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

\+ **Letters Patent Appeal No. 416/2018**

Date of decision: 1st August, 2018

M/S ABMIENCE DEVELOPERS & INFRASTRUCTURE PVT LTD

..... Appellant

Through: Mr. P. K. Aggarwal, Ms. Mercy Hussain and Ms. Tanya Sharma, Advocates.

versus

PUNJAB NATIONAL BANK ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

This intra-Court appeal by M/s. Ambience Developers & Infrastructure Pvt. Ltd. under Clause-X of the Letters Patent impugns order dated 9th July, 2018, passed by learned single Judge in W.P. (C) No.10406/2016.

2. The impugned order dismissed the above captioned writ petition filed by the appellant challenging communication dated 30th September, 2016, issued by the respondent-Punjab National Bank, calling upon them to remit pre-payment charges of Rs.9,06,64,095/- plus applicable service tax in respect of term loans prepaid.

3. Impugned order in paragraph 15 correctly records that the disputes raised by the appellant were essentially contractual and the writ petition should not have been entertained to decide commercial disputes. The writ petition should have been dismissed and not entertained in consonance with the decision of the Supreme Court in ***Joshi Technologies International Inc. v. UOI***, (2015) 7 SCC 728.

4. It is however apparent that the appellant had insisted that the writ petition should be heard on merits. In terms of the interim order, the appellant had even deposited pre-payment charge. Thus, it was on the persistence of the appellant that the learned single Judge had examined the issue of waiver of pre-payment charges predicated on the communication written by the respondent bank dated 24th March, 2015. We are therefore not inclined to permit the appellant to plead that notwithstanding the decision, they should be permitted to file a civil suit. We would curtail unnecessary litigation and not allow the appellant to forum shop and pray for a second chance after it has squarely failed.

5. Communication dated 24th March, 2015 was written on behalf of the respondent bank pursuant to the decision taken by the competent authority approving review of term loan of Rs.1280 crore

(outstanding amount of Rs.1117.81 crore) against future lease rentals; renewal of existing guarantee limit of Rs.8.71 crore; specific bank guarantee of Rs.54.75 crores; continuation of existing rate of interest till next review date i.e. 24th June, 2015 and permission for allowing takeover of the outstanding amount, either in part or in full, without pre-payment charges and on sharing of security on first *pari passu* basis with the prospective lenders. It was stated that NOC for ceding *pari passu* charges in favour of prospective lenders would be restricted to the amount actually prepaid.

6. Appellant pleads and submits that this letter had permitted swapping in part or full the term loan liability without pre-payment charges.

7. The finding of the single Judge is that the appellant herein did not sign the said letter as a mark of acceptance. This is accepted. Thus, the offer made vide this letter dated 24th March, 2015 was never accepted to fructify into a binding and legally enforceable agreement.

8. The appellant instead of accepting the terms, had pursued its case for reduction of rate of interest. The appellant did not accept the

condition in the letter/communication dated 24th March, 2015 that there would be continuation of existing rate of interest till next review date i.e. 24th June, 2015. The appellant had written a long letter dated 22nd May, 2015 requesting for reduction of rate of interest and to review the earlier decision communicated vide letter dated 24th March, 2015. Paragraph 14 and the next paragraph of the letter dated 22nd May, 2015 for the sake of convenience and completeness are reproduced below:-

> "14. It is significant to submit that tin case our request is considered sympathetically by the bank then the account will not only become regular but also health of the loan account will improve resulting substantial reduction in capital adequate requirement by the Bank. In this respect, it is also pertinent to submit that the market value of the land and building of Ambience Mall mortgaged to the bank is valued at Rs. 2710 crores by the panel valuer of the bank. Thus the fixed asset coverage ratio for the outstanding loan as on date is over 2.45 times. It is also apprised that LRD loans are most sought after loans by the bank (both public sector and private) and reputed and well established NBFC. It is further submitted that the subject mall is complete and all permissions are in place and is operational since November, 2007 and fully stabilized as is clear from the operation of escrow account. Thus all the completion, permission marketing and operational risk stands nullified. Further the mall has been one of the best operational mall in India and therefore entitled for the requested ROI of BR + 0.75%. We, therefore, request the bank to kindly immediately reduce the ROI to BR +1.00%.
>
> Thus on accepting our request the subject account would not only come out of SMA-2, but the credit rating for loan

would also increase resulting lower provisioning by the Bank which would be win-win situation both for the bank and the company.

In view of above facts and circumstances, we request the bank to approve the CAP as below:-

i) To reduce the ROI to BR+1.00% i.e. 11% p.a. at least equivalent to the ROI recently sanctioned by Bank of Baroda in LRD loan account sanction to us which will result into not only in regularize first of the loan account after bringing in of additional funds by the promoters and obtaining of better credit rating by the company. It is also pertinent to submit that the promoters are confident that worst in their main line of business of real estate development the worst is over and revival of real estate residential segment will happen shortly and after that promoters will be in a position to bring in additional funds to meet deficit, if any, in interest and installment in LRD Loan account during intervening period on monthly basis as in the past and thus the rating of the company will always be maintained intact.

ii) to allow time to create DSRA out of surplus in the Escrow Account after servicing of monthly interest and installment over a period of two years and not to levy penal interest for non-creation / maintaining of DSRA due to the reason beyond the control of promoters.

iii) To link the ROI in future with the upward and downward variation with the charge in BR of the bank with spread of 1.00%

List of lessees and lease revenue from the mall is enclosed herewith for your ready reference and record.

We hope you would find the above in order and do the needful as requested. However, in case in require any further information / clarification in this regard, kindly let us know for compliance.

