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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 24.12.2024*

\+ **CS(OS) 2541/2014**

SGS INFRATECH LTD .....Plaintiff

Through: Mr. Rajeev Mehra, Senior Advocate with Mr. Ekta Kalra Sikri, Mr. Ajay Pal Singh, Mr. Vikalp Mudgal, Mr. Dinesh Gandhi and Mr. Prakhar Khanna, Advocates.

versus

PUNJAB AND SIND BANK .....Defendant

Through: Mr. Sudhir Makkar, Senior Advocate with Mr. Girish Verma, Mr. Raghav Verma, Ms. Aadhya S., Ms. Mehak Nagar, Advocates and Mr. Umesh Jayant, Chief Manager, PSB.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. This is a suit for recovery instituted by the plaintiff SGS Infratech Limited [hereafter '***plaintiff company***'], against the defendant Punjab and Sind Bank [hereafter '***defendant bank***'],

seeking recovery of ₹2,24,89,361/- along with interest of ₹67,46,808/-, along with *pendente lite* and future interest at the rate of 18% per annum.

THE PLAINTIFF'S CASE

2. The plaintiff company is a public limited company incorporated under the Companies Act, 1956, engaged in the business of construction and similar activities. It is also involved in developing and acquiring commercial properties, earning income either through the sale or rental of such properties. In 2006, the plaintiff company decided to purchase a commercial mall namely Magnum Mall [hereafter '***the Mall***'], a fully constructed property with certain shops being rented out, for a total sale consideration of ₹147 crores.

3. To finance this purchase, the plaintiff company approached Indian Overseas Bank [hereafter '***IOB***'] for financial assistance of ₹130 crores. IOB agreed to provide ₹80 crores and advised the plaintiff company to seek the remaining ₹50 crores from other financial institutions or banks. Consequently, the plaintiff company sought assistance from the defendant bank and Punjab National Bank [hereafter '***PNB***'] for ₹25 crores each. Both the banks agreed, and based on their confirmations, the plaintiff company re-approached IOB, which issued a sanction letter dated 05.09.2006, sanctioning ₹80 crores. The repayment was to be made in 115 installments starting November 2006. To secure this financial assistance, the plaintiff company created securities in favor of IOB.

4. Upon receiving the sanction letter from IOB, the plaintiff company approached the defendant bank and PNB for their respective sanction letters. After conducting due diligence, the defendant bank sanctioned financial assistance of ₹25 crores through a sanction letter dated 26.10.2006, while PNB issued its sanction letter on 15.11.2006. The terms of the sanction letter from the defendant bank mirrored those in the IOB's sanction letter. All three banks, being nationalized, were governed by the guidelines, circulars, and instructions of the Reserve Bank of India [hereafter '***RBI***'].

5. Clause 2 of the defendant bank's sanction letter specified that the ₹25 crore loan would be repaid in 115 equal monthly installments starting one month after the first installment, with interest to be serviced separately as charged. Clause 4(a) provided that the loan would be secured by an equitable mortgage of the Magnum Mall on a *pari passu* basis. Clause 8(b) stipulated that the loan would be released through IOB, and Clause 8(e) acknowledged that the title deeds of the Mall would be held in IOB's custody. Relevant clauses of the sanction letter dated 26.10.2006, cited in the plaint, are set out below:

> "Clause 2:
>
> "115 EMI of Rs. 21.75 Lacs to commence from one month after the first disbursement, interest to be serviced separately as and when charged."
>
> Clause 4 (a):
>
> "Commercial security of Magnum Mali CTS No. 231 Moledina Road, Bund Garden, 0pp. Dorabjee's Stores, Camp Pune to equitable mortgage on pari passu basis with

> iOB/PNB. iOB for their term loan of Rs. 80 Crores/ PSB for their term loan of Rs. 25 Crores/ and PNB for their term loan of Rs. 25 Crores."
>
> Clause 8(b):
> "Term loan is to be released through iOB only after full tie-up of lease rentals through tripatriate Agreement with IOB and full tie up of remaining amount of term loan from PNB."
>
> Clause 8(e):
> "The title deeds of the property being purchased are received by IOB and mortgage is created on pari-passu basis after compliance of ail statutory requirements /obtaining of Government clearances/NOC etc."

6. The plaintiff company also created several additional securities in favor of the defendant bank. Further, clause 3 of the sanction letter dated 26.10.2006 outlined the terms under which the defendant bank would levy interest. The relevant clause in this regard is extracted below:

> "BPLR -1.25% i.e. at present @ 10.50% p.a. or as charged by other banks, whichever is higher."

7. The sanction letter clearly recognized that the ₹130 crore loan was collectively advanced by IOB, PNB, and the defendant bank for the purchase of the Mall. The defendant bank was fully aware of the terms and conditions under which IOB and PNB had agreed to extend their respective loans. The sanction letter dated 15.11.2006 issued by PNB was similar to those issued by IOB and the defendant bank, and the terms for levying interest provided by PNB were as follows:

> "BPLR-1.50%+0.50% (Term Premia). However, till title of the Mall and agreement with tenants are transferred in the name of borrowing company and all business conducting agreements/leave & license agreements/rent agreements are executed, interest shall be charged @ BPLR+0.50% (Term Premia) i.e. 12% in line with the lOB"

8. On the basis of the sanction letters issued by IOB, PNB, and the defendant bank, and after completing all requisite formalities, the ₹130 crore loan was sanctioned and deposited with IOB, which subsequently transferred the amount to the seller of the Mall. Following the transfer of funds, the plaintiff company purchased the Mall.

