(2000) 09 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

ARVIND MODERN DAL AND RICE MILLS — APPELLANT

Vs

BANK OF BARODA — RESPONDENT

Date of Decision : 01-09-2000

Acts Referred:

Citation : 2000 3 CPJ 485 : 2001 1 CPC 381 : 2001 1 CPR 495

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant instituted this complaint for damages worth Rs. 6,55,133.55. It is alleged that the complainant was sanctioned one unit for manufacturing careals and rice in small scale sector. This letter was issued on 24.1.1986 by District Industries Centre, Hardoi. On the basis of this letter the complainant obtained permanent registration on 28.2.1989. This firm was registered as a partnership firm on 10th April, 1986. A project report was prepared and was submitted to U.P. Finance Corporation, Lucknow and Bank of Baroda, Sandila on which the U.P. Finance Corporation with the agreement with Bank of Baroda sanctioned a term loan for the building and the machinery. This was approved by the U.P. Finance Corporation. THE complainant then purchased the machinery and building and completed the erection of the plant. It is further alleged that the Bank of Baroda, Sandila Branch vide letter dated 20.8.1988 sanctioned a cash credit limit of Rs. 4,00,000/-, copy of which has been filed as Annexure 5 to the complaint. This amount was credited in the account of the complainant. THE factory started working satisfactorily. All of a sudden on 26.12.1989 the cash credit limit was reduced to Rs. 2,00,000/- from Rs. 4,00,000/- stating therein that the prior permission of Reserve Bank of India has not been taken. According to the complainant on account of the reduction in the cash credit limit and shortage of working capital, the unit had to be closed down. It is further alleged that the Bank of Baroda should have taken prior permission of Reserve Bank of India before sanctioning the cash credit limit of Rs. 4 lacs. THE complainant had to pay interest to U.P. Finance Corporation and minimum guarantee charges to the Electricity Board. U.P. Finance Corporation thereafter vide their letter dated

12.7.1991 issued notice for locking the factory and also demanded payment of Rs. 1,49,078.20 as the amount due till 20.3.1991. According to the complainant this loss had occasioned on account of the reduction in the cash credit limit of the complainant by the Bank of Baroda. THE complainant wrote a letter dated 14.3.1991 to the Governor, Reserve Bank of India, Bombay, copy of which is Annexure 9 to the complaint, in which it was disclosed that the original working capital was sanctioned at Rs. 4,00,000/- and when the Unit started functioning the limit was reduced to only Rs. 2,00,000/-. It was also mentioned that the main reason for closure of the factory is reduction of the cash credit limit because before that the factory was working satisfactorily. According to the complainant upto the date of filing of the complaint, a loss of Rs. 6,55,135.94 had been incurred by the complainant which Bank of Baroda is liable to pay.

2. IN the preliminary objection filed by the opposite party, Bank of Baroda, it was alleged that a case has already been filed in the Court of Civil Judge, Hardoi which is pending for decision. IN view of that case in Civil Court, this Court has no jurisdiction to try this matter. It has further been mentioned that the alleged partner Mrs. Sarla Mehrotra has not disclosed the names of other partners. The compensation has been claimed in her personal capacity and not as partner. It has further been alleged that this Commission has no jurisdiction to try this case. The opposite party, Bank of Baroda, filed an affidavit signed by the Branch Manager, Sandila, namely Damodar Rai dated 16.3.1992 in which it has been stated that the limit of Rs. 4 lacs was sanctioned vide letter dated 20.8.1988 and that the sanction was subject to the terms and conditions as laid down in that letter. It has been alleged by the Bank that the complainant firm did not fulfil the conditions, that on inspection the stocks as were given in the Form 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 alleged that they have nothing to do with the increase in the rate of interest by U.P. Finance Corporation. It was further stated in the written statement that they are not responsible for the losses to the complainant. The suit for recovery of Rs. 70,378.01 was filed and this complaint should not be heard pending that suit.

Replication has been filed by the complainant alleging therein that once the cash credit limit was sanctioned, these terms and conditions cannot be varied and the cash credit limit cannot be reduced. He denied the allegations of the opposite party.

3. AFTER the evidence was filed by the parties, the predecessors vide judgment dated 22nd April, 1993 decreed the claim of the complainant for a sum of Rs. 1,00,000/- only holding that inspite of pendency of the civil suit the present case is maintainable. It was also further held that Sarla Mehrotra has filed this complaint as partner on behalf of the firm. It was further held that in view of the contents of letter dated 26.12.1989 a sum of Rs. 53,453.26 was outstanding against the complainant and since the cash credit limit was subject to prior permission of the Reserve Bank of India, the complainant was requested to

adjust the outstanding balance of this account. It also came to the conclusion that Bank had not disclosed the reasons for reducing the cash credit limit. It allowed damages of Rs. 1,00,000/- against the Bank of Baroda, opposite party. Against this order an appeal was filed in the National Commission by the Bank of Baroda and the National Commission vide its order dated 22.1.1996 remanded the case to this Commission on the ground that the State Commission directed the Bank to come out with the reasons for reducing the cash credit limit but granted the compensation. Thus after quashing of its order, this case has now come up before the State Commission.

