

WP-3880-2016

*(RAJAT AGRO COMMODITIES (P) LTD. THUR.SHRI RAJUL SARDA Vs RESERVE BANK OF
INDIA)*

07-11-2016

**HIGH COURT OF MADHYA PRADESH, BENCH AT
INDORE**
(SINGLE BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA

WRIT PETITION NO.3880 OF 2016

RAJAT AGRO COMMODITIES PVT LTD.
Through its Director Shri Rajul Sarda

Versus

RESERVE BANK OF INDIA AND OTHERS

Mr. Rajendra Tiwari, learned counsel for the petitioner.
Mr. H.Y. Mehta, learned counsel for the respondents.

O R D E R

(Passed on 07th day of November, 2016)

Per Vivek Rusia, J.

With the consent of parties, the petition is heard finally.

1. That, the petitioner is a private limited company registered under the Companies Act, 1956 and is engaged in the business of export, import and domestic supply of chickpeas and wide range of agricultural commodities. The respondent No.1 is a Reserve Bank of India established on 01st April 1935 registered under the provisions of Reserve Bank of India Act 1934. The respondent no.2 i.e. HDFC Bank (in short 'Bank') is a banking company duly constituted and registered under

the Companies Act 1956, carrying on the business of banking in India, as a scheduled bank.

2. That, the Bank had floated a scheme for availing working capital by offering collateral security and under which number of facilities are liable to be availed viz. cash credit limit and other facilities like EPC/PCFC/FBD, PSR FLC/Buyers Credit and other Short Term loans etc.

3. That, the petitioner had applied for sanction of working capital along with other facilities which was duly sanctioned by the respondents-Bank and Master Facility Agreement (MFA) was executed between them on 28.10.2012. After execution of said MFA between the petitioner and the respondents-Bank, the petitioner has started availing the facilities. The said MFA was annually extended time to time by the Bank at the request of the petitioner. Vide letter dated 31.10.2014, last Renewal-cum- Enhancement letter was issued by the Bank in favour of the petitioner which was valid up-to 15.08.2015 (Annexure-P/5) is available on record.

4. That, vide mail dated 28.09.2015, the respondents-Bank directed the petitioner to send the request letter for renewal of facilities in a format attached with the mail letter. The petitioner replied to the aforesaid mail and expressed his wish to continue to avail the cash credit facility with the same terms and conditions. Thereafter, vide letter dated 08.08.2015, again the petitioner requested the respondents-Bank to renew the cash credit facility along with other five facilities. When no response

was received from the respondents-Bank on 09.10.2015, the petitioner sent a mail to the respondents-Bank stating therein that it seems that the bank is not interested in any renewal process despite several letters and reminders, therefore, a fresh request is being sent by the petitioner to the respondents-Bank for renewal. It has also been made clear in the said mail that if reply is not given latest by 16.10.2015, we will be shifting our cash credit facility to some other bank. A letter to that effect was also sent to the respondents-Bank dated 09.10.2015. Finally, the respondents-Bank replied to the petitioner vide mail dated 15.10.2015 in which the petitioner was requested to provide the details and valuation of the properties with documents like copy of sale deed, latest tax receipts, latest audit reports etc. Thereafter, there is no communication available on record between the petitioner and the respondents-Bank. Finally, the petitioner switched the cash credit facilities to one **Kotak Mahindra Bank Limited (KMBL)** and the petitioner send above information to HDFC Bank vide mail dated 14.03.2016 that the **Kotak Mahindra Bank Limited, has sanctioned the cash credit facilities to us which we are currently availing with your Bank.** Along with this, an amount of Rs.8.00 crores and amount of Rs.12,98,99,707/- has also been transferred through UTR dated 11.03.2016 and made request to issue no dues certificate (NDC) and also release charge over all fixed and current assets and other securities including personal

guarantees along-with handover of all the original title documents of the properties to the respondents-Bank. The aforesaid conduct of the petitioner was taken seriously by the HDFC Bank Limited and immediately vide reply dated 15.03.2016, a preclosure charges were demanded from the petitioner under MFA agreement dated 06.09.2010. Thereafter, various correspondences were exchanged between the petitioner and the respondents-Bank and when the disputes could not settled, the petitioner has filed the present petition, mainly on the ground that there was no renewal by the respondents-Bank of making capital facilities after dated 15.08.2015 and despite requests made by the petitioner. Since the working capital facility was not extended after 15.08.2015, hence there was no capital facility, therefore, the petitioner is not liable to pay the preclosure charges. It is further submitted that the respondents-Bank is not liable to withheld the valuable securities of the petitioner and other documents.