9. In compliance with condition no. 8(e) of the defendant bank's sanction letter, the plaintiff company, through a letter dated 05.12.2006, submitted the title deeds of the Mall to IOB for creating an equitable mortgage to secure repayment of the ₹130 crore loan advanced collectively by IOB, PNB, and the defendant bank. All three banks were kept informed throughout the process and were aware of each other's involvement in granting the loan.

10. In 2011, the defendant bank, through a letter dated 15.02.2011, informed the plaintiff company that the ₹25 crore loan granted in 2006 had been renewed. It also conveyed that the rate of interest had been revised and, with effect from 09.12.2010, interest would be levied as per revised terms, which are set out below:

> "BR+4.05+TP or as charged by other Bank's whichever is higher"

11. The aforesaid term regarding the levy of interest was contrary to the terms of the sanction letter dated 26.10.2006. In these circumstances, the plaintiff company, vide its letter dated 25.03.2011, informed the defendant bank that charging interest at the rate of "BR+4.05+TP" was in violation of the terms of the sanction letter. Levying interest on such arbitrary terms would have imposed a significant financial burden on the plaintiff company and adversely impacted its obligations towards the other two banks. Consequently, the plaintiff company requested the defendant bank to charge interest in accordance with the terms of the sanction letter dated 26.10.2006. A similar reminder was sent on 02.04.2011.

12. In response, the defendant bank, through its letter dated 26.04.2011, stated that the interest charged on the loan sanctioned to the plaintiff company was "on Bank Rate or as charged by the other Banks, i.e., PNB/IOB, whichever is higher." Alarmed by this arbitrary levy, the plaintiff company raised objections to the interest rate of "Base Rate+4.05%+TP" through repeated letters dated 04.07.2011, 25.11.2011, 05.01.2012, 13.01.2012, 14.01.2012, 21.01.2012, 02.02.2012, 12.03.2012, 16.03.2012, and 24.03.2012. The plaintiff company consistently objected to the defendant bank's continuous practice of levying interest based on the Base Rate system instead of the Benchmark Prime Lending Rate [hereafter '***BPLR***'] system as agreed under the sanction letter.

13. The defendant bank charged interest at the rate of BR+4.05%+TP, while IOB and PNB charged interest at Base Rate+2.00% and Base Rate+3.50%, respectively. The interest charged by PNB was also contrary to its sanction letter dated 15.11.2006, and the plaintiff company pursued the matter with PNB simultaneously. The defendant bank's non-compliance with the terms of the sanction letter and its arbitrary interest rates resulted in undue financial gains for the defendant bank at the plaintiff company's expense, significantly burdening its growth.

14. On 18.04.2012, the plaintiff company informed the defendant bank that a sum of ₹10 crores had been transferred *via* RTGS and instructed the defendant bank to credit it towards the principal sum. The plaintiff company also requested a recalculation of the remaining balance in line with the sanction letter to facilitate repayment within 48 hours. The plaintiff company warned that, in case of non-compliance, legal action would be initiated to recover excess interest and claim damages. Despite these communications, the defendant bank failed to address the grievances raised, compelling the plaintiff company to reject the defendant bank's fraudulent and arbitrary offers and insist on a complete refund of the inflated interest.

15. Following a meeting on 27.04.2012, the plaintiff company reiterated its requests in letters dated 30.04.2012, 11.05.2012, and 25.05.2012. However, the defendant bank did not reduce the inflated interest rates. During another meeting on 24.07.2012, the defendant

bank demanded ₹5,12,58,060/- for full and final settlement of the loan. Despite protesting the arbitrary rates, the plaintiff company, under commercial duress and without prejudice to its rights, paid this amount on 25.07.2012 through RTGS. The defendant bank subsequently confirmed the loan's closure and canceled its *pari passu* charge on the Mall.

16. Meanwhile, upon realizing its error, PNB refunded Rs. 1,28,56,074/- to the plaintiff company on 09.10.2012 for excess interest. This prompted the plaintiff company to write to the defendant bank on 12.10.2012, urging it to rectify its mistakes, refund excess interest, and align its actions with the sanction letter. Despite providing comparative charts of interest rates charged by IOB, PNB, and the defendant bank, the latter continued to delay the matter by requesting redundant details, as seen in its letters dated 16.01.2013 and 19.07.2013.

17. To resolve the issue amicably, the plaintiff company sent a detailed letter on 01.04.2014, summarizing the circumstances and concluding that the defendant bank had charged excess interest amounting to ₹2,24,89,361/-. It further calculated interest on this amount at ₹67,46,808/- from 25.07.2012 to 25.07.2014.

18. The plaintiff company by way of this suit seeks a judgment and decree directing the defendant bank to pay ₹2,24,89,361/- along with interest of ₹67,46,808/-, *pendente lite* and future interest at 18% per annum with monthly rests, and litigation costs.

THE DEFENDANT'S CASE

19. The defendant bank filed its written statement in reply to the plaint. At the outset, the defendant bank denies all the allegations in the plaint and avers that it had conducted due diligence, taken proper care, and followed due procedure in financing the plaintiff company with ₹25 crore.

20. The case projected by the defendant bank is that it is a creditor, and the interest on the loan accounts of the plaintiff company has been charged as per the terms and conditions of the sanctioned letter, which were duly agreed and accepted between the parties. The defendant bank sanctioned a term loan against rent receivables for a sum of ₹25 crores. The plaintiff company acknowledged and agreed to all the terms and conditions as stipulated in the Sanction Letter dated 26.10.2006. It specifically agreed to repay the loan in 115 equal monthly installments [hereafter '***EMIs***'] of ₹21.75 lakhs each and also agreed to payment of interest at BPLR-1.25% i.e. 10.50% or as charged by other banks, whichever is higher.

21. The plea taken by the plaintiff company is claimed to be untenable at this stage, given that the entire loan amount has been adjusted and the matter of funding closed. The interest charged in this case was in accordance with the terms of the Sanction Letter dated 26.10.2006, which is contractual.

