$~112

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

Date of Decision: 30th August, 2022.

\+ W.P.(C) 5807/2020 & CM APPLs. 21004/2020, 20708/2021

HONEY BUILDERS LIMITED ..... Petitioner

Through: Mr. Neeraj Malhotra, Senior Advocate with Mr. Vikas Sethi and Mr. Nimish Kumar, Advocates.

versus

UNION BANK OF INDIA ..... Respondent

Through: Mr. Alok Kumar, Ms. Somya Yadava, Mr. Manan Gambhir, Ms. Garima Soni and Ms. Nandita Jha, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Petitioner has invoked Article 226 of the Constitution of India seeking release of Fixed Deposit Receipts ["***FDRs***"] claiming that the lien/charge created thereon stands discharged, and the bank is unlawfully withholding the same.

2. Mr. Neeraj Malhotra, Senior Counsel for the Petitioner-Honey Builders Limited ["***HBL***"], has handed over a brief note of written submissions across the board, which is taken on record.

3. Briefly, facts of the case are as follows:

3.1. For participating in a scheme for external development works of a residential plotted colony in Gurugram, Department of Town and Country Planning, Haryana ["***DTCP Haryana***"] called upon Supertech Limited to furnish Bank Guarantees ["***BGs***"] for which they approached the Respondent – Union Bank of India (formerly Corporation Bank) ["***Bank***"].

3.2. The Bank asked Supertech Limited to secure the BG by way of 100% cash margin, and if furnished by a third-party security, the same would be by way of a Memorandum of Charge/Lien.

3.3. In above background, HBL, which at that time was a sister concern of Supertech Limited, came into the picture. It created security by executing two documents, both dated 31st December, 2018, titled 'Memorandum of Charge/Lien Over Deposit by Third party' with the Bank which contained identical terms and clauses. [*Hereinafter, reference to one memorandum would be treated as reference to both, and collectively, shall be referred to as "**Memoranda**"*] Through the Memoranda, HBL created lien/charge on two FDRs bearing no. 530101344818079 and 530101344818103 for Rs. 21.80 crores and Rs. 1.05 crores respectively, in favour of the Bank, which were to *inter-alia* serve as 100% cash margin.

3.4. With security in place, the Bank issued two BGs, bearing no. IPBG04471800044 and IPBG04471800043 for Rs. 21.80 crores and Rs. 1.05 crores, both dated 31st December, 2018, respectively, in favour of DTCP Haryana, on account of Supertech Limited.

3.5. These BGs were subsequently returned by DTCP Haryana on 22nd July 2022, and cancelled by the Bank. This fact is not in dispute.

3.6. The grievance of HBL is that despite discharge of the BGs, and issuance of several letters requesting for release, the Bank is illegally and arbitrarily withholding the FDRs.

Contentions of Petitioner

4. Mr. Malhotra has made following submissions:

4.1. HBL furnished the FDRs as security, specifically for issuance of BGs. Clause 1 of the Memoranda, which is clear and specific, demonstrates that HBL made a request only for issuance of BGs on account of Supertech Limited, and nothing more. Since the BGs have been discharged, HBL is entitled to have the FDRs released.

4.2. The Memoranda are standard pre-printed formats, provided by the bank, which had blanks that were to be filled out by-hand. HBL signed the same and did not read each and every clause on the belief that inapplicable clauses would be struck out. HBL was not aware of the Bank's ill-intention to misuse certain clauses of the Memoranda to withhold its 100% cash margin.

4.3. Clause 1 has several blanks which have deliberately neither been been filled nor struck-out. This indicates that parties intended to furnish the FDRs as securities only for BGs. Clause 11 of the Memoranda also contains blanks, left unfilled intentionally. The same is reproduced as under:

11. * I/We confirm that the balance of Rs. ....in the Account No.(s)..............
as on ....as stated above is correct

4.4. None of the clauses of the Memoranda indicated any liability towards loans of other parties, or mentioned any outstanding amounts.

4.5. A plain reading of Clause 3 of the Memoranda indicates a special contract between the Bank and HBL, for the specific purpose of securing the BGs. Accordingly, the Bank could not have created a general lien on 100% cash margin deposited by HBL.