5. That, the respondents-Bank has filed the return in which it is stated that under Clause 3.4.2 of the MFA, the bank is entitled to recover the preclosure charges. Clause 3.4 is reproduced below:

3.4 Prepayment

3.4.1 The Borrower shall not without the prior written approval of the Bank (which approval may be given subject to such terms and conditions as may be stipulated by the bank including payment of prepayment charges) prepay the outstanding principal amount together with interest due in full or in part/foreclose the facility before the due dates.

3.4.2 The borrower shall give the bank a minimum of thirty days prior notice of its intention to prepay or foreclose whole or part the facility along with the borrower's undertaking to bear the prepayment charges. In the event that the bank accedes to the request for prepayment or foreclosure of any facility made by the borrower then the borrower shall be liable to pay to the bank prepayment charges of 4% or at such rate as may be advised by the bank at the time such prepayment request is made for prepayment or foreclosure of the facility.

6. That, it is further pleaded that in the MFA, the arbitration clause is there and under which all disputes and differences arising between the parties are liable to be referred to the arbitration of a single arbitrator. Clause 16.9.2 is relevant, which is reproduced below for kind perusal:

16.9.2. All disputes and differences arising between the parties hereto in connection with the transaction documents or the interpretation thereof or anything done or omitted to be done pursuant thereto or the performance or non-performance of the obligations under the transaction documents shall be referred to the arbitration of a single arbitrator to be appointed by the bank and the arbitrator's award shall be final and binding on both the parties hereto. The arbitration shall be held in Mumbai and the expenses of the arbitration shall be borne in such manner as the arbitrator may determine. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or such other law relating to arbitration as may be in force in India at the relevant time.

7. That, it is further submitted that the scheme called Banking Ombudsman Scheme, 2006, which has been formulated under-Section 35-A of Banking Regulation Act, 1949, under which the petitioner can approach the banking ombudsman under-Clause 9 of the said act, hence prayer for dismissal of writ petition for want of

jurisdiction and not maintainable. On merit, it is submitted that the petitioner vide his letter dated 06.08.2015 has requested the respondents-Bank for extension of its cash credit facility and also by mail dated 28.09.2015 requested for the renewal of cash credit facility. By virtue of said requests, the Bank has extended cash credit facilities to the petitioner even after 15.08.2015 which can be gathered from Export Packing Credit Limit (EPCL) up-to 08.06.2016. The petitioner is liable to pay 4% interest of preclosure charges and the bank has the right to retain the lien over the documents and the securities furnished by the petitioner. Under clause-8 of the MFA Agreement, which is relevant and is reproduced below:

8. SET-OFF AND LIEN

8.1 The borrower hereby agrees that a paramount lien and right to set-off is hereby given to the Bank against all of the borrowers property now or at any time hereafter in the bank's possession or control, or in the possession of any third party acting on the bank's behalf, whether for the express purpose of being used by the Bank as primary or collateral security as created under the transaction documents or for safe keeping or for any other purpose, including such property as may be in transit by mail or carrier to or from the bank. The borrower hereby irrevocably authorizes the bank at the bank's option at any time whether or not the property then held by the bank as security is deemed by the bank to be adequate and all of the obligations whether or not then due, any and all the monies now or hereafter with the bank on deposit or to the borrower's credit or belonging to the borrower or otherwise at the bank's discretion and exercise such lien on any such monies or properties. The bank's rights and liens hereunder shall continue unimpaired and the borrower shall be and remain obligated in accordance with the terms and provisions hereof notwithstanding the release or

substitution of any property over which the bank may have lien, as granted hereunder at any time or of any rights or interests therein or any delay, extension of time, renewal, compromise or other indulgence granted by the bank in reference to any of the obligations, or any promissory note, draft, bill of exchange or other instrument given to the bank in connection with any of the obligations. The borrower hereby waives notice of any such delay, extension, release, substitution, renewal, compromise or other indulgence, and hereby consents to be bound thereby as fully and effectually as if the borrower had expressly agreed thereto in advance.

8. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

9. That, the only controversy between the petitioner and the respondents-Bank is that whether the cash credit facilities continued after 15.08.2015 and if it is continued for a period of one year till 15.08.2016 and before the said date, the petitioner has paid the entire amount to the bank then certainly under clause 3.4.2, whether the petitioner is liable to pay the preclosure charges. Under clause 3.4.2, the borrower shall give the bank a minimum thirty days prior notice of its intention to prepay or foreclose whole or part the facility along with the borrower's undertaking to bear the prepayment charges, then the petitioner is liable to pay the prepayment charges of 4%. The aforesaid MFA was signed by the petitioner with the respondents-Bank and therefore, the petitioner is bound by all the terms and conditions of MFA. Now the question would be whether the respondents-Bank has extended or renewed the cash credit facility to the petitioner after 15.08.2015. Vide

letter dated 31.10.2014, the respondents-Bank has issued the renewal-cum-enhancement letter by which under existing terms and conditions of MFA granted to petitioner is cash credit facility in which the date, limit, rate of interest, margin, tenure and purpose are specifically mentioned. List of immovable properties are also mentioned in the said list. The respondents-Bank by a specific renewal-cum-sanctioned letter has renewed the cash credit facilities up-to 15.08.2015 to the petitioner. Immediately, after the expiry of the said period, the petitioner has started making the request for further grant of sanction of the renewal. The respondents-Bank vide email dated 28.09.2015 has requested the petitioner to send a request letter for renewal. The petitioner vide mail dated 06.08.2015 has sent a request letter to the respondents-Bank. Copy of the letter dated 06.08.2015 is reproduced below:

Date: 06.08.2015

**The Manager,
HDFC Bank Ltd.
Cloth Market.**

Reg: Renewal of Credit Facilities

Dear Sir/Madam,

We refer to your sanction letter dated 31.10.2014 Ref No.BBG/IND/31274 and the Agreement entered into between ourselves and the Bank in respect of the credit facilities as specified in the Agreements, and as amended from time to time regarding the sanction of the following credit facilities to us.

Facility Sanctioned Limits [Rs. Lakh]

1. Cash credit 800
2. EPC/PCFC/FBD 1300
3. PSR 350
4. FLC/Buyers Credit 150
5. Short Term Pledge 199

6. Terms Loans At Actuals

We understand that the credit facilities are due for renewal. We wish to continue availing the credit facilities at the same level and on same terms and condition.

We request you to renew the above mentioned facilities at the same level and proposed credit facilities and on the same terms and conditions as mentioned in your above letter dated 31.10.2014 Ref No.BBG/IND 31274 and above referred agreements and confirm that the same will continue to be valid and binding on me/us for the renewed credit facilities. We shall execute any document(s) with regards to the aforesaid renewal, if required, in form & manner satisfactory to the Bank.

Thanking You,
For Rajat Agro Commodities P Ltd.
Director: Mr. Rajat Sarda

For Rajat Agro Commodities P Ltd.
Director.

Thereafter, vide mail dated 15.10.2015, the respondents-Bank has requested the petitioner to provide certain documents to initiate revaluation of existing properties mortgaged with the respondents-Bank. Copy of the letter is reproduced below for kind perusal:

From: Rahul. Barfa@hdfcbank.com[mailto:Rahul.Barfa@hdfcbank.com]

Sent: 15 October 2015 11:02

To: Rajat Sarda

Cc: Anish.Maheshwari@hdfcbank.com;

AyanK. Bhattacharya@hdfcbank.com; Rajul Sarda;

gopal@rajatagro.com

Dear Sir,

Greetings>>

As per the discussion held during the meeting, we would like to initiate re-valuation of existing properties mortgaged with the Bank.

Also request you to provide below mentioned documents to initiate legal search and valuation of property offered for replacement of existing residential house.

1. Copy of sale deed
2. Chain documents of previous thirty years
3. Copy of latest property tax receipt.

4. Copy of latest audit report.

Thanks and Regards.

Rahul Barfa

Relationship Manager

Business Banking Working Capital-Indore

RIM-74893-17706

âRajat Sardaâ-10/09/2015 06:48:34 PM-Dear Anish/Rahul/Ayan.

{In Archive}: RENEWAL CUM ENHANCEMENT OF OUR CREDIT FACILITIES.

Thereafter, as no formal sanction and renewal letter was issued by the respondents-Bank to petitioner available on record, as issued on 31.10.2014 (Annexure-P/5). In absence of any sanction letter from the Bank, whether it can be assume that bank has accepted their request for renewal, whether it can be gathered from the communication between the petitioner and bank to establish that the request of the petitioner has been accepted by the bank. All these are disputed question of facts.

