

(2016) 07 DEL CK 0059

In the Delhi High Court

Case No : W.P. (C) 385 of 2016 & CM No. 1576 of 2016 (for interim directions)

Raghav Buildcon Private Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-07-2016

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 — Section 8
Banking Regulation Act, 1949 — Section 47A

Citation : (2016) 234 DLT 4 : (2016) 158 DRJ 324

Hon'ble Judges : Mr. Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : Mr. Arvind Nigam, Senior Advocate with Mr. Hrishikesh Baruah & Mr. Pranav Jain, Advocates, for the Appellant; Mr. Akshay Makhija, CGSC, Mr. H.S. Parihar & Mr. K.S. Parihar, Advocates, Mr. Sanjay Bajaj & Mr. Ajay Bahl, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Rajiv Sahai Endlaw, J.—W.P.(C) No.385/2016 (i) seeks mandamus to the respondent No.3 Punjab and Sind Bank to refund/revert the illegal, unreasonable and arbitrary debits made in the Term Loan Account bearing No.03881200055026 of the petitioner with the respondent No.3 Bank and to credit the same to Current Account bearing No.0388110043358 maintained by the petitioner with the Nehru Palace, New Delhi branch of the respondent No.3 Bank; (ii) seeks mandamus to the respondent No.3 Bank to close the term loan account aforesaid of the petitioner and to release all the securities mortgaged therein and as detailed in the petition; (iii) seeks a mandamus to the respondent No.1 Union of India (UOI) for conducting an enquiry in the matter and to pass appropriate direction/remedial measures in terms of Section 8 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (Banking Acquisition Act); and, (iv) seeks mandamus to the respondent No.2 Reserve Bank of India (RBI) for conducting enquiry and thereafter to pass appropriate directions in terms of the Banking Regulation Act, 1949, particularly Section 47A

thereof against the respondent No.3 Bank for violating the various Circulars issued by the respondent No.2 RBI from time to time.

2. W.P.(C) No.385/2016 came up first before this Court on 15th January, 2016, when on the statement of the counsel for the petitioner that the said petition had in fact been filed along with another petition which had not got listed till then, the same was adjourned to 19th January, 2016.

3. W.P.(C) No.437/2016 (i) seeks a mandamus to the respondent No.3 Bank to remove/rectify the illegal, unreasonable and arbitrary debits made in the accounts and the illegal, unreasonable and arbitrary demands detailed in paragraph 9(LXX) of the said petition and the statement of account dated 15th December, 2015 Annexure P-4 to the petition in the Over Draft (OD) Limit account maintained by the petitioner with the respondent No.3 Bank; (ii) seeks a mandamus to the respondent No.1 UOI to conduct an enquiry and pass appropriate directions in terms of Section 8 of the Banking Acquisition Act; and, (iii) seeks a mandamus to the respondent No.2 RBI for conducting enquiry and passing directions against the respondent No.3 Bank in terms of provisions of the Banking Regulation Act for violation of the Circulars of the respondent No.2 RBI.

4. W.P.(C) No.437/2016 came up first before this Court on 18th January, 2016, when the same was also posted to 19th January, 2016.

5. Being prima facie of the opinion that the writ petitions were not maintainable in view of the alternative remedy available under the civil laws for the reliefs claimed, the senior counsel for both the petitioners (the two petitioners were stated to be sister concerns) and the counsels for the respondents appearing on advance notice were heard in extensor on the said aspect on 19th January, 2016 and order reserved.

6. It is the case of the petitioner in W.P.(C) No.385/2016:

(i) that the petitioner, engaged in the business of development of real estate projects, to finance part of its activities had in June, 2008 availed of a term loan of Rs. 20 crores from the respondent No.3 Bank; the sanction letter dated 20th June, 2008 contained all the terms and conditions which were to govern the contractual relationship between the petitioner and the respondent No.3 Bank;

(ii) that it was specifically provided that the rate of interest would be 15.20% per annum on monthly basis and the upfront fee would be as per the Bank Guidelines;

(iii) that there was no mention of any provision for obtaining external credit rating;

(iv) that the petitioner and its Directors were also made to sign a number of documents but copies whereof not given to the petitioner in spite of demand;

(v) that the petitioner provided securities including of immovable property and corporate guarantee of petitioner in W.P.(C) No.437/2016 for re-payment of the

said term loan;

(vi) that upfront fee @ 2% to the tune of Rs. 44,94,400/- was debited on 16th July, 2008;

