(2010) 09 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA	APPELLANT
Vs	
MD.ANWAR MANAGING DIRECTOR HOTEL TAJ UTKAL PVT. LTD	RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Citation : 2010 0 NCDRC 159 : 2010 4 CPJ 58

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision petition is, accordingly disposed of

Judgement

1. THE present revision petition has been filed by the Small Industries Development Bank of India (SIDBI) (hereinafter referred to as the Petitioner) against the order of the Orissa State Consumer Disputes Redressal Commission (for short the State Commission) in appeal No.978/1997.

2. BRIEFLY the facts of the case according to the Petitioner are that one Md. Anwar (Respondent in this case) who is Managing Director of a Private Ltd. Company applied to the Petitioner Bank for sanctioning a loan to construct a 52 bedded Deluxe Hotel cum Business Communication Centre at Rourkela vide his application dated 15.3.1995. The Petitioner, after due diligence and consultation with the Respondent wrote to him on 26.5.1995 that SIDBI is in principle agreeable to sanctioning a term loan not exceeding 53 lakhs for the hotel project. Petitioner also included the terms and conditions which would have to be accepted by the Respondent within 30 days. The terms and conditions, interalia, included payment of 1% upfront fee on the loan amount payable to the Petitioner Bank on or before the date of issuing of letter of intent. The Respondent deposited the upfront fee of Rs.53,000/- vide demand draft dated 25.5.1995 and also conveyed his unqualified acceptance of the terms and conditions. On 18.7.1995, Petitioner communicated the specific formalities to be completed by the Respondent for availing the loan amount. But instead of complying with these, the Respondent started raising a host of issues and making false allegations of harassment and delay in sanctioning the loan. On 29.12.1995,

Respondent wrote a letter to the Petitioner that Rs.53,000/- upfront fee should be refunded to him within 15 days or else legal proceedings will be initiated. In reply, on January 25, 1996, Petitioner informed the Respondent in writing that upfront fees are not refundable and that although eight months had passed since the Petitioner had sent the Respondent the letter of intent, various formalities pertaining to execution of documents and agreement had still not been completed by the Respondent though these were to be done within four months. The Petitioner also informed that if Respondent further delays complying with these terms and conditions, Petitioner will be constrained to cancel sanction of the loan. The Respondent, while not disputing that he had applied to the Petitioner for a loan of Rs.53 lakhs for a Deluxe Hotel Project and had also paid upfront fee for Rs.53,000/-, denied the contention of the Petitioner that he had not fulfilled the terms and conditions necessary for sanctioning and disbursement of the loan. Respondent alleged that it was the Petitioner who had created all sorts of necessary hurdles by changing the terms and conditions of the loan from time to time which had not been earlier discussed or communicated to the Respondent. It was under these circumstances that the Respondent wrote a letter on 20.12.1995 requesting the Petitioner to refund the upfront fee of Rs.53,000/- because he was convinced that the Petitioner was not in a mood to sanction the loan. When the Petitioner refused in writing to refund the upfront fee, the Respondent had no option but to file a complaint before the District Forum on grounds of deficiency in service and seeking refund of Rs.53,000/- with interest, Rs.3,50,000/- towards compensation for loss of business and mental agony etc. Rs.10,000/- towards cost of litigation and Rs.30,000/- towards expenses on the officials of the Petitioner. The District Forum allowed the complaint on the grounds that there was inordinate delay in sanctioning the loan and also that there was no provision in any of the documents in evidence that the upfront loan is not non-refundable. The District Forum, therefore, directed the opposite party to pay Rs.53,000/- together with interest thereof @ 14% p.a. from 27.5.1995 till the date of actual payment to the complainant, Rs.3000/- towards compensation and Rs.1000/- as costs of litigation. The order was to be complied with within 30 days of its receipt.

Aggrieved by the order of the District Forum, the Petitioner filed an appeal before the State Commission who dismissed the Appeal with the following order :- "We do not find any merit in the contention of the appellant that the upfront fee deposited by the Respondent cannot be refunded to him. There may be valid reason for non-disbursement of the loan because the Respondent did not comply necessary formalities required for the purpose. But the appellant cannot withhold the amount deposited as upfront fee and should have refunded it. Had he deposited it is some bank, it would have accrued interest. Therefore, the District Forum has rightly directed the appellant to refund Rs.53,000/-. The rate of interest fixed by the District Forum appears to be excessive. We accordingly reduce it from 14% to 9%. The appellant shall pay to the Respondent Rs.53,000/- together with interest @ 9% p.a. from 27.5.1995 together with compensation of Rs.3000/- and cost of Rs.1000/- as ordered by the District Forum by 30.9.2006, failing which the operative part of the impugned order shall revive."