4.6. The details of the FDRs (*viz.* validity from 31st December, 2018 to 31st March, 2024 i.e., for a period of 63 months) were hand-written in a table below Clause 3, as follows:

Deposit(s) Receipt A/c No	Name of the Depositor(s)	Date of Deposit/ Opening the A/c.	Date of maturity	Period	Rate of Interest	Amount/ Balance
[illegible]	[illegible]	31/12/2018	31/3/2024	63M	5%	[illegible]

Deposit(s) Receipt A/c No	Name of the Depositor(s)	Date of Deposit/ Opening the A/c.	Date of maturity	Period	Rate of Interest	Amount/ Balance
[illegible]	[illegible]	31/12/2018	31/3/2024	63M	[illegible]	[illegible]

4.7. From a conjoint reading of the hand-written content and clauses noted above, the only intention that can be inferred is creation of lien/charge on 100% cash margin, for the sole purpose of securing the BGs.

4.8. Bank cannot deny admissibility of the hand-written content mentioned in Clause 3, which would be given primacy over the printed content.[1]

4.9. Further, Clause 5, 6 and 7 (which are printed clauses) of the

[1] Reliance is placed on ***Vijay Kumar v. Jullundur Body Builders and Ors.***, 1981 SCC OnLine Del 77.

Memoranda cannot be relied upon in isolation. It is well-settled in law that clauses of an instrument must be read together.[2]

4.10. Bank is not entitled to retain or withhold securities offered for issuance of BGs, after discharge thereof by the beneficiary, or after its purpose is fulfilled.[3]

4.11. The certified copy of the resolution passed by Board of Directors of HBL dated 1st October 2018 [*Annexure-9 to the petition*] [*hereinafter*, "***Board Resolution***"] also indicates that consent was given by HBL to create a lien on the FDRs as a security for the BGs only. This becomes evident from the resolution passed to the following effect:

> *"RESOLVED FURTHER THAT the consent of the Board be and is hereby accorded to create lien on the aforesaid Fixed Deposit as security for the Bank Guarantee to be issued on behalf of M/s Supertech Limited in favour of Bank.*
> *RESOLVED FURTHER THAT Mr. R. K. Arora, Authorised Signatory and/or any of the director be and are hereby severally authorized to sign all the necessary documents, agreements, undertakings all other necessary papers as may be required and to do all such acts, deeds and things that may be required or considered necessary or incidental for creation of Fixed Deposit and Lien regarding Bank Guarantee in favour of Bank."*
>
> [Emphasis Supplied]

Thus, Bank's claim of treating FDRs as a continuing security, is entirely misplaced.

4.12. In contracts which consist of printed forms with cyclostyled amendments, typed additions and deletions and hand-written corrections, all provisions must be given effect to. If they are inconsistent, hand-written corrections would normally prevail over

---

[2] Reliance is placed on ***Provash Chandra Dalui & Anr v. Biswanath Banerjee & Anr.***, 1989 Supp. (1) SCC 487.

[3] Reliance is placed on ***Vijaya Bank and Ors. v. Naveen Mechanised Construction (Private) Limited and Ors***, 2003 SCC OnLine Kar 779.

printed terms.[4]

4.13. HBL ceased to be a subsidiary of Supertech Limited, and instead became a subsidiary of M/s Veer Chemicals Private Limited on 30th August, 2018, which is prior to the execution of the Memoranda (i.e., 31st December, 2018).

Contentions of Respondent

5. Per contra, Mr. Alok Kumar, counsel for the Bank, contradicts the submissions advanced by Mr. Malhotra. His submissions are as follows:

5.1. Supertech Limited and its associate companies are the customers/ borrowers of the Bank, with a total exposure of approx. Rs. 466 crores. The accounts of Supertech Limited and its associate company, Supertech Realtors Pvt. Ltd. ["***SRPL***"] were classified as non-performing assets on 29th January 2019 and 28th September 2017 respectively, and recovery proceedings were initiated.

5.2. Clauses 5, 6 and 7 of the Memoranda lay out in clear terms that the Bank was authorised to use the FDRs as continuing security, even after the BGs were returned and cancelled (per Clause 5), for any of Supertech Limited's accounts (per Clause 6) for future loans as well (per Clause 7).