(vii) that as per the sanction letter, the total interest to be charged was Basic Prime Lending Rate (BPLR) + 0.5% + 0.70%;

(viii) that on certain occasions in the financial year 2008-2009, "the respondent No.3 Bank besides charging extra processing/upfront fee also charged interest at a rate higher than that stipulated in the sanction letter"

(ix) that from the financial year 2008-2009, the petitioner made several requests to the respondent No.3 Bank to rectify the amount of interest charged;

(x) that the representations dated 16th January, 2010 and 23rd March, 2010 for refund of excess interest amounting to Rs. 14,08,714/- charged in the account were made;

(xi) that vide sanction letter dated 9th March, 2010, additional term loan of Rs. 5 crores was sanctioned;

(xii) that another amount of Rs. 11,03,000/- was erroneously debited from the account of the petitioner on 23rd March, 2010 as processing fee, without there being any provision therefor in the sanction letter;

(xiii) that another representation dated 30th March, 2012 was made to the respondent No.3 Bank to reduce the rate of interest to 13% as had been assured;

(xiv) that vide letter dated 31st March, 2012, the respondent No.3 Bank sanctioned the review of the aforesaid two term loans and the remaining balance at that time in the first term loan was Rs. 15.78 crores and the second term loan was Rs. 3.84 crores; (xv) that in the sanction letter dated 31st March, 2012 supra for the first time a provision was made for obtaining an external credit rating and for imposing penalty; (xvi) that the petitioner approached the external credit rating agency CRISIL and whose rating was provided to the respondent No.3 Bank;

(xvii) that after the sanction letter dated 31st March, 2012, further sums of Rs. 11,00,350/- and Rs. 11,23,000/- were debited from the account of the petitioner as upfront fee/processing fee on 7th May, 2012 and 26th May, 2012, without any rationale therefor and without informing the petitioner;

(xviii) that the aforesaid amount could not have been debited in terms of the Fair Practise Code (FPC) issued by the respondent No.2 RBI;

(xix) that the respondent No.3 Bank vide letter dated 7th June, 2013 proposed to debit penal interest of Rs. 25,29,798/- from the account of the petitioner for want of external agency rating; the petitioner immediately drew attention to the report submitted of CRISIL; however the respondent No.3 Bank nevertheless charged penal interest to the account of the petitioner;

(xx) that the respondent No.3 Bank in contravention of sanction letters and banking practices created a charge on the properties of the petitioner which was much higher than the value of the loan availed, again in violation of bank's FPC;

(xxi) that the term loans were again reviewed on 28th September, 2013 and in pursuance whereof a further sum of Rs. 5,46,912/- was debited from the account of the petitioner on 29th January, 2014, even though there was no provision thereof;

(xxii) that in this manner, a total excess amount of Rs. 85.75 lakhs had been erroneously debited from the account of the petitioner and representation dated 3rd March, 2014 was made in respect thereof;

(xxiii) that the respondent No.3 Bank as a counter-blast claimed that there were irregularities of Rs. 1.378 crores in the first term loan and of Rs. 34.14 lakhs in the second term loan account;

(xxiv) that the respondent No.3 Bank in spite of repeated reminders of the petitioner refused to reconcile the account;

(xxv) that the petitioner submitted a detailed working of the actual interest chargeable in its account and on scrutiny whereof the respondent No.3 Bank admitted that it had overcharged interest in the account of the sister concern of the petitioner to the tune of Rs. 72,41,999/-;

(xxvi) that vide letter dated 11th March, 2015, the petitioner confirmed the balance of Rs. 23,20,012.50 paise on as 31st December, 2014; this confirmation was made subject to the pending reversal of the excess amounts deducted;

(xxvii) that upon the failure of the respondent No.3 Bank to reconcile the account, the petitioner and its sister concern approached the Banking Ombudsman;

(xxviii) that the respondent No.3 Bank as a counter-blast started issuing letters raising unauthorised, illegal, arbitrary and unreasonable debit entries from the sister concern of the petitioner;

(xxix) that the Banking Ombudsman in the meeting held on 23rd July, 2015 directed both the parties to sit together and reconcile the claims;

(xxx) that in terms thereof, the petitioner did a joint reconciliation on the point of interest charges on 24th July, 2015 and 27th July, 2015 and found excess interest to the tune of Rs. 48,59,897/- and informed the respondent No.3 Bank of the same vide its letter dated 27th July, 2015;

