

COMPLAINT CASE NO.115 OF 2013

Brindavan Agro Industries (P) Ltd.,
Office- 53/4 U, Pee Towers, 3rd Floor,
Sanjay Palace, Agra-282002, UP.
Through its Managing Director
Sri Gulab Chand.

.....Complainant

Vs

Bank of India,
Registered Office:- Star House,
C-5, G Block, Bandra Kurla Complex,
Bandra (East), Mumbai-400051.
Branch Office- Mid Corporate Branch,
Shastri Puram, Agra.
Through its Managing Director/Chief Manager.

.....Opposite Party

BEFORE:

**HON'BLE MR. UDAI SHANKER AWASTHI, PRESIDING MEMBER
HON'BLE SMT. BAL KUMARI, MEMBER.**

For the Complainant : Sri Rajesh Chadha, Advocate.
For the Opposite Party : Sri Awdhesh Shukla, Advocate.

Dated: 13.7.16

JUDGMENT

HON'BLE MR. UDAI SHANKER AWASTHI, PRESIDING MEMBER

This complaint has been filed by the complainant Brindavan Agro Industries (P) Ltd. against Bank of India wherein following reliefs have been prayed-

1. OP be directed to refund the sum of Rs.27,41,165.00 with 18% interest p.a. w.e.f. 30.12.2011 till the date of its refund and further 18% interest pendente lite may also be awarded.
2. OP be further directed to pay a sum of Rs.10,00,000.00 as compensation for suffering of economical loss.
3. OP be further directed to pay Rs.2,50,000.00 as cost of litigation.





and ICICI bank and has reiterated to credit the said wrongly debited amount of Rs.27,41,165.00.

Thereafter OP bank has informed vide its email dated 17.03.2012 that they had sanctioned the credit facilities. Immediately upon receipt of this email complainant vide its letter dated 19.03.2012 drawn the attention to its letter dated 22.02.2012 through which it has already brought to the notice of the Bank that the Complainant had already taken credit facilities from HDFC and ICICI bank and again requested to credit the amount of Rs.27,41,165.00 above-mentioned.

On getting no response from the OP Mid Corporate Branch, Agra Complainant sent letter dated 17.04.2012 to Chairman and Managing Director of OP Bank informing about the deficient bank services and about the arbitrary action of debiting Rs.27,41,165.00 without any authority without seeking any consent or permission for the same from the complainant and without sanctioning of the credit facilities and has called upon the Chairman to return the said amount with interest.

In response to this letter dated 17.04.2012 Complainant received email dated 29.06.2012 from DGM Sri P.K. Agarwal of the OP stating that they had advised their Agra Mid Corporate Branch about the approval of refund of Rs.9.16 lacs from the amount of alleged PPC of Rs.27,41,165.00 after deducting sum of Rs.18.25 lacs being the alleged TEV fees there was no question of deduction of any alleged amount under the alleged TEV fees for which complainant has never given consent. This amount of Rs.9.16 lacs has also not been credited in a/c of the Complainant by the OP.

On not getting any relief from the OP Bank, complainant has made a complaint to Reserve Bank of India, Kanpur and requested to look into the matter and direct the bank to refund the said amount debited arbitrarily. RBI, Kanpur after meeting with the complainant's officials and OP Bank's officials on 26.02.2013 under Banking Ombudsman Scheme 2006 informed that OP Bank has made serious

 

duties and has directed that the Bank should arrange for a reconciliatory meeting with the complainant on the issues but no heed was paid by the OP Bank, compelling the complainant to file this complaint.

OP Bank has filed the WS and has denied the allegations of the complainant and has further alleged that wrong averments have been made by the complainant that the processing charges are to be debited only after the complainant accepts the terms and conditions of the sanctioned loan. TEV study was carried out by Bank on 03.12.2011 and for this purpose technical officer alongwith Branch Manager had visited the Co, for spot study. It was after the TEV study that the revised request was made by the Co. on 06.12.2011 then again a revised request was made by the Complainant on 17.12.2011 and lastly revised request was made on 03.01.2012. Any change or revision in the request of the proposal had to be documented and submitted to the Head Office by the Bank and after that the Head Office at Bombay sanctioned the proposal. It was due to the repeated revision of the requests that the final proposal for sanction was submitted at Bombay on 24.01.2012 and the proposal was sanctioned on 10.03.2012 by the Head Office well within 3 months time as prescribed by the Reserve Bank of India. There was no delay on the part of the Bank. As the TEV study had been completed, as per Head Office circular letter dated 22.04.2005 requiring the processing charges to be recovered before the request for facilities being processed, the said charges were deducted and ultimately the proposal was sanctioned on 10.03.2012. Bank has also submitted that all the bank charges have been displayed on the bank's official website. The complainant was fully aware of the charges which are charged by the Bank and requested 50% concession in the charges in its application for sanctioning of the loan dated 15.10.2011. Bank has further alleged that the Bank had authority to debit the amount in terms of amount letter given by the Co. by means of letter dated 19.01.2011.