5.3. On the basis of above-extracted clauses, Bank has rightly exercised lien, adjusted the FDRs amounts against the outstanding dues of Supertech Limited and/or SRPL. Despite such adjustment, a large amount is pending recovery from Supertech Limited and/or SRPL, for which the Bank has initiated proceedings before Debt Recovery

[4] Reliance is placed on ***M.K. Abraham and Company v. State of Kerala and Anr.***, (2009) 7 SCC 636.

Tribunal ["***DRT***"]. Since Supertech Limited is presently undergoing insolvency proceedings in the National Company Law Tribunal ["***NCLT***"], DRT proceedings are suspended.

5.4. The Memoranda were executed by HBL voluntarily, with free consent, after carefully perusing the terms contained therein. HBL was therefore well aware of the extent and import of clauses contained therein.[5]

5.5. At the time of execution of the Memoranda, HBL was a sister-concern of Supertech Limited and SRPL. In this respect, reliance is placed on identical 'Registered Address' and 'Address other than R/o where all or any books of account and papers are maintained' in the 'Master Data of Registrar of Companies' of HBL, Supertech Limited and SRPL, as available on the website of the Ministry of Corporate Affairs [*Annexure R-4 to the reply filed by the Bank*].

5.6. The Board Resolution also confirms the fact that HBL had agreed to create a lien on the FDRs *"on such terms and conditions as may be agreed with the Bank"*, which is evident from the following extract:

> *"RESOLVED THAT the consent of the Board be and is hereby accorded to create Fixed Deposit of Rs. 218,000,000/- (Rupees Twenty One Crore and Eighty Lac only) and Rs. 10,500,000/- (Rupees One Crore and Five Lac Only) aggregating to Rs. 228,500,000/- (Rupees Twenty Two Crores and Eighty Five Lacs Only) by debit of Current bank account no. 51 01 01006407030, maintained with Corporation Bank, Corporate Banking Division, 1 Faiz Road, Jhandewalan, New Delhi branch (hereinafter referred as "Bank"), on such terms and conditions which may be agreed upon with the Bank."* [Emphasis Supplied]

5.7. As part of a one-time settlement proposal dated 3rd June, 2021 ["***OTS Proposal***"] submitted by SRPL to the bank, HBL had agreed

---

[5] Reliance is placed on ***Bihar State Electricity Board and Ors. v. Green Rubber Industries and Ors***. (1990) 1 SCC 731.

to adjust part of the amounts of FDRs against the outstanding dues of SRPL. Reliance is placed on Annexures R-5 and R-6 filed *vide* Index dated 24th March, 2020. As HBL itself had permitted the FDRs to be adjusted against the outstanding dues of SRPL, it indicates HBL's awareness and acceptance of the clauses of the Memoranda allowing for continuing security. Such surrounding circumstances should be taken into account whilst interpreting the terms of the contract.[6]

5.8. Although the Bank has pressed into service Section 171 of the Indian Contract Act, 1872, however, in light of clear and specific clauses in the Memoranda, the Bank is certainly entitled to retain the FDRs, and therefore, the right of general lien is not pressed.

Analysis

6. Court has considered the aforenoted submissions advanced by counsel for the parties.

7. The term 'borrower' is not defined in the Memoranda, however, there can hardly be any dispute on this issue. HBL is claiming itself to be a third party, and therefore, the necessary corollary is that first and second parties are the Bank and the borrower(s) (or vice versa).