22. The defendant bank, being a nationalized bank, issued the letter dated 15.02.2011, informing the plaintiff company that the term

loan had been renewed in accordance with the circulars of the defendant bank. The renewal was in line with the bank's policy, which determines the periodicity of loan renewals.

23. The rate of interest is floating and subject to change by the bank. No separate communication was required to be conveyed, as per the terms of the Sanction Letter, in case of an interest rate change. Notices regarding such changes were to be circulated in a national or local newspaper or displayed on the bank's notice board.

24. As per RBI guidelines, the rate of interest system was changed from the BPLR system to the Base Rate system with effect from 01.07.2010. The defendant bank complied with this change and accordingly wrote to the plaintiff company. It denies non-compliance with the terms of the Sanction Letter dated 26.10.2006 or charging higher interest rates to gain undue advantage at the expense of the plaintiff company.

25. The defendant bank denies receiving any instruction from the plaintiff company to credit the ₹10 crore transferred *via* RIGS towards the principal amount alone, as alleged in the plaintiff company's letter dated 18.04.2012. It also denies any obligation under Section 60 of the Indian Contract Act, 1872, to follow such an instruction. Clause 10 of the Sanction Letter explicitly states that the rate of interest is floating and can change at any time, with no separate communication required in such instances.

26. The defendant bank refutes allegations that any of its officials represented that if PNB reduced its interest rates or refunded excess interest charged, the defendant bank would follow suit. The assertion that the defendant bank charged inflated interest rates and refused to refund the excess amount is also denied.

27. The defendant bank denies liability to refund the excess interest allegedly paid by the plaintiff company and rejects claims of harassment or delay. It admits that it requested the plaintiff company to provide details of the default rate of interest charged by IOB and PNB, as well as the details of refunds allowed by these banks, through a letter dated 16.01.2013. However, the plaintiff company has not provided this information to date.

28. The defendant bank asserts that it is entitled to determine its base rate of interest, fixed in compliance with RBI guidelines. It denies receiving any request from the plaintiff company, as mentioned in paragraph 92 of the plaint, to calculate the excess interest charged and refund the same. The claim of liability to pay ₹2,24,89,361/- or any interest on this amount is explicitly denied. The defendant bank also contests the calculation of interest at 15% per annum on ₹2,24,89,361/- from 25.07.2012 until the loan was fully repaid.

29. The defendant bank denies allegations of mala fide conduct or refusal to acknowledge any wrongdoing despite extensive communications and meetings with the plaintiff company. The plaint,

in the view of the defendant bank, lacks merit and should be dismissed.

REPLICATION BY THE PLAINTIFF

30. In the replication filed in response to the written statement, the plaintiff company categorically denies the assertion that the defendant bank, despite being a nationalized bank, can impose conditions entirely different from other nationalized banks, particularly when the financial assistance sought or availed pertains to a specific transaction, namely, the purchase of the Mall. In cases of consortium loans, where two or three nationalized banks collectively finance a project or sanction financial assistance for a common purpose, it is common knowledge and a matter of established banking rules that the terms and conditions, including the rates of interest charged, must be uniform among all the participating banks. In the present case, IOB and PNB, which were also part of the transaction, are nationalized banks, and the defendant bank cannot unilaterally adopt terms and conditions that contradict the underlying purpose and intent of the multiple banking transaction.

31. The plaintiff company asserts that in such consortium arrangements, the banking institutions involved are not permitted to deviate or impose inconsistent terms, such as charging interest rates contrary to each other, as this would be entirely prejudicial to the interests of the plaintiff company. Here, IOB, PNB, and the defendant bank collectively financed the purchase of the Mall in

Pune, Maharashtra. While IOB provided assistance amounting to ₹80 crores, the remaining ₹50 crores was equally shared between PNB and the defendant bank at ₹25 crores each. Upon identifying the excess interest charged, IOB refunded the excess amount to the plaintiff company. Similarly, PNB acknowledged its error and refunded the excess interest. However, the defendant bank, under the pretext of its sanction advice and sanction letter, has refused to do the same.

32. It is also averred in the replication that although the defendant bank admits that the financial assistance was sanctioned under a multiple banking arrangement, it has unreasonably refused to return the excess interest charged, citing baseless grounds. The plaintiff company strongly denies the averments made in the written statement of the defendant bank, as they are incorrect and devoid of merit.

THE ISSUES

33. After completion of pleadings, the following issues were framed in the suit *vide* order dated 20.04.2017:

> "1. Whether the plaintiff is entitled to a recovery of Rs.2,24,89,361/-, if so, at what rate of interest pendente lite and future? GPP
>
> 2. Whether the plaint has not been filed through a duly authorized person and if so its effect? GPP
>
> 3. Relief."

THE EVIDENCE

34. PW-1 Sh. Rajeev Sood, the authorised representative of the plaintiff company, had tendered his evidence by way of an affidavit and reiterated the case of the plaintiff as in the plaint. The cross-examination of PW-1 reveals that the witness admitted having knowledge of the contents of the sanction letter including the stipulation that the rate of interest was floating and no separate communication was to be sent for change of interest, and notice of the same was to be circulated by the bank on any national or local newspaper or was to be displayed on the bank's notice board. The witness also did not deny that form No. 291 dated 18.11.2006 was deposited by the plaintiff company with the bank. However, the cross-examination further reveals that PW-1 reiterated that the sanction letter mentioned the interest rate as 10.5% per annum or as charged by other banks, whichever was higher, and there was no dispute as regards the interest rate mentioned in the sanction letter. The witness referred to Clause (n) of the sanction letter which stipulated that the defendant bank had to comply with all the terms and conditions of IOB. On being asked a question as to whether the plaintiff company had any document to show that there was any condition, that the rate of interest charged by the defendant bank could not be higher than other banks i.e. the IOB and PNB. The witness drew attention to P-48 i.e. a letter dated 25.02.2013 reflecting the same. The witness admitted that the plaintiff company had paid installments to the defendant bank till the year 2012 i.e. 115

installments of the loan to the defendant before the stipulated term of loan. The witness further, during cross-examination, stated that the plaintiff had made repayment of excess interest to the defendant bank since the year 2009 and further stated that in the year 2009-10, the plaintiff company had written various letters to the defendant bank for charging excess interest. PW-1 did not deny that after making entire installments, the loan account of the plaintiff was closed.