(xxxi) that on 23rd September, 2015, the Banking Ombudsman directed both the parties to prepare a document reflecting agreed areas and disagreed areas; though the respondent No.3 Bank admitted total excess of Rs. 43,49,745.79 paise was charged as interest but did not agree to reverse the excess processing fee charged and the additional interest charged on account of alleged non-

submission of external credit rating;

(xxxii) that after execution of the joint statement, issues were examined by Banking Ombudsman and order reserved; though no order was received but the Banking Ombudsman vide letter dated 8th December, 2015 informed the petitioner that no deficiency in service rendered by the respondent No.3 Bank had been found and the case was closed;

(xxxiii) that from June, 2008, the respondent No.3 Bank has charged excess interest in the sum of Rs. 76,35,608/- to the account of the petitioner;

(xxxiv) that the respondent No.3 Bank by way of letter dated 27th August, 2015 accepted that Rs. 43,49,745.79 paise was excess interest charged;

(xxxv) that according to the petitioner, the petitioner is entitled to refund of the entire excess amount charged i.e. Rs. 48,59,897/- along with compound interest as well as damages;

(xxxvi) that there is no policy of the respondent No.3 Bank to impose the said debit entries which are imposed as per the whims and fancies of the officials of the respondent No.3 Bank;

(xxxvii) that the debit of Rs. 5,84,244/- on account of non-submission of external credit entries is also bad;

(xxxviii) that the respondent No.3 Bank on 9th November, 2015 credited the Current Account of the petitioner with Rs. 53,65,302.99 paise without any intimation or particulars;

(xxxix) that even after the aforesaid credit, an amount of Rs. 51,45,017.48 paise remains payable to the petitioner and which the petitioner is entitled to recover from the respondent No.3 Bank.

7. It is the case of the petitioner in W.P.(C) No.437/2016:

(a) that a OD limit of Rs. 19 crores was sanctioned by the respondent No.3 Bank in its favour on 28th February, 2008;

(b) that the petitioner had furnished securities for re-payment thereof;

(c) that though there was no mention in the sanction letter of payment of upfront fee/processing fee but a sum of Rs. 6,40,500/- was debited thereto on 31st March, 2008;

(d) that the said OD limit was renewed after 12 months and whereupon a sum of Rs. 6,28,710/- was deducted from the account of the petitioner towards upfront fee/processing fee;

(e) that the aforesaid deductions were contrary to the FPC of the respondent No.3 Bank;

(f) that in the financial year 2008-2009, the respondent No.3 Bank entered

incorrect entries in the computer system resulting in a higher rate of interest being charged to the petitioner;

(g) that the requests of the petitioner from the financial year 2008-2009 for rectification of the amount of the interest charged did not bear any fruit;

(h) that a Chartered Accountant engaged by the petitioner though at the instance of the respondent No.3 Bank found a sum of Rs. 31,90,565/- to have been charged extra but no action was taken thereon;

(i) that the OD limit was on 2nd February, 2010 enhanced from Rs. 19 crores to 25 crores and again processing fee of Rs. 13,78,750/- was charged without any basis;

(j) that OD limit was renewed every 12 months, further amounts of Rs. 14,04,500/- and 42,93,750/- were illegally debited to the account of the petitioner;

(k) that the representations of the petitioner also did not bear any fruit. (Need to record any further details of the grievances of the petitioner in this judgment is not felt and suffice it is to state that according to the petitioner wrongful debits of Rs. 97,41,584/- and Rs. 66,98,630.14 paise have been made).

8. The purport of giving all the particulars qua W.P.(C) No.385/2016 and some of the particulars qua W.P.(C) No.437/2016 is to show the flavour of the grievances of the petitioners against the respondent No.3 Bank and it was in view thereof that I was prima facie of the opinion that the question, whether the debits by the respondent No.3 Bank in the account of the petitioners are wrongful or not i.e. in violation of the contract between the petitioners and the respondent No.3 Bank and/or in violation of any binding Circulars of the respondent No.2 RBI could not conveniently be resolved in jurisdiction under Article 226 of the Constitution of India and the remedy if any of the petitioners was to either avail of the civil remedies in this regard or in the event of the respondent No.3 Bank initiating any proceedings for recovery thereof from the petitioners, contest the said claim including on the grounds as raised in these petitions. It was also felt that the claim in the petitions is a money claim and/or a claim for declaration that the monies which according to the respondent No.3 Bank are due from the petitioners are in fact not due. It was yet further felt that if this Court were to start entertaining petitions as the present one, the pendency of the present petitions may come in the way of the respondent No.3 Bank initiating proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for realisation of its dues, thereby frustrating the spirit and provisions of the said two legislation's. It was yet further felt that unless such petitions are nipped in the bud, even the pendency thereof was fatal to the larger public interest in maintaining healthy banks, as the petitions of the present nature are designed to be obstacles in early recovery by the banks of their dues and for which purpose