8. The BGs, for which 100% cash margin in the nature of FDRs was furnished by HBL, have been discharged. Despite this development, which is beyond controversy, the FDRs are not being released and rather have been encashed and adjusted against the dues of borrowers. We are thus concerned with obligations and liabilities of HBL, a 'third-party' and corresponding

[6] Reliance is placed on ***Khardah Company Ltd. v. Raymon & Co. (India) Private Ltd***., (1963) 3 SCR 183.

rights of the Bank qua the FDR which have to be determined in accordance with the terms of contract i.e., the Memoranda. The construction and interpretation of the clauses contained therein thus becomes the fulcrum of dispute. Thus, for sake of convenience, clauses relied upon by both the parties, No. 1, 3, 5, 6 and 7 are extracted hereinbelow:[7]

> 1. "I/We request you to issue Bank Guarantee/s on account of ~~Sri/Smt.~~/M/s....SUPERTECH LIMITED.............. to the extent of Rs. ...21,80,00,000/-.......................and or extend to ~~him / her~~ / them / it, financial assistance by way of loan / OD / CC up to a limit of Rs..carrying interest at ....% per annum, *i.e., ...% over and above the applicable MCLR [Marginal Cost of Funds based Lending Rate] which is ....% per annum at present for a tenor of .... (subject to the condition that if on the date of first disbursement, whether partial or full, the applicable MCLR has been revised from the rate that has been stated above, then such revised MCLR and consequent interest rate will be applicable), compounded with monthly/quarterly/half yearly/annual rests, whether debited or not, or at such other lending rates that the Bank may determine to charge from time to time in terms of directives of Reserve Bank of India or otherwise determined by the Bank due to variation in MCLR or variation in interest spread and or in gradation of borrowal account/s of the borrower or otherwise at the Bank's absolute discretion without further reference or notice to me / us as long as the principal and / or interest and / or part thereof remain unpaid. *#The applicable Rate of Interest will be reset Annually on the anniversary date of first disbursement OR as under:... OR as

[7] From the Memorandum of Rs. 21.80 crores.

decided by the Bank from time to time. The MCLR applicable at the time of each reset of Rate of Interest, shall be the prevailing MCLR for the tenor, till the next reset date or the maturity of the credit facility, whichever is earlier.

** Words in bold letters should be struck out under due authentication for categories of loans not linked to MCLR.*

 # If the applicable reset period of Interest rate is not Annually on the anniversary date then the same should be struck out under due authentication of the borrower and applicable reset period as specified in CSI/ relevant guidelines of the bank should be written in the blank space provided.

xx … xx … xx

3. As security for repayment of monies that may become due to you from borrower(s) an account of the Bank Guarantees issued/to be issued by you and invoked/may be invoked by the beneficiaries or the outstanding in my/our loan/overdraft/CC account of the borrower(s) including interest, cost, charges, etc. I/We hereby create a lien/charge in your favour on the following deposits.

xx … xx … xx

5. The lien / charge hereby created by me/us over the said deposit(s) the credit balance(s) held by you will be available as a continuing security even though original Bank Guarantee(s) is/are returned by the beneficiary duly cancelled even if the Overdraft/Cash Credit account(s) runs into credit or the balance is reduced or extinguished at any time or from time to time. I / We will be personally liable for any balance that may become due to you from borrower(s) on account of' invoked Bank Guarantee(s). or under loan account or for any ultimate balance that may become due to you in the Overdraft/Cash Credit account or any account whatsoever from time to time.

6. I/We irrevocably authorise you to appropriate the balance in the above deposit(s) Account(s) for the repayment of the outstanding balance, including interest/charges etc. on any account whatsoever of' the borrower(s) even before the maturity of the deposits and in the event of premature payment of interest may be allowed as per rules applicable for the time being in force and in the event the deposit maturing for payment of interest may be allowed at the rate applicable for the repayment of the deposit(s) for the period. If the said deposit(s) is/are renewed by you at my / our request or otherwise on the due dates, so renewed deposit(s) shall be held as continuing security for all outstanding accounts including interest, expenses, charges etc. payable by tile borrower(s) in any of his/their accounts. Interest accrued on deposits from time to time as and when become payable as per the rules applicable may be appropriated towards arrears of *interest or other charges due, if any.*

7. I / We further declare and agree that in the event of my/our requiring you to advance any loan and/ or extend financial facility(ies) at any time hereafter to Borrower(s) and the Bank granting such loans and/or financial facility(ies) it is hereby understood and accepted that such facility(ies) were extended on the basis of this letter of request. You may hold the above deposit receipt(s), outstanding credit balance is the aforesaid A/c(s) including interest accrued thereon as security for repayment of all or any amounts that may be outstanding against borrower(s) at any time and from time to time, apart from my/our personal liability until this letter is cancelled by you and/or is returned to me/us duly cancelled, after I/We comply with all the requirements as may be required by you." [Emphasis Supplied]

9. To be reminded, Mr. Malhotra's emphasis has been on the blanks contained in Clause 1 extracted above, which, according to him, makes the other clauses relied upon by the Bank, irreconcilable. Let's analyse whether this is true. At this juncture it would be worth reiterating that to ascertain the real intent of parties, which would assist in the interpretation of contract, the clauses of the Memoranda need to be seen as a whole and not piecemeal or selectively.

