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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3992/2018

HEM CHAND GUPTA ..... Petitioner

Through: Mr.K.K. Sharma, Sr. Adv. with Mr.Rajiv Bakshi and Ms. Gagandeep Chauhan, Advs.

versus

BANK OF BARODA AND ANR. ..... Respondents

Through: Mr. Arun Aggarwal, Adv. with Mr.Madan Lal, Chief Manager.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

<u>O R D E R</u>

% 23.04.2018

<u>CM APP No. 15720/2018</u>

1. Allowed, subject to all just exceptions.

<u>W.P.(C) 3992/2018 & CM APP No. 15719/2018</u>

2. Issue notice. Mr. Arun Aggarwal, accepts notice on behalf of the respondents. Learned counsel for the respondents submits that he does not wish to file a counter affidavit in the matter and that, he would like to argue the matter based on the record, which is available with the Court.

3. The principal grievance of the petitioner is that contrary to the agreement Bank of Baroda (in short "BOB") is charging interest at a rate which is higher than the agreed rate.

The agreed rate of interest, according to the petitioner, is 11.65 per cent with monthly rest whereas it is being charged interest at the rate of 13.80 per cent per annum with monthly rest.

4. On the other hand, learned counsel for the respondents relies upon the communication dated 14.12.2017, appended as Annexure P-8 at page 62 of the paper book, to explain the variation in the rate of interest.

4.1 The communication dated 14.12.2017 is self-explanatory and therefore the relevant part is extracted hereafter:-

> *"1. The facility was last reviewed with increase on 04.09.2015 whereby the facility was increased from existing level of Rs.580.00 lacs to Rs.1055.00 lacs at ROI Nase Rate +2.75% p.a. i.e. 12.65% p.a. with monthly rests. The base rate being 9.90% p.a. The same have been applied in the account. But while going through the Annexure-D incorporation the detailed terms and conditions duly accepted by the firm the ROI mentioned in Annexure-D is base Rate +2.75% which comes to 12.65% p.a. instead of 12.65% p.a. However the correct ROI being 12.65% p.a. with monthly rests is being applied in the account.*
>
> *2. One of the major terms and conditions mentioned in Annexure-D, duly accepted by the firm and as mentioned under point no.25 is that rate of interest is subject to change in Base Rate/Credit Rating of the account/Bank's administrative guidelines/RBI directives, issued from time to time.*
>
> *3. Another terms and conditions mentioned in Annexure-D under point no.26 is that the stipulated rate of interest is subject to Internal Credit Rating of the borrower, carried out by the bank. The rate of interest is subject to change from time to time based on*

audited financials as on 31st March of each year, which is to be submitted before 30th September of each year *for carrying out credit rating and deciding rate of interest to be charged in the account effective from 1st October for the respective year. In case of delay in submission of audited financials, bank reserves the right to charge rate of interest with maximum spread along with penal interest for delay in submission of balance sheet.*

4. *Subsequently upon the change/reduction in base rate from 9.90% p.a. to 9.65% p.a. w.e.f. 05.10.2015, the applicable rate of interest in the account being Base Rate +2.75% p.a. with monthly rests which reduced from 12.65% p.a. to 12.40 p.a. with monthly rests. The same have been charged in the account.*
5. *The branch has charged rate of interest 12.40% p.a. with monthly rests from 05.10.2015 to 30.06.2016 which is correct and as per terms of sanction.*
6. *Subsequently upon the further change/reduction in base rate from 9.65% p.a. to 9.60% p.a. w.e.f 01.07.2016 the applicable in rate of interest being Base rate +2.75% p.a. with monthly rest which account.*
7. *The account became due for annual review on 04.09.2016. Due to non-submission of financial papers and other information's on time, the account was short reviewed on 03.03.2017 for a further period of -06- months. At the time of review, based on credit rating carried out in the account on ABS 31.03.2016, the applicable rate of interest arrived at -1- years MCLR+S.P. +5.20% p.a. i.e. 13.80% p.a. with monthly rests (-1- year MCLR being 8.35% p.a. and Strategic Premium being 0.25% p.a.) as mentioned in sanction but the same has been applied/charged by the branch in the account w.e.f 03.03.2017 to till date.*

Rate of interest on bill discounting under LC:

It appears there is a nominal excess ROI charged in LC. There is a difference in ROI charged on LC due to technical fault. As per the calculations, total amount of Rs.18,143 has been charged more and same will be reversed shortly. (Calculation sheet attached) While going through the account, there has been no instances found where rate of interest charged in the account is higher than the terms of sanction by the bank.

Further your account have been slipped to NPA category on 29.08.2017. You are advised to deposit the overdue amount Rs.76.80 lakh including charges, if any, to regularize your cash credit account, immediately."

(emphasis is mine)"

5. Furthermore, learned counsel for the respondents submits that the learned CMM vide order dated 22.03.2018 has already appointed a receiver for taking possession of the secured asset.

6. Having regard to the aforesaid circumstances, according to me, the remedy, if any, of the petitioner lies under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6.1 The petitioner, if aggrieved, can approach the concerned Debt Recovery Tribunal (DRT) for redressal of his grievance.

6.2 In addition thereto, the petitioner, if he so wishes, can make a representation to respondent no.1 bank. Liberty in that behalf is granted to the petitioner.

6.3 Respondent no.1 bank, if it deems fit, may entertain the representation so made.

7. Needless to say, the liberty given to the petitioner to make a representation will not come in the way of the statutory measures that respondent no.1 bank may wish to pursue to recover its dues.

8. The writ petition is disposed of in the aforesaid terms.

9. *Dasti*.

RAJIV SHAKDHER, J

APRIL 23, 2018
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