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

+ **Date of Decision: 07.03.2019**

% W.P.(C) 2220/2016

STATE BANK OF PATIALA ..... Petitioner
Through: Mr. Bheem Sain Jain, Adv.
versus

M/S GABS AND ORS ..... Respondent
Through: Ms. Vinny Shangloo, adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

C.M. No. 10584/2019

We have heard learned counsel for the petitioner. For the reasons stated in the application and the explanation furnished, we waive of the costs imposed upon the petitioner vide our order dated 14.02.2019 both in the W.P. (C) No. 2220/2016 & W.P. (C) No. 10998/2016.

W.P.(C) 2220/2016

1. The petitioner has assailed the order dated 04.11.2015, passed by the Debts Recovery Appellate Tribunal (DRAT), Delhi in Appeal No. 332/2015, arising out of O.A. No. 79/2005 (Delhi-I). By the impugned order the

Appellate Tribunal has rejected the said appeal preferred by the petitioner bank.

2. The petitioner had preferred the said appeal to raise a challenge to the final order dated 19.08.2015 passed by the Debts Recovery Tribunal (DRT) – I, Delhi in O.A. No. 79/2005, titled State Bank of Patiala v. GABS (Group Apparel Business Service) with two others. The same is referred to as the final order.

3. We may observe that the final order relates to two Original Applications preferred by the petitioner bank, the other being O.A. No. 59/2005. O.A. No. 59/2005 had been preferred in respect of a home loan granted by the petitioner bank to the defendants in the said Original Application. We are, however, not concerned with the operative directions issued in O.A. No. 59/2005.

4. The DRT, while passing the final order in O.A. No. 79/2005 had allowed the claim of the petitioner bank for the amount of Rs. 29,24,947/- together with pendentelite and future interest @ 9% p.a. simple interest in respect of the Export Packing Credit Limit and a sum of Rs. 68,330.77 together with pendentelite and future interest @ 12% per annum simple till the date of realization.

5. The limited challenge raised by the petitioner before the DRAT was to the award of simple, as opposed to Compound interest, compounded with monthly rests, in terms of clause 14 of the Loan Agreement executed by the

petitioner bank with the defendants/ respondents on 01.10.2002 in respect of the Export Packing Credit Facility.

6. The DRAT, while dismissing the aforesaid appeal, by a short three page order has observed that the findings returned by the DRT are based on documentary evidence and are reasonable, just and fair and, therefore, do not call for interference.

7. The submission of learned counsel for the petitioner is that the Agreement of Loan for Overall Limit dated 01.10.2002, for an agreed sum of Rs. 25 lakhs, specifically provided in Clause 14 that interest shall be charged on the outstanding(s) in the accounts opened in respect credit facilities at such rate(s), as may be determined by the Bank from time to time at the Bank's sole discretion on the basis of any internal credit rating accorded to the borrower or otherwise, provided that the rate(s) shall be subject to changes in the State Bank Advance Rate and/ or changes in interest rates prescribed by the Reserve Bank of India from time to time.

8. Counsel for the petitioner points out that while passing its order, the DRT has extracted the first part of Clause 14 of the said Loan Agreement in the impugned order itself. However, the Tribunal omitted to read the later part of the said Clause which, inter alia, specifically provides that "*interest shall be calculated respectively on the daily balance of such account(s) and be debited thereto on the last working day of the month or quarter according to the practice of the Bank"*

9. Learned counsel submits that on account of the said omission, the DRT, while passing the final order, returned a patently incorrect finding in paragraph 19 of the order that "*in the entire loan documents, there is not a single whisper about the charging of interest at monthly rests nor it has been mentioned that interest has to be charged monthly, quarterly or half yearly."*It is on that premise that the Tribunal went on to observe that it was "*of the considered view that the charging of monthly rests by the bank is totally illegal and without any contract between the parties.*"

10. Learned counsel for the petitioner submits that even in their written statement filed by the respondents/ defendants before the Tribunal, so far as the liability to pay Compound Interest is concerned, they had not disputed the same. It was the submission of the respondents that interest should be charged @ 8% per annum only (rest quarterly), and not rest monthly. In this regard, reference is made to paragraph 5.3(a) of the written statement filed by the respondent/ defendants.