35. PW-2 Sh. Shashank Shekhar, Assistant Manager, IOB, Daryaganj Branch, Delhi, was the summoned witness who proved the interest calculation sheet, statement of account, sanction letter, interest charged certificate and certificate under Section 65B of the Indian Evidence Act, but claimed to have no knowledge of the present case.

36. PW-3 Sh. Saurabh Kumar, Scale-1 Officer, PNB, proved the attested copy of letter dated 29.09.2012, interest calculation sheet, statement of account, rate of interest charged in account, transaction inquiry, statement of the refund of interest, sanction letter, letters dated 25.11.2011, 04.07.2011, 14.112006 and 15.11.2006 and certificate under Section 65B of the Indian Evidence Act.

37. The plaintiff did not lead any further evidence and the right to lead evidence was closed.

38. Thereafter, opportunity was granted to the defendant bank to lead the evidence. However, it did not lead any evidence despite being granted several opportunities. Finally, the right of the

defendant bank to lead the evidence was closed *vide* order dated 15.05.2023 by learned Joint Registrar (Judicial). The relevant portion of the said order is extracted hereunder:

> "5. Vide order dated 15/02/2023, the Hon'ble Court had directed the Joint Registrar (Judicial) to complete the recording of defendant's evidence within three months and any request for adjournment shall be refused.
>
> 6. Despite directions and imposition of cost,the defendant has failed to file hard copy of evidence by way of affidavit of the witness. In view of the above facts and circumstances, right of defendant to lead evidence is closed."

SUBMISSIONS BEFORE THE COURT

Submissions on Behalf of the Plaintiff Company

39. The learned senior counsel for the plaintiff company contended that the claim of ₹2,92,36,169/- along with future interest arises from the defendant bank's failure to adhere to the agreed terms of the sanction letter regarding the rate of interest on the loan granted in the year 2006. As per the sanction letter, the defendant bank was required to charge interest either 0.25% lower than IOB (ROI: BPLR – 1.25%) or commensurate with IOB (ROI: "or as charged by other banks, whichever is higher"). However, *vide* letter dated 15.02.2011 (enclosing another letter dated 09.12.2010), the defendant bank unilaterally claimed to have renewed the loan and altered the methodology for interest calculation from the BPLR system to the Base Rate system, revising the rate of interest without the plaintiff company's consent. The plaintiff company had immediately

protested against these unilateral changes *via* letter dated 25.03.2011 and demanded that the interest be charged per the original sanction letter. Unlike the defendant bank, IOB renewed the plaintiff's loan with its consent and later reduced the rate of interest at the request of plaintiff company, adhering to the contractual terms.

40. In regard to the defendant bank's reliance on clause 10 of the sanction letter, which states that no separate communication would be issued for changes in floating rate of interest, the plaintiff company contended that this clause does not authorize the defendant bank to charge interest beyond the agreed terms of the sanction letter, as floating rate of interest does not justify unilateral and arbitrary revisions by the defendant bank. It was further submitted that PNB had acknowledged its overcharging and refunded ₹1,28,56,074/- to the plaintiff company. Despite the plaintiff company informing the defendant bank of this development and providing detailed data on interest charged by other banks, the defendant bank failed to rectify its overcharges or refund the excess amount.

41. The learned senior counsel for the plaintiff contended that Section 21A of the Banking Regulation Act, 1949, is inapplicable to the facts of the present case. It was argued that the plaintiff is not challenging the contracted rate of interest or the defendant bank's right to charge such rates. Instead, the grievance pertains to the defendant bank's unilateral action of charging interest beyond the contracted rate, amounting to a breach of the contractual terms. The

plaintiff company emphasized that the loan documents relied upon by the defendant, specifically Form 291 and the Demand Promissory Note dated 18.11.2006, are irrelevant to the present dispute as they do not pertain to any penal interest or default. With respect to the circulars issued by the RBI on 09.04.2010 and 01.07.2010, the learned senior counsel submitted that these circulars are inapplicable to the plaintiff company's loan facilities. It was argued that both circulars of RBI expressly provided under their 'transitional provisions' that the Base Rate system would apply only to new loans or old loans coming up for renewal. Existing loans based on the BPLR system were permitted to continue until maturity unless the borrower opted to switch to the Base Rate system. In the present case, the loan facilities were sanctioned on 26.10.2006, prior to the issuance of the circulars, and the plaintiff company never agreed or consented to switch from the BPLR to the Base Rate system. The defendant's unilateral action of changing the basis for charging interest, without the plaintiff's consent, was a clear violation of the terms of the circulars.

42. Regarding the purported renewal of loan facilities, it was argued that the term loan obtained by the plaintiff was repayable over a fixed period of 115 months, as per the sanction letter dated 26.10.2006. Therefore, there was no provision for or necessity of renewal. The defendant bank, however, unilaterally issued a letter dated 15.02.2011, stating that the credit facilities had been renewed

effective from 09.12.2010. This unilateral renewal was never requested or agreed to by the plaintiff company. Furthermore, no fresh loan documents were executed by the plaintiff to validate such renewal, which clearly highlights the arbitrary nature of the actions of the defendant bank.

