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

+ **W.P.(C) 10406/2016**

**M/S AMBIENCE DEVELOPERS & INFRASTRUCTURE
PVT LTD**

..... Petitioner

Through: Mr P. K. Agrawal, Ms Mercy
Hussain and Ms Tannya
Sharma, Advocates.

versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr Sartaj Singh, Advocate for
PNB.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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09.07.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning a communication dated 30.09.2016 issued by the respondent, whereby the respondent has called upon the petitioner to remit prepayment charges of ₹9,06,64,095/- plus applicable service tax in respect of the term loans prepaid by the petitioner on 28.09.2016. The petitioner claims that the demand of such prepayment charges is arbitrary and unreasonable as the respondent had agreed to waive such prepayment charges.

Background Facts

2. The petitioner company is engaged in the business of real estate

development. The petitioner and its associate companies own several properties including Ambience Mall, Vasant Kunj; Ambience Mall, Gurgaon; Leela Ambience Hotel, Gurgaon; Leela Ambience Hotel Shahdara, Delhi.

3. In and around April 2011, the petitioner approached the respondent bank for grant of a term loan to be secured against the future lease rentals receivable from its property – Ambience Mall, Gurgaon. The respondent bank sanctioned a term loan of ₹1280/- crores in terms of the sanction letter dated 14.06.2011. The terms and conditions as stated in the said letter clearly stated that “*Prepayment charges @ 1% on the outstanding, shall be levied if the loan is prepaid on any date other than interest Re-set date. Prepayment charges shall also be applicable in case of debt swap*”.

4. The respondent bank also reserved the right to vary the terms and conditions of the loan facility at its discretion. The petitioner claims that due to recession in the economy, particularly in the real estate and retail industry, the revenue from lease rentals has come under tremendous economic stress. Consequently, it became difficult for the petitioner to realise the lease rentals on the basis of which the term loan had been sanctioned by the respondent bank and its promoters had to fund the petitioner company from time to time, for servicing the debt owed by it. The petitioner states that the respondent bank had also evaluated its risk in respect of the facilities advanced to the petitioner and had been threatening to withdraw or modify the sanctioned conditions based on the enhanced risk perception.

5. The learned counsel appearing for the petitioner also referred to a communication by the respondent bank calling upon the petitioner to improve its financial ratios on account of the risks identified by the Risk Management Department of the respondent bank.

6. The petitioner claims that in view of the various pressures exerted by the respondent bank, the petitioner was under a constant threat that the respondent would recall the loan advanced to the petitioner and/or impose onerous conditions by increasing the rate of interest.

7. In view of the above, the petitioner took up the matter with the respondent bank for permission to swap the term loan with some other banking institution. The petitioner also continued to pursue with the respondent for reduction in the rate of interest.

8. The petitioner states that by a letter dated 24.03.2015, the respondent bank granted permission for takeover of the outstanding amount either full or in part without prepayment charges.

9. The learned counsel appearing for the petitioner contended that the said communication established that the respondent bank had modified the terms on which the loan was sanctioned and, thereafter, there was no stipulation that the respondent bank would charge any prepayment charges.

10. The petitioner claims that in view of the above, it proceeded to arrange a loan facility from IDBI Bank Ltd. and on 26.09.2016, IDBI

Bank Ltd. issued a Letter of Intent / Sanction Letter communicating its agreement in principle to underwrite the Rupee Term Loan of ₹1400 crores towards takeover of the existing loan from the respondent bank; for repayment/foreclosure of the existing facilities; and for construction and development of other ongoing projects.

11. On 28.09.2016, the petitioner requested IDBI Bank Ltd. to disburse an amount of ₹1260 crores, which included ₹9,14,21,45,779/- to be disbursed by way of transfer to the respondent bank towards the petitioner's outstanding against the facilities availed from the respondent bank. Pursuant to the aforesaid request, on 28.09.2016, IDBI Bank Ltd. remitted a sum of ₹9,14,21,45,779/- to the respondent bank by RTGS.

12. The learned counsel appearing for the petitioner contended that after receipt of the aforesaid amount, the respondent bank sent an email dated 30.09.2016 (which is impugned in the present petition) acknowledging the receipt of the aforesaid amount and further requiring the petitioner to remit the prepayment charges calculated at ₹9,06,64,095/- plus service tax in terms of the sanction. The petitioner sent a letter dated 04.10.2016 disputing the respondent's claim of prepayment charges; it contended that by the letter dated 24.03.2015, the respondent had waived levy of any prepayment charges.

13. Mr Agrawal, the learned counsel appearing for the petitioner contended that the respondent was well within its right to vary the terms on which it had sanctioned the loan in favour of the petitioner.

And, the respondent bank in exercise of the said powers had acceded to the petitioner's request and waived the levy of any prepayment charges. He earnestly contended that having waived the prepayment charges, the respondent was precluded from raising any demand on that count.

