In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 21710 of 2017

M/s Pearson Drums & Barrels Pvt. Ltd.
Vs.
The General Manager, Consumer Education & Protection Cell of Reserve Bank of India and others

For the petitioner	:	Mr. Nilendu Bhattacharya, Ms. Arunima Lala, Mr. A.K. Upadhyay
For the respondent nos. 1, 2 and 3	:	Ms. Suchismita Chatterjee, Mr. Malay Kumar Seal
For the respondent nos. 4, 5 and 6	:	Mr. Snehashis Sen, Mr. Abhishek Banerjee
Hearing concluded on	:	03.03.2021
Judgment on	:	10.03.2021

Sabyasachi Bhattacharyya, J:-

1. The petitioner is a company coming within the purview of the Micro, Small and Medium Enterprises Act, 2006 and is engaged in the business of manufacture and supply of M.S. Barrels to the Oil Sector and various other sectors. On September 24, 2015 the respondent no.4, that is, the IndusInd Bank granted "in-principle" sanction, subject to final sanction of the Credit Committee, for credit facility worth Rs.25.05 crore to the petitioner. It was mentioned that the processing fee of 0.60 percent of the total sanction facility, along with applicable rates and taxes, have to be paid by the petitioner to avail of the financial assistance. It was also mentioned therein that the

communication by the bank to the petitioner did not create any binding/obligation on the bank to release any payment in favour of the petitioner by way of financial assistance provided the bank issued its final sanction letter to that effect and the terms thereof were duly accepted by the petitioner.

2. Subsequently, by an e-mail dated September 29, 2015, the respondent no.4 asked the petitioner to deposit Rs.14,27,850/- as processing fees including service tax. In the said e-mail. It was mentioned that if by any reason the sanction did not go through from the bank's end, the bank would refund the same. The petitioner paid such amount pursuant to the bank's e-mail.

3. Subsequently on November 6, 2015, respondent no.4 issued a fresh sanction of credit limits in favour of the petitioner. The relevant communication in that regard requested the petitioner to return to the bank the duplicate copy of the sanction communication along with annexures, duly signed by the authorized signatory of the petitioner-company and the guarantors as a token of the petitioner having accepted the terms and conditions, within 30 days of the letter, failing which it would be presumed that the petitioner was not interested in availing continuation of the facilities and the bank may, in its discretion, withdraw them without any further notice to the petitioner.

4. The said fresh sanction included an additional condition that processing fees would be non-refundable post-acceptance of the sanction letter and in the event of the applicant being unable to

comply with the sanction conditions or refusing to take disbursal, on which event the amount paid as processing fees shall be forfeited. However, the petitioner issued a communication to the respondent no.4-bank on November 16, 2015 seeking refund of the processing fees of Rs.14,27,850/- against delay and non-receipt of final sanction letter. In the said letter, the petitioner clearly indicated that it was unable to accept the sanction on the grounds as mentioned therein. One of such grounds was that there had been inordinate delay of 50 days between interactive sanction dated September 24, 2015 and the sanction dated November 6, 2015 which, according to the petitioner, had jeopardized the petitioner's financial planning and almost defeated the purpose of switching over from the petitioner's present banker, that is, the State Bank of India. It was also mentioned, as a ground of refusing to accept the sanction, that there were several deviations from the interactive sanction dated September 24, 2015 and the final sanction, which deviations were indicated in detail in the communication dated November 16, 2015.

5. Subsequent to the refusal to accept the sanction on the part of the petitioner on the ground, inter alia, of deviation from the in-principle sanction originally granted, the petitioner sought a refund of the processing fees on several subsequent occasions.

6. However, by a further e-mail dated April 5, 2016, respondent no.4 intimated the petitioner that the processing fee was non-refundable as per terms of sanction.

7. The bank sought an intervention of the Managing Director and CEO of respondent no.4 by a representation dated July 25, 2016, thereby reiterating its grounds for not accepting the fresh sanction.

