT

Vs

STATE BANK OF HYDERABAD RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Citation : 2012 0 NCDRC 763 : 2012 2 CPJ 128 : 2012 2 CPR 180

Hon'ble Judges : R.C.JAIN , S.K.NAIK J.

Final Decision : Appeal dismissed

Judgement

1. THIS complaint was earlier decided by this Commission (by a Three-Members Bench presided by the then President)vide an order dated 2. 9.2004. The operative part of the said order reads as under: "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 Travancore 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 lakh as nominal compensation and also refund the amount of Rs. 6 lakh 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 lakh 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. "

2. AGGRIEVED by the said order passed by this Commission, both sides filed Civil Appeals before the Hon ''ble Supreme Court. The appeal filed by the Complainant M/s. Aquadev India Limited was registered as Civil Appeal No. 1739 of 2005 while the appeal filed by the opposite party-State Bank of Hyderabad and others was registered as Civil Appeal No. 1750 of 2005. Both these appeals were heard and decided by the Supreme Courtvide an order dated 9.3.2010 and the Supreme Court accepted both the appeals and set aside the order of this Commission dated 2.9.2004 (supra) and subsequent order dated 19.11.2004 passed on the Review Petition and remitted the matter to this Commission to decide the complaint afresh in accordance with law, after hearing both sides by observing as under: "These Appeals have been filed against the impugned judgment of the National Consumer Disputes Redressal Commission, New Delhi dated 2nd September, 2004 and subsequent order dated 19th November, 2004 passed in the review petition. We have heard learned Counsel for the parties. The facts have been set out in detail in the impugned judgment and hence we are not repeating the same here. Lengthy arguments have been advanced by the learned Counsel for both sides but in our opinion, it is not necessary for us to deal with the same here because we are of the opinion that the National Commission has not given proper reasons in its judgment and has not properly appreciated the facts of the case. Hence, we accept these appeals, set aside the impugned judgment dated 2nd September, 2004 and subsequent order dated 19th November, 2004 passed in the review petition and remit the matter to the National Commission to decide it afresh in accordance with law and after hearing both sides. We would request the National Commission to decide the case expeditiously, preferably within four months '' from the date of production/receipt of a copy of this order. No costs. All contentions are left open to both the parties. Both parties shall present themselves before the National Commission on 5th April, 2010 along with a certified copy of this order. "

It is in the above circumstances that this Commission is again seized of the complaint for its fresh adjudication.

3. SUCCINCTLY stated the case of the complainant as put forth in the complaint is that complainant is a company registered under the Companies Act 1956. It is incorporated on 31.5.1993 with the objects of establishing and running aquaculture, pissiculture, brackish and fresh water culture, agriculture,

horticulture, floriculture, sericulture, dairy, poultry farms, etc. and to grow cultivate, harvest marine and fresh water products of all kinds like prawn, shrimp, fish, crab, lobster and such other marine products and to process, prepare and buy and sell and deal with those products. It was supposed to be a 100% Export Oriented Integrated Shrimp Culture Project in the District of Prakasam in the State of Andhra Pradesh at Eathamukkala Village in Kothapatnam Mandal, an industrially declared backward area, having potential to provide direct employment opportunity to about 400 workers and indirect employment opportunity to about 1,000 workers. To begin with, the project was promoted by three promoters having experience in varied fields of business, financial and agricultural arenas.

4. FURTHER case of the complainant is that after obtaining expert advice from Dr. V.R. Panthulu, Technical Director and after obtaining the opinion of the Marine Products Export Development Authority (MPEDA) about the suitability of the soil and after obtaining the feasibility report, the complainant acquired land to the extent of 535 acres for the project in the above referred industrially declared backward area. The project was intended to go a long way in the prosperity of the Nation. To get the loan for the said project, the complainant company approached State Bank of Hyderabad (OP No. 1) and State Bank of India (OP No. 2) by way of applications along with detailed project report and estimate. The Appraisal Team appointed by the banks visited the project site in June, 1993 and on receipt of the appraisal report, State Bank of Hyderabad (O.P. No. 1) took initiative to act as a lead bank for Consortium of Banks comprising State Bank of India (O.P. No. 2), State Bank of Travancore (O.P. No. 3), Dena Bank (O.P. No. 4), Bank of Maharashtra (O.P. No. 5) and Catholic Syrian Bank Ltd. (O.P. No. 6). As per the project appraisal report, the project of the complainant was found financially and economically sound, viable and technically feasible and the project was recommended for consideration for grant of financial assistance as per the norms prescribed therein. State Bank of Hyderabad also approached the Apex Bank/NABARD for refinancing purpose who also got independently appraised the project and found it financially viable and conveyed its approval in principle for refinancing the project. Central Government Organization for Promotion and Development of Export of Marine Products (MPEDA) also certified that the complainant unit was registered with them and that the site of the project had been surveyed and found suitable for semi intensive type of culture.

5. ON a consideration of all the reports relating to financial viability, etc., the term-loan component for the project was assessed at Rs. 23.85 crores and the Consortium of above named banks sanctioned a total term-loan of Rs. 23.85 croresvide a letter dated 14.12.1993 (to be referred as sanction letter hereinafter) in the following manner: Sl. No. Name of the Bank Date of sanction Share Amount Rs. In lacs 1. State Bank of Hyderabad 14.12.93 20 477.00 2. State Bank of India 18.6.94 20 477.00 3. State Bank of Travancore 8.3.94 20 477.00 4. DenaBank 4.1.95 20 477.00 5. Bank of Maharashtra 21.4.94 20 357.00 6. Catholic Syrian Bank Ltd. 23.3.94 5 120.00 Total: 2385.00

