(1993) 04 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

ARVIND MODERN DAL And RICE MILL APPELLANT

Vs

BANK OF BARODA RESPONDENT

Date of Decision : 22-04-1993

Acts Referred:

Citation : 1994 3 CPJ 333 : 1995 1 CPR 715

Hon'ble Judges : K.S.Varma , S.P.Goyal , Vidya Sonker J.

Final Decision : Complaint decided

Judgement

1. ON behalf of M/s Arvind Modern Dal and Rice Mill, Sandila District Hardoi, this complaint has been filed in the State Commission against the Bank of Barda, Branch Manager, Sandila Branch. It has been stated that the Complainant firm is a partnership firm registered on 10.4.86 and that the U.P. Finance Corpn. Ltd. Lucknow and the Bank of Baroda, Sandila were presented the project reports on which the U.P. Finance Corpn. with the agreement of Bank of Baroda sanctioned a term loan for the land building and machinery and that the Complainant firm completed the plant in the form of land, building and machinery. It is stated that the Manager Bank of Baroda, Sandila Branch in their stated letter dated 20.8.88 sanctioned a cash credit limit of Rs. 4 lakhs and the copy of this letter dated 20.8.88 has been enclosed as Annexure 5 to the complaint. It is stated that the aforesaid bank credited the aforesaid amount of Rs. 4 lakh in the cash credit account of the Complainant firm by giving Rs. 4 lakh on 2.9.88. It is stated that the Complainant firm started running the unit (Mill) properly by hard work and that the unit had been working satisfactorily till December 89 and that the Bank Manager of the Bank of Baroda vide their letter dated 26.12.89 reduced the cash credit limit from Rs. 4 lakh to Rs. 2 lakhs stating in their letter about prior permission from R.B.I. have not been taken. It is stated that due to reduction of cash credit and therefore in the event of shortage of working capital the working of the unit stopped. It is also contended that it was the responsibility of the Bank to have taken or having not taken prior permission of the R.B.I. It is contended that on this account interest on the loan taken from the U.P. Finance Corpn. kept on increasing and the minimum charges bill of the Electricity also kept on

increasing and also the other over head charges. The U.P.F.C. vide their letter dated 12.7.91 issued notice for locking the factory as also demanded immediate payment of Rs. 1,39,078.30 paisa as balance interest up to 20.3.91. It is stated that the entire loss to the unit is due to reduction of the cash credit limit by the Bank for which the entire responsibility rested on the Manager Bank of Baroda, Sandila Branch. It is stated that the Complainant firm has been requesting for giving working capital and copies of the letters were sent to offices stated in the Complaint. In this connection they have relied upon their letter dated 14.3.91 addressed to the Governor, Reserve Bank of India, Bombay (copy enclosed as Annexure 9 of the Complaint.) They have stated that their unit was working with a credit limit of Rs. 4 lakhs whereas now to start the unit a working capital of Rs. 10 lakhs is required and that the main reason for the unit having stopped working in December 1989 is the reduction of the working capital by the Bank. In the end of the Complaint it has been stated that upto the date of the Complaint the unit has suffered losses amounting the Rs. 6,55,135.94 paisa and have requested for ordering the Bank to pay this amount to the unit.

2. NOTICES were sent to the parties fixing the date of 13.12.91 on which date there was appearance on behalf of both the parties and the written statement of the opposite party was also filed. Subsequently, the Complainant firm also filed their replication and other papers were also filed by both the parties on 14.9.92. On the date fixed for arguments part arguments were put forward on behalf of the Complainant firm who on that day asked for time. Finally on 27.11.92 both the parties put up and closed their arguments. In their reply dated 13.12.91, the opposite party had put up preliminary objections but has not given parawise reply of the main Complaint. It has been stated by the opposite party that a certain Civil Suit is pending in Civil Court (Civil Judge) Hardoi Court in which the date of 31.1.92 is fixed. However no details were given by the opposite party. The Complainant firm in their reply dated 23.12.91 stated that they have no knowledge about the said case. Other preliminary objections raised by the opposite party were also replied by the Complainant firm in their reply dated 23.12.91. The Opposite Party (Bank) has filed an affidavit of Damodar Rai, Manager of the Bank, Sandila Branch (Hardoi) dated 16.3.92. In their reply in para 4 the Bank has stated that a limit of Rs. 4 lakhs was sanctioned vide their letter dated 20.8.88 and that this sanction was subject to the terms and conditions as laid down in this letter. It has been stated on behalf of the Bank that the Complainant firm did not fulfill the conditions and that on inspection the stocks etc. as were given in the form of principal security for the loan were not found and accordingly the cash credit limit was reduced under the Rules of the Bank. It has also been stated on behalf of the Bank that they have nothing to do with the increase of interest etc. (referring to the interest on the loan amount given by the U.P.F.C. It has also been stated that the said interest by U.P.F.C. dated 12.7.92 was not due to opposite party and that it was due to it''s (units) own working and due to not working honestly by the Complainant firm. In the written statement in various paras the Bank has stated to the effect that they are

not responsible for the losses of the Complainant firm and that the Complaint has been lodged to harass the Bank. In paragraph 14 of the written statement they have stated that they have lodged a Civil Suit No. 284 of 1991 on 31.8.1991 in the Court of Civil Judge, Hardoi for recovery of amount of Rs. 70,378.01 paisa and that during the pendency of the said civil case, this Complaint should not be heard as it relates to same matter. They have not accepted any amount to be paid to the Complainant firm by them. On behalf of the Complainant firm the parawise replication has been filed vide their affidavit dated 10.4.92. In para 6 of their replication they have contended that the terms and conditions of the sanction letter dated 20.8.88 were only precedent to the sanction and once the credit limit was sanctioned these terms & conditions can not be operated and that the cash credit can not be reduced. They have denied various contentions put forward by the Bank and have reiterated their demand as made in the Complaint letter.