43. Therefore, it was argued that the present suit be decreed in favour of the plaintiff company.

Submissions on Behalf of the Defendant Bank

44. On the other hand, the learned senior counsel for the defendant bank contended that the term loan granted to the plaintiff company was sanctioned *vide* sanction letter dated 26.10.2006, which expressly provided in clause 3 that the rate of interest would be BPLR – 1.25% (i.e., 10.50% per annum) or as charged by other banks, whichever is higher. It was further contended that clause 10 of the sanction letter made it clear that the rate of interest was floating and any change in the rate would be communicated through public notices in newspapers or displayed on the Bank's notice board. It was also emphasized that the rate of interest charged by the three banks – IOB, PNB, and the defendant bank – varied and was governed by the respective terms and conditions of their sanction letters. It is further argued that *vide* letter dated 15.02.2011, the defendant bank had informed the plaintiff company about the renewal of the credit facilities, attaching the letter dated 09.12.2010. This communication indicated a shift to the Base Rate system, which was consistent with

the floating nature of the rate of interest as agreed upon in the original sanction letter.

45. The learned senior counsel contended that even after the transition to the Base Rate system, the three banks continued to charge interest at different rates, operating independently as per their respective terms and conditions. The plaintiff company's primary grievance arises from PNB's refund of excess interest, but the defendant bank is under no obligation to follow PNB's actions, having charged interest strictly in accordance with its sanction letter. It was further submitted that the plaintiff company voluntarily closed its loan account with the defendant bank on 25.07.2012 by depositing a sum of ₹5,12,58,060/- without any protest, reservation, or demur. This is evident from the plaintiff company's own letter dated 25.07.2012.

46. The learned senior counsel argued that the plaintiff company's closure of the account without objection demonstrates acceptance of the terms under which the defendant bank had charged interest. The plaintiff company's subsequent claims for a refund lack merit as the defendant bank had acted strictly in compliance with the terms of the sanction letter, which the plaintiff company had duly accepted.

47. The learned senior counsel for the defendant bank contended that the bank had acted in strict compliance with the provisions of Sections 21, 21A, and 35A of the Banking Regulation Act, 1949, as well as the RBI circulars. It was argued that the RBI, through its

Master Circular dated 01.07.2010, replaced the BPLR system with the Base Rate system for all categories of loans, as set out in Clause 2.3.1 of the circular. Clause 2.2.2 of the circular allowed banks to determine actual lending rates with reference to the Base Rate and other customer-specific charges, thereby justifying the defendant bank's revision of the rate of interest in accordance with the RBI's directives. It was further contended that banks are bound by the RBI's directions on interest rates under the Banking Regulation Act, and any revisions in the interest rate must be applied to existing loans unless explicitly excluded by the directive.

48. The defendant bank also relied on Clause 10 of the sanction letter dated 26.10.2006, wherein the plaintiff company had agreed to a floating rate of interest and acknowledged that changes in the rate would be notified through public channels such as newspapers or the bank's notice board, without requiring separate communication. It was asserted that the interest charged by the defendant bank was in accordance with the agreed terms and conditions of the sanction letter and the RBI Circulars. It was argued that the plaintiff company, having accepted these terms, was contractually bound by them, and objections raised against the increased interest rate were insufficient to warrant a refund.

49. The learned senior counsel also submitted that the plaintiff company could not rely on refunds allegedly offered by other banks under a multi-banking arrangement, as the contractual terms with the

defendant bank were independent of those with other banks. The defendant bank maintained that its actions, including the switch from the BPLR to the Base Rate system, were in compliance with the RBI Circular, which has the force of statutory mandate. The bank emphasized that it was entitled to charge interest as per its own policies governed by the RBI Circular and that the conduct of other banks such as IOB and PNB had no bearing on the merits of the present suit.

50. Therefore, it was argued that the present suit, being devoid of any merit, be dismissed.

ANALYSIS & FINDINGS

51. With the consent of the parties, final arguments were heard by the Court on 13.12.2024. Both the parties placed on record their written submissions as well as additional written submissions.

52. This Court, at the outset, notes that in the present case, the defendant bank was granted multiple opportunities to lead evidence, however, since it did not avail the same, the opportunity to lead evidence was closed. Therefore, the Court has before it, the pleadings of the parties, and the evidence led by the plaintiff.

Re: Issue No. 2: Whether the Plaint has been filed through a duly authorised person?

53. In the written statement, the defendant bank submitted that the present suit has been filed by incompetent/unauthorized person as

there was no specific resolution in favour of the Sh. Rajeev Sood, who had signed and verified the present suit, and thus, the suit was liable to be dismissed on this ground alone.

54. In this regard, this Court notes that the plaintiff company led evidence through its authorized representative, PW-1 Sh. Rajeev Sood, who had placed on record the authorization letter which authorized him to institute the present suit for recovery and appear before this Court on behalf of the plaintiff company by virtue of being authorized by the Board Resolution dated 01.07.2014 (*Ex. PW1/2*). The relevant extract of the Board Resolution is set out below:

> "...**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF BOARD OF DIRECTORS OF SGS INFRATECH LIMITED HELD ON SATURDAY. 21ST MAY. 2016 COMMENCED AT 03.00 PM AND CONCLUDED AT 04;00 PM AT ITS REGISTERED OFFICE AT R-10. SECOND FLOOR. GREEN PARK MAIN. NEW DELHI-110016**
>
> **RESOLVED THAT** consent of the Board of Directors be and is hereby accorded to authorize Mr. Rajeev Sood, S/o. Shri. C. D Sood, Aged about 48 years, as an Authorized Representative of the Company, to deal, on behalf of the Company, in relation to filling of legal proceedings against Punjab & Sind Bank, Green Park Branch, New Delhi before Delhi High Court or any Government Authority, Tribunal, Court, and/or any other legal authority.
>
> **RESOLVED FURTHER THAT** the said authority shall include authorization to:
>
> (a) appoint advocate/solicitor/attorney to institute and/or defend legal proceedings before the Authority and for the purpose of giving legal notices and filing civil suits and

> criminal cases; against various parties in the competent court for and on behalf of the company;..."