6. SUBSEQUENTLY , O.P. No. 1vide its letter dated 14.6.1994 advised the complainant company to fulfil certain stipulations within six months from the date of the said letter, which according to the complainant were duly and faithfully complied within the stipulated period. However, it is alleged that despite doing so the opposite parties had not disbursed the amount of sanctioned loan and several correspondence was exchanged and several meetings were held. The opposite party No. 1 appointed M/s. J.S. Rao and Associates, Chartered Accountants for verifying the capital expenditure on the project and as to whether all the Governmental permissions had been obtained by the complainant company and the said firm of Chartered Accountants submitted its report. Opposite Party also obtained legal opinion from one Mr. K. Mohan, an Advocate for verifying the title deeds of the project of the land who gave a positive opinion after that the opposite party appointed another Auditors M/s. J.B. & Co., who also made a re-appraisal of the project finding nothing on the strength of which the opposite parties could withheld the disbursement of the loan. The other Member Banks of the Consortium withdrew from the consortium and lastlyvide a letter dated 15.4.1996, O.P. No. 1 also withdrew from the consortium on the ground of non-compliance of the terms and conditions of the sanction against which representations were made by the complainant to the opposite party No. 1 as also to Ministry of Finance. After issuing a legal notice dated 3.5.1996, the complainant filed the present complaint claiming a total compensation of Rs. 79.20 crores together with pendent lite and future interest @ 24% per annum as per the following breakup: Rs./ Crore (i) Loss of Profit (in accordance with the profits projected by the Respondent No. 1 in the Appraisal Reports) 13.00 (ii) Cost overrun to implement the project at this juncture 12.00 (iii) Loss of reputation in the Public as a result of which the promoters cannot afford to enter into any public issue in future and loss of reputation in the market with creditors 15.00 (iv) Mental agony and torture suffered by the Promoters 10.00 (v) Loss on the expected value of spurt in the share value in the market 16 .00 (vi) Loss and effect on the other business of the promoters 10.00 (vii) Advances given to Contractors and forfeited by them. 2.00 (viii) Sums incurred on administrative, preliminary 1.20 and pre-operative expenses The complainant also prayed for a direction to the opposite parties-Banks to release sanctioned loan amount of Rs. 23.85 crores to the complainant within a fixed time-frame. On being noticed, the opposite parties contested the complaint and filed their respective written versions to the averments and allegations made in the complaint. Almost identical written versions have been filed on behalf of O.P. No. 1, State Bank of Hyderabad, O.P. No. 2, State Bank of India, O.P. No. 3, State Bank of Travancore and O.P. No. 5, Bank of Maharashtra. The opposite parties have not disputed the factum of the complainant-company having approached the opposite parties-Bank to participate in the proposed Consortium of Banks for the purpose of advancing a loan of Rs. 23.85 cores. Out of which O.P. Nos. 1, 2, 3 and 5 were requested to grant a loan of Rs. 477.00 lacs. Opposite Party No. 1 considered and examined the request of the complainant and on the basis of information supplied and representations made, the answering opposite parties agreed to

sanction a loan of Rs. 477.00 lacs, subject to various terms and conditions stipulated by the opposite parties. The other proposed consortium banks also communicated their sanction to the complainant from time-to-time. The loan was sanctioned with a clear understanding that it would be the responsibility of the complainant to arrange for the balance requisite loan from other proposed consortium banks and in no case the answering opposite parties would release its share of the overall consortium loan unless all other proposed consortium banks release their share, subject to compliance of other terms and conditions. At that stage, the consortium was in the process of formation with the following banks that the amount mentioned to be sanctioned by them as under: "Sate Bank of Hyderabad Rs. 4 77.00 lacs State Bank of Travancore Rs. 477.00 lacs Bank of Maharashtra Rs. 4 77.00 lacs State Bank of India Rs. 477.00 lacs Catholic Syrian Bank Rs. 238.50 lacs South Indian Bank Ltd. Rs. 238.50 lacs "

7. IT is further pleaded that in case the complainant failed to tie up with the aforesaid banks, the complainant was to induct other banks. According to the answering opposite parties, the complainant was required to complete various formalities and fulfil certain terms and conditions besides arranging for a tying up with other banks to get the loan released from the answering bank but the complainant failed to fulfill the following conditions: (a) Creation of equitable mortgage on the properties comprising 532 acres of land. (b) 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. (c) Pledge of shares held by the Promoter-Directors of M/s. Acquadev India Limited as collateral security. However, it was never done. (d) 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/done by the complainant. (d) Furnishing of personal guarantee of 199 shareholders of the complainant, whole land was to be mortgaged. However, it was never 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, Seashore Develop-ment Agency/Authority ''s permission was required. The complainant Company had to pay a compensation to the local fishermen for depriving them from 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 Company. The land measuring 532 acres was proposed to be mortgaged by the complainant whereas the title deeds pertaining only to 432 acres of land were submitted for verification and the title deeds pertaining to the remaining 100 acres of land were yet to be submitted by the party. "

8. IT was next contended that when the compliance of the conditions was still awaited a complaint was received from a certain Mr. Sai Bhasker making the following allegations: "G. Venkateswarlu, Director, Aquadev Ethamukkala, Prakasham District, MDRCPL MADIPADU and Ex-Executive Director, Lakshmi Oils (P) Ltd., Yanam cheated Andhra Bank, Kakinada, officers dismissed. CBI case pending Pondicherry Court. RCOPL funds nearly Rs. 3 crores misappropriated and diverted to his own. Ethamukkala Government lands D.K. and disputed lands shown as Patta lands. Total land is not purchased and shown as purchased. Sea water pipeline land not purchased. Cheated Banks and Government with false records. Please stop loans and enquire. Copy to Finance Minister, New Delhi. Sai Bhaskar "

Accordingly the answering opposite party made investigations into the above allegations, which disclosed that a suit for recovery of Rs. 1.18 crores was pending in the Pondicherry Court against M/s. Lakshmi Oils (P) Ltd., of which Shri G. Venkateswarlu was the Executive Director and Promoter, which though he resigned and he continued as one of the Directors and Guarantor for the loan advanced by the Andhra Bank. In regard to the 432 acres of land claimed to have been acquired by the complainant Company, it was revealed that the land continued to remain in the name of 19 individuals in the books of record of Sub-Registrar of Assurances/village records and it was sought to be explained by the complainant that it was so done in order to avoid any complications that might arise on account of the provisions under the Land Ceiling Act and also to reduce the incidental expenses required in connection with the registration charges. The land which was claimed to have been purchased at a sum of Rs. 1501.00 lacs was found to having been purchased by 19 persons for just Rs. 20.86 lacs. A unique method was adopted for acquisition of the land inasmuch as a group consisting of 19 members, mostly the family members, friends and employees of Mr. G. Venkateswarlu, the Managing Director of the complainant company had entered into a partnership firm with the complainant as one of the partner and the aforesaid 432 acres of land was stated to be the capital of the said partnership firm which was constituted on 16th July, 1993 under the name and style of Aquadev & Co. on 20th August, 1993 by means of a Dissolution Deed. This present complainant took over all the assets of the firm and it was decided that all the 19 partners, the shares of complainant would be allotted towards the cost of land. The acquisition of the land in the above manner was absolutely illegal. The acquisition of land for water intake drain from sea was also found to be irregular inasmuch as the land allotted to landless persons long back by the Government for cultivation purposes was acquired for its aquaculture project but no decision was taken by the Government in that behalf.