8. On November 3, 2016, on the complaint of the petitioner against respondent no.4 regarding non-refund of the processing fee, a notice of hearing was given to the petitioner by a Sub-Committee of the State Level Inter-Institutional Committee (SLIIC), promoted by the Reserve Bank of India to hold meetings periodically to address problems of MSMEs, mostly finance related issues. The minutes of the meeting of such Sub-Committee dated November 18, 2016 was subsequently communicated to the Director, MSME, Government of West Bengal. In the said minutes it was observed after detailed deliberation with members, among other things, that there should be a cap on actual expenditure and accordingly the SLIIC suggested to cap the same to the extent of 25 percent of the same and the balance 75 percent of the processing fee should be refunded to the petitioner-company.

9. The petitioner approached the Reserve Bank of India with a similar complaint. In its reply dated November 25, 2016, the RBI intimated the petitioner that, as per the understanding of the RBI, the processing fees were non-refundable as per the terms and conditions of the sanction letter of the concerned bank.

10. However, the respondent no.2, that is, the Assistant General Manager of the Consumer Education & Protection Cell of Reserve Bank of India (CEPC) *suo moto* took a contrary view subsequently and called a

meeting with the petitioner and respondent no.4 on January 13, 2017. By an e-mail dated January 25, 2017, respondent no.2 intimated the respondent no.4 that the petitioner's complaint primarily related to refund of processing fee for a loan facility wherein there were lapses on the part of both the bank and the customer at different stages of the related transaction trail. The respondent no.4 was urged to take urgent action on the lines of the discussion held in the previous meeting dated January 13, 2017.

11. Subsequently, the petitioner gave several reminders to respondent no.4 to act on the decision of the SLIIC Sub-Committee dated November 18, 2016 and to release 75 percent of the processing fee in favour of the petitioner.

12. Ultimately, respondent no.4, vide communication dated May 12, 2017, intimated the petitioner that the GM, CEPC, RBI Kolkata had suggested in the meeting held on January 13, 2017 that the dispute be settled with respondent no.4 waiving 50 percent of the processing fees collected from the petitioner.

13. By subsequent communications, the petitioner reiterated its claim for the processing fees, disputing the communication of the bank with regard to the meeting held on January 13, 2017.

14. The petitioners, being thus aggrieved, have filed the present writ petition asking for a refund of 100 percent of the processing fee along with interest for not accepting the sanction letter dated November 6,

2015 and for setting aside the impugned letter dated June 12, 2017 issued by respondent no.4.

15. Learned counsel for the petitioner submits that it was clearly mentioned in the e-mail demanding processing fees that if the sanction did not go through from the bank's end, the bank would refund the processing fees. Since the fresh sanction issued by the bank was delayed and defeated the purpose of the credit facilities and in view of the several deviations from the in-principle sanction, the petitioner refused to accept such fresh sanction. Thus, it is submitted that in view of the bank having failed to adhere to the terms and conditions of the in-principle sanction, the refusal regarding such sanction was from the bank's end.

16. It is further submitted that the clause regarding non-refundability of the processing fees, which found place in the fresh sanction, was subsequently inserted and did not find place in the original in-principle sanction. In view of the petitioner having refused to accept such fresh sanction, no question of applicability of such clause to the petitioner can arise.

17. Moreover, since there was no acceptance of the fresh sanction, there also could not arise any question of post-acceptance non-refundability of the processing fees.

18. Learned counsel for respondent nos. 1 to 3 argues that the decision taken by the SLIIC Sub-Committee on November 18, 2016, which recommended that 75 per cent of the processing fee should be

refunded to the petitioner, was not binding on the concerned Bank, being respondent no.4. Respondent nos. 1 to 3 contend that the framework for revival and rehabilitation of MSMEs by the Reserve Bank of India, which was constituted to look into the problems of MSMEs, only contemplated suggestive/advisory decisions of the Sub-Committee of SLIIC. Such Sub-Committee, by virtue of Memo No. 209/SLB/PS-17 dated March 8, 2017, was subsequently discontinued. That apart, it is submitted that, in the present case, the suggestions of the said Sub-Committee could not be considered on a footing equivalent with RBI guidelines or statutory directions.

19. Learned counsel appearing for the respondent no.4-Bank submits that it was clearly stipulated in the e-mail dated September 29, 2015, requiring the petitioner to pay processing fees, that the same would be refunded only if the sanction did not go through from the Bank's end. In the present case, however, it is the petitioner who refused to accept the sanction granted by the Bank. It is argued that even in the in-principal sanction it was indicated that the processing fees had to be paid by the petitioner.

