IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20123 of 2018
Date of decision : 14.08.2018

M/s Raja Fat & Feeds Pvt. Ltd., Rajpura and another .... Petitioners

VS

Axis Bank Ltd. and others
...... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present:- Mr.V.K.Jindal, Sr. Advocate with
Mr.Abhinav Oberoi, Advocate and
Mr. Gopal Soni, Advocate
for the petitioners.

***

AVNEESH JHINGAN, J.

1. This writ petition has been filed seeking quashing of order dated 18.10.2017 (Annexure P-5) imposing penalty on the petitioners @ 2% per annum. A prayer is also made for quashing of order dated 09.04.2018 (Annexure P-6) passed by Banking Ombudsman, reducing the penalty from 2% to 1% per annum. Further, a prayer has been made for seeking directions to the respondent-Bank to release the documents of industrial property mortgaged as collateral security against the credit facility.

2. Petitioners No.1 and 2 are private limited companies and the writ petition has been filed through its Directors. Axis Bank Limited, Mall Road, Ludhiana; Ombudsman, appointed and constituted under the Banking Lokpal Planning, 2006 and Reserve Bank of India, Sector-17, Chandigarh have been arrayed as respondents No.1 to 3 respectively in the writ petition.

3. The petitioner companies approached respondent No.1 for sanctioning of cash credit facilities. Both the petitioners were sanctioned

credit facility limit to the tune of Rs. 495.59 lakhs each. The credit facility was sanctioned vide letter dated 27.07.2015. The facility was for 12 months subject to further extension. The terms and conditions were agreed upon by the parties. In the terms and conditions, there were 29 pre-disbursement conditions. The credit facility was renewed from time to time and it was continued till the year 2017-18.

4. The grievance raised by the petitioners in the present writ petition is regarding the imposition of penalty by the bank for violation of pre-disbursement conditions No.5 and 6.

5. The contention raised by learned counsel for the petitioners was that the pre-disbursement conditions were purely procedural and were not supposed to be implemented. It was further contended that once the credit amount was disbursed, there was no occasion to comply with the pre-disbursement conditions. He argued that by disbursing the credit amount, the bank had waived off pre-disbursement conditions.

6. At this stage, the relevant pre-disbursement conditions are quoted below :-

> *1-4 x x x x x*
>
> *5. Company to submit an undertaking that all the business transactions will be routed through account with Axis Bank.*
>
> *6. Current Account with HDFC Bank Ltd., J&K Bank, SBOP & PNB to be closed and the customer to provide closure proof latest by 31.12.2015.*
>
> *7. Non-compliance of any of the above conditions (5 & 6) may attract penalty @ 2.00% p.a. for*

period of default.

8-9 x x x x x x

10. The borrower shall undertake that it shall maintain minimum level of TNW to the tune of Rs.292.71 lacs (Rs.346.23 lacs w.e.f. 31.03.2016) & USLs at Rs.66.23 Lacs during the currency of bank finance, failing which penalty @ 1% p.a. + ST will be charged for the period of default.

11 x x x x x x

12. Gearing ratio & Gearing ratio (taking USL as quasi-equity) not to exceed the level of 3.50:1 & 2.75:1 (w.e.f.31.03.2016) during the currency of bank finance."

7. The contentions raised by learned counsel for the petitioners are not well founded and are liable to be rejected.

8. From a perusal of the conditions, it is evident that these are not mere procedural conditions. These conditions have been imposed by the respondent-bank keeping in view the commercial expediency of the transaction. Condition No.5 ensures that the petitioners who were availing the cash credit facilities should route all their business transactions through the respondent-bank thereby giving more business to the bank. In order to ensure that pre-disbursement condition No.5 is complied with in letter and spirit, condition No.6 puts an obligation on the petitioners to close their current accounts with HDFC Bank Ltd., J&K Bank, SBOP and PNB. The proof regarding the closure of the above said bank accounts was to be provided latest by 31.12.2015. Failure to comply with clause No.5 and 6, attracts penalty @ 2% per annum for period of default under clause 7 of pre-

disbursement conditions.

9. As the pre-disbursment conditions are not procedural in nature, the availing of the cash credit facility from a bank is a commercial transaction. Both the parties agreed to the terms and conditions and thereafter, the cash credit facilities were availed by the petitioners. It is an admitted fact that the petitioners agreed to all the terms and conditions for sanctioning of the credit facility and these conditions included pre-disbursement conditions. If the petitioners were aggrieved of pre-disbursement conditions No.5, 6 and 7, they had a choice of not availing the cash credit facility from respondent No.1.

10. Moreover, once the terms and conditions are accepted by both the parties, these have to be complied with and honoured as a whole. The petitioners can not later in the time, turn around to argue that certain conditions were not binding.

11. Reliance in this regard is placed upon the decision of the Supreme Court in the case of **New Bihar Biri Leaves Co. v. State of Bihar, 1981(1) SCC 537,** it was held that :-

> *" It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is qui approbat non reprobat, (one who approbates cannot reprobate). This principle, though originally borrowed from Scots Law, is now firmly embodied in English Common Law. According to it, a party to an Instrument or transaction cannot take advantage of one part of a*

document or transaction and reject the rest, That is to say no party can accept and reject the same instrument or transaction."

12. The contentions raised by learned counsel for the petitioners that Clause No.5 and 6 were pre-disbursement conditions and once the credit amount has been disbursed, there was no occasion with the bank to levy penalty and the conditions were waived off, has a fallacy.

13. From the reading of clause 6 of pre-disbursement conditions, it is evident that the current accounts with other banks were to be closed latest by 31.12.2015. The credit amount was sanctioned on 27.07.2015. A reasonable period of time was provided to the petitioners to sort out their transactions with the said banks and to close the accounts. It is nowhere provided that unless or until, the bank accounts are closed, the credit amount will not be disbursed. No words can be added in the terms and conditions already settled between the parties.

14. There is another aspect of the matter. Under clause 5, the companies had to submit an undertaking that all business transactions will be routed through the account associated with the respondent-bank. If the argument of learned counsel for the petitioners is accepted, the clause becomes redundant. Rather, the undertaking given in clause 5 would come in operation only after disbursement of the credit facility. It is, thereafter, that all the transactions are required to be routed through the account associated with the respondent-bank.

15. The argument of petitioners that clause Nos.5 and 6 were to be complied with before the disbursement of the credit facility can't be accepted. If it is so, the undertaking given under clause 5 would remain merely a piece of paper. Clause 7 could never be invoked even if the

petitioner failed to route all the transactions through the account of the respondent-bank. The phrase '*period of default*' in Clause 7 viz-a-viz Clause 6 would mean period beyond 31.12.2015 taken by the petitioners for closing their current accounts with other banks.

16. Moreover, the Banking Ombudsman had already reduced the penalty from 2% to 1% inspite of the fact that as per clause 7, penalty @ 2% per annum should have been levied for the period of default.

17. No case is made out for interference in exercise of writ jurisdiction under Article 226 of the constitution of India.

18. The writ petition is dismissed.

19. However, it is clarified that in case the petitioners make the payment of penal charges along with Goods and Services Tax, the respondent-bank would release the title deeds to the petitioners in accordance with Law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

14.08.2018
anju

Whether speaking/reasoned? Yes
Whether reportable? Yes