9. IT is further pleaded that before the opposite party and other proposed consortium banks could satisfy themselves about the development in the aquaculture project and complainant could produce the relevant permission from the Government/other concerned authorities and could fulfil the other terms and conditions for sanction put up by various consortium banks, one more complaint was received on 21.6.1995 alleging therein that Shri G. Venkateswarlu had cheated MMTC to the extent of Rs. 3.00 corres as M.D. of Raghunath Cotton and Oil Products Ltd. (RCOPL); land for the project was acquired by him on the basis of forged signatures and the real owners were planning to file suit against the complainant; Shri Venkateswarlu having cheated State Bank of India of Rs. 7.00 crores and Income Tax Department having raided the factory and other books of RCOPL had not been audited but accounts submitted to the banks were under the forged signatures. A further inquiry was held by the proposed consortium banks, which brought out as under: (i) The land to be used for Aquaculture was still agricultural land and permission had not so far been granted by the Government/concerned authorities to convert the use thereof for Aquaculture. (ii) 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. (iii) 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 Government of India, is annexed herewith and marked as Annexure R-1/2. The actual ''recall '' notice served by I.D.B.I. on RCOPL, dated 23.5.1996, is enclosed as Annexure R-1/3. (iv) 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. (v) 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 be fulfilled by the complainant, (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. "

10. M /s. J.B. and Co. also pointed out that R.B.I.vide its letter dated 10.6.1996 had informed all the banks and financial institutions about the interim order dated 24.8.1995 having passed by the Hon ''ble Supreme Court in a Public Interest litigation 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 was further checked that the Catholic Syrian Bank, State Bank of Travancore and Bank of Maharashtra withdrew from the proposed consortium on 18.8.1995, 5.10.1995 and 14.2.1996 respectively and on such withdrawal, the complainant had to tie up with some other banks to meet the gap between the required loan and the loan to be made available by the remaining three banks but complainant took no initiative in that behalf and

rather requested the answering opposite party to return the title deeds submitted by it for verification and creation of mortgage afterwards which the answering respondent in fact returned to the complainant on 14.9.1995. The said act of the complainant give the impression that the complainant was no more interested in the loan for its project as on receipt of the reports it became clear that the promoters/complainant wanted to deceive the proposed consortium banks by making misrepresentations and concealing certain material facts from them. Since the relevant and requisite permissions were not forthcoming from the Government and complainant failed to comply with the conditions, the opposite party was constrained to withdraw from the consortium and from the sanction of the loan. It is denied that opposite party has committed any deficiency in service by withdrawing the proposal and refusing to disburse the sanctioned amount and liability to pay and compensation much less compensation to the extent of Rs. 79.20 crores as claimed by the complainant is specifically denied. Opposite Party No. 6, Catholic Syrian Bank has filed a separate written version raising preliminary objections about the non-maintainability of the present complaint on the ground that there is no deficiency in service on its part within the meaning of the Consumer Protection Act, 1986 inasmuch as the answering opposite party has not charged any amount from the complainant and it was within its right not to revalidate the sanction of the loan which was granted by the opposite parties earlier. It is further pleaded that the sanction of loan was composite term loan as sanctioned in consortium with other banks and no part of the composite term loan could be disbursed unless company obtain the sanction from the other five banks of the proposed consortium and as Bank of India did not grant any sanction and was not agreeable to join the consortium of banks, the conditional sanction could not become operative. It is also pleaded that personal guarantee of Shri G. Venkateswarlu was to be given but he did not disclose that a suit for recovery of Rs. 1,17,96,881.55 filed by the Andhra Bank was pending against him and when he was confronted with the above position he came out with the plea that his name was later on deleted from the said suit. This opposite party has also taken the similar plea as were taken by opposite party Nos. 1 to 5 in their written version for withdrawal from the proposed consortium and the sanction of the loan. It is maintained that opposite party has not committed any deficiency in service by withdrawing from the proposed consortium and making them liable to pay any compensation much less the compensation claimed in the complaint.

11. IN the rejoinders filed by the complainant to the written versions filed by the opposite party, the complainant has controverted the objections and pleas raised in the written versions and has generally reiterated the averments and allegations already made in the complaint. The grounds and reasons on which the opposite parties sought to justify the withdrawal from the proposed consortium and finally the sanction of the loan have been specifically controverted and it is maintained that all the conditions of the sanction letter were duly complied with. Referring to the reappraisal made by the opposite

parties through J.B. & Co. and another J.S. Rao and Associations, it is pleaded that nothing adverse was brought in the said reports on the basis of which the complainant could take a decision to withdraw from the consortium and refuse to disburse the sanctioned loan. It is stated that the action of the opposite parties in not disbursing the amount of sanctioned loan was for wholy unjustified reasons which was a clear act of deficiency in service on the part of the opposite party-Banks.

12. TO substantiate their respective pleas, the parties have larger relied upon the voluminous documentary evidence comprising applications for sanction of loan, the initial appraisal report of the appraisal which the opposite party No. 1 got conducted as a lead bank, the subsequent reports of J.S. Rao and Associates, Chartered Accountant, J.B. & Co. as also the Minutes of the meeting of the proposed consortium Banks and correspondence exchanged between the parties from time to time besides filing their supportive affidavits. Affidavit from Mr. G. Venketeswarlu, Director of the complainant company has been filed on their behalf by Mr. V. Kama Raju, Ex-Chief General Manager, Reserve Bank of India, affidavit of Smt. Kalpakam Murthy, Mr. G. Rama Mohan Rao have been filed on behalf of opposite party No. 1 (State Bank of Hyderabad) while affidavit of Shri N. Vasudevan Pillai, Mr. M.V. Ramana Babu and Mr. P. Ravinder have been filed on behalf of Opposite Party Nos. 3, 4 and 5 respectively. Affidavit of Mr. V. Srimantha Rao, Asstt. General Manager has been filed on behalf of State Bank of India afterwards additional affidavits of the complainant were also filed. We have carefully perused the entire evidence and material brought on record on behalf of the parties and have heard Mr. Dayan Krishnan, Advocate and Mr. B.P. Padhy, Advocate on behalf of the complainant, Mr. R.P. Vats, Advocate on behalf of opposite party Nos. 1 to 5 and Mr. Balraj Dewan, Advocate for opposite party No. 6 at length and have given our thoughtful consideration to their respective submissions.

