

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

% **Date of decision: 8th July, 2019**

+ **CS(COMM) 1021/2018**

TRINITY TOUCH PRIVATE LIMITED **Plaintiff**

Through: Ms. Aditi Mohan with Mr. Shidharth
Mohan, Advs.

Versus

SVC COOPERATIVE BANK LIMITED **Defendant**

Through: Mr. Anil Kumar Singh, Adv. along
with A.R.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for recovery of Rs.1,68,63,600/- along with *pendente lite* and future interest at 18% per annum, from the defendant bank.

2. It is the case of the plaintiff in the plaint, (i) that the plaintiff, from time to time, for the purposes of its business, has been availing credit facility from various banks and financial institutions; (ii) that till January, 2016, the plaintiff was banking with the Indian Overseas Bank (IOB) and was availing various credit facilities therefrom, which were renewable on a year to year basis and were due for renewal in January, 2016; (iii) that sometime in June, 2015, the plaintiff required certain additional facilities and was approached by the defendant in the month of December, 2015; (iv) the defendant, vide letter dated 30th January, 2016, sanctioned in favour of the plaintiff facilities which were earlier being availed of by the plaintiff from IOB and after including additional credit facilities required by the plaintiff; (v) the defendant, vide said letter sanctioned credit facilities to the

tune of Rs.43.88 crores in favour of the plaintiff; (vi) pursuant to the aforesaid sanction, the credit facilities were disbursed to the plaintiff; (vii) the defendant in the sanction letter aforesaid had included various penal clauses which had not been discussed with and agreed to by the plaintiff; (viii) that the sanction letter was due for renewal in the month of January, 2017; (ix) the plaintiff, vide letter dated 29th June, 2016 requested the defendant for amendment of the terms of the sanction letter with respect to pre-closure charges and pre-closure penalty and requested the defendant to waive off/amend the same; another letter dated 5th October, 2016 was also sent in this regard; (x) the plaintiff, on 20th January, 2017 i.e. prior to the expiry of the sanction letter dated 30th January, 2016, submitted a fresh enhancement-cum-renewal proposal to the defendant and again requested for waiver/amendment of condition no.13 qua prepayment/pre-closure charges; (xi) however, till 31st January, 2017, the defendant neither renewed the credit facilities nor responded to the renewal-cum-enhancement proposal dated 20th January, 2017 of the plaintiff; (xii) the credit facilities stood terminated with effect from 30th January, 2017 by efflux of time as there were neither any extension nor any renewal of the earlier sanction letter and which was to be done on or before 31st January, 2017; (xiii) the defendant, on 16th February, 2017 sought a response to certain queries from the plaintiff in connection with the enhancement-cum-renewal sought by the plaintiff and the plaintiff duly replied to the same on 20th February, 2017 itself; (xiv) the plaintiff also wrote letters dated 1st March, 2017 and 10th March, 2017 in this regard including for waiver of processing of prepayment / pre-closure charges; (xv) the plaintiff, vide e-mail dated 14th March, 2017 informed the defendant that the plaintiff was no longer

inclined to renew its credit facilities and requested the defendant for closure of credit facility and release of collateral securities; the said request was reiterated on 16th March, and 18th March, 2017; (xvi) to the shock and surprise of the plaintiff, the defendant unilaterally renewed the credit facilities vide e-mail dated 18th March, 2017 and also arbitrarily and illegally debited an amount of Rs.17,25,000/- towards processing charges, for renewal-cum-enhancement of credit facilities and informed the plaintiff that the sanction letter will be shared shortly; (xvii) the plaintiff having already on 14th March, 2017 informed the defendant that it was no longer inclined to renew the credit facilities, the defendant was not entitled to deduct processing charges of Rs.17,25,000/-; (xviii) a sanction letter dated 18th March, 2017 was also received by the plaintiff from the defendant, calling upon the plaintiff to sign a duplicate copy thereof as a token of acceptance of the terms and conditions thereof; (xix) the plaintiff did not accept the terms and conditions of the said sanction letter and did not send any signed duplicate copy thereof to the defendant; thus the enhancement-cum-renewal sanction letter dated 18th March, 2017 was never accepted by the plaintiff; (xx) the plaintiff, on 18th March, 2017 again informed the defendant that the plaintiff had already requested the defendant to intimate the final outstanding amount towards various facilities and thus had no authority to unilaterally issue a sanction letter and also deduct processing charges; (xxi) the defendant, vide e-mail dated 21st March, 2017 levied an additional penalty of 3% on the total sanctioned limits allegedly towards pre-closure/pre-payment of the credit facilities and which was also illegal and in contravention of the sanction letter dated 30th January, 2016; (xxii) that the plaintiff was forced to switch to another bank on account of