4. AFTER the case was remanded the Bank of Baroda has filed an affidavit giving therein the reasons for reducing the cash credit limit. The complainant has also filed a counter affidavit. We have gone through the evidence on record and we have also heard the arguments of the learned Counsels for the two parties. The learned Counsel for the complainant has argued that the unit of the appellant was a Small Scale Industry. A loan of Rs. 5,00,000/- was given for building and machinery. The loan availed was of the Rs. 4,30,000/-. The Bank, the opposite party inspected the unit on 20.8.1988 and allowed the Cash Credit Limit of Rs. 4,00,000/- by a letter of the Bank dated 26.12.1989. The cash credit limit was reduced to Rs. 2,00,000/- without assigning any reasons. There was no over-draft of the unit in the Bank concerned and reduction in the cash credit limit could have been done only by taking permission from the Reserve Bank of India. On the other hand, the learned Counsel for the opposite party has argued that the cash credit limit sanctioned to the complainant was subject to fulfilment of certain terms and conditions and since the terms and conditions were violated by the complainant, the limit was reduced and the Bank was within its power to reduce the limit. The value of the stocks had fallen down. Therefore, there was a valid ground for reducing the cash credit limit. It was also argued that a civil suit for recovery of the outstanding dues against the complainant was pending in the Civil Court at Hardoi. The Bank had even advanced an over draft to the complainant inspite of the lower value of the stocks held by the complainant, the complainant did not produce the Balance Sheet, Profit and Loss Account with the result that the Bank could not have continued the facility of the cash credit limit without going into the value of the stocks and the securities that were required to maintain the sanctioned level of the cash credit limit. The permission of the Reserve Bank of India is not required. The learned Counsel also argued that although the cash credit limit sanctioned was Rs. 4,00,000/- but at no occassion the availment exceeded Rs. 1,50,000/- and that is the reason that the limit was reduced. The controversy revolves around the action of the opposite party, Bank of Baroda in reducing the cash credit limit which has resulted into the closure of the unit and loss and damages to the complainant. We have to examine whether the action of the Bank in reducing the cash credit limit was justified or not. The basic parameters which decide the quantum of the cash credit limit to be sanctioned to any industrial unit are optimum levels of the units stock determined on the basis of the capacity of the plant and also the optimum level

of the stock is valued as per market rate generally obtaining for a particular period and the percentage of margin is also maintained by the Bank to ensure the safety of the money it lends to the industry in terms of the cash credit facility. Thus, according to the banking norms, the cash credit limit is decided on the basis of the value of the stocks which the particular industry is required to maintain at the optimum level. To examine these points, we will examine the records made available before us.

5. THE opposite party, Bank of Baroda in their letter dated 20.8.1988 intimated to the complainant that the facility of cash credit limit of Rs. 4,00,000/- with a margin of 45% had been sanctioned to the unit. This limit was subject to furnishing of certain securities, hypothecation of the entire stocks of Dal and certain collateral securities. THE second charge on the factory land and building, plant and machinery was also required to be made in the favour of the Bank. In this connection, fortnightly statement of stocks and drawings were also required to be submitted by the complainant. THE Bank reserved the right to periodically inspect the securities, books of accounts and the stocks maintained by the complainant. Balance Sheet and Profit and Loss account was to be regularly submitted to the Bank. This facility was granted for the period of 2 months but at the same time, the Bank reserved the right to call back the facilities of the advance. On 26.12.1989, papers-6 enclosed with the complaint, the opposite party informed the complainant to adjust his outstanding balance and later on the Bank reduced the limit of cash credit from Rs. 4,00,000/- to Rs. 2,00,000/-. THE Bank also made it clear that any disbursal of reduced limits can only be affected after the Reserve Bank of India''s approval is obtained.