55. Clearly, a perusal of the aforesaid extract reveals that PW-1 Sh. Rajeev Sood was specifically authorized by virtue of the said Board Resolution to file the present suit against the defendant bank.

56. Further, no question in this regard was put to PW-1 Sh. Rajeev Sood in cross-examination by the learned counsel for the defendant bank, and even no arguments in this regard were addressed on behalf of the defendant bank during the final arguments before this Court.

57. Therefore, this issue is decided in favour of the plaintiff company and against the defendant bank.

Re: Issue No. 1: Whether the Plaintiff Company is entitled to recovery of ₹2,24,89,361/-, if so, at what rate of interest pendente lite and future?

58. The onus to prove this issue was on the plaintiff.

59. The learned senior counsel for the defendant bank contended that the defendant bank had no option but to follow the directions of RBI, which were issued *vide* circulars dated 09.04.2010 and 01.07.2010, wherein it was categorically mentioned that the BPLR system was being replaced by Base Rate System for all categories of loans, and with effect from 01.07.2010, all categories of loans should be priced only with reference to Base Rate. The learned senior counsel further placed reliance on clause 10 of the sanction letter dated 26.10.2006, which stipulated that since the rate of interest was

floating, no separate communication would be conveyed to the plaintiff company for change of interest. Therefore, it was contended that considering the mandate of circulars issued by RBI and clause 10 of the sanction letter dated 26.10.2006, there was no requirement on part of the defendant bank to seek prior consent of the plaintiff in this regard.

60. The learned senior counsel for the plaintiff argued to the contrary and contended that once the sanction letter dated 26.10.2006 mentioned the rate of interest – decided, agreed, and consented to by the defendant bank – the defendant bank could not have unilaterally enhanced/changed the rate of interest without communicating the same to the plaintiff. The learned senior counsel for the plaintiff in this regard relied on the documents produced by the defendant itself i.e. the circulars of the RBI, and stated that it will be against the principles of natural justice, as well as the specific clauses of the circulars issued by the RBI.

61. The relevant portion of the circular dated 09.04.2010, issued by RBI, on which the defendant bank is relying upon, reads as under:

> "**Base Rate**
>
> i. The Base Rate system will replace the BPLR system with effect from July 1, 2010. Base Rate shall include all those elements of the lending rates that are common across all categories of borrowers. Banks may choose any benchmark to arrive at the Base Rate for a specific tenor that may be disclosed transparently. An illustration for computing the Base Rate is set out in the Annex. Banks are free to use any other methodology, as considered appropriate, provided it is

consistent and is made available for supervisory review/scrutiny, as and when required."

62. Similarly, the relevant portion of the circular dated 01.07.2010, issued by RBI, on which the defendant bank is relying upon, reads as under:

> "2.2 **Base Rate**
>
> * * *
>
> 2.2.2. Banks may determine their actual lending rates on loans and advances with reference to the Base Rate and by including such other customer specific charge as considered appropriate.
>
> * * *
>
> **2.3 Applicability of Base Rate**
>
> 2.3.1 With effect from July 1, 2010, all categories of loans should be priced only with reference to the Base Rate."

63. Though there is no dispute insofar as the aforesaid stipulations in the RBI's circulars are concerned, it shall be apposite to take note of the following clause of the circular dated 09.04.2010, issued by RBI:

> "**Transitional issues**
>
> xi. The Base Rate system would be applicable for all new loans and for those old loans that come up for renewal. Existing loans based on the BPLR system may run till their maturity. In case existing borrowers want to switch to the new system, before expiry of the existing contracts, an option may be given to them, on mutually agreed terms. Banks, however, should not charge any fee for such switch-over."

64. Similarly, clause 2.3.6 of the circular dated 01.07.2010 issued by the RBI provides as follows:

> "2.3.6 The Base Rate system would be applicable for all new loans and for those old loans that come up for renewal. Existing loans based on the BPLR system may run till their maturity. In case existing borrowers want to switch to the new system, before expiry of the existing contracts, an option may be given to them, on mutually agreed terms. Banks, however, should not charge any fee for such switch-over."

65. Notably, clause 6 of the circular dated 01.07.2010 provides as under:

> "6. Wherever loans sanctioned prior to June 30, 2010 come up for renewal from July 1, 2010, the Base Rate system would be applicable."

66. Therefore, on a plain reading of the aforesaid clauses of the circulars issued by the RBI, two things become clear. *First*, the introduction of the Base Rate system was designed to provide transparency and uniformity in lending rates, with its application being made mandatory for all '**new loans**' and for those '**old loans that come up for renewal**'. Clause xi of the circular dated 09.04.2010 and clause 2.3.6 of the circular dated 01.07.2010 clearly stipulates that the existing loans based on the BPLR system may continue to operate under their current terms until maturity. However, an option is provided to borrowers holding such existing loans to switch over to the Base Rate system before the expiry of their existing contracts. This switch over must be based on mutually agreed terms between the borrower and the bank, ensuring that both parties consent to the revised terms. *Second*, that clause 6 of the circular dated 01.07.2010 clarifies the application of the Base Rate

system to loans sanctioned before 30.06.2010. It stipulates that such loans, upon their renewal on or after 01.07.2010, shall mandatorily transition to the Base Rate system.