inefficiency and the long delay on the part of the defendant to renew and enhance the credit facilities which were urgently required by the plaintiff for its business purposes; (xxiii) on 3rd April, 2017, the defendant recovered an amount of Rs.1,51,38,600/- from the plaintiff towards prepayment penalty charges by debiting the account of the plaintiff; (xxiv) the plaintiff, being aggrieved, approached the Banking Ombudsman, RBI and to which a reply was filed by the defendant; the Banking Ombudsman vide order dated 17th January, 2018 granted liberty to the plaintiff to approach the appropriate forum, holding that the total amount of Rs.1,66,39,000/- claimed by the plaintiff was not within the pecuniary jurisdiction of the Banking Ombudsman; (xxv) that the renewal on 18th March, 2017 of the credit facilities by the defendant is unilateral; and, (xxvi) the plaintiff was thus entitled to recover a sum of Rs.1,68,63,600/- from the defendant.

3. The suit came up for admission before this court on 17th July, 2018, when summons thereof were ordered to be issued.

4. The defendant has filed a written statement, pleading (i) on request of the plaintiff, the defendant sanctioned a total credit facility of Rs.43.88 crores including both fund-based and non-funded limits, vide sanction letter dated 30th January, 2016; (ii) that as per the terms of the sanction as well as banking norms, these credit facilities were to be renewed every year; (iii) the plaintiff, on 20th January, 2017 approached the defendant for enhancement-cum-renewal of the credit facilities; (iv) the renewal-cum-enhancement proposal was initiated by the defendant and the plaintiff continued to avail credit facilities beyond date of review under the sanctioned terms including prepayment penalty terms as per sanction letter

dated 30th January, 2016; as such closing of loan account during the availment of credit facilities comes under the terms and conditions of sanction letter dated 30th January, 2016; (v) the defendant was in process of consideration of the enhancement amount as well as rate of interest and in the meanwhile the plaintiff, without giving any prior notice, issued the letter dated 14th March, 2017 informing that it was no longer inclined to renew its credit facilities and requested for release of collateral securities; and, (vi) the processing fee as well as pre-closure charges/penalty have been recovered from the plaintiff in accordance with the norms and the terms of the sanction letter dated 30th January, 2016.

5. No replication to the written statement has been filed by the plaintiff.

6. The suit came up before the undersigned on 24th April, 2019, for framing of issues. Attention of the counsels was drawn to ***DLF Limited Vs. Punjab National Bank*** (2011) 180 DLT 435, holding the levy by banks of prepayment charges to be illegal and the counsel for the plaintiff was asked to verify whether any appeal was preferred thereagainst and outcome thereof.

7. The counsel for the plaintiff, on 24th April, 2019 contended that the processing fee charges and the prepayment penalty charges recovered by defendant from the plaintiff were contrary to the contract between the parties and thus, otherwise also recoverable by the plaintiff from the defendant. The counsel for the plaintiff also contended that no verbal evidence is required to be recorded in the present suit and all documents of each other have been admitted.

8. The counsel for the defendant however on 24th April, 2019 could not respond satisfactorily and the hearing was adjourned to 22nd May, 2019, also directing the presence of the responsible officer of the defendant in this Court. On 22nd May, 2019, the arguing counsel for the defendant appeared but no officer of the defendant in a position to answer queries of the Court appeared.

9. On pleadings of the parties, the following issues were framed on 22nd May, 2019:-

- (i) Whether the defendant Bank has illegally debited an amount of Rs.1,51,38,600/- from the plaintiff's account towards prepayment penalty charges? OPP
- (ii) Whether the defendant Bank has illegally debited an amount of Rs.17,25,000/- towards upfront processing fees? OPP
- (iii) Whether the plaintiff is entitled to interest @18% p.a. on the aforesaid amounts? OPP
- (iv) Whether the plaintiff continued to avail credit facilities from the defendant beyond due date of review as per Sanction Letter dated 30th January, 2016 and the suit is not maintainable for this reason? OPD

10. The counsel for the defendant also, on 22nd May, 2019 stated that all evidence required in the suit was documentary and no trial was necessary. Accordingly, the suit was posted on 5th July, 2019 for final hearing.