Thanking you"

9. Pursuant to the said request made by the appellant, the respondent bank had written letter dated 29th May, 2015, which reads:-

> "Ref No:PNB/LCB/Ambience
> 29.05.2015
>
> M/s Ambience Developers & Infrastructure Pvt. Ltd.,
> L-4, Green Park Extension,
> New Delhi 110016
>
> Dear Sir,
>
> Reg: Your Term Loan with us.
>
> Please refer to your request for reduction in Rate of Interest, we are pleased to inform you that Competent Authority in its meeting held on 25.05.2015 has approved as under:
>
> Reduction and rest of ROI in the term loan to BR+TP+0.50% i.e. 11% p.a. from existing BR+TP+1.50% (fixed) i.e. 12% p.a. on deposit of crores to be deposited within 90 days failing which the ROI shall be restored to present level.
>
> Benefit of subsequent reduction in base rate from present level i.e. 10.00% will require poor approval of competent authority.
>
> All other terms and conditions of existing sanction shall remain unchanged.
>
> You are therefore requested to return the duplicate copy of this letter, duly signed by the authorized official(s) of the company as a mark of acceptance of the sanction. You are requested to pay Rs.5,00,000/- + Applicable Service Tax towards prepayment charges.
>
> Sr Relationship Manager
> Accepted

Ambience Developers & Infrastructure Pvt. Ltd. S/d
Authorised Signatory"

The said letter while partly accepting the appellant's request on interest had stated that terms and conditions of the existing sanction shall remain unchanged. The appellant had signed the said letter as a mark of acceptance. The appellant cannot, therefore, fallback and per-sue the claim predicated on the earlier offer terms in the letter dated 24th March, 2015, which terms were not accepted by the appellant. The respondent bank on the other hand rightly pleaded that they had never agreed to grant double benefit of reduction of rate of interest by one percent and also waive pre-payment charges of one percent payable in terms of the sanction letter dated 14th June,2011 and loan agreement dated 25th June, 2011. The unequivocal and categorical stand of the respondent bank is that the competent authority had only approved reduction and had reset rate of interest in the term loan to BR+TP+0.50(floating) i.e. 11% per annum from existing BR+TP+1.50%(fixed) i.e. 12% per annum. Accordingly, an amount of Rs.51.78 crores was to be deposited by the appellant within 90 days failing which the existing rate of interest and not the reduced rate was to continue. The letter dated 29th May, 2015 had, therefore, appropriately communicated that all other terms of the existing sanction shall remain unchanged. Consequently, terms of the sanction vide letter dated 14th June, 2011 including pre-payment clause were never abrogated and modified. Appellant cannot partly rely on the letter dated 24th March, 2015, which terms were not accepted by it and partly rely on the terms of the letter dated 29th May, 2015, which terms of offer were accepted by it. Thus, the claim double benefit was not intended and agreed.

10. This position and clear stand of the respondent bank gets affirmation from the subsequent exchange of mails/ correspondence between the parties and IDBI Bank Ltd. On this aspect the learned single Judge, has held:-

> "20. In this view, it is difficult to accept that the respondent bank had waived its right to receive prepayment charges as expressly provided in the sanction letter dated 14.06.2011.
>
> 21. The contention that the demand for prepayment charges is an afterthought and the same was only after the respondent had received the funds from IDBI Bank Ltd. is ex facie erroneous. After the petitioner had obtained the sanction from IDBI Bank Ltd., the petitioner had approached the respondent for confirmation of the amount outstanding against the facilities advanced to the petitioner. By an email dated 27.09.2016, the respondent bank confirmed the balance outstanding upto 27.09.2016, 28.09.2016 and 30.09.2016 so as to apprise the petitioner as to the amounts required for discharge of the loan if the

same was prepaid on any of the aforesaid dates. The said email also expressly indicated that prepayment charges and other charges would be levied as per the term of the sanction. The said email reads as under:-

"M/s Ambience Developers & Infrastructure Pvt. Ltd.,
L-4, Green Park Extension,
New Delhi 110016

Reg: Outstanding dues in the Term Loan Account

This is regarding your request for providing the outstanding balance in the term loan account. Balance outstanding in the term loan account (216400IC00003693) against Future Lease rentals of Ambience Mall, Gurgaon is as under:

(Amount in Rs.)

Bal. Outstanding upto	Tentative Amount (including interest)	Remark
27.09.2016	913,97,85,916/-	Prepayment charges and other charges to be levied as per terms of sanction
28.09.2016	914,21,45,779/-	
30.09.2016	914,78,35,916/-	

Detail for remittance is as follows

Name of Account Ambience Developers & infrastructure
Private Limited
Name of Bank Punjab National Bank
Account Number: 216400IC00003693
IFSC Code: PUNB0216400
Address of Branch: Tolstoy House, Tolstoy Marg, New Delhi-110001
This is for your information please."

> 22. The trailing mails produced by the respondent indicate that the said mails were also forwarded to the IDBI Bank Ltd. on the next date. The chain of emails also indicate that no protest with regard to prepayment charges was made by the petitioner at the material time and the IDBI Bank Ltd. remitted the sum of ₹9,14,21,45,779/- to the respondent bank on 28.09.2016, as indicated by the respondent in its email dated 27.09.2016, to the petitioner."

11. As noted the appellant has paid/deposited pre-payment penalty amount in terms of the interim order passed by the Court.

12. The appeal has no merit and is accordingly dismissed. Caveat is disposed. Pending applications are also disposed of.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

AUGUST 01, 2018
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