13. THOUGH in their written versions filed by the opposite party-Banks in response to the complaint, objections were taken about the maintainability of the present complaint on the premise that complainant is not a consumer within the meaning of Section 2(1)(d) as opposite parties have not provided the services to the complainant and as such there is no question of deficiency in service and in any case service provided was for commercial purposes and that the complainant itself is failed to comply the pre-requisite conditions of the sanction of loan, yet at the time of hearing of the complaint, Counsel representing the Banks did not make any serious submissions in support of the above objections. Therefore we may summarily reject these objections. Having regard to the entirety of the facts and circumstances and that the complaint relates to a cause of action, which had accrued to the complainant between 1993-96 i.e. before the amendment of the Consumer Protection Act, 1986 by Amending Act 62 of 2002 effective from 15.3.2003, the complainant even though it had availed the services of the opposite party-Banks for a purely commercial purpose i.e. sanction and disbursement of loan in order to establish a fully integrated, semi-intensive

shrimp (aquaculture) Farm comprising a hatchery, processing plant and feed mill, in an area of 415 acres of land at village Ethamukkala, Kothapatna Mandal, Prakasam District, Andhra Pradesh, and that the complainant had paid a sum of Rs. 6.00 lacs to the opposite party No. 1 for appraisal of the project in order to judge its suitability and viability, there can be no escape from the conclusion that the complainant is a consumer within the meaning of Section 2(1)(d) as it stood prior to its amendment and the opposite party-Banks are service provider and prima facie going by the allegations of deficiency in service, the complaint is maintainable under the provisions Consumer Protection Act, 1986.

14. GOING by the factual matrix and the gamut of controversy which has surfaced in the present case, the ultimate question answer to which will decide the fate of the present complaint is as to whether the opposite party-Banks have committed any deficiency in service by withdrawing from the consortium and not disbursing the amount of sanctioned loan to the complainant in terms of the sanction letter dated 14.12.1993. The answer to the above would require the consideration of the following aspects: (i) Whether a concluding contract came into existence between the parties; (ii) Whether the complainant had failed to comply with the various terms and conditions of the sanction of loan; (iii) Whether the complainant failed to tie-up with the other banks for the sanction of loan once the four banks of the proposed consortium had withdrawn from the proposed consortium; (iv) Whether the reappraisals made by the opposite parties through J.S. Rao Associates and J.B. and Co. on receipt of the report in regard to the past conduct/track record of Mr. G. Venkateswarlu, Director of the Laxmi Oil Mill and RCOPL made any significant change in the situation on the strength of which the opposite parties refused to disburse the loan amount. (v) Whether the complainant company is a vanishing company as declared by SEBIvide public notice dated 19.3.2000 and if so, its effect.

We propose to deal with the above points ad seriatim: (i) Whether a concluding contract came into existence between the parties Mr. R.N. Vats, learned Counsel representing the opposite party Nos. 1 to 5 has vehemently argued that no concluded contract came into existence between the parties and therefore, non-disbursement of the sanctioned loan amount by the opposite parties will not constitute any deficiency in service on the part of the opposite parties. The basis of the above submission is that the letter of sanction dated 14.12.1993 issued by opposite party No. 1 to the complainant can at best be treated as a conditional offer made by the opposite party No. 1 to the complainant which was valid not only subject to its acceptance but was also dependent on fulfilment of each and every condition contained in the letter of sanction. What were the stipulations/ conditions which were laid down in the letter of sanction, it is necessary to extract the said letter of sanction here: "No. F/ADV/2048 Date: .12.1993 M/s. Acquadev India Ltd., 3-6-291/2, Hyderguda, Himayatnagar, Hydrabad - 500029 Dear Sirs, Credit Faculties With reference to your application for credit facilities, we have pleasure in informing you-sanction of the following credit facilities subject to the terms and conditions appended below - (1) Nature of facility :

Composite Term Loan (2) Quantum of Loan : Rs. 477.00 lacs (3) Security Primary : Pari passu first charge on the fixed of the company, to be shared with other consortium members in the sharing pattern of the Composite Term Loan. Collateral : Personal guarantee of Mr. G. Venkateswarlu, Shri K. Gopalan, Mr. N.V.S.S.S. Rao, all promoter-directors of the company. (4) Interest : 15% P.A. The rate of interest is linked to State Bank Advance Rate subject to a minimum of 15% per annum and will be suitably modified after the NABARD Refinance is made available. (5) Repayment : The loan amount should be repaid in 12 half-yearly instalments of Rs. 39.75 lacs each with a startup period of one year. (6) Insurance : The assets charged to us should have full insurance cover against all normal risks, and usual mortgage clauseshall have to be incorporated in the relative insurance policies. (7) Other Terms and Conditions : The composite term loan is sanctioned in consortium with other Banks. No part of the composite term loan would be disbursed until the company obtains sanction from the following Banks for the balance of Composite Term loans and consortium arrangements are formalized. (a) State Bank of India Rs. 477.00 lacs (b) State Bank of Rs. 477.00 lacs Travancore (c) Bank of Rs. 477.00 lacs Maharashtra (d) Catholic Syrian Bank Rs. 238.50 lacs (e) South Indian Bank Rs. 238.50 lacs (8) The core promoters equity amounting to Rs. 425.00 lacs has to be fully raised and invested in the project. (9) The company should obtain sanction letters from MPEDA and APIDC for equity participation of Rs. 25.00 lacs each and also for release of eligible subsidy which works out to Rs. 25.00 lacs. (10) The company should successfully complete Public Issue as envisaged in the Project Report and also bring in the balance promoters '' equity before release of any part of composite term loan. (11) The company should appoint us i.e. State Bank of Hyderabad as lead Managers for their forthcoming Public Issue. (12) The company has to arrange for furnishing bio-data on all the promoter-directors in our format together with all supporting data i.e. Income Tax, Wealth-Tax returns, etc. (13) You are requested to return the duplicate copy of the sanction letter duly signed by the Authorized Director of your company as a token of having acknowledged the above terms and conditions. Yours faithfully, Sd/- Asstt. General Manager