11. Lastly, learned counsel for the petitioner has drawn the attention of this Court to the RBI communication dated 09.03.2002 on the subject of interest rates on advances. This communication, inter alia, reads as follows:

> "*In exercise of the powers conferred by Sections 21 and 35A of the Banking Regulation Act, 1949, and in partial modification of paragraph 1 of its Directive DBOD No. Dir. BC. 106/13.03.00/2000-01 dated April 19, 2001, the Reserve Bank of India, being satisfied that it is necessary and expedient in the public interest to do so, hereby directs that:*
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> *i. With effect from April 1, 2002, banks shall move over to*

charging of interest on loans/advances at monthly rests. However, interest on monthly rests shall not be applicable to agricultural advances and banks shall continue to follow the existing practice of charging/compounding of interest on agricultural advances linked to crop seasons.

ii. *Application of interest on monthly rests shall be restricted to Cash Credit and Overdraft accounts only.*

iii. *In the case of loans of longer/fixed tenor, banks shall move over to application of interest at monthly rests at the time of review or renewal of such loan accounts.*

iv. *Interest at monthly rests shall be applied in case of all new term loans and other loans of longer/fixed tenor.*

2. *All other terms and conditions relating to interest rates on advances as contained in directives, issued from time to time, shall remain unaffected"*

12. Learned counsel for the petitioner points out that the aforesaid communication was produced by the petitioner before the DRAT, since it was not available when the proceedings were held before the DRT.

13. On the other hand, learned counsel for the respondent submits that the Sanction Letter issued by the petitioner on 30.09.2002 provided that interest would be charged "*as per instructions of bank from time to time presently being 8% upto 180 days and 10% beyond 180 days to 270 days on EPC.*" He submits that in the Sanction Letter there was no indication that interest would be charged on compounded basis, and that too with monthly rests. The further submission of learned counsel for the respondent is that the petitioner had charged simple interest @ 8% per annum for the period 01.09.2003 to 30.11.2003, but the bank had suddenly, on its own, started charging interest @ 9% per annum with effect from 01.12.2003 to 29.09.2005, which was illegal. Learned counsel also submits that reliance

placed on the RBI Communication dated 09.03.2002 is misplaced, as it is not attracted to the loan facility of Export Packing Credit Limit.

14. Having considered the submissions of learned counsels; perused the impugned order passed by the DRAT; the final order passed by the DRT, and; perused the documents relied upon by the counsels, we are of the view that the submission of the petitioner merits consideration and the finding returned by the DRAT that the order passed by the DRT does not call for interference on the aspect highlighted by the petitioner, cannot be sustained.

15. The submission of learned counsel for the respondent premised on Sanction Letter dated 30.09.2002, in our view is misplaced. Firstly, the Sanction Letter broadly states that the interest could be charged as per the instructions of the bank from time to time. It only indicates that the rate of interest presently being charged i.e. at the time when the loan was sanctioned, was 8% upto 180 days and 10% beyond 180 days to 270 days on EPC. The petitioner bank never stated that, either the rate of interest would continue to remain 8% for all times to come, or that the same would be computed only as simple interest. The Sanction Letter does not constitute the binding agreement between the parties. What constitutes the binding agreement is the agreement itself, which was executed between the parties on 01.10.2002. This agreement clearly states in Clause 14 that the bank shall charge interest in its own discretion on the basis of internal credit rating accorded to the borrower, or otherwise, provided that the rate(s) shall be subject to changes in the State Bank Advance Rate and/ or changes in interest rates prescribed by the Reserve Bank of India from time to time.

This Clause, as aforesaid, also provided that interest shall be calculated respectively on daily balance of such account(s) and be debited thereto on the last working day of the month or quarter according to the practice of the bank. Thus, the Agreement provided for computation of interest on compounded basis i.e. with monthly rests, or quarterly rests, according to the practice of the bank.

16. It is evident on a reading of the final order passed by the DRT, that the Ld. DRAT erred in failing to notice that the DRT had referred to only the first part of Clause 14 of the Agreement, and its finding that there is no term in the Agreement, stipulating calculation of interest with monthly rests was patently incorrect and in teeth of the express Agreement between the parties. Thus, the finding returned by the DRAT, that the order passed by the DRT is in accordance with the agreement terms is incorrect and cannot be sustained. It appears to us that while passing its 3 page impugned order, the DRAT does not appear to have applied its mind.

17. The submission of the respondent that the bank had, for a short duration, charged interest @ 8% per annum and that too without compounding the same, is neither here nor there. What determines rights and liabilities of the parties is the binding contract between them. We, therefore, set aside the impugned order and allow the writ petition.

18. We hold that the petitioner was entitled to charge compound interest with monthly rests in terms of Clause 14 of the Agreement of Loan for Overall Limit dated 01.10.2002.

19. In view of the aforesaid, we direct the petitioner to prepare an up to date statement of accounts within one week from today, which should reflect all the date wise credits, including the amount of Rs. 71 lakhs that the respondent deposited during the pendency of the Original Application before the DRT, and it should clearly indicate the final position i.e. whether any amount is further payable by the respondents, or any amount is refundable to them. The amounts deposited by the respondent shall be given credit on the dates on which the amounts are so deposited, and they shall first be adjusted towards the outstanding interest and the balance, if any, towards the principle amount.

20. It shall be open to the parties to proceed before the Recovery Officer, keeping in view the position as may obtain upon the preparation of the statement of accounts.

21. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

MARCH 07, 2019
N.Khanna