20. That apart, the fresh sanction issued in favour of the petitioner dated November 6, 2015, also indicated that the processing fees would be non-refundable post-acceptance of the sanction letter and in the event of the applicant being unable to comply with the sanction conditions or refusing to take disbursal, in which case the processing fees would be forfeited. In the present case, since the petitioner

refused to accept the sanction, no liability is cast upon the petitioner to return the processing fees.

21. That apart, it is argued by the respondent no.4-Bank that the processing fee was an "upfront" payment and was utilized by the petitioner for taking necessary steps to process the application for loan made by the petitioner, getting approval of the relevant credit committee and drawing up and issuing the fresh sanction. Hence, there is no scope of refund of such fees on the petitioner's refusal to accept the fresh sanction.

22. By placing reliance on *Federal Bank Limited Vs. Sagar Thomas and others,* reported at *(2003) 10 SCC 733,* it is argued by learned counsel appearing for the respondent no. 4-Bank that a writ petition under Article 226 of the Constitution is not maintainable against private banks.

23. Upon considering the submissions of the parties, it is evident that the petitioner has not only claimed refund of full processing fees from respondent no.4, a private bank, but has also challenged the communication dated June 12, 2017 of the Assistant Manager, CEPC, RBI which closed the dispute raised by the petitioner regarding return of processing fees. Since the Reserve Bank of India is an instrumentality of the State, it comes squarely within the meaning of "State" as contemplated in Article 12 of the Constitution. Thus, the writ petition is maintainable. That apart, the functions discharged by the respondent no.4-Bank are of a public nature and, as such, pertain

to the discharge of public duties. The question raised by the petitioner in the present writ petition is not restricted to the grievance of the petitioner solely although such grievance forms the cause of action of the petitioner, but also has a wider connotation insofar as the liabilities of banks in respect of refund of processing fees is concerned. Hence, the objection regarding maintainability of the writ petition is turned down.

24. On merits, the communications between the respondent no.4 and the petitioner indicate certain aspects of the matter. The in-principle sanction dated September 24, 2015 contained a clause charging processing fee as a percentage of the total sanction facility along with applicable rates and the taxes. Thus, it cannot be said that the upfront payment was confined to the initial processing charges only. The expression 'upfront' can have different connotations. It can be an initial payment for the first phase of processing as well as the payment for the processing of the entire loan sanction, if the same materializes between the bank and the borrower. Since the processing fee was charged in the present case as a percentage of the total sanction facility, there is *prima facie* presumption that such fees contemplated the entire processing charges up to the finalization of the sanction of loan and not merely restricted to the initial consideration by the bank. Such presumption has not been rebutted by cogent material by the bank.

25. The same clause also indicated that the communication by the bank

to the petitioner did not create any binding obligation on the bank to release any payment in favour of the petitioner by way of financial assistance and was subject to issuance of "final sanction letter" to that effect and the terms thereof being duly accepted by the petitioner.

26. It is noteworthy that within five days from the in-principle sanction, that is on September 29, 2015, the Bank sent an e-mail to the petitioner requiring the petitioner to deposit the processing fees. It was further mentioned that if, "by any reason" the sanction does not go through from the Bank's end, the Bank would refund the processing fees.

27. The next communication by the Bank was on November 6, 2015, which intimated a "fresh sanction" of credit limits to the petitioner. The term "fresh" itself clearly indicates that there were variations in terms from the in-principle sanction initially forwarded to the petitioner.

28. The in-principle sanction indicated that the Bank would have a binding obligation only after the Bank issues its "final sanction letter" to that effect and the terms thereof are duly accepted by the petitioner. There is a sea of difference between the terms "final" and "fresh". The term itself indicates that the in-principle sanction was not finalized in its initial form but a fresh sanction was offered to the petitioner, which deviated in several respects from the in-principle sanction. Such deviations were clearly pointed out by the petitioner in its communication to the bank refusing to accept the fresh sanction.