the legislation's aforesaid are devised. It was yet further felt that to start entertaining disputes as the present one where money claims made by a bank against its customers are disputed on the ground of being contrary to the contract of the bank with its customers and/or the law would amount to converting the extraordinary jurisdiction vested in this Court under Article 226 into ordinary civil jurisdiction and would come in the way of this Court in exercise of its extraordinary jurisdiction expeditiously dealing with the deserving matters.

9. The senior counsel for the petitioners argued with reference to the paper book of W.P.(C) No.385/2016 and drew attention to:

(i) letter dated 27th August, 2015 of the respondent No 3 Bank to the petitioner at page 206 of the paper book to contend that the respondent No.3 Bank therein on recalculation found excess interest to have been charged and which was rectified;

(ii) letter dated 20th May, 2015 of the office of the Banking Ombudsman closing the case of the petitioner;

(iii) para 19 of ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. (2004) 3 SCC 553 laying down that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case does not require the Court entertaining a petition under Article 226 of the Constitution of India to relegate the parties to a suit and that in an appropriate case, the writ Court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition, even if the same arises out of contractual obligation and/or involves some disputed questions of fact;

(iv) argued:

(a) that the respondent No.3 Bank is claiming interest even on the wrongfully charged amount;

(b) that the respondent No.3 Bank is charging process fee without there being any provision therefor;

(c) that these issues can be decided in writ jurisdiction;

(d) that the Supreme Court in Joshi Technologies International Inc. v. Union of India (2015) 7 SCC 728 also in para 69 held that there is no absolute bar to the maintainability of the writ petition in contractual matters or where there are disputed questions of fact or even when monetary claim is raised, though went on to hold that discretion lies with the High Court which under certain circumstances, can refuse to exercise and would normally not be exercised;

(e) drew attention to State of Kerala v. M.K. Jose (2015) 9 SCC 433 reiterating ABL International Ltd supra and further holding that if from the materials that come on record it is clearly evincible, the writ Court may exercise the power of judicial review and argued that it is so in the present case;

(f) drew attention to the judgment dated 28th October, 2013 of this Court in W.P. (C) No.1161/2010 titled Fortuna Foundation and Engineers AMD Consultants Pvt. Ltd. v. RBI laying down that RBI cannot ignore the interests of the borrowers and if satisfied that a particular Non-Banking Financial Company is charging interest at unreasonable rates or levying charges which are not called for, would be entitled to issue appropriate directions to the financial institution to modify the rate of interest or charges and to refrain from levying the same;

(g) drew attention to Sardar Associates v. Punjab & Sind Bank (2009) 8 SCC 257 laying down that since a public sector bank is bound by the guidelines issued by the RBI, the Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT) are entitled to enforce the same;

(h) referred to my judgment in DLF Limited v. Punjab National Bank (2011) 180 DLT 435 where the demand of the petitioner in that case for pre-payment charges was quashed.

10. Per contra, the counsel for the respondent No.3 Bank argued:

(I) that the petitioners are averring errors in the entries in the account since the year 2008;

(II) that in whichever objections of the petitioners merit was found, the entries were reversed;

(III) that vide letter dated 4th August, 2015 of the respondent No.3 Bank to the petitioner at page 173 of the paper book in W.P.(C) No.385/2016 the position was explained to the petitioner;

(IV) drew attention to page 76 of the paper book being a part of the letter dated 9th March, 2010 of sanction and which provides for charging of upfront fee/ processing fee in terms of the Circular dated 28th July, 2009;

(V) that the charging of interest is in terms of the letter of sanction.

The counsel for the respondent No.3 Bank also handed over the letter dated 20th October, 2015 of the Banking Ombudsman advising the respondent No.3 Bank to refund the excess interest amount and stated that the respondent No.3 Bank has complied therewith. Extract of the sanction letter providing for the undertaking to be furnished by the petitioners that penal interest @ 2% above the normal rate would be recovered for the period of default was also handed over and it was contended that interest which is disputed by the petitioners is thus in terms of the contract.

