(1991) 09 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

INDUSTRIAL PRODUCTS, KARNAL — APPELLANT

Vs

Punjab National Bank — RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:

Citation : 1992 0 CPC 81 : 1992 1 CPJ 172 : 1992 1 CPR 70 : 1993 1 CLT 702

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Petition dismissed

Judgement

1. THE Complainant set up a unit for manufacture and sale of electrodes in 1981-82. For running the unit he obtained working capital facilities from the erstwhile Hindustan Commercial Bank Ltd. This Bank was amalgathated with the Punjab National Bank on the 19th December, 1986.

2. THE grievance of the Complainant is that in the beginning he was able to obtain credit and advances from the Bank through opening a single account. Subsequently, the Bank bifurcated it into cash credit, over draft, term loan, bill of discount, letters of credit accounts with different drawing powers, margins etc. and that this splitting up of his single account with the Bank was responsible for unnecessary complications and led to the Bank failing to provide the need based financial assistance to the Unit for its various requirements such as purchase of essential raw-materials (wire rods for manufacture of electrodes) and non-observance of the orders and the guidelines of the Government of India and the Reserve Bank of India regarding credit facilities to small scale industries. THE Complainant has also alleged that his banker violated the statutory banking norms and practices thereby caused serious financial crises for the unit. According to him an independent industrial consultant has assessed his avoid-able loss due to deficiency in services rendered by the Bank at Rs. 7,30,45,250/-. As per the details furnished by the Complainant this loss comprised of excess and erroneous charges for opening and closing of Letters of Credit, interest on bills retired late, non-provision of over draft facility to purchase electrode quality wire rods, unjustified insistence on margin money etc.

The Opposite Party, Punjab National Bank, has refuted the allegations made by the Complainant and has submitted that the partners of the partnership firm of M/s. Industrial Products, Karnal (Complainant) are Shri R.M. Jain and Shri J.M. Jain and that Mr. R.M. Jain is also the sole proprietor of the concern, M/s. Special Machines, that earlier Shri R.M. Jain was running other partnership firms viz. M/s. Weldwell and M/s. Weldflux at Karnal and had availed of loan facilities from the State Bank of India and the Hindustan Commercial Bank and had defaulted in repayment of the loans to the Banks, and that the partner (Shri R.M. Jain) of the Complainant firm (M/s. Industrial Products) is involved in litigation with the State Bank of India as a partner in the firm of M/s. Weld well and M/s. Weldflux and that the funds obtained for his partnership firm of Industrial Products (Complainant) were diverted to another of his partnership firm M/s. Modern Equipments in which his wife and two minor children were the partners. The Opposite Parties have further alleged that the Complainant had contravened financial discipline to be observed by him by diverting funds received from the Bank for personal use - leading a luxurious life - which resulted in loss to the firm including M/s. Industrial Products, the Complainant here.

The Opposite Party has further averred that the single account was split up by the erstwhile Hindustan Commercial Bank into different accounts viz. cash credit (Factory Type Pledge), overdrafts (Bils), term loans, bills discounting and letters of credit, in accordance with the directions of the Reserve Bank of India regarding credit to industry. The Opposite Party has further averred that the limits allowed under the various accounts to the Complainant were enhanced from time to time in 1981 -82 at the request of the Complainant. The Opposite Party the Punjab National Bank, was driven to transfer the accounts of the Complainant to Protested Advances Category in August, 1988 because of the failure of the Complainant to furnish the stock statements, balance sheets, sales summary etc. of the concern which he was bound to furnish and because of his failure to regularise the accounts.

3. THE Opposite Party has pointed out that a sum of Rs. 41,27,256/-was also pending for recovery from the Complainant on account of various loan facilities availed of by the Complainant, its partners and the Bank filed a suit for recovery of the amount in the Court of the Senior Sub-Judge, Karnal, in 1988 to recover the same. THE Complainant has also made a counter claim of Rs. 3,15;26,925/- against the Bank as loss and damages suffered by the Complainant in the same suit. THE Opposite Party has, therefore, argued that the case is subjudice in a Civil Court on the same issues and cause of action on which the Complainant has come before the National Consumer Disputes Redressal Commission. The Opposite Party has also taken preliminary objection that the complaint is barred by limitation as it pertains to 1986 and earlier that the matter is subjudice before a Civil Court, and that this Commission has already decided an identical case of M/s. Special Machines, Karnal v. Punjab National Bank. (Original Petition No. 32 of 1989) and therefore the complaint is not maintainable.

4. WE have carefully gone through the matter. The parties in this complaint and in the case of M/s. Special Machines are really the same : Shri R.M. Jain is the proprietor of M/s. Special Machines and he is one of the two partners of M/s. Industrial Products, the Complainant here. The Opposite Party in both these cases is the same viz.. the erstwhile Hindustan Commercial Bank and now the Punjab National Bank. The cause of action in both these cases is identical except so far as the amounts involved are concerned. The Original Petition No. 32 of 1989 M/s. Special Machines v. Punjab National Bank & Ors. was considered at great length by this Commission. After due consideration of the complaint petition and the reply thereto and the documents submitted therewith and the arguments of learned counsel for the parties this Commission felt that the questions arising for consideration in that case could not be satisfactorily adjudicated upon without elabaorate oral and documentary evidence being adduced and scrutinised, that elaborate scrutiny of the evidence can be satisfactorily undertaken only in regular civil suits and not in the proceedings before this Commission which are essentially summary in nature. Commission came to the conclusion that Section 13 of the Consumer Protection Act, 1986 clearly indicates that the statute does not contemplate the determination of the complicated issues of fact involving taking of elaborate oral evidence and adducing of voluminous documentary evidence and a detailed scrutiny and assessment of such evidence by the Consumer Redressal Forums. The Commission, therefore, came to the conclusion that in view of the complex nature of the questions of fact and law arising in that case for determination, a satisfactory adjudication under this act was not feasible and therefore declined to adjudicate upon the complaint and referred the Complainant to seek remedy, if he so chooses, in a Civil Court. In fact the Opposite Party, the Punjab National Bank, has raised the same preliminary objection before us. In view of only Order in M/s. Special Machines'' case (Supra) we find force in this contention of the learned counsel for the Opposite party particularly in view of the fact that the parties and causes of action are essentially similar in the two cases. It may be mentioned here that M/s. Special Machines took appeal to the Supreme Court against our Order and the same was dismissed in limine. Accordingly, we uphold the preliminary objection raised by the Opposite Party, the Punjab National Bank and dismiss the complaint petition. Petition dismissed.