15. VIDE a letter dated 15.4.1996, the O.P. No. 1/State Bank of Hyderabad declined the request of the complainant for validation of the term loan by giving the following reasons. The said letter is extracted below: "State Bank of Hyderabad OSBH/AD V/107 Dated: 15th April, 1996 The Managing Director, Aquadev India Limited, A1/25, (Illegible) Apartments, Begumpet, Hyderabad - 16 Dear Sir, Re: Term Loan of Rs. 477 lacs Ref: Our letter No. 2048 dated 14.12.1993 And letter No. OSB/ADV/565 dated 14.6.1994 With reference to the above, we advise you that your request for revalidation cannot be considered since the project had underwent numerous changes after sanction of the facility, controversial reports about the culture project, non-disclosure and non-compliance of terms and conditions of our sanction. It is decided not to extend the above facility to you and our earlier sanction stands lapsed. Hence we are

opting out of consortium. Yours faithfully, Sd/- Asstt. General Manager "

16. EVEN earlier to that the other Opposite Party/Banks - State Bank of Travancore, Bank of. Maharashtra and Catholic Syrian Bank had withdrawn from the consortium and the sanction of loan. It would appear that the complainantvide its communication dated 30.4.1996 represented to the O.P. No. 1 for reconsideration of the matter and the O.P. No. 1vide a communication dated 8.5.1996 communicated their final decision. The said letter reads as under: "State Bank Of Hyderabad (Associate of State Bank of India) Foreign Exchange Dept. Overseas Branch ''Kautilya '', 6-3-652 Somajiguda Hyderabad - 500 482 (A.P. (INDIA) Telex: 4256023 SWIFTSBHYINBBA003 TELEPHONE: 312576 Fax: 040-312576 IMPEXBANK HYDERABAD DT 8.5.1996 CONFIDENTIAL THE DY. GENERAL MANAGER, (INDUSTRIAL FINANCE) THE AP STA TE CO-OP BANK LTD. PB No. 142, TROOP BAZAR HYDERABAD Dear Sir, Re: M/s. AQUA DEV INDIA L TD. Please refer to your Letter No. AD V/A QUA/55/805 Dated 30.4.1996 Our bank has sanctioned a composite Term Loan of Rs. 477.00 lacs in Dec., 93 out of the total of Rs. 2385 lacs from the consortium of six banks. We have since withdrawn from the consortium due to numerous changes in the project, unsatisfactory performance of Aquaculture Projects and other related factors. Bank of Maharashtra, Bank Street, Hyderabad/Catholic Syrian Bank, Abid Road, Hyderabad/SBT, Hyderabad and ABI, Agri Business Branch, Abids, Hyderabad have also withdrawn their sanctions. The contents of this letter may please be kept strictly confidential. Yours faithfully Sd/- ASSTT. GEN. MANAGER "

It is not in dispute that the complainant conveyed its formal acceptance to the offer made by the Banks. However; the important question is as to whether the complainant had complied with the conditions stipulated in the sanction letters of the opposite parties. For the sake of brevity, we may summarize the terms and conditions conveyed by the various banks subject to which the opposite parties had sanctioned the loan: 1. Pari passufirst charge on the fixed assets of the company; 2. Personal Guarantee of Shri G. Venkateswarlu, Shri K. Gopalan and Shri N.V.S.S. Raoj; 3. No part of the composite Term Loan would be disbursed until the company obtain sanction from the other Banks and consortium arrangements are formalized; 4. No amount of the loan shall be released unless consortium arrangements are formalized; 5. Core Promoters equity includes that of MPEDA and APIOC (equity participation to the extent of Rs. 25 lacs each) has to be fully raised and invested in the project; 6. Company should complete public issue; 7. Company to arrange for furnishing bio-data of all the promoter-Directors, with supporting date, i.e. income-tax, wealth tax returns, etc.; 8. Pledge of equity share of the face value of Rs. 75 lacs of M/s. Raghunath Cotton and Oil Products Ltd.; 9. In case the project implementation is delayed, company to make arrangements for raising funds to meet the coast overrun, if any; 10. Loan will not to be disbursed until the company obtains No Objection Certificate issued by the competent authority of A.P. State Government under the Land Ceiling Act;11. Arrangements for supply of machineries/equipments need to be firmed up; 12. Company must obtain proper sanction for supply of power from

A.P.S.E. Board; 13. Company must obtain proper permission from the competent authority for use of agricultural land and for Aquacultural and industrial use; 14. Company must provide necessary No Objection Certificate from A.P. State Pollution Control Board and Shore Development Authority before disbursement of the Term Loan; 15. Limits should be availed before 21.5.1994 (State Bank of Travancore); ï ¿ 1/2 16. Certified copy of Board of Resolution should be submitted including the powers of borrowing, execution of documents and for witnessing affixation of common seal; 17. Term Loan will be disbursed to the company meet part cost of the project and payment will be made as far as practicable directly to the suppliers/manufactures/contractors on the specific request of the Borrower each time; 18. Hypothecation of movable assets i.e. plant and machinery and vehicles, etc., on pari passu basis with other banks; 19. Joint documentation to be executed in favour of consortium on pari passu basis; 20. Separate documents to be executed in our favour for the amount of our sanction (Bank of Maharashtra); 21. All pares, certification, licences, clearances, return relating to project requirements from time-to-time are to be submitted by the company; ï ¿ 1/2 22. Bank to obtain wealth and income tax particulars of all the directors of the Company before release of loan. "

17. WHILE according to the complainant all the stipulated conditions (supra) and as modified by the opposite parties subsequently due to certain post sanction events were duly complied with but despite that the opposite parties failed to disburse the loan amount. Mr. R.P. Vats, learned Counsel representing the opposite party-Banks has vehemently argued that most of the above conditions were not at all complied with or in any case strictly complied with. To begin with, his submission is that it was one of the important conditions of the sanction that no part of the composite term loan will be disbursed/released until the company obtains sanction from all other Banks and consortium arrangements were finalized. In other words his submission is that to give final shape to the consortium, it was necessary that consortium agreement were executed between the lenders and borrowers and inter se agreement were executed between the lenders and authority letters from the rest of the lenders in favour of the lead Bank i.e. State Bank of Hyderabad were executed. This arrangement could be formalized only after the complainant had fulfilled the various terms and conditions stipulated in the respective sanction letters of the Opposite Party/ Banks. There is merit in this contention because the sanction of Loan was subject to formalization of Consortium agreements between the Banks inter se which was never done.

