**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

114 **CWP-12705-2025.**
Date of Decision: 14.05.2025.

M/s Vasu and Sons and another ....Petitioners.

VERSUS

Union Bank of India and others ....Respondents.

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CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Rajesh Bansal, Advocate for the petitioners.

Mr. Akaant Kumar Mittal, Advocate
for respondents No.1 and 2-Union Bank of India.

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<u>ANUPINDER SINGH GREWAL, J. (Oral)</u>

The petitioners have challenged the order dated 27.03.2025 (Annexure P-17) passed by respondent No.4-Banking Ombudsman, whereby the complaint dated 27.09.2023 (Annexure P-9) filed by the petitioner has been rejected. The petitioners have also challenged the action of respondent No.2-Bank whereby Rs.23,36,219/- has been deducted/debited from their account.

2. Learned counsel for the petitioners submits that the petitioners had availed cash credit facility from respondent No.2-Bank in January, 2023. However, the petitioners were not satisfied with the quality of the services

being provided by respondent No.2-Bank and vide letter dated 26.04.2023 (Annexure P-2), it had sought to close the cash credit facility being availed by it. The petitioners had repaid from their own resources the entire amount along with applicable rate of interest. However, respondent No.2-Bank has erroneously debited the afore-noted amount towards penalty charges in an arbitrary manner. He further submits that the Code of Bank's Commitment to Micro and Small Enterprises, 2015 (hereinafter 'the 2015 Code'), stipulates that banks shall not levy pre-payment penalties on loans extended to MSME borrowers if the interest rate on such loans is 'floating'.

3. Learned counsel for respondents No.1 and 2-Bank submits that as per the applicable terms and conditions agreed upon by the petitioners at the time of availing the cash credit facility, there was a lock-in period of one year and the petitioners were required to repay the amount from their own sources. The petitioners had concealed the factum of obtaining a loan from HDFC Bank to discharge their current liability, which is in violation of RBI guidelines.

4. Heard.

5. The petitioners had availed a cash credit facility for a sum of Rs.5 crores from respondent No.2-Bank, which was sanctioned vide letter dated 21.01.2023 (Annexure P-1). It was stipulated in the terms and conditions set out in the sanction letter that a penalty of 4% plus GST would be applicable if the account is taken over by another bank within 12 months from the date of the first availment. The relevant extract of the sanction letter is reproduced hereunder:-

> *"Borrower to submit an undertaking from the firm and partners regarding following Union MSME Suvidha Scheme parameters:*
>
> - *Prepayment Penalty @ 4% + GST, for both term loan and fund based working capital if the account is taken over by another bank within 12 months from date of 1st availment, else 3% + GST will be applicable to the account;*
>
>   *xxx xxx"*

6. The petitioners being dissatisfied with the services provided by respondent No.2-Bank are stated to have repaid the entire loan amount within a period of three months, but the repayment was not made from their own funds. It transpires from a perusal of the bank statement that the petitioners had not discharged their liability from their own resources, but had availed a loan from another bank, namely HDFC Bank. Consequently, respondent No.2-Bank, in accordance with the terms and conditions of the sanction letter (Annexure P-1) had imposed penalty charges at the rate of 4% along with GST at the applicable rate.

7. Thereafter, the petitioners had preferred a complaint before respondent No.4-the Banking Ombudsman, but no decision had been taken by the Banking Ombudsman. Aggrieved by the inaction, the petitioners had approached this Court by preferring CWP No.8377 of 2024 and this Court, vide order dated 13.01.2025 (Annexure P-15), had directed the Banking Ombudsman to consider and decide the complaint of the petitioners afresh by passing a speaking order expeditiously after affording the petitioners an opportunity of personal hearing. The Banking Ombudsman did not find any deficiency in service on the part of respondent No.2-Bank and the complaint was closed by order dated 27.03.2025 (Annexure P-17). In the said order, it

has also been stated by the Banking Ombudsman that the action of the petitioners in obtaining a cash credit facility from a different bank was in violation of the terms and conditions of the sanction letter. The relevant extract of the order of the Banking Ombudsman is reproduced hereunder:-

> *"8. The claim of the complainant to have closed the account out of own funds seems to be unsubstantiated, it is also in variance with the complainant's acknowledgment that it had availed a Limit Facility on March 16, 2023 from a different bank.*
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> *9. The action of approaching a different bank for a credit facility, while continuing to enjoy the credit facilities availed from the RE is also in violation of the applicable terms and conditions of the sanction.*
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> *11. In the text of the complaint as well as the claims made during the PH, it appears that the RE disclosed the applicable charges transparently, and the complainant was aware about their applicability as seen from the signatures of the borrowers on the Sanction Letter (SL).*
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> *12. Grant of concession related to charges and rate of interest applicable on a loan is the commercial call of the concerned RE. Normally, these are given with the objective of retaining a customer. Accordingly, clause(s) related to their retrospective withdrawal in case such customers move within a relatively short period of time does not seems to be in violation of principles related to "fair treatment of customers".*
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> *13. Currently, as per the regulatory instructions, regulated entities are required to abide by the commitment made to the erstwhile BCSBI (Banking Code & Standards Board of India) in case of advances extended to Micro and Small enterprises.*
>
> *14. Although the compensation of Rs.1.25 crore seems to be not very specific (as it is mentioned after and/or), that this is significantly more than the delegated authority of this office*

under the head "consequential loss."

8. Learned counsel for the petitioners has been unable to point out any manifest illegality or abitrariness in the impugned order of the RBI Ombudsman. The impugned order of the RBI Ombudsman appears to be well-reasoned, the grievances raised by the petitioners have been looked into but the allegations levelled by the petitioners have been found to be untrue. Furthermore, the 2015 Code is only a voluntary commitment by banks, aiming to enhance standards of banking practices when dealing with MSMEs and does not have any statutory force. Therefore, we are unable to agree with the submission of learned counsel for the petitioners that in view of the 2015 Code, no penalty charges could be levelled.

9. Commercial banks primarily make a profit by lending money deposited with them to individuals and industries in the form of loans and advances and charging interest thereon. Penalty charges are levied by financial institutions to discourage borrowers from switching over to another financial institution which is offering a loan at lower rate of interest. If no such penalty is levied, it would encourage borrowers to breach agreed terms with impunity undermining the sanctity of contractual obligations and the financial discipline expected in banking transactions. Even otherwise, Section 37 of the Indian Contract Act, 1872, lays down the obligation of parties to a contract. It provides that the parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law. In the instant case, the petitioners, having accepted the terms and conditions of the

contract at the time of sanction of the loan, cannot now be permitted to contend that the action of respondent No.2-Bank in levying penalty charges is illegal or unlawful.

10. We are, therefore, of the considered view that the action of respondent No.2-Bank in imposing penalty charges was as per the terms and conditions of the sanction letter which the borrower had agreed to. It is also trite that in contractual or commercial matters Courts should exercise restraint while exercising their powers of judicial review. Reference can be made to the judgement of the Supreme Court in the case of ***Silppi Constructions Vs. Union of India and Another, (2020) 16 SCC 489.*** Relevant extract of the same is reproduced below:

> *"19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even*

> *more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain."*

11. Consequently, we do not find any illegality in the action of the respondents which would warrant interference by this Court while exercising writ jurisdiction and the petition being devoid of merit stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

14.05.2025
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No