

(1995) 02 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7076 of 1993

Gunjan Cement Pvt. Ltd.

APPELLANT

Vs

Rajasthan State Industrial Development and Investment
Corpn. Ltd.

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Contract Act, 1872 — Section 15

State Financial Corporations Act, 1951 — Section 31

Citation : AIR 1996 Raj 88 : (1995) 2 WLC 417 : (1995) 1 WLN 435

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : A. Kasliwal, for the Appellant; Alok Sharma, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Singh, J.—In all these writ petitions, the common point involved is whether the demand by the respondent for enhanced rate of interest i.e. 18% and 18.75% in place of 12.5% and 13.5% is justified in law or not. So, these petitions are being disposed of by this common judgment. Facts are almost identical except that the "deeds of loan agreement" and "deeds of modification" were executed on different dates but the contents are identical.

2. The Writ Petition No. 7076/1993 M/ s. Gunjan Cement Pvt. Ltd. v. Rajasthan State Industrial Development & Investment Corporation Ltd. has been taken up as a leading case.

3. The petitioner is a Private Limited Company incorporated under the Companies Act, 1956. It sets up a mini cement plant at Industrial Area, Behror, District Alwar, Rajasthan. It carries on the business of manufacturing and selling cement.

4. For setting up the said unit, a term loan of Rs. 90,00 lacs as financial assistance was sought from the respondent-Rajasthan State Industrial Development & Investment Corporation Ltd. (RIICO). The loan was sanctioned

on 31st October, 1991, by the Industrial Committee of the Board of Directors. The sanction of the loan was subject to Industrial Development Bank of India (IDBI) and Small Industries Development Bank of India (SIDBI), agreeing to re-finance the loan to the RIICO.

5. A loan agreement was entered into on 12th March, 1991, between the petitioner and Rajasthan State Industrial Development & Investment Corporation Ltd. The petitioner agreed to abide by the terms and conditions stated therein and was required to send the compliance report. It was further required to confirm that:

(a) The Company and/or promoter was not the defaulter to any financial institution/ Bank;

(b) The compliance of all the eligibility criteria contained in Circular dt. 16-7-1990;

(c) The investment in plant and machinery falls within the ambit of Small Scale Industries Sector on the basis of Government guidelines currently in force;

(d) The Geep is being acquired by the Company for captive use in its production activities;

(e) Suitable and experienced technical expert has been appointed to look after production activities.

6. Paragraph 3.2 of the loan agreement is as under:

The borrower shall pay to the lender interest as under:-

(i) Until the date of availability of refinance from the Industrial Development Bank of India, the borrower shall pay to the lender on the principal amount of the loan outstanding from time to time at the rate arrived at after adding 7.5% to the Bank rate prevailing on the date of signing of the loan agreement but minimum of 16% per annum quarterly in each year on the 15th Jan., 15th April, 15th Aug., 15th Oct.

(ii) From the date of first disbursement of term loan till the date of repayment of the last instalment by the lender to the Industrial Development Bank of India in respect of amount of this loan, interest will be charged at a rate 3.5% above the Industrial Development Bank, of India's rate of interest on refinance but with a minimum of @ 12.5 p.a. quarterly. During implementation (construction) period as given in the appraisal documents or two years whichever is earlier from the date of signing of loan agreement between the lender and borrower and 13.5 p.a. quarterly for remaining period of loan/refinance.

PROVIDED that all interest, which shall during the continuance of this agreement accrue due on the loan or any part thereof and for the time being remaining unpaid and all other monies, which have become payable under this agreement shall, in case the same be not paid on the days on which they accrued due, carry

further interest 7.5% (seven and half per cent per annum quarterly) as and by way of liquidated damages-over and above the rate of interest aforementioned computed from the respective days of such interest or monies accruing due and all such interest and further interest which have become payable upon the footing of compound interest, with rests taken or made quarterly as herein before provided and all such compound interest shall stand secured under the security created in terms of Article IV hereof.