10. Clause 3 stipulates the right of the Bank to retain cash margin furnished by HBL as a "security" for repayment of money that may become due from borrower(s) on account of BGs. At the same time, it also stipulates that the security would relate to repayment of monies towards the outstanding overdraft/ cash credit account of the borrower(s), including interest, cost, charges, etc. This clause, thus, enables the bank to encash security for repayment of outstanding balance/dues in the overdraft/ cash credit account of the borrower(s), apart from the BGs.

11. Clause 5 unambiguously provides that the security furnished by HBL

was a continuing one. In fact, we cannot lose sight of the fact that HBL acknowledged and agreed that the lien/charge created over the said deposits in favour of the Bank would not be extinguished even if the original BGs stood returned by the beneficiary, duly cancelled. Rather, HBL agreed that the security would be available as a continuing security even if the overdraft/ cash credit account(s) ran into credit, or the balance reduced or extinguished at any time or from time to time. Furthermore, HBL undertook personal liability for balance that may become due to the Bank from borrower(s) on account of invoked BG(s) or under loan account or for any ultimate balance that may become due under the overdraft/ cash credit account or any account whatsoever, from time to time. This personal liability is in addition to the lien created on the security.

12. Clause 6 further reinforces the contractual commitment whereby HBL agreed to treat the securities as continuing security for all outstanding accounts, including interest, expenses, charges etc. payable by borrower(s) in any of their accounts. In fact, it uses the words “irrevocably authorise” while providing that HBL allows the Bank to appropriate the balance in the FDRs for the repayment of such outstanding balance, if any, including interest/charges etc. on any account of the borrower(s) whatsoever, even before the maturity of the deposits.

13. Lastly, Clause 7 stipulates that HBL “declares and agrees” that in the event the Bank extends any loan or financial facility(ies) to any of the Borrower(s), it would be “understood and accepted” that the same was done on the basis of the Memoranda. As security for repayment of all or any

amounts that may be outstanding against borrower(s) at any time and from time to time, the bank was granted the right to hold FDRs as security. Further, this undertaking was apart from the personal liability.

14. The aforenoted clauses exhibit that parties unequivocally agreed to treat the FDRs as a continuing security, not confined to serve as cash margin for the BGs. HBL vouched for the borrower(s) and agreed to treat the security as a continuing one, and also for other dues/ outstanding of the Bank, recoverable from Supertech Limited/ SRPL, in unequivocal terms. This interpretation is evident from a plain reading of the clauses, and HBL cannot be permitted to wriggle out of its contractual obligations and promises by placing reliance on certain blanks in one of the clauses. These clauses leave no room for uncertainty about the charge/ lien created in favour of the Bank on the deposits/ security in question. The operation of the Memoranda is not restricted to the issuance of the BGs, as contended. The restrictive and narrow interpretation canvassed by Mr. Malhotra is not borne out from a plain reading of the foregoing clauses.

15. Now let's come to Clause 1, which has been the mainstay of Mr. Malhotra's submission. He places reliance upon the blanks therein to refute and negate the effect of the clauses relied upon by the Bank, discussed above. This reliance is entirely misplaced. The rights and obligations arising from Clauses 3, 5, 6 & 7 are independent of other clauses, although supplementing and reinforcing the underlying intent of the contract. Therefore, blanks contained therein would not abrogate or contradict the above-said clauses. No doubt, HBL has not requested the Bank to extend