11. The counsel for the plaintiff was heard on 5th July, 2019 and the hearing adjourned to today, for arguments of the counsel for the defendant. The counsel for the defendant has also been heard.

12. The counsel for the plaintiff, in response to the query made states that though an appeal has been preferred against **DLF Limited** supra to the Division Bench of this Court, but is still pending consideration.

13. The counsel for the plaintiff has argued, (i) that the defendant sanctioned the credit facilities in favour of the plaintiff on 30th January, 2016 and which was to be re-paid within one year; (ii) the monies were actually disbursed on 26th February, 2016; (iii) that the plaintiff, on 20th January, 2017 requested the defendant for renewal of the facilities and for enhancement of loan; (iv) the defendant inordinately delayed the consideration of the said request of the plaintiff and the plaintiff, exasperated therefrom, on 14th March, 2017 asked the defendant to close the account of the plaintiff; (v) notwithstanding the same, the defendant on 18th March, 2017 issued a sanction letter and terms and conditions whereof have not been accepted by the plaintiff; (vi) notwithstanding the plaintiff having not accepted the terms and conditions of the sanction letter dated 18th March, 2017, the defendant has recovered from the plaintiff processing charges and also levied pre-closure/prepayment charges from the plaintiff and which recovery was unlawful and the plaintiff has instituted this suit for reimbursement of the said amounts; and, (vii) that though the defendant has recovered prepayment penalty/charges from the plaintiff, but has not pleaded any damages having been suffered by the defendant from prepayment.

14. The counsel for the defendant, besides reiterating the dates aforesaid, has taken me through the same documents which the counsel for the plaintiff had taken me through and also referred to some additional documents.

15. I have considered the pleadings, evidence in the form of documents and contentions.

16. The defendant, vide sanction letter dated 30th January, 2016 Ex.P-1, informed the plaintiff that the Board of Directors of the defendant, in the meeting held on 29th January, 2016, had sanctioned the credit facilities as under in favour of the plaintiff:-

“Facility	Prime Security	Margin	Exist	Addn/Redc.	Total	R.O.I. p.a./Remarks
<i>Cash Credit</i>	<i>Hypn. Of stock & book debts</i>	<i>25%</i>	<i>0.00</i>	<i>2300.00</i>	<i>2300.00</i>	<i>ROI@PLR-5.25% i.e.12.25% p.a. Renewal due in January 2017</i>
<i>PC/PCFC</i>	<i>Pre shipment credit under LC</i>	<i>10%</i>	<i>0.00</i>	<i>100.00</i>	<i>100.00</i>	<i>As stipulated by IBD Renewal due in January 2017</i>
<i>FDBP/FUDBP (sublimit of PC/PCFC)</i>	<i>Post shipment credit under sight/usance upto 180 days under confirmed contracts</i>	<i>Nil</i>	<i>0.00</i>	<i>(100.00)</i>	<i>(100.00)</i>	<i>As stipulated by IBD Renewal due in January 2017</i>
<i>Bills discounting under LC (DA 90 days)</i>	<i>Underlying bills backed by confirmed L/C opened by nationalized</i>	<i>Nil</i>	<i>0.00</i>	<i>800.00</i>	<i>800.00</i>	<i>Rate of Interest shall be Market driven, to be confirmed with</i>

	bank, Scheduled Co-operative bank & private sector bank					CGM, Credit. Renewal due in January 2017
Term Loan* (LRD) (Takeover)	Equitable Mortgaged of Building B located in Village Dudhola Tehsil & Dist.Palwal, Haryana. Assignment of total net rent receivable from Phoneix Contact India Pvt. Ltd.	25%	0.00	388.00	388.00	ROI@PLR-3.50% i.e. 14.00% p.a. Repayable in 48 EMI of Rs.10.60 lacs Review due in January 2017 Shortfall in EMI vis-à-vis actual rentals at any point of time, should be met by the Company out of own funds.
Total Funded Limits			0.00	3588.00	3588.00	
LC Limit Inland/Import DA usance not exceeding 120 days Bank Guarantee**	Documents to goods and pledge of Term Deposits Counter Guarantee	10% in FD	0.00	800.00	800.00	Commission as per card rate
Total Non-Funded Limit			0.00	800.00	800.00	
Total Funded & Non-Funded limit			0.00	4388.00	4388.00	

17. The aforesaid sanction letter also contains the Special Terms and Conditions and the counsel for the plaintiff and the counsel for the defendant have during their arguments referred to the following clauses:-

“4. Upfront processing charges @ 0.50% of Rs.17.94 lacs plus applicable Service Tax to be paid prior to disbursement.