We have seen the file and having heard the arguments put forward on behalf of both the parties our findings are as under :- (i) We do not agree with contentions of the Bank that this Complaint can not be considered in view of the pendency of the said civil case in the Court of the Civil Judge, Hardoi. We observe that the said case in the Court of Civil Judge, Hardoi relates to the recovery which the Bank states that they are entitled to get the said amount from the Complainant firm on account of the overdraft having not been (Illegible) within time and the interest which has accrued on the same where as the main point that emerges in the present Complaint is as to whether the Banks action in issuing their letter dated 26.12.89 (wherein they have reduced the cash credit limit from earlier sanctioned limit of Rs. 4 lakhs to Rs. 2 lakhs) is correct or not. (ii) Other preliminary objections raised on various stages on behalf of the Bank do not hold any ground before us and we find that the present Complaint as filed by one of it''s partners Smt. Sarla Mehrotra is maintainable under Consumer Protection Act, 1986. (iii) We have seen the contents of the Bank''s letter dated 26.12.89 wherein it''s paragraphs 1 and 2 we find that on the date of 26.12.89 (the date of issue of this letter by the Bank) there was an outstanding amount of Rs. 53,453.26 paisa. The contents therein reveal that since the cash credit facility is stated in para 2 of this letter to be under R.B.I. and since prior permission of R.B.I. was required the Complainant firm was requested in this letter to adjust the outstanding balance of this amount. From the contents of these 2 paras of this letter we find that admittedly there was an outstanding balance of Rs. 53,453.26 paisa in the cash credit account of the Complainant firm and that it was the responsibility of the Complainant firm to have (Illegible) this outstanding in a reasonable time, however we find no relevance of this outstanding amount with any prior permission of the R.B.I. having been taken or not having been taken by the Bank. In any way, it was the entire responsibility of the Bank to have taken necessary actions and to have obtained any prior permission of the R.B.I. if it was so required, and in any case there is no responsibility in this regard on the Complainant firm. In these two paragraphs of this letter of the bank, we find no reference wherein the bank might have stated any lapse (other than the said outstanding amount) and no reference is made to any of the terms and or conditions as detailed in their sanction letter dated 20.8.88.

3. THE paragraph 3 (which is the last para of this letter dated 26.12.89) it has been stated by the bank that meanwhile on review the Bank has reduced the limit as sanctioned to the Complainant firm from Rs. 4 lakhs to Rs. 2 lakhs. We observe that no specific reasons have been given for reducing the earlier sanctioned limit of Rs. 4 lakhs nor any reference has been given to any terms and or conditions as detailed in the sanction letter dated 20.8.88. We therefore observe that the opposite party (Bank) has not been able to convince us as to the full justification about their action of reducing the cash credit limit from Rs. 4 lakh to Rs. 2 lakhs as intimated by them in their letter dated 26.12.89. THE last part of this para lays down further instructions about the dispersal of even this reduced Rs. 2 lacs limit to be operated only after the approval of the R.B.I. We find that this restriction had nothing to do with any lapse on the part of the Complainant firm and that it was gross negligence on the part of the Bank in not having obtained prior approval of the R.B.I. (if it was so required) and in sanctioning the cash credit limit of Rs. 4 lakhs vide their letter dated 20.8.88 without prior approval of R.B.I. and in reducing cash credit limit to Rs. 2 lacs vide their letter dated 26.12.89 and also in restricting the operation of even this reduced each credit limit of Rs. 2 lacs as mentioned at the end of their letter dated 26.12.89. THE Bank has failed to satisfy us about the actions taken by them vide their letter dated 26.12.89 and we hold that the Bank is responsible of the above stated negligences. From what has been stated above it is obvious that the action of the Bank Authorities in reducing the cash credit facility from Rs. 4 lacs to Rs. 2 lacs is arbitrary as no reasons have been indicated as to in what circumstances the Bank came to this conclusion. THE stand taken by the Bank is inconsistent. On the one hand it says that previous sanction of the Reserve Bank of India even for earlier sanction was necessary yet it is surprising that no sanction was actually taken. THEse facts indicate that the Bank did not apply it''s mind to reasons for reducing the cash credit facility. Unless an order is informed with reasons it is not possible to ascertain the reason for doing so. In the absence of speaking order indicating the reason for reduction. THE conclusion is unsustainable and the order is arbitrary. We accordingly quash the order dated 26.12.89 and direct the Bank to come out with a reasoned order indicating grounds for reducing the cash credit facility. The next question that arises for our consideration is whether the Complainant is entitled to compensation of Rs. 6,55,137.95 paisa in the manner indicated in the Complaint. The Complainant''s case is that on account of reduction of cash credit facility of Complainant his business come to a stand and stopped functioning in Dec. 89. There is nothing to indicate the extent of loss but some loss must have been occasioned on account of reduction of cash credit facility. Even though no evidence has been lead to prove the loss this much is certain that the Complainant did suffer loss on account of the arbitrary action of the Bank. In the circumstances of the case

which have emerged during the pendency of the case, we are of the view that the Complainant is entitled to compensation which we assess at Rs. 1 lakh. This amount shall be paid by the Bank latest by 31st May 1993 failing which the amount will carry interest @ 16% per annum from 1.6.93 onwards till the date of actual payment.

4. THE Complaint is decided in the manner indicated above. Complaint decided.