any financial assistance by way of a overdraft/ cash credit in favour of borrower, but that, in the opinion of the Court does not lead to the conclusion that the rights and obligations provided in the other clauses, would not be enforceable or are contravened. The blanks are actually redundant for the purpose of enforceability of other clauses. These were intentionally kept blank, as HBL did not make a request for extending financial facility of overdraft/ cash credit, etc. It does not mean that in absence of such a request, HBL's obligation and commitment under other clauses to, *inter-alia,* create a continuing security and/or also serve as security towards other outstanding dues of the borrowers, would cease to exist. In fact, this obligation is also borne out from the fact that apart from agreeing to create a lien on security for other dues, HBL also undertook personal liability. The blanks in Clause 1 cannot be considered to be exclusive of other terms to conclude that Bank's lien over the FDRs was only for the BGs and not beyond that, specially when three clauses – 5, 6 and 7 – reinforce the view that the Bank would have lien on the FDRs for other dues apart from the BGs in question.

16. It is cardinal principle of interpretation of contracts that all clauses contained therein must be read read in conjunction with the other clauses of the Memoranda, which manifests that HBL agreed to create a lien/charge on the fixed deposits, not only as security for the BGs, but also for the outstanding balance, if any, on "any" account(s) of borrower(s). The additional liability that HBL undertook cannot be ignored. Mr. Malhotra's interpretation would render the remainder clauses superfluous. This interpretation would have been possible if certain terms in the ordinary sense

of the words would have led to absurdity with the rest of the contract and/ or been contrary to the purpose of entering into the agreement. Here, when the clauses are interpreted in their ordinary and natural sense, they clearly spell out the rights and obligations that the parties desired to assign. That there are outstanding dues recoverable from Supertech Limited and/or SRPL, is not in controversy before this Court, and thus, adjustment of FDRs by the Bank, cannot be held to be arbitrary or beyond the terms of the contract, as canvassed by HBL.

17. Next, the Court would deal with the judgments relied upon by the parties. HBL's reliance on ***Vijay Kumar*** (*supra*) and ***M.K. Abraham*** (*supra*). Mr. Malhotra emphasised that hand-written content would prevail over the printed content, which proposition in the opinion of the Court, would be relevant only in case of an ambiguity or contradiction between the printed and the hand-written terms. In the present case, both the printed and the hand-written terms indicate that the Bank has lien over the FDRs and a harmonious interpretation of the clauses of the contract is possible. ***Vijaya Bank*** (*supra*) is not applicable on facts. The said decision states that securities corresponding to said BGs should be returned by the bank when BGs are returned and cancelled; however, it further holds that this obligation would arise only in absence of any specific authorisation or lien conferred upon the bank to retain the security towards the discharge of debt for another company, which, is the situation in the present case.

18. Thus, clauses of Memoranda, when read in entirety, establish that the Bank had the right to retain the FDRs and the blanks left in some of the

clauses of the standard form cannot be relied upon to negate the meaning sought to be imputed by the afore-noted express clauses of Memoranda. Also, taking into account the surrounding circumstance of HBL agreeing to adjust the FDRs amount for dues of SRPL as per the OTS proposal submitted by SRPL, a plausible conclusion is drawn that HBL was fully aware of the obligations under the clauses, which it is trying to circumvent.

19. With respect to the blanks in the Memoranda, this Court finds merit in the reasoning in the judgement relied upon by the counsel for the Bank in ***Khardah Company Ltd.*** (*supra*), which holds that in addition to reading the contract as a whole, surrounding circumstances should be taken into account to construe a contract. His further reliance on ***Bihar State Electricity Board*** (*supra*) to press that the Memoranda, which is a standard form of contract widely used by parties would be fair and reasonable on the presumption that the bargaining power is fairly matched, also bears noting. However, the Court does not find merit in this suggestion, and cannot assume that the Bank and HBL had equal bargaining power. Nonetheless, HBL had ample opportunity to read and understand the terms of the Memoranda, prior to the execution of the same and object to any stipulation that was contrary to to it's contractual intent.

20. Thus, the Court does not find any merit in the present petition. Accordingly, the same is dismissed, along with other pending applications.

SANJEEV NARULA, J

AUGUST 30, 2022/*d.negi*
Corrected and released on 13th September, 2022