 

Director whereas to support the averments of the OP Bank Sri Meni Prakash, Chief Manager, Bank of India, Mid Corporate Branch of Agra has filed his affidavit.

We have heard Sri Rajesh Chadha, learned Counsel for complainant and Sri Awadhesh Shukla, learned Counsel for OP Bank and perused the record.

The moot question to be adjudicated in the case is:- Whether the OP Bank has committed deficiency in service by deducting Rs.27,41,165.00 from the a/c of the complainant existing in the OP Bank as processing charges?

It is undisputed that there is no written agreement between the parties for deductions regarding processing fees or TEV study charges. As per the version of the complainant OP Bank has unlawfully deducted the above mentioned amount from its a/c without its prior consent despite the fact that the Bank has failed to sanction the credit facility requested by the complainant.

It has been contended on behalf of the OP Bank that the following facts make it abundantly clear that the complainant was fully aware about the deduction of the processing charges as well as charges regarding TEV study and has consented for its deductions:-

1. In his application dated 15.10.2011 submitted by the complainant, it has been clearly requested for 50% concession in L.C. charges, processing charges, inspection charges etc. and full waiver of B.D. charges and commitment charges.
2. The contents of website of the Bank is open to the public and the complainant knew that the TEV study is mandatorily required for the credit facilities requested by the complainant.
3. As per circular dated 22.04.2005 the processing charges were required to be recovered before the request of required facilities. Processing of loan includes various processes. In the case of loan requested by the complainant, it also includes TEV study.

 P. Prakash

the queries made by Mr. Gaur during TEV study.

5. Vide letter dated 19.01.2011 complainant had given authority to the Bank to debit their amount. The consent letter dated 19.01.2011 was a general consent which was not changeable.

Learned Counsel for the complainant has vehemently opposed the contentions of OP Bank. It has been argued that the bank has utterly failed to establish that there was any agreement or consent of the complainant regarding payment of processing charges including TEV study charges. There was no fault on the part of the Complainant causing delay in sanction of loan. Complainant has simply responded to the queries of the bank details where are mentioned in the letter dated 09.02.2012 of complainant. As per the version of the complainant the issue of alleged TEV study was brought to the knowledge of the complainant for the first time vide OP's email dated 29.06.2012, prior to this, Bank had never informed about having any TEV study or taken any consent for the same or for deduction of charges from the complainant's a/c directly without having complainant's consent. The complainant further alleges that the authority vide letter dated 19.01.2011 relates to complainant's earlier sanctions. This authority letter is not a blank authority of the complainant but was executed for earlier sanctions not for any future sanctions.

We have carefully considered the arguments of the learned Counsels for both the parties.

Huge amount of Rs.27,41,165.00 has been deducted by the OP Bank as processing charges including TEV charges. Now, it is to be seen as to whether on consideration of the circumstances narrated by the learned Counsel for the OP Bank, above mentioned, can it be inferred that there was, in fact, consent of the complainant regarding deduction of the processing charges debited by the OP Bank.

Letter dated 15.10.2011 submitted by the Complainant to the OP Bank requesting for the sanctioning of credit facilities (annexure

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terms and conditions regarding payment of processing fees including TEV charges were settled between the parties. Although, it has not been disclosed as to what are the contents of the website, with respect to the requested facilities. Moreover, details, if any, mentioned in the website will not ipso facto become a concluded contract or agreement and will not be binding on the complainant unless it is established that those details were brought to the knowledge of the complainant. There is no evidence also on record which may establish that in fact complainant has consented to those details.