5. *Bank statement of the Current a/c with Indian Overseas Bank to be submitted every month. Credits routed through this a/c to be transferred to cash credit a/c maintained with our Bank. Company to route transactions through cash credit account to be maintained with our Bank.*

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10. *The unsecured loans as per projections be kept in the business on long term and the same should not be repaid without bank's permission. The rate of interest on unsecured loans should not exceed bank's rate of interest.*

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13. *Pre-mature closure/Pre-payment of the loan/credit facility any time during the currency of the advance will attract penalty charges @ 3.00% on the outstanding balance in case of Term Loans and on the sanctioned limit or the outstanding balance whichever is higher in case of other credit facilities at the time of take over.*

14. *Facility to be review on or before January 2017."*

18. Clause 6 of the "Specific Terms and Conditions for Cash Credit Facilities" in the said sanction letter is as under:-

"6. Period of Advance: Repayable on demand. The facility is available for one year subject to review in January 2017 when it may be cancelled/reduced, depending upon the conduct and utilisation of the advance."

19. The counsel for the defendant has also drawn attention to Clause 13 of the General Terms and Conditions of the said sanction letter and which is as under:-

"13. The company should obtain the written consent of the Bank in respect of the following matters:

a. Entering into any borrowing arrangement with any other bank/financial institution or with any other party.

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g. Premature repayments of loans and discharge of other liabilities.”

20. The said sanction letter, at the end provides as under:-

“If all the aforesaid terms and conditions are acceptable to you, kindly sign duplicate copy of this Sanction Letter as a token of acceptance and return for our record.”

21. The plaintiff signed a duplicate copy of the sanction letter dated 30th January, 2016 and forwarded the same to the defendant.

22. During the hearing, it is enquired from the counsel for the plaintiff, whether not though as per the said sanction letter, the Cash Credit, PC/PCFC, FDBP/FUDBP and Bills discounting under LC limits sanctioned in favour of the plaintiff, as per the last column titled “R.O.I p.a./Remarks”, were renewable in January, 2017 but the term loan sanctioned was repayable in 48 EMIs of Rs.10.60 lacs and whether not the plaintiff indeed has prepaid the term loan on 30th March, 2017.

23. The counsel for the plaintiff contends, that out of the entire limit of Rs.43.88 crores, the term loan was only of Rs.3.88 crores and the outstanding thereagainst as on 3rd April, 2017 was Rs.2,97,98,421/- only and prepayment charges at the rate of 3% could at best be only on that i.e. amounting about Rs.8.9 lacs and the defendant has instead recovered Rs.1,51,38,600/- from the plaintiff. It is also argued that though the last column in the table in the sanction letter, reproduced above, against the

term loan, provides for the same to be repayable in 48 EMIs of Rs.10.60 lacs, but also provides for review thereof to be due in January, 2017 and Clause 6 reproduced above titled “Period of Advance” qua the same also provided that it was available for one year and was subject to review in January, 2017.

24. The counsel for the defendant has argued, (i) that of the total limit of Rs.43.88 crores, fund-based limit i.e. limit against security, was of Rs.35.88 crores and non fund-based limit i.e. limit without any security, was for Rs.8 crores only; (ii) that the plaintiff, besides signing sanction letter, had also signed letter of continuity Ex.P-27 as under:-

*“With reference to the Demand Promissory Note Dated 19.02.2016 in your favour signed and/or endorsed by me/us for **Rs.8,00,00,000/- (Rupees Eight Crores only)** in respect of the abovementioned account, I/We/the Company do and each one of us doth hereby agree and undertake that the said Demand Promissory Note is to stand and be regarded as a continuing security and be enforceable for all monies which now are or which may at any time hereafter become due and owing by the undersigned **M/s. Trinity Touch Pvt. Ltd.**, a Company registered under the Companies Act, 1956 and having its registered office at D 10, Defence Colony, New Delhi, Delhi – 110024, to the Bank on the said account or any other account or accounts and whether or not from time to time there be nothing owing in such account or the same may be in credit .*

Dated at New Delhi this 19th day of Feb. 2016.”