14. Mr Singh, the learned counsel appearing for the respondent bank countered the submissions made on behalf of the petitioner. He submitted that the petitioner had agreed to waive the prepayment charges in terms of the letter dated 24.03.2015 but the said letter also included other conditions, which the petitioner was required to accept. The petitioner was further requested to sign the said letter as a mark of acceptance but the petitioner had failed to do so; and, on the contrary, the petitioner had sought further reduction in the rate of interest by its letter dated 22.05.2015. This was not necessary if the petitioner was intending to swap the loan. He submitted that the petitioner's request for reduction in interest was acceded to and this was communicated to the petitioner by a letter dated 29.05.2015. He pointed out that the said letter expressly provided that all other terms and conditions of the existing sanction would remain unchanged and, therefore, the conditions regarding waiver of prepayment charges did not become operative. He also refuted the contention that the respondent had raised the demand of prepayment charges after receipt of the sum of ₹9,14,21,45,779/- from IDBI. He referred to an email dated 27.09.2016, whereby the respondent had confirmed the balance outstanding against the facilities advanced to the petitioner and the

said communication expressly provided that the prepayment charges and other charges would be levied as per the terms of sanction.

Reasons and Conclusion

15. It is apparent from the above that the disputes sought to be raised by the petitioner are essentially contractual disputes and in the normal course, this Court would not entertain such disputes in proceedings under Article 226 of the Constitution of India. However, the learned counsel appearing for the petitioner had submitted that the petitioner's case rested on the material already placed on record and there was no requirement for any other evidence to be considered. In view of the above and considering that the present petition is pending before this Court since 2016, the present petition was taken up for hearing.

16. There is no dispute that the terms and conditions on which the loan facilities were provided to the petitioner expressly provided that the prepayment charges at the rate of 1% of the outstanding would be levied in the event the loan was prepaid. Such charges were also applicable in case of a debt swap. Thus, the only question to be addressed is whether the respondent had altered the terms of the sanction by waiving its right to recover prepayment charges.

17. The petitioner has rested its case almost entirely on the letter dated 24.03.2015 issued by the respondent bank. The said letter is set out below:-

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 and approval of other issues.

It is to inform you that Competent Authority in its meeting held on 04.03.2015 has approved as under:

- i) Review of Term Loan of Rs.1280 crore (present o/s Rs.1117.81 Cr.) against future lease rentals.
- ii) Renewal of existing guarantee limit of Rs.8.71 crore and specific bank guarantee limit of Rs. 54.75 crore with existing rate of processing fee and commission to continue.
- iii) Continuation of existing ROI till next review date i.e. 24.06.2015.
- iv) Permission for allowing takeover of the outstanding amount either in part or in full without prepayment charges and on sharing of security on 1st pari passu basis with the prospective lender(s). NOC for ceding pari passu charge in favour of the prospective lender(s) to be restricted for the amount actually prepaid.

The above are approved with following stipulations:-

- 1) Risk identified by IRMD, HO to be critically examined

and the necessary remedial steps be provided to safeguard bank's interest. The same are as follows:

- a. As on 31.03.14, the DER (5.96), TOL/TNW (6.59) was high whereas the Current Ratio (0.34), interest coverage ratio (1.15) and DSCR (0.67) were low.
 - b. The advances to Associates/related parties as on 31.03.2014 were Rs.839.64 crore i.e. more than the TNW of the company.
 - c. Account of the company is running irregular.
- 2) The Bank reserves the right to vary ROI depending upon the market conditions and/or change in risk rating and/or in case conduct of the account is not satisfactory.
 - 3) The Bank shall have the right to withdraw or modify all/any of the sanctioned conditions or stipulate fresh conditions, including change in ROI during the currency of loan under intimation to the borrower.
 - 4) Company's request for waiver of DSRA will be reviewed at the time of next review of ROI i.e. 24.06.2015 till then company to maintain DSRA as per sanction at the earliest. Otherwise, Branch to charge penal interest at 2% p.a. on the defaulted amount for DSRA maintenance for the defaulted period as per earlier sanction.

Besides, it is also required that External Risk rating of the company be got updated.

All other terms and conditions of previous sanctions 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.

Sd/-”

18. It is apparent from the plain reading of the aforesaid letter that the same was issued pursuant to the petitioner’s request for reduction in the rate of interest and approval of other issues. As is apparent from the last sentence of the said letter, the petitioner was required to sign a duplicate copy of the said letter as a mark of its acceptance. Admittedly, the petitioner did not sign the said letter as it did not accept the same. The petitioner continued to pursue with the respondent for a reduction in the rate of interest. This is evident from the letter dated 22.05.2015 sent by the petitioner to the respondent bank. The said request was acceded to and by a letter dated 29.05.2015, the respondent bank agreed to reduce the rate of interest. The letter dated 29.05.2015 is relevant and is set out below:-

“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 prior 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”

19. The petitioner accepted the terms of the said letter and a signed copy of the same as a mark of its acceptance. As is apparent from the language of the said letter, the respondent had reiterated that all other terms and conditions of the existing sanction shall remain unchanged.

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

28.09.2016	914,21,45,779/-	and other charges to be levied as per terms of sanction
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.

23. In view of the above, this Court finds no infirmity with the demand of the prepayment charges made by the respondent bank. The petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

JULY 09, 2018/RK