10. That, in the return filed by the respondents-Bank also there is no specific pleading to the effect that the Bank had issued the Renewal-cum-Enhancement sanction letter. Relevant part of the pleadings in the return is reproduced below:

'The sanction granted on 31.10.2014 was having validity for one year meaning thereby the credit facility was valid up-to 15.08.2015. Sanctioned limit was valid up-to 15.08.2015 and same was extended for one year till 15.08.2016. Petitioner was satisfied with the services of the answering respondent. Therefore, petitioner by its letter dated 06.08.2015 requested answering respondent for extension of its credit limit. Petitioner by its mail dated 28.09.2015 made a request for renewal of credit facility. The mail was sent on 28.09.2015 and the same was having the scanned copy of its letter dated 06.08.2015. Copies of the mail with attachment, inbox of the respondent and full scanned letter dated 06.08.2015 are filed herewith as R/3, R/4 and R/5 respectively. Therefore, it is incorrect statement of the petitioner that petitioner may gave consent for extension for its credit facility. It is also incorrect to say that no

writing was made by petitioner for giving consent. If allegation of the petition is taken to be a gospel truth then its financial assistance after August 2015 cannot be in existence. It is submitted that petitioner availed financial assistance even after 15.08.2015 and such fact can be gathered from the Export Packing Credit Limit (EPCL) a/c statement of the petitioner'.

It has only been stated that the petitioner availed the financial assistance after 15.08.2015 that is for Export Packing Credit Limit (EPCL). Therefore, these are the disputed question of facts which cannot be adjudicated in the present writ petition but prima-facie from the communication filed by the petitioner which were replied by the respondents-Bank, it is established that there is no specific sanction cum renewal by the Bank to the petitioner to avail the cash credit facilities after 15.08.2015. The petitioner has sent several copies of mail to the respondents-Bank till March 2016 with a request to grant the renewal facility otherwise they would switch to the different Bank. Copy of the said mail dated 09.10.2015 is reproduced below:

From: Rajat Sarda [mail to:rajat@rajatagro.com]

Sent: 09 October 2015 18:6

To: Rahul Barfa @ hdfcbank.com; Anish.Maheshwari@hdfcbank.com;

AyanK. Bhattacharya@hdfcbank.com;

Cc; Rajul Sarda; gopal@rajatagro.com

SUB: RENEWAL CUM ENHANCEMENT OF OUR CREDIT FACILITIES.

Dear Anish / Rahul / Ayan,

Its been so many days since our request for enhancement has been given but no reply / initiative has come from your side. It seems like the bank is not interested in any renewal / enhancement. Earlier also our renewal / enhancement has taken more than three months every year. We would like to bring it your notice that so much delay and complacency severely affects our growth and expansion plans and is therefore unacceptable to us.

Now we are hereby sending our modified request for renewal/enhancement.

You are requested to ignore any earlier request sent from our side and consider this request.

The petitioner has availed the number of facilities from the Bank in pursuance to the MFA due to the last sanction letter dated 31.10.2014. Thereafter, number of letters and representations were send to the respondents-Bank for renewal and sanction of as many as for six facilities, the respondents-Bank ought to have issued letter accepting or denying the Renewal-cum-Enhancement letter to petitioner but petitioner in its mail dated 14.03.2016 has specifically written that **“Kotak Mahindra Bank Limited has sanctioned credit facility to us which we are currently availing with your Bank.** It means according to the petitioner credit facility is being availed currently also. In one way, prima-facie on the basis of material available on record, there is no sanction for Renewal-cum-Enhancement of cash credit facility by the respondents-Bank to the petitioner after 15.08.2015 but in other way also according to mail dated 14.03.2010, petitioner was availing the facility after 15.08.2015.

11. In view of the above discussion, the writ petition deserves to be partly allowed by giving direction to the bank to release the charges over the fixed deposit and current assets over all other securities including personal guarantees and also issue No Dues Certificate (NDC) to the petitioner. The petitioner is directed to give security in any other form to the satisfaction of the bank to the extent of amount i.e. 4% preclosure charges. So far as direction to reverse the entry made towards the auto renewal charges of Rs.5,92,000/- is concerned, it would be decided by the Arbitrator along with other issues. So far as recovery of preclosure

charges @ 4% are concerned, a liberty is granted to the Bank to refer the dispute to the Arbitrator, as contemplated under Clause 16.9.2 of MFA.

With the aforesaid liberty, writ petition is partly allowed. No order as to costs.

(VIVEK RUSIA)
JUDGE