clearly indicating that the loan was to continue; (iii) that the plaintiff has violated clause 13A of the sanction letter dated 30th January, 2016 by, without obtaining written consent of the defendant bank, entering into a borrowing arrangement with HDFC bank, and with monies received

wherefrom, pre-mature payment had been made to the plaintiff; (iv) that the plaintiff, vide its letter dated 20th January, 2017, besides renewal, also sought enhancement of credit limits and which could not have been enhanced at the level of the branch and was being processed and the meeting of the Board of Directors of the defendant was scheduled for 17th March, 2017, including for consideration of the renewal-cum-enhancement proposal of the plaintiff; (v) however, the plaintiff on 14th March, 2017, vide its e-mail Ex.P-11 as under:-

“Dear Sir,

Further to our telephonic discussion with you today, we are sorry to know that our enhancement proposal has got postponed to Bank’s Committee meeting due now on March 17, 2017. This is quite disheartening since we’ve originally submitted proposal almost 2 months ago and have been emphasizing upon taking it up on priority, but hasn’t been considered so by the bank.

Beside this, we understand that bank is unable to meet our expectations on commercial pricing either.

*In light of these facts and circumstances, **we are not interested in renewing our credit facilities and request you to let us know the outstanding amount to be paid towards closure of credit facilities** with you. Also, we would request you to release our collateral securities and charge on current assets suitably. We thank you for the support and cooperation extended to us in last one year.”*

withdrew the renewal-cum-enhancement proposal dated 20th January, 2017 and on 30th March, 2017 deposited the outstanding in the account of the defendant; 31st March, 2017 was year ending and 1st and 2nd April, 2017 were Saturday and Sunday; the amounts so received from plaintiff was

adjusted against the outstanding from the plaintiff on 3rd April, 2017; (vi) that the plaintiff, till 30th March, 2017, was availing of all the credit facilities sanctioned vide letter dated 30th January, 2016 by the defendant and the defendant was permitting the plaintiff to so enjoy credit facilities even beyond 30th January, 2017, because the proposal of the plaintiff for renewal-cum-enhancement was pending consideration and was being processed; (vii) it is thus not open to the plaintiff to contend that the plaintiff has not prepaid, because the plaintiff also continued to enjoy the credit facilities beyond 30th January, 2017, on the premise that the proposal for renewal-cum-enhancement was being processed; and, (viii) the sanction letter was only revivable after one year.

25. I have drawn the attention of the counsel for the defendant to the last column of the table in the sanction letter dated 30th January, 2016 and which has been reproduced here-in-above, and which against all other limits except term loan, provides for the same to be renewable in January, 2017.

26. The counsel for the defendant contends that the word “renewable” therein is a typographical error and should have been “reviewable”.

27. However, on enquiry whether the defendant in its written statement has pleaded “renewable” to be a typographical error instead of “reviewable”, the counsel for the defendant fairly states that no such plea has been taken.

28. On enquiry, whether the defendant has claimed any damages from the plaintiff for loss if any suffered by the defendant from the plaintiff,

without the written consent of the defendant, having availed of facilities from HDFC bank, the answer is in the negative.

29. On enquiry, whether the Board of Directors of the defendant, on 17th March, 2017, was informed of the communication dated 14th March, 2017 from the plaintiff, of withdrawal of the renewal-cum-enhancement proposal, the answer is again in the negative.

30. On enquiry, whether not the defendant, for the plaintiff having availed of the credit limits till 30th January, 2017, has charged up-to-date interest thereon, the answer is in the affirmative.

31. I have enquired from the counsel for the defendant that even though the defendant may have processed the renewal-cum-enhancement proposal dated 20th January 2017 of the plaintiff, but admittedly there was no sanction thereof till 14th March, 2017, when the plaintiff withdrew the said proposal; in the circumstances, how can the defendant charge processing charges from the plaintiff, when the said processing was halted by withdrawal of proposal.

32. The counsel for the defendant states that the processing charges are recovered year after year i.e. on every review and which review has to be yearly as per norms.

33. In ***DLF Limited*** supra, exercising writ jurisdiction, I was concerned with a challenge to the demand of the respondent Bank therein, of pre-payment charges, without there being a provision therefor in the loan agreement. It was held, that (i) if loan agreement provides for re-payment of loan in a specified period, pre-payment of the loan by the borrower

before the specified period at best amounts to breach of the loan agreement and the remedy of the bank for such breach would be to claim compensation therefor from the borrower; (ii) even if for such breach a penalty is stipulated, the same under Section 74 of the Indian Contract Act, 1872 read with dicta of the Constitution Bench in ***Fateh Chand Vs. Balkishan Dass*** AIR 1963 SC 1405, is only the maximum extent of penalty / compensation payable for such breach; (iii) the bank would still be liable to prove the loss suffered by it by such breach and would be entitled to only such compensation to the extent of the loss shown/proved; (iv) unless such compensation is determined, the bank could not have a right to unilaterally debit the account of the borrower or else recover the claimed amount coercively from the borrower; (v) every borrower has an inherent right to free himself from the loan; and, (vi) similarly every lender has a right in law to recall the loan at any time unless they agree to suspend that right for a limited period and in which case, they are barred from recalling the loan for that period.