7. It has been stated by the petitioner that in pursuance of the sanctioning of the financial assistance by Small Industries Development Bank of India and execution of loan agreement on 12th March, 1991, the RIICO has disbursed a sum of Rs. 86.75 lacs only, out of the entire amount of 90.00 lacs sanctioned vide letter dated 16th November, 1990.

8. Subsequently, on 13-12-1991 a "deed of modification" was signed by the petitioner on mutual agreement of both the parties.

9. The petitioner voluntarily agreed for change of rate of interest as follows:-

"Whereas according to the letter of intent, SIDBI refinance sanction and loan agreement referred to above, the rate of interest to be charged on the aforesaid loan was 12.5% per annum during implementation period and 13.5% for remaining period of loan/refinance.

Whereas consequent upon upward revision of rate of interest for term loan, the lender has intimated us vide letter No. ID.DI (92) dated 15-11-1991 about applicability of 18.75% per annum rate of interest on the term loan of Rs. 90.00 lacs sanctioned to the borrower company by the lender instead of 12.5% per annum.

Whereas the above change in rate of interest is to be incorporated in the Term Loan Agreement executed by the borrower company in favour of the lender on 12-3-1991."

16. Similar "deeds of modification" have been executed in other two writ petitions as well by the respondent and the petitioners.

11. This writ petition has been filed challenging the change of rate of interest as indicated in the "deed of modification".

12. Shri Anant Kasliwal appearing on behalf of the petitioner contended that the petitioner was not bound to pay extra interest, the "deed of modification" on which reliance was placed by the respondent was got signed by the petitioners under duress. There are other persons similarly situated who were granted loan but enhanced rate of interest is not being charged from them. This amounts to discrimination.

13. Coming to the point of discrimination, it has been admitted by the petitioner's counsel that none of those persons, from whom unenhanced rate of interest is being charged, have signed any "deed of modification". In view of this

admitted position, the question of discrimination does not arise. 14. Regarding the first point, it may be stated that as per the term loan agreement between the petitioner and the respondent, the rate of interest was dependant upon the rate at which refinance for the term loan was available from Small Industries Development Bank of India (SIDBI) plus 31/2% thereon. The petitioner knowing fully well the legal implications of the contract, has signed the "deed of modification". It was not a case of an illiterate person signing the deed without understanding the contents thereof. The theory of coercion and duress submitted by the petitioner is not acceptable and the submission so made is hereby rejected.

15. The term loan agreement did not envisage a fixed rate of interest during the . entire period of the term loan. The rate of interest payable on the term loan was variable and depended on the rate of interest of the refinance provided by the Industrial Development Bank of India/Small Industries Development Bank of India to the Rajasthan State Industrial Development & Investment Corporation Ltd. subject to a minimum of 121/2% during the period of implementation and 13 1/2% subsequent thereto.

16. Parties are bound by the terms and conditions of the "agreement for loan" and "deed of modification". The respondent could enhance the rate of interest unilaterally with reference to the "deed of modification".

17. Knowing fully well the terms and conditions of the loan the petitioner was motivated to set-up an industry in the State of Rajasthan to earn profit and no assurance or promise was ever made by the respondent that enhanced rate of interest would not be charged. The respondent merely informed the petitioner that in terms of the "deed of modification" and "loan agreement" between the parties, the rate of interest was enhanced to 18.75% with effect from 1-10-1991 and 18% till 1st of October, 1991. The enhancement of rate of interest amounts to a bilateral act of the parties and it is not open to the petitioner to challenge the same.

18. The revision in the interest rate structure was brought forth in response to the changing economical and financial conditions and had been uniformly made applicable to all categories of borrowers in the Small Scale Sector. Further, it was in supersession of the existing interest rate structure and in keeping with revision in interest rates announced by the Reserve Bank of India on October 8th, 1991.

19. Unless the "deed of modification" is set aside or cancelled by a court of competent jurisdiction on the ground of duress or coercion, it is binding between the parties as they have signed it with their eyes wide open. Accordingly, the petitioner has failed to make out a case for interference and is not entitled for any direction to the respondents not to demand enhanced rate of interest i.e. 18% and 18.75% from the petitioner.

20. The writ petitions being devoid of merit are hereby dismissed.