IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

CS 288 of 2017

R.V. Rail Products Pvt. Ltd.
Versus
Punjab National Bank

Mr. Vikas Baisya

Mr. Sourojit Dasgupta

Mr. Altamash Alim

… for the plaintiff.

Heard on : 20.03.2023

Judgment on : 03.05.2023

<u>Krishna Rao, J.:</u>

1. The plaintiff has filed the present suit praying for decree for cancellation of the letter dated 20th November, 2017 upon the same being adjudged null and void, perpetual injunction restraining the defendant, its men, servants and agents from giving any or further effects or taking any steps pursuant to the letter dated 20th November, 2017, decree for mandatory injunction compelling the defendant to accept counter guarantee from Axis Bank Limited for the value of the outstanding letters of Credit and bank guarantee, decree for Rs.52,47,189.50/- and other reliefs.

2. The plaintiff maintains a current account with the defendant bearing No. 11704011000085. The plaintiff availed banking facilities from the defendant in the form of cash credit, letter of credit and bank guarantee. The bank has granted the said facilities for the period of one year from the date of issuance of sanction letter. The defendant has granted cash credit cum Inland letter of credit for a sum of Rs. 2 Crores and bank guarantee of Rs. 30 Crores. In the year 2015, when the plaintiff had applied for loan, the turnover of the plaintiff was Rs. 28.27 crores and its credit rating by CRISIL was BBB+. During the year 2015-2016, the turnover of the plaintiff increased to Rs. 88.43 crores and its credit rating enhanced to A-.

3. On 28th January, 2016, the plaintiff had applied for enhancement of the existing cash credit limit of Rs. 5 crore and bank guarantee limit to Rs. 40 Crores with interchangeable limit of up to 50% from cash credit to bank guarantee. On 7th October, 2016, the defendant had forwarded its sanction letter dated 12th September, 2016 to the plaintiff and the same was received by the plaintiff on 10th October, 2016 wherein the existing facilities was extended for a further period of one year. The defendant did not accept the plaintiff's proposal for enhancement of the facilities and reduction of bank charges.

4. As the facilities offered by the defendant were not acceptable to the plaintiff, the plaintiff by a letter dated 7th October, 2016 informed the defendant that credit facilities are not acceptable to the plaintiff and the plaintiff requested the defendant to review its offer by considering the financial status of the plaintiff failing which the plaintiff constrained to approach other banks. On 6th March, 2017, the defendant had forwarded a fresh sanction letter dated 20th February, 2017, containing terms of grant of credit facilities on and from 20th February, 2017. Again the plaintiff had informed the defendant that the terms proposed by the letter dated 20th February, 2017 were not acceptable to them. The defendant informed the plaintiff the proposed terms could be negotiated but the plaintiff should sign and return the acknowledgement portion of the letter dated 6th March, 2017 to the defendant to continue with the existing ad hoc facilities and reconsideration of the plaintiff's proposal.

5. On 15th March, 2017, one of the Directors of the plaintiff namely Mr. Piyush Jalan resigned from the Board of the plaintiff. By letter dated 24th March, 2017, the plaintiff complained about the delay on the part of the defendant in considering the renewal of sanction and the loss suffered by the plaintiff and requested for reduction in bank charges and interest rates with effect from 1st January, 2016. By a letter dated 4th April, 2017, the defendant admitted that the plaintiff was entitled to reduction in process fee, bank guarantee commission and rate of interest as the credit rating of the plaintiff by external agency namely CRISIL had improved. The defendant agreed to give the following concession with retrospective effect from 9th September, 2016:-

50% concession in process fees;

Bank Guarantee Commission at 1% per annum (financial) and 0.75 % per annum (performance);

Rate of Interest on Cash Credit 1 year MCLR +1.75% as against applicable 1 year MCLR +3.50%.

6. On 17th April, 2017, the defendant called upon the plaintiff to provide additional securities in lieu of release of the personal guarantee of Piyush Jalan and for grant of enhanced credit facility but the said demand of the defendant was not acceptable to the plaintiff and the plaintiff had conveyed the same to the defendant. The plaintiff had already furnished adequate security valued in excess of Rs. 69.82 Crores in the form of fixed assets, fixed deposit receipts and personal guarantee of three (3) continuing directors. The defendant had expressed its intention not to grant the enhanced credit facility without additional security and the plaintiff is losing out on lucrative contracts because of inability to furnish bank guarantees and accordingly the plaintiff approached other banks for credit facilities and obtained sanction from Axis Bank on 10th October, 2017 and the same was duly intimated to the defendant.