34. The counsel for the plaintiff states that it is not the plea of the defendant also in its written statement that the defendant, owing to alleged pre-payment of loan by the plaintiff, has suffered any damages and the defendant has not claimed any damages from the plaintiff.

35. The counsel for the defendant is unable to controvert.

36. Applying ***DLF Limited*** supra, the defendant was not entitled to recover the amount of Rs.1,51,38,600/- towards pre-payment charges from the plaintiff as a condition for release of securities of the plaintiff and which

securities were required by the plaintiff for deposit with HDFC bank, with assistance wherefrom the plaintiff re-paid the loan of the defendant. The plaintiff, in my view is entitled to a decree, insofar as amount of pre-payment charges recovered is concerned, on this ground alone.

37. It is however the contention of the counsel for the plaintiff that even in terms of the documents executed by the parties, no pre-payment charges are recoverable by the defendant from the plaintiff. The counsel for the plaintiff in this regard has referred to the various clauses of the sanction letter dated 30th January, 2016 and which have also been set out hereinabove.

38. The sanction letter dated 30th January, 2016 though in Clause 13 of the “Special Terms & Conditions” provides that premature closure / pre-payment of the loan / credit facility at any time during the currency of the advance will attract penalty charges at 3% of the outstanding balance in case of term loans and on the sanctioned limit or the outstanding balance, whichever is higher in case of the credit facilities at the time of takeover, but at the same time with respect to the facility of Rs.23 crores towards cash credit, Rs.1 crore towards pre-shipment credit under LC, Rs.1 crore towards post-shipment credit and Rs.8 crores with respect to underlying bills, in the said sanction letter states that the said facilities were to be renewed in January, 2017. The argument of the counsel for the defendant, admittedly without any pleading, that in the sanction letter dated 30th January, 2016 the word ‘renewal’ with respect to the aforesaid limits / facilities is a typographical mistake for ‘reviewable’, cannot be accepted. Moreover, the fact that the sanction letter specifically provides for term

loan to be “reviewable” and all the other facilities provided by the defendant to be “renewable”, does not lend confidence to the argument that the usage of the word “renewal” was a typographical error.

39. However the sanction letter dated 30th January, 2016 with respect to the term loan of Rs.38.8 crores does provide for the same to be repayable in 48 equated monthly installments, indicating that the term of the said loan was of 48 months and any repayment thereof prior thereto would be pre-payment. However after stipulating that the term loan was repayable in 48 equated monthly installments, with respect to the said term loan, it was stated that the review thereof was due after one year, in January, 2017. Clause 14 of the ‘Special Terms and Conditions’ also provides that the facility, meaning the entire facility sanctioned under the sanction letter, including Rs.38.8 crores towards term loan, was to be reviewed on or before January, 2017.

40. Once the sanction letter dated 30th January, 2016 stipulates the period of advance as repayable on demand and for one year only and / or reviewable at the end of the year, the conclusion is inevitable that the term for which financial facilities were sanctioned vide sanction letter dated 30th January, 2016 was of one year only, and payment thereof prior to one year would constitute pre-payment and payment at the end of the year would not constitute pre-payment.

41. The fact, that the plaintiff vide its letter dated 20th January, 2017 sought renewal of the entire existing facility sanctioned on 30th January, 2016 and sought enhancement thereof and / or fresh facilities and the

defendant also entertained the same, also evidences that the plaintiff as well as the defendant also understood and acted on the understanding that the facilities sanctioned on 30th January, 2016 were for a term of one year only, beginning from 30th January, 2016.