3. AGGRIEVED by the above order, the present revision petition has been filed by the Petitioner. Learned counsel for both parties appeared today for final arguments. Learned counsel for the petitioner stated that both the District Forum and State Commission had erroneously concluded that there was deficiency in service and that the petitioner was entitled to refund of the upfront fee. In fact the upfront fee was like a processing fee which was utilized by the Petitioner for funding the field visits of its officers and other expenditure incurred in assessing and processing the Respondents loan application. Further there was no deficiency in service on the part of the Petitioner who in fact had been in regular communication with the Respondent advising him to complete the formalities and execute the loan documents without delay and had requested them to contact the petitioner for any clarifications etc. It needs to be appreciated that petitioner being a Public Finance Statutory Institution has to ensure adherence to the various terms and conditions governing sanction of such loans. The delay that occurred was totally on the part of the Respondent who wanted to either deviate from or seek relaxation for the laid down terms and conditions. There was no deficiency in service on the part of the Petitioner and the fault for the delay, if any was attributable to the Respondent. Learned counsel for the Petitioner in support of his case also cited a judgment of the Honble Supreme Court in Managing Director, Maharashtra State Financial Corporation & Ors. Vs. Sanjay Shankarsa Mamarde, (2010) 7 SCC 489. In that case the Honble Supreme Court while setting aside the order of the National Consumer Disputes Redressal Commission had ruled that the Maharashtra State Financial Corporation was within its right to impose an upfront fee and also to stop disbursement of the loan because of default on the part of the complainant in failing to adhere to the terms and conditions of the loan agreement. The circumstances in the present revision petition are similar to the case cited above (which involved a Public Sector Corporation extending a loan to a private party for building a hotel) and, therefore, the revision petition needs to be accepted. Learned counsel for the Respondent denied that the Respondent had been delaying submission of important documents and reiterated that it was the Petitioner who had caused both delay and harassment by stating new terms and conditions not communicated to the Respondent earlier. Further, nowhere has it been stated or written that the upfront fee which was paid by the Respondent is not refundable more so when the loan was not even sanctioned. The Respondent did his best to meet all the requirements stipulated in the terms and conditions and Respondents consultant visited the Petitioners office atleast 10-15 times to pursue the matter. A lot of money was also spent on telephone/fax to get the loan proposal accepted. Thus, there was clear deficiency in service and this was rightly appreciated by both the learned lower fora below who ruled in favour of the Respondent.

4. WE have carefully considered the averments of the learned counsels and have carefully gone through the evidence on record. At the outset, we must clarify that there are material differences in the facts and circumstances in the Honble Supreme Court case cited by the Petitioners counsel and the present revision petition. In the case before the Apex Court, the cheque issued by the complainant in favour of the Petitioner Corporation for Rs.30,000/- as upfront fees was returned unpaid by the Bankers ; because it was dishonoured. So the issue regarding its non refundability or otherwise did not arise. Secondly ; the Corporation had already sanctioned and disbursed two installments of the loan in the case cited above and the loan was later cancelled on the grounds of violation of certain terms and conditions as well as slow progress of the project. In the present case, the Petitioner had agreed only in principle to sanction the loan as indicated in its letter of intent in May 20, 1995. It had not sanctioned the loan as is clear from para 5 of the letter of intent which reads as follows :- "Please note that this communication should not be construed as giving rise to any binding obligation on the part of SIDBI, unless the company communicates to SIDBI within 30 days from the date of receipt of this letter of intent that the terms and conditions set out herein are acceptable to it and unless the loan agreement and other documents relating to the above facility are executed by the company in such forms as may be required by SIDBI within four months from the date of this letter of intent or such further time as may be allowed by SIDBI in its absolute discretion."

In view of the above differences in the two cases, the judgment of the Apex Court does not help the Petitioner in the present case. It is also a fact that there is no provision or condition available in any of the documents on record that upfront fee is not refundable. The Petitioner, therefore, cannot take a plea in the absence of the above for not refunding it more so when the loan had not even been sanctioned. We, therefore, agree with the view taken by the State Commission and District Forum that the Petitioner cannot withhold refund of Rs.53,000/- to the Respondent. We, however, find force in the contention of the Petitioner that they it could not be held responsible for deficiency in service because there is ample evidence on record that right from March 1995, following receipt of the application from the Respondent, Petitioner had communicated the specific information and documents required for processing the loan and had also time and again assured the Respondent that Petitioner would be glad to provide any information and clarification that Respondent may require. Petitioner was also prompt in responding to the various letters written by the Respondent. It also needs to be appreciated that the Petitioner, being a financial institution is bound by its own rules and regulations governing the sanctioning of loans. Having considered all the facts and circumstances, of the case, we are of the view that the Respondent is not entitled for any interest on the amount of Rs.53,000/- with compensation of Rs.3000/- and Rs.1000/- as costs.

5. IN the result, the revision petition is partly allowed and the impugned order passed by the State Commission so far as it directs the Petitioner to pay interest

@ 9% from 27.5.1995 on the amount of Rs.53,000/-, compensation of Rs.3000/- and costs of Rs.1000/- is set aside. However, the Petitioner is directed to refund the amount of Rs.53,000/- being the 1% upfront fee to the Respondent within a period of four weeks failing which the amount shall carry interest @ 9% from the date of this order. Revision petition is, accordingly disposed of.