7. The plaintiff requested the defendant to transfer the credit facilities to the Axis Bank and to issue No Objection Certificate to the plaintiff to commence its banking relationship with the Axis Bank. The plaintiff further requested the defendant to refund the additional bank charges and interest debited from the account of the plaintiff prior to 9th September, 2016. By a letter dated 20th November, 2017, the defendant informed the plaintiff that the defendant will recover the concessions allowed on cash credit, letter of credit, bank guarantee charges, commission and process fee along with prepayment penalty charges.

8. Mr. Vikas Baisya, Learned Advocate, representing the plaintiff submits that the contents of the letter dated 20th November, 2017, issued by the defendant is not correct. He submits that defendant had no right to impose condition upon the plaintiff. The plaintiff was never obliged to furnish a counter guarantee from the nationalised bank for the value of the outstanding letter of credit and bank guarantees. He submits that the defendant had issued the said letter solely for the purpose of preventing the plaintiff from moving to another bank.

9. Mr. Baisya submits that the defendant had withheld the title deeds, fixed deposit receipts etc. illegally. The defendant had returned title deeds to the plaintiff pursuant to the order passed by this Court. The defendant has not returned the fixed deposits to the plaintiff till date which valued at Rs. 3 Crore inclusive of interest.

10. Mr. Baisya submits that due to the illegal acts of the defendant and due to breach in fiduciary duty of the defendant, the plaintiff had suffered immense loss and damage. He submits that the plaintiff had promised another bank i.e. Axis Bank that the plaintiff would make over title deeds to the said bank by 30th November, 2017, however, due to illegal acts of the defendant, the same could not be done due to which the plaintiff had suffered business losses which reasonably quantified at Rs. 25 lakhs.

11. Mr. Baisya submits that the defendant had an obligation to reduce the rate of interest, specifically in view of the fact that the credit rating of the plaintiff had reduced. Instead of doing the same, the defendant deducted the amount of interest from the accounts of the plaintiff by causing additional loss to the plaintiff. He submits that the defendant has not come forward with any reasonable or plausible explanation as to why the rate of interest was not reduced.

12. Mr. Baisya submits that the defendant was duty bound to return all the title deeds and fixed deposit receipts without any condition. He submits that in the Sanction Letter, not a single provision entitles the defendant to impose any condition, if a request for issuance of No Objection Certificate or shifting a Bank Account is made by the plaintiff. He submits that defendant could not have imposed any condition upon the plaintiff and the defendant has no right to recover the concession which was given to the plaintiff by the defendant.

13. Mr. Baisya submits that the plaintiff has proved his case by adducing evidence and exhibiting documents in connection with the claim of the plaintiff and as such the plaintiff is entitled to get decree as prayed for by the plaintiff.

14. Initially when the plaintiff has filed the suit, the plaintiff had also filed an application being G.A. No. 16 of 2018 and the said application was disposed of by an order dated 14th January, 2019. The said application was duly contested by the defendant. In the said order, it is categorically recorded that:

> *"Mr. Sandip Chatterjee, Advocate waives service of a writ of summons upon the defendant bank and shall enter appearance in the suit within a period of two weeks from the date of service of the plaint accompanied by a duplicate writ of summons upon him. The defendant shall file written statement within five weeks thereafter".*

15. In spite of the order passed by this Court dated 14th January, 2019, the defendant has not filed any written statement. By an order dated 16th January, 2023, the plaintiff was directed to file affidavit of service for compliance of the order dated 14th January, 2019 and accordingly on 2nd February, 2023, the plaintiff has filed affidavit of service enclosing the report issued by the Deputy Sheriff wherein it reveals that the copy of writ of summons was served upon the defendant on 15th November, 2021, but none appears on behalf of the defendant, accordingly, the matter is listed as undefended suit.