42. The defendant also as per the aforesaid understanding, vide its communication dated 18th March, 2017, informed the plaintiff that it had reviewed the credit facilities and consented to enhance the credit facilities as requested by the plaintiff vide its letter dated 20th January, 2017 and that the sanction letter will be following. Not only so, the defendant vide the said communication also informed the plaintiff that it had also recovered Rs.15 lacs plus tax from the plaintiff towards renewal-cum-enhancement of credit facilities. Had the credit facilities been for a term of more than one year, the question of renewal thereof after one year would not have arisen. The defendant processed the request of the plaintiff for renewal and sanctioned the renewal only because the facilities sanctioned on 30th January, 2016 were for one year only. The sanction letter subsequently issued by the defendant on 18th March, 2017 itself also bears the subject “Renewal-cum-Enhancement of Credit Facilities” and informs the plaintiff that the plaintiff’s request for renewal-cum-enhancement of credit facilities has been approved by the Board of Directors of the defendant, again indicating that the earlier sanction dated 30th January, 2016 was for one year only. Not only so, the term of the facilities, in the sanction letter dated 18th March, 2017, is again shown for one year with renewal due in January, 2018. Though against term loan and fresh term loan sanctioned, again it was indicated that the same was repayable in 48 equated monthly

instalments and / or in 60 equated monthly instalments, but with the rider that the same was also reviewable in January, 2018. Not only so, the sanction letter dated 18th March, 2017 also under 'Special Terms & Conditions' provides for all the facilities thereunder to be reviewable on or before January, 2018.

43. The plaintiff, though on 20th January, 2017 i.e. prior to the expiry of one year from 30th January, 2016, vide its letter dated sought renewal from the defendant of the credit facilities, and also certain additional credit facilities, but upon not hearing anything from the defendant inspite of repeated requests and reminders, vide its communication dated 14th March, 2017, recalled its letter dated 20th January, 2017 and unequivocally informed the defendant that the plaintiff was no longer interested in renewal of its credit facilities from the defendant and wanted to clear the outstanding and called upon the defendant to disclose the outstanding.

44. The letter dated 20th January, 2017 of the plaintiff to the defendant requesting for renewal-cum-enhancement of credit facilities was in the nature of an offer of the plaintiff. The said offer was withdrawn by the plaintiff on 14th March, 2017, prior to acceptance thereof by the defendant. With effect from the communication dated 14th March, 2017, there was no offer of the plaintiff, which could have been accepted by the defendant. Thus the purported acceptance by the defendant of the offer dated 20th January, 2017 which had been withdrawn vide the communication dated 14th March, 2017, did not bring about any binding contract of renewal and enhancement of the credit limits. Section 5 of the Indian Contract Act, 1872 provides that a proposal may be revoked at any time before the

communication of its acceptance is complete as against the proposer, but not afterwards. Thus, the plaintiff was entitled to withdraw the renewal-cum-enhancement letter dated 20th January, 2017 at any time before the e-mail dated 18th March, 2017 of the defendant. Reference in this regard may also be made to *National Highways Authority of India Vs. Ganga Enterprises* (2003) 7 SCC 410, *New India Assurance Company Ltd. Vs. Raghuvir Singh Narang* (2010) 5 SCC 335, and *Union of India Vs. V.K. Jain* 2012 SCC OnLine Del 193 (DB).

45. Not only so, the acceptance by the defendant was not absolute in as much as the defendant did not agree to each and every term contained in the offer letter dated 20th January, 2017 of the plaintiff. It is for this reason only that the defendant also in its letter dated 18th March, 2017 called upon the plaintiff to sign a duplicate thereof in token of its acceptance. The letter dated 18th March, 2017 was thus in the nature of a counter offer. The plaintiff did not accept the counter offer and on the contrary on 18th March, 2017 itself again informed the defendant that it was no longer interested in availing the credit facilities from the defendant.

46. Seen in the aforesaid light, repayment by the plaintiff to the defendant on 30th March, 2017 of the credit facilities was after the period of one year of the earlier sanction and before the fresh contract. The said repayment cannot be claimed to be pre-mature or pre-payment, to attract penalty as stipulated in the sanction letter. The repayment by the plaintiff during the period of sanction vide letter dated 30th January, 2016 or even immediately after renewal and before the end of the period of renewal could qualify as pre-payment, but not the repayment after the period of one year

of sanction vide letter dated 30th January, 2016 and before any fresh contract came into being between the parties.

47. The mere fact that the defendant, after the period of one year of sanction vide letter dated 30th January, 2016, had allowed the plaintiff to continue the credit facilities while it was considering renewal thereof, would also not in my view qualify repayment as pre-payment. During the said time, there was no specific term for which the plaintiff was entitled to enjoy the facility and the defendant was free to recall the same at any time and the plaintiff was also free to withdraw its requests for renewal and repay as the plaintiff did.