OP Bank has also placed reliance on the circular letter dated 22.04.2005 justifying mandatory requirement of TEV study with respect to credit facilities requested by the complainant. It is further alleged that TEV study was conducted by the Bank through Mr. Gaur. During TEV study complainant has also replied to the queries made by Mr. Gaur. This fact has also been admitted by the complainant in his letter dated 09.02.2011 submitted to the Bank. Report of TEV study submitted by Mr. Gaur has also been filed.

Perusal of report of Mr. Gaur regarding TEV study and letter dated 09.02.2011 sent by the complainant to the OP Bank suggests that TEV study was in fact conducted and it was in the knowledge of the complainant but there is no evidence to establish that the complainant has agreed to pay the processing charges before the sanction of loan.

So far as circular letter dated 20.04.2005 filed as annexure No.2 with the WS. Certainly this circular is meant for intra use of the Bank. Moreover, on perusal of this circular, we find that on page 6 under the heading Appraisal Fees in para 4 it is mentioned that "Appraisal fees is to be recovered as per fee structure given below and is exclusive of out of pocket expenses like travelling/lodging/boarding etc. incidental carrying out inspections. **Consent of the customer for payment of appraisal fees may be obtained as per draft letter enclosed Annexure B.**" Annexure B of the circular letter is the letter regarding

 

his request and the balance on sanction of the facilities.

It is pertinent to mention here that no consent of the complainant/customer has been obtained as per the requirement of this circular letter and it is also not the case of the OP Bank that any letter in compliance to the circular letter regarding the appraisal fees has been sent to the Complainant. So far as the contention of the OP Bank that by way of letter dated 19.01.2011 (filed as annexure 4 with the WS) complainant has authorised the bank for the impugned deductions. We have perused this letter, nothing is mentioned in this letter, by which it can be inferred that authority through this letter is applicable for future transactions also. Certainly it is not a blank authority to be utilised by the Bank for all the future transactions. It was executed on 19.01.2011 much before the submission of request for the current credit facilities. It is certainly an authority confined to the earlier loan. We are of the view that the deductions made utilising this so called authority cannot be held to be lawful.

It is also worth mentioning that usually Banks issue sanction letters wherein all the terms and conditions with respect to the requested loan including charging of the processing fees are mentioned but in the present case request for the credit facility was made by the Complainant on 15.10.2011 wherein urgency of the purpose of the loan was also mentioned but the Bank could not finalise the sanction of the loan till March, 2012 and before the issuance of the sanction letter when no communication regarding the sanction of the loan was received after the lapse of 4 months from the date of application complainant has finally informed the Bank in unequivocal terms by it's letter dated 22.02.2011 that HDFC Bank and ICICI Bank has sanctioned loan to the complainant. Certainly sanction of loan after that by the OP Bank was meaningless for the complainant.

It is also worth to mention that the dispute was referred to banking ombudsman also who has also observed that lapse was on the part of the Bank.

 

processing fees without any prior agreement or without prior consent of the complainant and that too before sanctioning the loan as such Bank has committed deficiency in service and is not entitled to debit this amount and complainant is entitled for its refund with 9% p.a. simple interest. It is also desirable to award Rs.10,000.00 as cost of the litigation to the complainant.

So far as payment in lieu of alleged harassment is concerned, on perusal of record it is found that in fact TEV study was conducted by the Bank with regard to sanction of the credit facility requested by the complainant and this fact was in the knowledge of the complainant also. Certainly OP Bank had to engage manpower as well as time also. It is pertinent to mention that complainant did not disclose to the Bank that it was simultaneously pursuing grant of credit facilities from other Banks. Had this fact been brought to the knowledge of the OP Bank ~~at~~ at the initial stage, Bank also would have acted accordingly. Under such circumstances, we are, of the view that any amount under this head is not required to be paid to the complainant. In view of this complaint deserves to be allowed partly.

ORDER

Complaint is partly allowed.

OP Bank is directed to pay Rs.27,41,165.00 with 9% interest within 30 days from the date of judgment. Interest will be calculated from the date of filing of the complaint till the date of final payment.

OP is further directed to pay Rs.10,000.00 to the complainant as cost of litigation.


13.7.16

(UDAI SHANKER AWASTHI)
PRESIDING MEMBER



(SMT. BAL KUMARI)
MEMBER