

Item No.1
29.06.2026
Court. No. 12
GB

MAT 503 of 2021
With
CAN 1 of 2021

Indusind Bank Limited
VS
M/s. Pearson Drums & Barrels Pvt. Ltd. & Ors.

*Mr. Soumya Majumder, Sr. Adv.,
Ms. Anna Malhotra,
Mr. Rishav Maity*

...for the Appellant.

*Mr. Siddhartha Banerjee,
Mr. Dyutiman Banerjee,
Mr. Bodhisatya Haldar*

...for the Respondent No.1.

*Ms. Suchismita Ghosh,
Ms. Asadhita Banerjee*

...for the Respondent Nos.2 to 4.

1. The appeal arises out of a judgment and order dated March 10, 2021, passed in WPA No.21710 of 2017. By the order impugned, the learned Judge set aside the decision of the General Manager, Consumer Education and Protection Cell of the Reserve Bank of India dated June 12, 2017. His Lordship further directed the appellant to refund the entire processing fee of Rs.14,27,850/- to the respondent No. 1 within 30 days from the date of the order. In default, the appellant was directed to pay interest at the rate of 6% per annum on the aforementioned sum, till the date of payment of the amount.
2. The writ petition was filed by the respondent no.1 challenging non-refund of the processing fee by the appellant and disposal of the complaint of the respondent no.1 by the Reserve Bank of India, which

was communicated by the Assistant General Manager, CEPC, Reserve Bank of India. The contentions of the writ petitioner/respondent no.1 before His Lordship was that, pursuant to negotiations and discussions between the appellant and the respondent no.1, credit facility worth Rs.25.05 crores was sanctioned. By a communication dated September 24, 2015, the terms and conditions were forwarded. The respondent No. 1 agreed. A processing fee for an amount of Rs. 14,27,870/- was charged by an e-mail dated September 29, 2015.

3. It was contended by the respondent no.1 that, the e-mail had clearly stated that, in the event the sanction would not go through from the end of the bank, the processing fee would be refunded. Relying on such clause, it was urged before the learned Single Judge that, in view of the offer and acceptance, the terms and conditions put forward by the bank were binding on the parties. Thus, the processing fee should be refunded, as the bank had issued a fresh sanction with modified/additional terms and conditions, to which the respondent No. 1 did not agree. The sanction did not go through.
4. The respondent no.1 objected to the 'Fresh Sanction' of the loan and the terms and conditions appended to the fresh sanction, which were communicated on November 16, 2025. The respondent no.1 withdrew his request for credit facility and demanded the refund of the money. The respondent no.1 also approached

the Reserve Bank of India. When deliberations and negotiations on the quantum to be refunded did not lead to any result, Reserve Bank of India closed the matter. The writ petition was filed and the reliefs prayed for were granted.

5. Mr. Majumder, learned senior advocate appears on behalf of the appellant and submits that the writ court misconstrued the terms and conditions of the two sanction letters issued by the bank. The first sanction letter demonstrated acceptance of the request of the respondent No. 1 for credit facility in principle, and the same was communicated on September 24, 2015. The said letter clearly mentioned that the request for credit facility was principally accepted, but the same was subject to final sanction of the credit committee. It was also stated that the facilities would be repayable on demand and subject to review at any point of time. The said terms and conditions of sanction which was forwarded by the letter dated September 24, 2015 also provided that processing fee at the rate of 0.60 % of the total sanctioned facility was chargeable along with applicable rates and taxes. The terms and conditions contained in the said communication were subject to the approval of the credit committee and till then, no obligation had been created on the part of the bank to release any amount. By an e-mail dated September 29, 2015, the Relationship Manager informed the respondent no.1 the quantum of processing fee that would be applicable towards sanction of Rs. 25.05

crores. Service tax on the amount was also chargeable. The respondent no.1 was asked to transfer the amount by RTGS. Admittedly, the letter contained a clause which stated that, in the event the sanction did not go through from the end of the bank, the money would be refunded.

6. Mr. Majumder submits that the learned court erred in relying upon the said refund clause, and considering the same to be a part of a concluded contract. The terms and conditions of the sanction clearly indicated that those were subject to review/approval of the credit committee. Reliance was placed on the subsequent letter dated November 6, 2025, which, according to Mr. Majumder, was the final sanction letter. There were no substantial changes to the first sanction letter. With regard to the processing charges, the final sanction provided that, an upfront processing fee of 0.50% on total exposure plus applicable service tax and other charges would be payable on the acceptance of the sanction letter. It also provided that, processing fee would not be refundable post acceptance of the sanction letter and in the event the applicant was unable to comply with the conditions of the sanction or refused to take disbursal, the amount paid as processing fee would be forfeited.
7. Mr. Majumder submitted that the terms and conditions communicated by the letter dated November 6, 2015 were in continuation to the earlier sanction. According to Mr. Majumder, the issue as to

whether the earlier in-principle sanction was the final offer of the bank or not, required interpretation of the various clauses in the letter, and analysis of the communications and other documents.

