IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-5417-2019

Date of Decision: 28.2.2019

M/s Venus Remedies Limited

...Petitioner

Versus

Allahabad Bank, Chandigarh

...Respondent

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Aalok Jagga, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a direction to the respondent to decide its representation dated 6.2.2019 (Annexure P-20). Further, a prayer has been made for restraining the respondent from altering the Drawing Power of the Cash Credit Account of the petitioner without notice.

2. The petitioner is a pharmaceutical company manufacturing injectables. It had availed of three credit facilities to fund the capital requirements of the company, i.e., terms loans, working capital (fund based) and working capital (non-refund based) as is clear from the chart (Annexure P-2). As per chart (Annexure P-3), the six banks had funded and sanctioned a sum of ₹ 115 crores in the shape of working capital fund based as on 31.1.2019 to the petitioner. The banks who were working in the shape of consortium and had provided ₹ 27 crores as working capital (non fund

based) as on 31.1.2019 are mentioned in the chart (Annexure P-4). The terms and conditions of the restructuring initially came to be set out in the letter of approval prepared by the CDR Cell on 17.12.2014 which was modified on 23.12.2014 and ratified in the minutes of 254th meeting of the CDR Empowered Group held on 30.12.2014. Pursuant thereto, the Master Restructuring Agreement dated 19.1.2015 (Annexure P-5) was executed between the petitioner and all the others banks. In response thereto, the existing terms and conditions of the loan were altered and restructured. The Working Capital Consortium Agreement was reconstituted on 10.2.2015 (Annexure P-6) vide which the terms and conditions were again altered on the basis of the Master Restructuring Agreement. Since the respondent was not original signatory to the said Working Capital Consortium Agreement, vide 'Deed of Accession' dated 23.5.2015 (Annexure P-6), the respondent covenants and agreed with the each lenders that it shall be bound and comply with all the terms and conditions of the said agreement. A joint Deed of Hypothecation dated 10.2.2017 (Annexure P-7) was executed by the petitioner in favour of the creditors who executed the said Agreement through IDBI Trusteeship Services Limited to be appointed on behalf of the creditors for implementation of the restructured terms and conditions. The State Bank of India declared the loan account of the petitioner as NPA on 31.3.2018, though the retrospective date of NPA would be 1.4.2014, for non-fulfilment of the CDR terms and conditions. The notices dated 12.11.2018 and 19.1.2019 (Annexure P-8 Colly) under Section 13(2) 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short “the SARFAESI Act”) were issued by the State Bank of India and Dena Bank claiming the amount of ₹ 90,30,04,251.91 and ₹ 12,10,37,659.44, respectively. The Corporation Bank, Dena Bank, State Bank of India and Exim Bank had filed petitions under Section 19 of the Recovery of Debts & Bankruptcy Act, 1993 before the Debts Recovery Tribunal-II, Chandigarh (in short "the Tribunal"). In the said petitions, notices (Annexure P-9 Colly) have been issued to the petitioner. The respondent vide sanction letter dated 3.12.2013 (Annexure P-10) renewed the working capital limits of the petitioner and enhanced the same from ₹ 8 crores to ₹ 10 crores. The drawing power was to be calculated on 25% margin on stocks and 40% on the debtors. The said limit was renewed from time to time and the last was renewed vide letter dated 31.3.2015 (Annexure P-11). The petitioner had been providing stock statement and the statement of book debts to the respondent for calculation of drawing power on the basis of which it had been enjoying Cash Credit Limit of ₹ 10 crores. The petitioner had been regularly making the payment of interest of the said account. However, as per discussions during JLM meeting held on 20.12.2018, the State Bank of India had expressed its inability to calculate and allocate DP from then onwards. The minutes of the meeting were received by the petitioner through e-mail dated 28.1.2018 upon which the petitioner submitted its stock statement as on 31.12.2018 (Annexure P-12) including the position of book debts for calculation of drawing power for continuation of the Cash Credit Limit of ₹ 10 crores. As on 30.1.2019, against the sanctioned limit of ₹ 10 crores, the outstanding balance in the Cash Credit Account on the opening day was ₹ 7.74 crores and on the basis of the transactions during the course of the day, the closing outstanding balance as on 30.1.2019 was to be ₹ 9.18 crores as is clear from the Statement of Account (Annexure P-13). As per the statement of

Account (Annexure P-14), on 31.1.2019, the account opened with the opening balance of ₹ 9,20,77,917/- and by the closing of 31.1.2019, the balance was ₹ 9,56,63,500/-. Since the outstanding was less than the sanctioned limit of ₹ 10 crores, the bank reduced the drawing power to 'nil' on 1.1.2019. As a result thereof, eight cheques amounting to ₹ 12,27,603/- issued by the petitioner from 14.1.2019 to 29.1.2019 came to be dishonoured as is clear from the list (Annexure P-15). As per the statement of account dated 1/2.2.2019 (Annexure P-16), the respondent had crashed and zeroed the drawing power without any notice or intimation to the petitioner. The petitioner vide representation dated 2.2.2019 (Annexure P-17) requested the respondent for restoration of the Working Capital Cash Credit Limit who restored the Working Capital Limit but reduced the drawing power to some extent by making the cash credit account of the petitioner to be operational as is clear from the statement of account dated 2.2.2019 (Annexure P-18). In the meeting with the respondent, the petitioner was informed that on account of non-calculation of drawing power in the absence of the stock statement, the drawing power had been zeroed on 1.2.2019 and when the petitioner submitted the stock statement and the drawing power calculation, the drawing power was partially restored. In the meantime, the petitioner vide letter dated 8.2.2019 (Annexure P-19) submitted the stock statement for the month ended on 31.1.2019 for calculation of the drawing power. Thereafter, the petitioner moved a representation dated 6.2.2019 (Annexure P-20) for restoration of drawing power of ₹ 10 crores in Working Capital Cash Credit Account, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief

claimed in the writ petition, the petitioner has moved a representation dated 6.2.2019 (Annexure P-20) to the respondent, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing the respondent to take a decision on the representation dated 6.2.2019 (Annexure P-20), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of 15 days from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

February 28, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**