18. IN regard to the non-compliance of the other terms and conditions of the sanction letter, Mr. Vats pointed out that as per condition No. 8 of the sanction letter, the Core Promoters Equity amounting to Rs. 425.00 lacs had to be raised and invested in the project, which the complainant failed to do despite several opportunities granted over a period of time. In this connection, our attention has been invited to the prospectus issued by the complainant, which shows that out of 83.00 lacs shares offered through the prospectus, 475.00 lacs shares of Rs. 10

each were reserved for firm allotment to the promoters. Besides it is mentioned that out of shares reserved for promoters, 15,08,400 shares of Rs. 10 each at par were allotted to the erstwhile partners of the alleged partnership firm which was converted into the Complainant-Company. About the contribution of land, assets to the complainant company in the form of 432 acres of land, it is pointed out that as per the sale deeds of the said land purportedly contributed by the partners of the erstwhile firm, the total value of the land was Rs. 20.85 lacs which was considered at Rs. 25.00 lacs in the meeting of the opposite parties held on 24th March, 1995. It is submitted by Mr. Vats that thus the total contribution to the shares capital by promoters was only Rs. 2,49,60,000 (Rs. 2,24,16,000 allegedly contributed by the promoters plus Rs. 25 lacs, value of the land) instead of Rs. 4,75,00,000. Per contra the submission of the complainant is that this condition was fully complied with to the satisfaction of the opposite party/banks. It is sought to be explained that adequate land of the above value was brought by the complainant company is indicated from the report of J.S. Rao and Company, the Chartered Accountant dated 30.9.1994, which inter alia clarified the position that the company initially brought 432 acres of land before going for public issue on 12.9.1994 and once in the consortium meeting which was held on 24.3.1995, an objection was raised that it would the value of the land as per the value shown in the registered sale deed i.e. Rs. 25.00 lacs but the bank considering the fact that the complainant company was buying additional land measuring 100 acres, the bank satisfied themselves that the requirement in that behalf would be met. It is also pointed out that the complainant company in fact purchased 100 acres of additional land in the name of the company subsequent to 24.3.1995. Besides, it is pointed out that the opposite party/banks had obtained legal opinion from Mr. K. Mohan, Advocate, who in his opinion given on 14.1.1995, 11.4.1995 and 22.5.1995 made the position very clear that the complainant company had brought the land into its fold. It is also pointed out that although the transferable value of the land from the individual land owners to the company was @ Rs. 35,000 per acre but in essence the market value of the said land ranged between Rs. 40,000 to 50,000 per acre and value of some portion of land was between Rs. 80,000 and Rs. 1,50,000 per acre. Our attention has also been invited to the valuation report dated 2.2.1995 submitted by Mr. S. Deshpande, the approved valuers of the Bank.

19. HAVING considered the respective submissions, we are of the view that it was the sole discretion/wisdom of the opposite party/banks to have agreed or not to have agreed with the legal opinion given by Mr. K. Mohan, Advocate or the valuers, which were not un-clarified. The banks were not satisfied about the total valuation of the land said to have been brought to the fold of the complainant and therefore, we see merits in the contention of the opposite parties that the total contribution to the share capital by the promoters and towards the land was not more than Rs. 2.5 crores as against the stipulated contribution of Rs. 4.75 crores, meaning thereby that the contribution in share equity was deficient by

more than Rs. 2.00 crores.

20. ASSUMING for the sake of argument that the total contribution to the share capital by the promoters and the value of the land contributed by the promoters was nearby Rs. 4.75 crores, still the important question is whether the said land was in fact hypothecated to the banks. On going through the entire material on record, it would appear that a unique method was adopted by the complainant company to acquire the land measuring 432 acres. According to the complainant a group of 19 persons mostly, family members, friends and employees of Mr. G. Venkateswarlu entered into partnership on 16th July, 1993 with the complainant and the partnership firm was converted into a company named as Aquadev & Co., without transacting any business. The said firm was dissolved and one of the partners i.e. the complainant company acquired all the assets which were the only assets of the partnership firm. The complainant agreed to allot shares out of promoters '' quota as consideration for the land. This method of transferring the land is not in accordance with law and is in entire violation of the provisions of the Indian Registration Act and Indian Stamp Act. The explanation of the complainant that the land had been acquired and kept in the name of 19 individuals to avoid any complications that could arise on account of the provisions of the Land Ceiling Act and also to reduce the incidental charges of registration and stamp fee, etc., to say the least was totally illegal and unauthorized. The fact remains that the land measuring 432 acres always remained in the name of 19 individuals and legally it was never transferred in the name of the complainant company. This is so manifest from the summary of observations and findings appearing in the special audit report of J.B. and Company, which we would like to extract here: "4.1 Acquisition Of Lands: In order to acquire the immovable property comprising 432 acres of land forming part of Ethamukkala village and Maddipadu village, M/s. Aquadev India Ltd., hereinafter referred to as ''The Company '' joined the partnership firm viz. M/s. Aquadev and Co. Technically the firm was created and immediately dissolved to take over the lands held in the name of the individual partners of the above said firm for consideration representing the then market value of the above said lands, having been settled by means of allotment of 15,08,400 Equity Shares of Rs. 10 each in the company. "

"6.1 We are of the view that the Promoter Director, Mr. G. Venkateswarlu, with a view to introduce his unaccounted cash into the business, has chosen to adopt the colourable exercise of understanding 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. "

21. IN view of the above position obtaining on record we have no hesitation in holding that the primary and pre-requisite condition in regard to the creation of

the first charge on the fixed assets of the company was not fulfilled.

22. THAT apart, Mr. Vats, learned Counsel for the opposite party/Banks also submitted that in the meeting held on 24th March, 1995, Mr. Venkateswarlu informed the lenders that the land owned by the company was inadequate due to certain conditions stipulated by Seashore Area Development Authority (SADA) and therefore, it was proposed to purchase another 100 acres of land adjacent to the project site to meet the shortfall of the land. The promoters were required to bring the said additional land with their own additional resources which was never brought in the submission is countered from the complainant side by stating that the additional land measuring 100 acres were actually brought in the name of the company subsequent to the meeting of 24.3.1995. Nothing concrete has been brought on record to show that this additional land was actually purchased and brought in the name of the complainant company. It was next argued by Mr. Vats that term loan could not be disbursed/released until the complainant obtained sanction letters from all other banks and consortium arrangements were finalized. That with a view to give final shape to the consortium and to ascertain the respective rights and obligations between the lender banks inter se and the borrowers, it was necessary that the consortium agreements were executed between the lenders and the borrowers and then inter se agreements were executed between the lenders and authority letters from the rest of the lenders in favour of the lead bank were to be executed. Nothing of the sort was done and the above arrangement could be formalized only after the complainant had fulfilled the various terms and conditions mentioned in the respective sanction letters of the bank, which the complainant failed to comply/fulfill. There is no denial of this factual position that consortium arrangement and inter se consortium agreements were not formalized between the lenders. In this regard, it is pointed out by the complainant that it was the internal matter of the opposite parties/ banks and the opposite parties/bank held three consortium meetings on 9.6.1994, 24.3.1995 and 30.12.1995 and the O.P. No. 1/State Bank of Hyderabad acted as the leader of the consortium. On perusal of the minutes of the said meetings, it cannot be said that the consortium arrangements and inter se consortium agreement as were talked in the sanction letters, were actually executed and actually formalized. This was again an act of non-compliance of the terms and conditions of the sanction letter. That apart the complainant failed to bring out/substitute another bank in place of the bank who had withdrawn from the proposed consortium.