8. Under such circumstances, the writ petition could not have been entertained. The term and conditions of the offer and the obligations of the parties arising therefrom, fall within the domain of commercial disputes. The writ court could not have interpreted the clause for refund as stated in the e-mail of the representative of the bank, to be binding on the bank. He submits that the parties were negotiating and the Reserve Bank of India had also held meetings. The parties were disagreeing on the quantum to be refunded and not on the right of the bank to forfeit the entire processing fee. The respondent no.1 had retracted from his earlier request for sanction of credit facilities.
9. Mr. Banerjee, learned advocate for the respondent no.1 submits that, after the respondent no.1 had agreed to the terms and conditions contained in the offer dated September 24, 2015 and had paid the processing fee, there was a binding contract. The fresh sanction, with further terms and conditions were not acceptable to the respondent no.1. Those terms and conditions were contrary to and in addition to the terms and conditions which the respondent no.1 had agreed to. Thus, by changing the terms and conditions, the appellant had failed to comply with its

own offer and was bound to refund the money. The sanction did not go through from the end of the bank.

10. He also submitted that all costs to be charged by the lender, including such charges involving the processing fees for sanction of loan, ought to have been disclosed to the respondent no.1 prior to the respondent no.1 applying for the credit facility. Such information should have been available in the website of the bank. By failing to do so, the bank had not only failed to comply with the guidelines of the Reserve Bank of India, but had also concealed valuable information from proposed borrowers. Referring to the opening lines of the communication dated November 6, 2015, Mr. Banerjee submitted that the subsequent sanction was not a continuation of the first one. A fresh sanction letter was issued by the bank, instead of waiting for any approval from the credit committee. Thus, the terms and conditions of the sanction in principle, dated September 24, 2015 were unilaterally altered. In any event, approval of the credit committee was a matter of course and a mere formality. The appellant could not have deviated from its earlier offer. Under such circumstances the appellant ought to refund the entire processing fees.

11. We have heard the learned advocates for the respective parties. From the order impugned, we find that His Lordship had placed reliance on a particular refund clause in the letter dated September 29, 2015, which is quoted below:-

“Please also note that if by any reason the sanction does not go through from our end we will refund the same.”

12. In our opinion, this clause should be interpreted with reference to the conduct of the parties, the deliberations which the parties had and other evidence, for the court to come to a conclusion that the sanction did not go through on account of laches, delay or omission on the part of the bank and not the respondent no.1. Records reveal that the respondent no.1 did not accept the terms and conditions of the ‘fresh sanction’ which was communicated by letter dated November 6, 2015.
13. It appears from a communication dated November 16, 2015, that the terms and conditions were not acceptable to the respondent no.1 and reasons have been elaborated. They are at pages 91 and 92 of the application. The reasons cited by the respondent no.1 for not accepting the subsequent terms and conditions, appear to be factual. Whether the bank could have altered the earlier terms and conditions, by adding new terms and conditions which were not agreeable to the respondent no.1, is again a matter of adjudication of the factual issues. According to the bank, no substantial alternation had been made in the final sanction. Moreover, terms and conditions for sanction of loan are primarily policy decisions of the bank and are subject to the decision of the credit

committee. The writ court could not have entered into this arena, *inter alia*, holding that the clauses incorporated in the first sanction, which was in the nature of a sanction in principle, were final and binding on the bank. Secondly, we find that His Lordship held that the subsequent communication dated November 6, 2015 which was captioned as “Fresh Sanction of credit limits” was a variation from the in-principle sanction and, such variation was not permissible. Thus, His Lordship held that, forfeiture of the processing fee was untenable. The writ court could not have decided such issue and acted beyond jurisdiction.

14. We are of the view that the finding of His Lordship amounts to interpretation of the terms and conditions of commercial documents. The bank has the freedom to frame its own lending policy. His Lordship held that the subsequent communication of November 6, 2015 amounted to novation of the sanction which was granted in principle. In our view, novation is a matter which has to be decided by the competent forum. Moreover, when the in-principle sanction clearly stated that all those terms and conditions would be subject to approval of the credit committee and may be reviewed, the principle of estoppel and legitimate expectation would not apply. It also appears from the communications made by the respondent no.1 that the dealings between the parties were the stage of the bank's offer.

15. Under such circumstances, we are of the view that the writ court could not have entered into these disputed questions, especially those relating to interpretation of the terms and conditions of the offer made by the bank in the two sanction letter. Moreover, the fact that the bank was solely responsible for the sanction not going through, is subject to proof. The condition for refund would be applicable only if it was proved that the bank was responsible for the sanction not going through.
16. However, we find from the various communications between the parties that the respondent no.1 was pressing for refund of at least 75%, whereas, the bank was negotiating at 25%. The Reserve Bank of India then negotiated and directed that 50% of the amount should be repaid. The bank communicated this order to the respondent no.1 but, the respondent no.1 did not accept the same.
17. In view of the fact that the parties were negotiating and the Reserve Bank of India opined that the dispute could be resolved if 50% of the amount was refunded, we are of the view that, at present 50% of the amount as directed by the regulatory authority should be refunded. A sum of Rs.7,00,000/- shall be paid to the respondent no.1 within two weeks from date, either by bank transfer or by demand draft or by any other convenient mode. The claim with regard to the rest of the amount is left open for adjudication by the appropriate forum. In the event of failure to pay the

amount as directed hereinabove, simple interest @ 6% per annum shall be paid on the said amount, from the date when the payment became due, till the date of actual payment.

18. All observations hereinabove are for the purpose of disposal of the appeal and the application. In the event, any further proceeding is initiated by the respondent no.1, the competent forum shall decide the issues independently. The respondent no.1 will be at liberty to take the benefit of Section 14 of the Limitation Act in view of the pendency of the proceeding before this Court.

19. Accordingly, the appeal and the application are disposed of.

20. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Smita Das De, J.)