As such, it is the respondent no.4 which failed to go through the motions of giving a logical conclusion to the in-principle sanction by a final sanction on the same terms, after the approval of its Credit Committee. The novation of the terms is a clear indicator that the fresh sanction was a different proposal from the initial in-principle sanction. As such, taking into account the expression used in the e-mail asking for processing fees immediately after the in-principle sanction, the said in-principle sanction did not go through from the bank's end. That, coupled with the phrase "by any reason" preceding the phrase regarding the sanction not going through from the bank's end, is wide enough to take within its purview a fresh sanction being issued by the Bank on terms different from the in-principle sanction.

29. The additional clause which was introduced regarding processing fees in the fresh sanction was never accepted by the petitioner in view of non-acceptance of the fresh sanction as a whole. As such, the said clause cannot be said to be binding, as far as processing fees are concerned, on the petitioner. The relevant provisions would only be those contained in the in-principle sanction and the e-mail regarding processing fees dated September 29, 2015.

30. Even if it were assumed that the said clause in the fresh sanction was binding on the petitioner, it clearly envisages that the processing fees would be non-refundable "post-acceptance of the sanction letter". Such *post-facto* clause could not have referred to the previous in-principle sanction letter but had to be read in the context of the fresh

sanction, which was never accepted by the petitioner. Thus, the term "post-acceptance" does not apply at all in the present case, which would render the processing fees non-refundable. By the same logic, the question of the petitioner being unable to comply with the sanction conditions or refusing to take disbursal did not arise in view of non-acceptance of the fresh sanction by the petitioner on justified grounds.

31. The refusal of the petitioner dated November 16, 2015 clearly indicated the gross deviations in the fresh sanction from the in-principle sanction, to which the petitioner had agreed. Even discounting the ground of delay taken in such refusal letter, the variance between the fresh and in-principle sanctions is sufficient ground to come to a finding that the petitioner was not at fault but it was the Bank which issued a fresh sanction on terms different from the in-principle sanction, thereby seeking a novation of the offer for all practical purposes.

32. Thus, the relevant clause in the e-mail dated September 29, 2015 is clearly applicable in the present case, as the sanction contemplated in the in-principle sanction did not go through from the Bank's end.

33. The argument of the RBI as regards the non-binding nature of the SLIIC Sub-Committee recommendations is correct in principle. There is no binding effect of such recommendations, since those cannot be equated with RBI guidelines, which have statutory force behind them.

34. However, on the facts of the case, respondent no.4, while discharging

its public duty which is within the domain of the State to discharge, acted *de hors* its own promise of refund, on which the petitioner acted, which debars respondent no.4 by the principle of estoppel from refusing to refund the processing fees. The fresh sanction letter dated November 6, 2015, in no uncertain terms, indicated that, unless the petitioner returned the duplicate copy of the same with annexures, duly sanctioned by the authorized signatories by the petitioner-company and the guarantors as a token of acceptance of the terms and conditions within 30 days of the letter, the fresh sanction would not come through and/or be finalized. Such clause is also a clear pointer to the fact that there was no concluded agreement on the fresh sanction between the parties, in view of the petitioner having not accepted such fresh sanction, thereby precluding the applicability of the clause relating to processing charges inserted in the fresh sanction. The variance of terms from the end of the Bank provide sufficient justification for the petitioner not to accept the fresh sanction. Hence, it was from the Bank's end that the transaction did not go through.

35. The Bank cannot now resile from its stand, which is revealed from a conjoint reading of the in-principle sanction letter and the e-mail asking for processing fees, that the entire processing fees would be refunded in the event the sanction did not go through from the end of the respondent no.4-Bank "by any reason". In the present case, the reason was that the Bank sought a novation of the in-principle sanction agreement by issuance of a fresh sanction on deviated terms.

Thus, the decision of the respondent no.4 and that of the Consumer Education & Protection Cell of the Reserve Bank of India to refuse the petitioner's claim for refund of entire processing fees has to be set aside.

36. Accordingly, WPA No.21710 of 2017 is allowed, thereby setting aside the decision of respondent no.2 on behalf of the Consumer Education & Protection Cell of Reserve Bank of India dated June 12, 2017. Respondent no.4 is directed to refund the entire processing fees of Rs.14,27,850/- to the petitioner within 30 days from date. In default, the respondent no.4 shall pay interest at the rate of 6 per cent per annum on the aforementioned amount, that is, Rs.14,27,850/- till the date of payment of the refund.

37. There will be no order as to costs.

38. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)