23. THE next non-compliance alleged by the opposite party is in regard to the condition that APIDC and MPEDA had to contribute Rs. 25 lacs each as core promoters which contribution had not come from APIDC and MPEDA besides MPEDA was to provide a subsidy of Rs. 25 lacs. In is alleged that in the absence of the contribution by APIDC and MPEDA to the equity share of the complainant as core promoters and as subsidy by MPEDA, the total source to finance the project was not achieved by the complainant. This contention is stated to be afterthought by the complainant as according to them, the O.P./Banks were

aware of the fact that in view of the non-participation of the APIDC and MPEDA limiting its equity to Rs. 5.00 lacs, the promoters '' contribution was raised from Rs. 425 lacs to Rs. 475 lacs. We see merits in this contention because the initial contribution of promoters was Rs. 425 lacs but in view of the contribution of APIDC and MPEDA, having been reduced, the promoters '' contribution was raised from Rs. 425 lacs to Rs. 475 lacs. We therefore, hold that there was no non-compliance so far as these contributions were concerned.

24. THIS takes us to the question as to whether a valid contract had come into existence between the parties. Mr. Vats had empathetically argued that the complainant company having failed to fulfil the various conditions precedent including the primary condition, which they were obliged to do before disbursement of the loan amount, no concluded contract can be said to have come into existence. In support of his contention, Mr. Vats placed strong reliance on a decision of the Patna High Court in First Appeal No. 42 of 2002, where also a plea was raised by the answering defendant Bank that no concluded contract had come into existence between the parties and, therefore, the Bank, as a financial institution was not obliged to disburse the sanctioned loan. The Hon ''ble Single Judge dealt with and answered the question in the following manner: "8. The learned Senior Counsel Mr. Siddheshwari Prasad Singh appearing on behalf of the appellant submitted that the learned Court below has not properly appreciated the facts of the case and has wrongly held that there was a concluded contract between the parties. The learned Counsel further submitted that the learned Court below has misunderstood the contents of the letter dated 16.5.1989 and held that it is a promise to advance working capital to the plaintiff. The learned Counsel further submitted that although the letters dated 16.5.1989 and the sanction letter dated 2.3.1993 are subjects to compliance of the terms and conditions incorporate therein, the learned Court below misconstrued the said letters and held that there was a valid contract. By the said letter dated 16.5.1989 (Ext. 3/G), the Bank has simply intimated to the plaintiff that the Bank shall be able to grant the working capital within the framework of working norms of Bank and not otherwise and, therefore, the said letter was not absolute assurance letter in favour of the plaintiff. The learned Counsel further submitted that on the basis of the said letter, the plaintiff is not entitled to compel the Bank to sanction loan unless the necessary requirement is fulfilled by the plaintiff. There were sufficient materials produced before the Court below which were subsequent to the letter dated 16.5.1989, which are sufficient evidence to doubt the credibility, honestly, integrity of the proprietor and Managing Director of the plaintiff, company which are sufficient to refuse advancement of working capital. The learned Counsel further submitted that the learned Court below has misconstrued the letter dated 2.3.1993 (Ext. 3/J) issued by the Bank to the plaintiff sanctioning Rs. 17 lacs to be the valid contract. The learned Counsel further submitted that the plaintiff was specifically required to execute the necessary security documents along with guarantors and also to sign the duplicate copy of the agreement and returned the same to the bank but till

15.11.1996, the plaintiff neither returned the duplicate copy of the agreement and letter to the Bank agreeing inter alia to comply the terms and conditions of the sanction letter dated 2.3.1993 nor did he approached the Bank and offered to execute necessary loan documents. In the meantime, the validity of the sanction letter expired after expiry of one year. The appellant was justified in refusing to advance working capital when the Bank was satisfied that providing the financial accommodation to the plaintiff ''s firm was not going to serve any useful purpose. The learned Court below could not have compelled the Bank to provide financial assistance. On these grounds, the learned Counsel submitted that the impugned judgment and decree are liable to be set aside and the plaintiff suit be dismissed with cost. At the time of hearing of this First Appeal, nobody appears on behalf of the respondents. "

The facts of the present case have several similarities inasmuch as there also the sanction letter was issued subject to compliance of certain terms and conditions incorporated therein, which the Court held were not complied with and therefore held that no concluded contract came into being. The fact of non-fulfilling the conditions of sanction letter, the Court held as under: "This letter only indicate that the bank had sanctioned loan and the plaintiff was required to fulfill the conditions if he fulfils the said conditions and returned the duplicate letter signing thereon and also after entering into agreement as mentioned in detail in the said letter, the loan would have been disbursed in favour of the plaintiff there is nothing on record to show that the plaintiff ever fulfilled the conditions and entered into an agreement, hypothecated the stocks with the Bank or mortgaged the land as required by the said letter. The conditions mentioned therein are condition precedent for disbursement of the loan. The plaintiff has failed to produce any evidence on record to show that he ever complied the terms and conditions. That the Court held that there was no concluded contract between the parties. "

25. ON the other hand Mr. D. Krishnan, Counsel for the complainant submitted that the said judgment has no application to the facts and circumstances of the present case as per Section 2(a), (b) and (f) of Indian Contract Act, 1972. He contended that a concluded contract had come into existence inasmuch as the reciprocal promises made by the promisee and promisor had been crystallized, which was the only requirement for bringing a concluded contract into existence. In our view the sanction of the loan by the opposite party/Banks was contingent of the fulfilment of certain conditions, which the complainant was obliged to fulfil to the satisfaction of the O.P./Banks. As noted above they have failed to do so before the loan amount could be disbursed to them. Therefore, we have no hesitation in holding that no concluded contract came into existence between the parties due to the non-fulfilment of the conditions precedents mentioned in the sanction letter.