48. Interpreting the sanction letter constituting the agreement between the parties and the correspondence exchanged between the parties, no case of pre-payment or premature payment is made out and in any case the defendant has not pleaded least proved any loss or damage from such pre-payment, and not claimed any loss or damage and / or being entitled to coerce the plaintiff to pay the amounts illegally claimed as a condition to release the securities of the plaintiff withheld by the defendant and having so recovered the amount, is liable to reimburse the same.

49. What has been analyzed above, also holds good for the processing charges of Rs.17,25,000/- recovered from the plaintiff. Though undoubtedly, the defendant commenced processing the request dated 20th January, 2017 of the plaintiff for renewal and enhancement of credit facilities, but before the defendant took any decision, the plaintiff on 14th March, 2018 recalled its letter dated 20th January, 2017 and after which

recall there was no request or offer of the plaintiff to be accepted by the defendant or to be processed further by the defendant. Even though the defendant may have from 20th January, 2017 till 14th March, 2017 processed the request dated 20th January, 2017 of the plaintiff, but the defendant in law is not entitled to recover charges for an aborted act. It is the settled law that the preparations made for entering into a contract, if no contract is ultimately entered into, do not give rise to any claims unless it is established that the said steps were at the specific asking of the other party and charges thereof were payable irrespective of whether the contract is entered into or not. Reference in this regard may be made to ***Santi Devi Vs. Life Insurance Corporation of India*** 1983 SCC OnLine Ori 120 (DB), ***Regalian Properties PLC Vs. London Docklands Development Corporation*** (1995) 1 WLR 212, ***T.N. Peermohamed Vs. The D.F.O. Tenmala*** AIR 1974 Ker 192, ***State of Orissa Vs. Harinarayan Jaiswal*** (1972) 2 SCC 36, ***Aggarwal Associates (Promoters) Ltd. Vs. Delhi Development Authority*** (2010) 15 SCC 380, and, ***K. Poovendran Vs. Assistant Director*** 2017 SCC OnLine Mad 19190. Such is not even the pleaded case of the defendant. Rather, it is inexplicable as to why the Board of Directors of the defendant bank, in the meeting held on 18th March, 2017 considered the request dated 20th January, 2017 of the plaintiff which had already been recalled / withdrawn and proceeded to issue a sanction letter in terms thereof, albeit with some modification. Such wrongful act of the defendant would not entitle the defendant to any claim towards processing charges from the plaintiff. Thus, the unilateral recovery of processing charges of Rs.17,25,000/- by the defendant from the plaintiff is also found to be illegal and plaintiff is entitled to reimbursement thereof.

50. Accordingly, (1) I decide issue no.(i) in favour of the plaintiff and against the defendant, by holding that the defendant bank has illegally debited an amount of Rs.1,51,38,600/- from the plaintiff account towards pre-payment charges; (2) I hold that the defendant bank has illegally debited an amount of Rs.17,25,000/- towards upfront processing charges, deciding the issue no.(ii) in favour of the plaintiff and against the defendant; (3) however considering the facts and circumstances of the case, I find the plaintiff entitled to interest *pendente lite* and till 30th September, 2019, at 7% per annum; however if the defendant does not satisfy the decree within said time, the defendant shall ideally / normally be liable for interest at the same rate as claimed under the sanction letter from the plaintiff i.e. at the rate of 12.25% per annum with monthly rests; however the plaintiff having confined the claim for interest at 18% per annum, the defendant, after 30th September, 2019, would be liable for interest till the date of payment at 18% per annum; issue no.(iii) is decided accordingly; (4) under issue no.(iv), I hold that the plaintiff did continue to avail credit facilities from the defendant beyond the due date for renewal/review as per sanction letter dated 30th January, 2016, but the counsel for the defendant has not even urged any argument as to how the same can make the suit not maintainable. I am unable to fathom any. Issue no.(iv) is decided accordingly.

51. A decree is passed, in favour of the plaintiff and against the defendant, of recovery of Rs.1,68,63,600/- along with interest at 7% per annum from the date of institution of the suit till today and till 30th

September, 2019 whereafter the defendant shall be liable for interest on the principal amount at 18% per annum.

52. The plaintiff is also entitled to costs of the suit against the defendant, with professional fee assessed at Rs.2 lacs.

Decree sheet be drawn up.

JULY 08, 2019

‘AK/gsr’..

(corrected & released on 5th August, 2019)

(Interest till 30th September, 2019 at 7% is decreed keeping in mind the release date)

RAJIV SAHAI ENDLAW, J.