16. The plaintiff has examined one witness as P.W.1, who is the Finance Manager of plaintiff's Company. During his evidence, altogether 11 documents were exhibited being Exhibit A to Exhibit K.

i. *Exhibit A is the letter dated 2nd May, 2015, issued by the defendant to the plaintiff by informing the plaintiff about the renewal of the Cash Credit Limit of Rs. 2.00 crores and Renewal–Cum–Enhancement of Bank Guarantee Limit of Rs. 30 crores for a period of one year.*

ii. *Exhibit B is an application for renewal cum enhancement of working capital facilities submitted by the plaintiff to the defendant.*

iii. *Exhibit C is the letter dated 7th October, 2016 issued by the defendant informing the defendant with regard to sanction of renewal of credit limits along with terms and conditions.*

iv. *Exhibit D is the letter dated 27th October, 2016 submitted by the plaintiff to the defendant requesting the defendant to revive the sanction letter dated 7th October, 2016 (Exhibit C) as the financial position of the plaintiff Company.*

v. *Exhibit D/1 is the letter dated 12th September, 2016, issued by CRISIL wherein external rating of the plaintiff was provided which was approved by the Reserve Bank of India.*

vi. *Exhibit E is the letter dated 24th March, 2017, wherein the plaintiff had requested the defendant for renewal-cum-enhancement of working capital facility of the plaintiff.*

vii. *Exhibit F is the sanction letter issued by the defendant dated 4th April, 2017.*

viii. *Exhibit G is the letter dated 10th April, 2017, issued by the plaintiff to the defendant informing that one of the Directors namely, Piyush Jalan has resigned from the Company as Director.*

ix. *Exhibit H is the letter issued by the plaintiff to the defendant requesting the defendant to release the personal guarantee of Mr. Piyush Jalan.*

x. *Exhibit I is the letter issued by the defendant wherein the defendant had agreed to return personal guarantee of Piyush Jalan on condition that they will decrease the cash credit limit from Rs. 40 crore to Rs. 30 crore.*

xi. *Exhibit J is the letter issued by the plaintiff to the defendant dated 13th November, 2017 requesting to refund the concession which was granted by the defendant with retrospective effect that is with effect from 9th September, 2016 in the said connection it was also requested to provide no objection certificate to avail credit facilities granted by Axis Bank.*

xii. *Exhibit K is the letter dated 22nd November, 2017 informing the defendant regarding shifting of account of the other plaintiff and requested for grant of no objection certificate.*

17. Plaintiff was a constituent of the defendant since 2008. By way of a letter dated 2nd May, 2015, the defendant had renewed Cash Credit (Hyp) and Renewal cum Enhancement of Bank Guarantee Limit for a period of one year. When the plaintiff had applied for loan in the year 2015, the turnover was Rs. 28.27 Crores and during the year 2015-2016, the turnover of the plaintiff increased to Rs. 88.43 Crores and credited rating also enhanced to a A-(Long Term Ratings). On 28th January, 2016, the plaintiff had applied for enhancement of the existing cash credit limit to Rs. 5 crore and bank guarantee limit to Rs. 40 crore with interchangeable limit of 50% from cash credit to bank guarantee. The dispute arose when the revised sanction terms proposed by the defendant bank in the year, 2017, was not acceptable to the plaintiff. By way of letter dated 24th March, 2017, wherein the plaintiff had requested for renewal cum enhancement of working capital facility, the plaintiff has furnished the following details:

> *"# During the financial year 2014-2015, the net sales of the company was Rs. 28.27 Crore only which rose upto 88.43 Crore during the financial year 2015-2016 registering an increase in sales of more than 300% as compare to the net sales during 2014-2015. Photocopy of Audited Balance Sheet for the year 2015-2016 is enclosed.*
>
> *# During the financial year 2014-2015, the net profit after tax was Rs. 1.32 Crore whereas the net profit after tax of the company during 2015-2016 went up to Rs.5.43 Crore showing an increase of profit of more than 400% as compare to the profit of previous year.*
>
> *# The rating of our company has been upgraded from BBB+ (Long Term Rating) to A- (Long Term Rating) by external rating agency i.e. CRISIL. Copy of latest rating issued by CRISIL is enclosed.*
>
> *# The valuation of various collateral securities kept with you as per the valuation made by you comes to Rs.8.84 Crore as compared to the earlier valuation of Rs.5.58 Crore."*

18. The defendant has admitted that the external rating of the plaintiff was improved with effect from 9th September, 2016 and agreed to provide concession to the plaintiff with retrospective effect from 9th September, 2016. In spite of having knowledge that Personal Guarantee and Cash Guarantee of the remaining Directors of the group of Companies of the plaintiff are still Rs. 69.82 crores which is around 150% of the total exposure of the bank limit, the defendant insisted to provide additional securities in lieu of release of personal guarantee of Piyush Jalan for grant of enhanced credit facilities. The plaintiff required enhanced credit facilities for its business purpose but the defendant has not considered the same due to which the plaintiff had suffered business loss and on the other hand, the plaintiff had informed that if the defendant will not enhance the facilities, the plaintiff will approach the other Bank and requested for providing no objection certificate but instead of providing no objection certificate, the defendant had informed that in case of shifting account the sanctioning authorities will take the following action:

> ***"Reg: Shifting of account M/S RV RAIL PRODUCTS PVT LTD***
>
> *In reference to your letter regarding shifting of account, the sanctioning authority has advised as under*
>
> *1- Concession allowed on account of CC/LC/BG charges/Commission/ process fee are to be recovered with pre payment penalty charges.*
>
> *2- Please provide 100% Liquid security by way of CDR/FDR for outstanding amount of LC/BG OR Counter guarantee of any of the nationalized bank only.*
>
> *3- All the other terms and condition of shifting of accounts be complied."*

19. The defendant by way of communication dated 20th November, 2017, had put some conditions for shifting the account by the plaintiff from the defendant bank to Axis Bank. On receipt of the letter dated 20th November, 2017, the plaintiff had sent a reply on 22nd November, 2017, informing the defendant that the validity of the sanction letter which was for one year has already expired on 8th September, 2017 and the said sanction was not re-validated further and the decision to shift the account by the plaintiff to other Bank has been taken after expiry of validity of sanction letter and the terms and conditions of the sanction letter are not subsisting and thus it is not applicable to the plaintiff. The plaintiff by letter dated 22nd November, 2017 (Exhibit K) again requested the defendant for issuance of no objection certificate at the earliest without imposing any condition but the defendant has not considered the request of the same.

20. The defendant bank has initially by letter dated 2nd May, 2015, renewed the Cash Credit (Hyp) Limit and Renewal cum Enhancement of the Bank Guarantee Limit for the period of one year. In the said renewal, the defendant has put the following conditions :

> ***"9.** The Bank shall be entitled at any time during the currency of the guarantee, to demand and recover margin to the extent of 100% of the guarantees and in case of default in payment by the borrower of the margin so demanded, the Bank reserves its right to recover such margin by debiting any of the borrower's accounts and such debit shall be recoverable from the borrowers as their duties.*
>
> ***11.** In case any guarantee is outstanding and the account is taken over by some other Bank, the securities shall be released only after obtaining 100% margin or Guarantee of that bank containing a specific clause that their liability under the said guarantee shall exist till the original Guarantee Bond is received or a release letter from the beneficiary is received by OBC."*

21. In the said renewal, there is no condition that in case of shifting of credit facilities from the defendant bank to any other Bank/financial institution, levying prepayment charges, all the concessions in rate of interest and service charges granted in all credit facilities shall be withdrawn after the completion of the period of renewal.

22. The plaintiff had requested the bank for enhancement of working capital facilities and in support of the request, the plaintiff had also submitted the rating assigned by CRISIL wherein the total bank loan facilities rated enhanced from Rs. 245 million to Rs. 320 million and long-term rating upgraded from CRISIL BBB+/stable to CRISIL A- and short term rating upgraded from CRISIL to CRISIL A2+. When the plaintiff had requested for enhancement of working capital facilities, the defendant bank by a letter dated 4th April, 2017, (Exhibit F) had imported a new condition which reads as follows:

> *"In case of shifting of credit facilities from our bank to any other Bank/Financial Institution, in addition of levying pre payment charges, all the concessions in rate of interest and Service charges granted in all the credit facilities shall be withdrawn ab-initio and the same shall be recovered at the time of shifting credit facilities from our Bank to any other Bank/Financial Institution."*

23. It is found from the record that the defendant bank has brought the said condition which is afterthought when the plaintiff had initially requested the defendant for enhancement of working capital facilities and when the defendant bank has not enhanced the same inspite of receipt of ratings assigned by CRISIL and the plaintiff had informed the defendant bank if the defendant will not enhance the credit facilities, the plaintiff will approach the other Bank.

24. The contentions raised by the plaintiff in the plaint and in the evidence has not controverted by the defendant either by filing written statement or by cross-examining the plaintiff.

25. After considering the various clauses of the agreement, this Court finds that the bank cannot insist for any other claim over and above the conditions as none of the sanction letter provide any clauses that in the event there is a request for takeover, the bank would be entitled to realise the past concession allowed in respect of the facilities provided to the plaintiff.

26. In view of the above, this Court finds that the plaintiff has proved the case and is entitled to get a decree in terms of prayers (a), (c) and (e) of the plaint.

C.S. No. 288 of 2017 is thus **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)