6. IN the affidavit filed on behalf of Bank of Baroda Sri V.P. Mehrotra, Senior Manager it was stated that on 26.12.1988 the total value of the stock was Rs. 1,85,740/-. The advance value after deduction of margin @ 45% had come to Rs. 1,02,157/- only and the outstanding balance on 26.12.1988 was Rs. 1,50,038.60 which was exceeded by Rs. 47,881.60 and this was contravention of the terms and conditions setforth by the Bank while sanctioning the Cash Credit Limit (Annexure 2 of the affidavit). It has further been stated that on inspection by the opposite party on 27.12.1988 it was found that in contravention of the terms, the complainant had put 127 bags of paddy in their godown and these irregularities were communicated to the complainant on the same day which is Annexure 3 of the affidavit. On 29.4.1989 the value of the stocks was found at Rs. 1,01,470/-. The godown inspection report is Annexures 4 and 5. Annexures 6 and 7 indicate that the Bank had asked the complainant to deposit the excess drawings and regularise the accounts in future. The periods of cash credit limit expired on 20.8.1989 and the Bank reviewed the cash credit facility sanctioned to the complainant for a period of one year. As it would be evident from the Annexures 8 and 9 annexed with the affidavit of Sri Mehrotra, the complainant was informed the position of the unsatisfactory accounts and non-submission of final statements. Now we examine the papers filed by the complainant in support of his case. It is a fact that the U.P. Financial Corporation had sanctioned a loan

of Rs. 5,00,000/- to the unit which was a partnership firm. It is also a fact that on reducing the cash credit facility, the correspondence was made to the higher authorities of the Bank to maintain the limit at Rs. 4,00,000/- and not to reduce the limit. Enclosure 9 the complainant also speaks of the facts that the unit sustained losses and the U.P. Financial Corporation issued a letter of taking over of physical possession of the unit for failure on the part of the complainant to make the payment of the loan advanced to the firm. At the same time, the balance sheet submitted by the complainant for the period ending 31.3.1989 shows the closing stock at Rs. 69,250/-. The Profit and Loss Account shows a gross profit of Rs. 46,173.57 and the net loss transferred to balance sheet is Rs. 28,923/-. The balance sheet as on 31.3.1990 shows the closing stock of Rs. 1,20,500/- and the Profit and Loss Account for the same period shows a gross profit of Rs. 60,539/- but the loss during the year is Rs. 2,87,262,20. In the year 1991, the closing stock value shows Rs. 8,550/- and the net loss is Rs. 43,123/-. The examination of these financial statements reveals that even if we ignore the financial results of 1990 and 1991, in the year 1988 and 1989 the value of stock was such that it did not warrant the cash credit facility of Rs. 4,00,000/-. It appears that the capacity of the plant was not fully utilised and at no length of time, the value of the stocks reached Rs. 4,00,000/-. Therefore, the Bank was within its right to review the facility sanctioned earlier and the allegation given in the affidavit of the Senior Manager of the Bank, the opposite party appears to be completely substantiated.

Now coming to the question whether the opposite party, Bank of Baroda should have reduced the limit on its own without referring the matter to the Reserve Bank of India, it may be said that as per the banking norms and guidelines are set-forth by the Reserve Bank of India for providing the credit facilities to the particular type of industry, it is usual banking practice that individual cases are not referred for sanction, the Bank provided the facility of Rs. 4,00,000/- as cash credit limit, keeping in view of the project report and the appraisal done by it and when during the currency of the limit, it was found that the volume of the drawings has never reached at any point of time. It appears that when the quantum of the cash credit limit has not been fully utilised then the Bank in the normal banking practice would be within its right to reduce the limit to the extent it considered necessary in the light of the performance of the unit.

7. THE National Commission in the case of Bhupinder Kumar Sharma v. National Research Development Corporation & Ors., I (1994) CPJ 86 (NC), has held that "the Bank was within its rights not to allow the complainant to operate the bank account pending completion of the formalities and also subsequently when it entertained doubts whether the complainant was engaged in bona fide and legitimate business or commercial activity. We do not feel that it can be said that the Bank was guilty of deficiency in service when it took a deliberate decision not to allow him to operate his bank account. We, therefore, dismiss the complaint without prejudice to the right of the complainant to seek redress in Civil Court if he is so advised". We, therefore, find that there is no deficiency of service on the

part of the Bank in reducing the cash credit limit as it would appear from the record of the case, the Bank has instituted a civil suit for recovery of outstanding dues on the complainant. The National Commission in the case of Nagannath Meher v. The Branch Manager, State Bank of India & Ors., 1993 (2) CPR 95, has held that when the substantial amounts of Bank loan have been advanced to the complainant but he has not been able to pay up the loans, complaint alleging non-payment of the adequate amount at the right time is not maintainable when there is no reason to hold that the Bank acted otherwise than a good faith in exercise of its power of discretion.

8. IN this case the Bank acted as per the banking policy and norms and it cannot be held guilty of deficiency of service. IN the circumstances, the case of the complainant fails and the same is liable to be dismissed. Order The complaint is dismissed. There will be no order as to cost. Let copy be made available to the parties as per rules. Complaint dismissed.