67. This makes it evident that the RBI had sought to establish a clear cutoff date i.e. 01.07.2010, for the universal adoption of the Base Rate system for all new loans and all loans which come up for renewal, while respecting the terms of existing contracts and loans under the BPLR system, leaving no room for ambiguity or granting discretion to the banks.

68. Undisputedly, the loan in the present case was sanctioned by the defendant bank, in favour of the plaintiff company, in the year 2006 i.e. *vide* sanction letter dated 26.10.2006, which is prior to the circulars issued by the RBI in the year 2010. All the terms and conditions pertaining to the loan were mentioned in the said sanction letter. The circular issued by the RBI in the year 2010, which is being relied upon by the defendant bank, in clear and unambiguous language and terms mentions that the loans which were sanctioned prior to 01.07.2010, will continue to be governed by the BPLR system, and in case the existing borrowers wished to switch to the new system, before expiry of the existing contracts, an option may be given to them in this regard on mutually agreed terms.

69. Further, the defendant bank had written a letter dated 15.02.2011 (*Ex. PW-1/12*) to the plaintiff company *vide* which the plaintiff company was informed that the loan sanctioned to it had

been '**reviewed**' on different rate of interest, and the plaintiff company was requested to send its acceptance to the same. Along with the said letter, another letter dated 09.12.2010 (*Ex. PW-1/11*) was enclosed which contained the updated terms of the loans with respect to the rate of interest, which had changed according to the new Base Rate system. The relevant portion of letter dated 09.12.2010 issued by the defendant bank is set out below:

In view of your recommendation, the competent authority (Vide ZM sanction No – 64/2010-11 dated 09.12.2010) has sanctioned the following facilities by way of reviewal on terms and conditions as under.

(Rs. in lac)

Facility.	Credit facility sanctioned. Original Amount.	Reviewed Amount.	Rate of Interest.	Repayment.
Term Loan (Rent Receivable).	Rs. 2500.00	Rs. 1896.02 (By way of reviewal.)	BR + 4.05 + TP or as charged by other Bank's whichever is higher.	As per E.D.Sanction No. 27/2008-09 dated 31st March 2009. In 115 equated monthly installments of Rs. 34.80 lacs per month wef January 2007.

70. During the course of arguments, it was vociferously argued on behalf of the defendant bank that it had only complied with the directions of the RBI contained in circulars dated 09.04.2010 and 01.07.2010 while issuing the aforesaid letters to the plaintiff company. However, as noted above in the preceding paragraphs, the RBI circulars clearly mentioned that existing loans under BPLR system may continue to operate under their current terms until maturity, and the borrowers may be given an option to convert to Base Rate system, and the same may be done only with their consent. Further, the Base Rate system would be applicable in cases where the loans come up for '**renewal**' after 30.06.2010.

71. *Intriguingly*, however, there is no document on record, neither it could be proved by way of any evidence (since the defendant bank did not lead any evidence) or while arguments were addressed in this case, that the plaintiff company at any point of time had requested the defendant bank for 'renewal' of the loan, or that even otherwise, the loan was to be renewed as per any terms and conditions entered between the parties at the time of sanction of loan. In fact, the letter dated 09.12.2010 issued by the defendant bank uses the words '"**reviewal**", and not "**renewal**" of the loan. Further, concededly, the plaintiff company did not give its consent at any point of time, by way of any letter or communication, for renewal of loan on updated terms and conditions viz. the rate of interest. Neither it is the case of the defendant bank that the plaintiff company had given its consent or accepted the updated terms and conditions of the loan. It is very strange that the circular relied upon by the defendant bank itself does not stipulate that the existing loans were affected by the said circular, rather on the other hand, it categorically mentions that the existing loans were to be governed by the BPLR system until their maturity. Further, on the contrary, the plaintiff company has placed on record a letter dated 25.03.2021 (*Ex. PW-1/13*) which it had written to the defendant bank, protesting against the change of interest rate. In another letter dated 02.04.2011, the plaintiff company had again submitted that the defendant bank had unilaterally and arbitrarily changed the rate of interest, which meant that the plaintiff company would be liable to pay a higher rate of interest. Further, the plaintiff

company had, at the earliest available opportunities, continued to raise objections *vide* letters dated 04.07.2011, 09.08.2011, 25.11.2011, 05.01.2012, 13.01.2012, 14.01.2012, 21.01.2012, 02.02.2012, 12.03.2012, 16.03.2012, 24.03.2012, 18.04.2012, 30.04.2012, 11.05.2012, and 25.05.2012, to the enhanced and changed rate of interest. Eventually, on 25.07.2012, the plaintiff company decided to close the loan account after paying the outstanding dues, since the requests of the plaintiff company were not addressed by the bank.

72. The learned senior counsel for the defendant bank could not point out from the record, to substantiate the claim that the defendant bank could unilaterally decide to 'renew' the loan, which was already for a 'fixed term period'. In this regard, it is to be noted that it was at no point of time disputed that the loan in this case was a 'Term Loan' and the same was sanctioned for a fixed term, which is also reflected in clause 02 of the sanction letter dated 26.10.2006. Therefore, once the loan had been sanctioned *vide* the said sanction letter, wherein the rate of interest was mentioned as "*BPLR - 1.25% i.e. at present @ 10.50% p.a. or as charged by other banks, whichever is higher*", there was no question of renewing the loan on its own and changing either the rate of interest, based on the RBI circular which did not extend this liberty to them, rather it laid down that the term loans already sanctioned will be governed by BPLR system.