26. THERE were many more reasons for the O.P./Banks to withdraw from the proposed consortium and finally to withdraw the sanction of the loan. These were

relatable to the financial conduct of Mr. Venkateswarlu, Promoter and Director, which was brought to the notice of the O.P./Bank by means of two complaints in relation to his other company/ M/s. Raghunath Cotton and Oil Products Limited and raid conducted on the promoter, Director and his two companies. An independent inquiry was made by J.B. and Company and after discussions, verification of various records made available by M/s. Raghunath Cotton and Oil Products Ltd., and after meeting with statutory auditors of the said company at Hyderabad and Income Tax Officials at Hyderabad the said company commented as under: "5.2 Income Tax Raid: We approached the Income Tax Investigation Department and discussed with the top officials to understand the implications of search and seizure operations of the company and its promoter director. We also went through their Appraisal Report. It is observed based on the documents, records and share certificates seized by the Department that Mr. G. Venkateswarlu has substantial interest in M/s. Gumadi Agro Products (P) Ltd., M/ s. Gummadi Investment and Finance (P) Ltd., M/s. Jhansi Agro Products (P) Ltd., M/s. Raghunath Enterprises, Kakinada and M/s. Jayalakshmi Enterprises, Kakinada. The Department recovered cash of Rs. 15 lacs from the Company ''s office premises at Ongole during the course of their search. We also verified the returns filed by Mr. G. Venkateswarlu and few others and he has so far paid Rs. 24.12 lacs as against the total tax liability of Rs. 115 lacs. The balance tax liability of about Rs. 91 lacs is in arrears to the Department. The Bank may have to ascertain the sources of Mr. G. Venkateswarlu to meet the arrears of tax liability before granting any disbursement from the loan under consideration. We have discussed with Mr. G. Venkateswarlu on this matter and we understand from him that he had been advised of having got a fair chance of containing the overall tax liability to Rs. 50 lacs, as most of the lands are agricultural lands and the transfer of these lands does not attract capital gains tax. However, the Department has refuted the claim treating them as non-agricultural lands. "

Whether the complainant was a vanishing company. It is not denied that the name of the complainant company did figure in the public notice issued by SEBI but it is sought to be explained that it was on account of non-implementation of the project, which was due to non-disbursal of the loan by the respondent banks. Further that the registered office of the complainant company had changed from Hyderabad to Ongole at the place of the project at the relevant time and therefore the letters sent by the SEBI i.e. at the earlier address of the company could not be replied to. In our view, the O.P. cannot be allowed to take up this ground in order to justify the non-disbursement of the loan because this had happened several years after the O.Ps. had withdrawn from the consortium and withdrawn the sanction of the loan in April, 1996 and during the pendency of the present complaint.

27. IN view of the foregoing discussions, we must decide as to whether the reasons set out by the O.P./Banks in support of the withdrawal of the sanction were valid and justified or not. Non-compliance of the terms and conditions of the sanction of Term Loan is cited as one of the grounds for withdrawal of the

sanction. We have already found that the complainant company had failed to comply several terms and conditions of the sanction including the primary condition and, therefore, we must hold that the Opposite Party has not committed any act of deficiency. That apart, we have noted that there had been several changes in the situation after the sanction of loan and controversial reports about the project in question were received by the O.P. In our view, the opposite parties have by means of cogent evidence and material brought on record established the existence of the above grounds on the strength of which, they were compelled to withdraw the sanction. By doing so, the opposite parties cannot be said to have done anything wrong which can amount to deficiency in service on the part of the O.P./Banks. It is true that in a welfare state like ours the financial institutions like Banks have to discharge their functions including lending of money to entrepreneurs but such institutions are also expected to safeguard and secure the public funds and cannot advance the loan amount without adequate security. It has been the consistent view of the Courts and this Commission that Banks commit no deficiency in service if it did not provide the loan to a customer because it is for the bank to satisfy if the borrowers '' position was creditworthy and the project to be finalized was technically feasible and economically viable. The borrowers without strictly complying the terms and conditions, subject to which the loan is sanctioned, cannot expect the Bank to disburse the loan. That is what the complainant expected from the O.P./Banks. The Courts and Tribunals cannot substitute their decision with that of the Bank not to sanction the loan or not to disburse the sanctioned loan and would be loath to interfere in the matter unless it is shown that the decision of the Bank was tainted with malice or extraneous consideration. In the case in hand, ample material has been produced on record, which would show that the decision taken by the Opposite Party/Banks was for justifiable reasons and not tainted with any malice or based on extraneous reasons. We are, therefore, of the considered opinion that the complainant has failed to establish any deficiency in service on the part of the O.P./Banks, by withdrawing from the proposed consortium and not disbursing the amount of sanctioned loan entitling them to any compensation, much less a compensation as high as Rs. 79.20 crores claimed in the present complaint, which claim in any case appears to be imaginary and fanciful.

28. NOW coming to the last question as to whether in the given facts and circumstances, the O.P. can be said to have committed deficiency in service by delaying the disbursement of the loan/and withdrawal of the sanction. This Commission in its earlier order dated 2.9.2004 despite taking the view that the O.P./Banks were entitled to repudiate the contract for justifiable reasons there was delay in taking such decision and, therefore, which must have occasioned to loss and injury to the complainant and therefore awarded a nominal compensation of Rs. 10 lacs to be paid by the opposite parties. We are unable to subscribe to the view taken by this Commission on earlier occasion because the delay was caused due to the complainant ''s own default in complying with the

terms and conditions of the sanction, which led to a changed scenario and ultimately to the withdrawal of the sanction. Not only this, O.Ps. had received complaints of serious nature pointing out serious financial illegalities and irregularities on the part of the promoter, Director Mr. Venkateswarlu. To verify the same, auditors were appointed, which the O.P. was bound to enquire through independent agencies. That must be a time consuming process. We are therefore, of the view that the O.Ps. have been earnestly considering the question at all relevant times and no delay can be said to have been caused by the opposite parties in the matter. Therefore, there is no question of the complainant seeking or being awarded any compensation even in regard to the alleged deficiency arising on account of delay. For the above cited reasons and in the result we dismiss the complaint, leaving the parties to bear their own costs. Complaint dismissed.