11. The senior counsel for the petitioners in rejoinder:

(A) contended that the Banking Ombudsman had failed to furnish a detailed order;

(B) drew attention to the statement of account dated 15th December, 2015 Annexure P-30 to the writ petition showing reversal of entries of excess interest

in the amount of Rs. 4,62,329.85;

(C) drew attention to the letter dated 12th November, 2010 at page 264 of the paper book of the RBI to all the banks advising them to disclose "all in cost inclusive of all such charges involved in processing/sanction of loan application in a transparent manner to enable the customer to compare the rates/charges with other sources of finance and to ensure that such charges/fees are non-discriminatory" and contended that the respondent No.3 Bank is not doing so;

(D) argued that the respondent No.3 Bank is holding security in excess of the amount due and refusing to release the same.

12. I am afraid, none of my aforesaid doubts about the maintainability of the writ petition stand addressed by any of the contentions of the senior counsel for the petitioners. What the petitioners are wanting this court to do in exercise of jurisdiction under Article 226 of the Constitution is to scrutinise the statement of account of the petitioners since the year 2008 and to adjudicate whether the disputed entries therein are in accordance with law and contract or not and if finds the same to be not so, to pass consequential directions. In such an exercise, the question of limitation is also likely to arise as unlawful debits and entries are claimed since the year 2008. Though the jurisdiction to do such an exercise, as the petitioners are wanting this Court to do, was traditionally and inherently of the Civil Court but with the enactment of the DRT Act and the SARFAESI Act, now stands vested in the Debt Recovery Tribunal to the extent provided therein. Once a specialised forum has been created and before which the petitioner would have full liberty to take all the pleas as are raised herein, I fail to see, as to why this Court should entertain such a petition. To do so, would tantamount usurping to itself the jurisdiction vested by law in DRT. The DRTs which are under the supervisory jurisdiction of this Court, even if approached by the respondent No.3 Bank during the pendency of these petitions, are likely to hesitate in proceeding to adjudicate when the same question is pending adjudication before this Court. Even otherwise, there is no reason to open up the fora of Article 226 in a matter which is within the jurisdiction of a specialised forum. The principle as enunciated in *T.P. Vishnu Kumar v. Canara Bank*, P.N. Road, Tiruppur (2013) 10 SCC 652 and *United Bank of India v. Satyawati Tondon* (2010) 8 SCC 110 that a writ remedy cannot be used to prevent a fora as DRT from exercising jurisdiction is applicable to the petition of the present nature as well.

13. Supreme Court, in *Joshi Technologies International Inc. supra*, after reiterating that there is no bar to entertain writ remedy in contractual matters or when a money claim is made or when disputed questions of fact arise, went on to hold that normally the High Court should not entertain such a petition if there is no public law character to the issue or if serious disputed questions of fact of complex nature requiring oral evidence arise or if alternative fora are available. So is the position here. There is no public law character to the dispute raised in these petitions i.e. whether the money claimed by the respondent No.3 Bank

from the petitioners is due from the petitioners or not. In fact, even qua the Civil Court, I have held in Radnik Exports v. Standard Chartered Bank that a suit for declaration that the monies claimed by the defendant are not due would not lie, as such defence can be adjudicated before the DRT in a proceeding for recovery of those monies. The principle of Section 34 of Specific Relief Act, 1963 that mere declaration without consequential relief is not maintainable is also attracted. Supreme Court, in Muni Lal v. Oriental Fire & General Insurance Co. Ltd. (1996) 1 SCC 90 held mere declaration that monies are due, without claiming recovery thereof, cannot be claimed. If it were to be held that after returning a finding as sought by petitioners, direction is to be issued for payment of said amount by respondent no.3 Bank to petitioners, then this becomes a writ petition for recovery of money and which also, as per Joshi Technologies International Inc. supra is not maintainable.

14. The adjudication of all these questions would also involve examination and cross-examination of witnesses, to gauge whether either of the parties have by their conduct acquiesced in the stand of the other. It has also been seen whether the petitioner, by keeping quiet, now till January, 2016 with respect to its grievances of the year 2008 onwards, is entitled to any relief with respect thereto.

15. On the aspect of maintainability of writ petition, reference may also be made to Dr. Yashwant Singh v. Indian Bank (2015) 220 DLT 667 (DB).

16. I therefore do not find the petitions to be maintainable and dismiss the same.

17. No costs.