73. Therefore, in such facts and circumstances, two things are clear. Firstly, that the Base Rate system, as per RBI circulars, was to be applied either to new loans or the loans which were to come up for renewal post 30.06.2010. There is nothing on record in the present case to show as to why and how the loan sanctioned to the plaintiff company could have been reviewed or renewed in light of the fact that neither the terms of sanction of loan nor the RBI circular authorised them to do so. Secondly, as per RBI circulars, the existing loans could have continued on earlier terms and conditions and only if an option was given to a borrower, and accepted by the borrower, the bank could have changed the BPLR system to Base Rate system. As noted in preceding paragraphs, no such 'option' was given to the plaintiff company and rather, it was a unilateral decision of the bank to change the rate of interest, which was never accepted by the plaintiff company, and the same is evident from a bare perusal of several letters exchanged between the plaintiff company and defendant bank.

74. Another contention of the learned senior counsel appearing for the defendant bank was that since the plaintiff company had paid the entire loan amount, and the loan account had been closed, it was not open for the plaintiff company to have now disputed the charging of excess interest by the bank. It was contended that the plaintiff company had made repayment of the entire balance amount to the defendant bank on 25.07.2012, but had filed the present suit in

August, 2014 i.e. at a belated stage. However, this Court is of the view that the plaintiff had written several letters to the defendant bank, first raising objections to higher rate of interest being charged on the loan and second, demanding refund of the excess interest charged by the bank. Moreover, in the letters dated 04.07.2011, 09.08.2011, 25.11.2011, 05.01.2012, 13.01.2012, 14.01.2012, 21.01.2012, 02.02.2012, 12.03.2012, 16.03.2012, 24.03.2012, 18.04.2012, 30.04.2012, 11.05.2012, and 25.05.2012, the plaintiff company had also categorically mentioned that it was being constrained to sever its ties with the defendant bank due to their conduct of not attending to its grievance of charging excess interest on the loan against the agreed upon rate of interest between the parties. In addition to the aforesaid, the plaintiff company had written several letters to the defendant bank, even after closing the loan account, whereby it had issued reminders to the defendant bank to refund the excess amount of interest charged by it. In this regard, the plaintiff company placed on record a letter dated 09.10.2012, issued by PNB, and which was proved during evidence by PW-3, wherein the PNB had decided to refund the excess interest charged by it, on the loan sanctioned to the plaintiff company, and had in fact refunded an amount of ₹1,28,56,074/-. This fact was brought to the notice of the defendant bank *vide* letters dated 12.10.2012 and 14.01.2013, and on 16.01.2013, the defendant bank had requested to provide details of interest charged by other banks from inception of loan as well as details of refund allowed by them. *Vide* letter dated 19.07.2013, a

similar request was made by the defendant bank and the plaintiff company *vide* letter dated 01.04.2014 had provided the relevant details to the defendant bank. In the letter dated 01.04.2014, the plaintiff company had requested the defendant bank to take immediate steps to refund the excess interest of. ₹2,24,89,361/-, illegally and arbitrarily charged from the plaintiff company within 15 days of receipt of notice, along with 15% interest, failing which the plaintiff company shall be forced to take legal recourse as per law. Therefore, the contention of the learned senior counsel for the defendant that no such letter was received by them is negated by the series of letters (as mentioned above), which were placed on record and duly proved while recording evidence of the plaintiff. The plea of the defendant bank that the documents which were to be produced by the plaintiff company were not produced by it before the defendant bank i.e. the proof of refund of excess interest charged by Punjab National Bank, which they had requested the company to produce is negated by the testimony of witnesses of the plaintiff PW- 3. To reiterate, the plaintiff has placed on record the document i.e. letter issued by PNB refunding the excess interest charged and the proof that it was sent to the defendant bank.

75. Therefore, this Court finds merit in the contentions and the claim of the plaintiff company.

76. As far as the calculation of the amount to be refunded is concerned, the plaintiff company has brought to this Court's notice

that the excessive rate of interest on the basis of the new Base Rate system was charged by the defendant bank with effect from 09.12.2010. Till the date when the loan account was closed by the plaintiff i.e. 25.07.2012, the defendant bank had charged excess interest of ₹57,41,734/-. Additionally, when the plaintiff company had closed its loan account on 25.07.2012, the plaintiff had paid a total amount of ₹5,07,60,902/- including the excessive interest, whereas the amount to be paid by the plaintiff company, in terms of the previously agreed rate of interest, would have been ₹3,91,88,509. Therefore, the excess interest paid by the plaintiff company at the time of closing the loan account was ₹1,15,72,393/-.

77. Insofar as the plaintiff's claim for period prior to change of rate of interest to Base Rate system is concerned, this Court is of the opinion that the plaintiff company for a period of about five years had never raised any protest or grievance in respect of the interest paid by it earlier i.e. prior to 09.10.2010 and, therefore, the amount of ₹51,75,234/- being claimed by the plaintiff company in respect of earlier period cannot be accepted.

78. Thus, the amount to which the plaintiff company has been found entitled is ₹1,73,14,127/- in above context.

79. Insofar as the interest is concerned, the plaintiff has calculated the same at 15% p.a. from 25.07.2012, i.e. the date on which the plaintiff company repaid the entire loan, till 25.07.2014, on ₹2,24,89,361/-, as ₹67,46,808/-. However, this Court is of the view

that interest at the rate of 9% p.a. would serve the interests of justice. Therefore, interest calculated at 9% p.a., on ₹1,73,14,127/-, for a period of two years would be ₹31,16,542.

Re: Issue No. 3: Relief

80. In view of the foregoing discussion, the total amount to which the plaintiff company would be entitled is ₹2,04,30,669/-, alongwith the interest at 9% p.a. from the date of filing of present suit, till its realization.

81. The suit is decreed in favour of the plaintiff, in the aforesaid terms. Let a decree sheet be prepared accordingly.

82. The parties shall bear their own costs.

83. The suit is accordingly disposed of in above terms.

84. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 24, 2024/*zp/at*