

GAHC010211362015



2025:GAU-AS:11899

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3082/2015

M/S SHRADHANJALI and ANR.
A PROP. FIRM HAVING ITS OFFICE AT KELVIN CINEMA COMPOUND, S R C
B ROAD, TOKOBARI, GHY-1, DIST- KAMRUP, ASSAM, REP. BY ITS SOLE
PROPRIETOR, SRI SHANKAR LALL GOENKA

2: SHANKAR LALL GOENKA
S/O LT. JIBAN RAM GOENKA
R/O KELVIN CINEMA COMPOUND
S.R.C.B. ROAD
TOKOBARI
GHY-1
DIST- KAMRUP
ASSA

VERSUS

IDBI BANK LTD. and 3 ORS
REGISTERED OFFICE - IDBI TOWER, WTC COMPLEX, FUFFE PARADE,
MUMBAI-5, REP. BY ITS CHAIRMAN

2:THE MANAGING DIRECTOR
IDBI BANK LTD.
IDBI TOWER
WTC COMPLEX
CUFFE PARADE
MUMBAI-5

3:THE GENERAL MANAGER
GUWAHATI MAIN BRANCH
IDBI BANK LTD.
IDBI BUILDING
G.S. ROAD
GHY-5

4:THE ASSTT. GENERAL MANAGER
GUWAHATI MAIN BRANCH
IDBI BANK LTD.
IDBI BUILDING
G.S. ROAD
GHY-

Advocate for the Petitioner : MR.A BHATTACHARJEE, MR.D P BORAH,MR.S S DEY,MR.M NATH

Advocate for the Respondent : MR.M C KAKOTIR-1 to 4, ,MR.M DUTTA(R-1 to 4),

BEFORE
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

28/08/2025

Heard Mr. M Nath, learned Senior counsel assisted by Mr. D P Borah, learned counsel for the petitioners and Mr. M Dutta, learned counsel appearing for all the respondents.

2. The petitioner in the present proceeding has prayed for a direction upon the respondent authorities to refund an amount of Rs.7,72,100/- (Rupees Seven Lakhs Seventy Two Thousand One Hundred), which was projected to have been so charged from the petitioner as upfront processing fee for sanction of Cash Credit Limit to it.

3. As projected in this writ petition, the petitioner had approached the respondent No. 1, Bank seeking financial assistance for setting up of a Shopping Mall cum Multiplex at Kelvin Cinema Compound, Guwahati.

4. Basing on the said request and on processing of the matter, the respondent No. 1 Bank vide communication dated 05.11.2009 had agreed in principle to grant overall financial assistance of Rs.800.00 Lakhs (Rs.8 Crores) in the form of Cash Credit. The said approval was so granted with certain conditions. One of the conditions involved required the petitioner to pay an upfront fee of Rs.8,82,400/- (Rupees Eight Lakhs Eighty Two Thousand Four Hundred), which included service charges.

5. It is further projected in the writ petition that the said financial assistance in the form of cash credit, as approved to the petitioner, was secured by the petitioners by hypothecation of moveable and immovable assets.

6. It is further projected in this writ petition that the respondent Bank had converted the Cash Credit Limit to the extent it was so drawn by the petitioner, i.e., Rs.1,00,00,000/-(Rupees One Crore), as a Working Capital Demand Loan vide a communication dated 31.12.2012.

7. It is seen that the Cash Credit Limit utilized by the petitioner, which was subsequently converted as a Working Capital Demand Loan, was refunded along with interest by the petitioner and the account came to be closed by the Bank authorities.

8. The petitioner, thereafter, preferred a representation on 19.01.2013 and therein, inter-alia, raised a contention that the upfront processing fee having been so received from it, by the Bank for the grant of Rs.8,00,00,000/- (Rupees Eight Crore) as working capital, the petitioner having only draw Rs.1,00,00,000/- (Rupees One Crore), the processing fee for the remaining Rs.7,00,00,000/- (Rupees Seven Crore) not utilized by the petitioner be refunded to it. The said refund not having been made, the petitioners have instituted the present proceeding.

9. Mr. M Nath, learned Senior counsel for the petitioners after reiterating the facts as noticed, hereinabove, has submitted that the reason assigned by the respondent Bank for not refunding the amount received from the petitioner as upfront processing fee, in excess of actual drawal by it of the credit limit authorized to it, was on account of non-renewal of the said financial benefit extended to it by the Bank authorities. Mr. Nath, learned Senior counsel for the petitioners by referring to a communication dated 07.01.2011, submitted by the petitioner in response to a communication dated 07.12.2010 issued by the Bank authorities, has submitted that the petitioner had furnished all requisite information for renewal of the said Cash Credit Limit. However, the Bank refused to renew the financial assistance extended to the petitioner in the form of Cash Credit Limit. Accordingly, he submits that the petitioner not having utilized the entire Cash Credit Limit and the Bank having restricted utilization of the same only to the extent of Rs.1,00,00,000/- (Rupees One Crore), the processing fee which was admittedly received from the petitioner for authorization of Cash Credit Limit to the extent of Rs.8,00,00,000/- (Rupees Eight Crores), the excess so received from the petitioner is now required to be refunded to it with interest.

10. Mr. M Dutta, learned counsel for the respondents, at the outset has submitted that the Cash

Credit Limit was authorized to the petitioner basing on an application submitted by it in this connection. Basing on the projections made in the said application, the bank had at the outset agreed in principle to grant an overall financial assistance of Rs.8,00,00,000/- (Rupees Eight Crores) in the form of cash credit facility to the petitioner firm. As per the policy of the Bank, for authorization of the Cash Credit Limit benefit to a customer, an upfront processing fee of 1% of the sanctioned amount plus service charges, is required to be received from the customer. Accordingly, the petitioner herein was required to deposit an upfront fee of Rs.8,82,400/- (Rupees Eight Lakhs Eighty Two Thousand Four Hundred), which was duly deposited by the petitioner with the Bank authorities and thereafter, the petitioner was at liberty to utilize the Cash Credit Limit given to it.

11. It is submitted by Mr. Dutta, learned counsel for the respondents that during the processing of the matter, while proceeding to determine the drawing limit required to be authorized to the petitioner, it came to the notice of the Bank authorities that the petitioner had not complied with certain conditions, including the condition for increase in the promoter share in the project in question, accordingly the drawl limit of the petitioner was fixed at Rs.2,00,00,000/- (Rupees Two Crores). He submits that the said fixation so made was however permissible to be increased, subsequently, basing on the transaction so carried out in the matter by the petitioner.

12. Mr. Dutta, learned counsel for the respondents has submitted that although the petitioner was eligible to draw Rs.2,00,00,000/- (Rupees Two Crores) as Cash Credit Limit, the petitioner could only draw Rs.1,00,00,000/- (Rupees One Crore). He submits that the said amount of cash credit of Rs.1,00,00,000/- (Rupees One Crore) granted to the petitioner not having been refunded, the same came to be converted as a "Working Capital Demand Loan" and now the petitioner was to refund the same along with interest. He submits that the petitioner having failed to act in the matter by complying with the conditions put for utilization of the maximum limit of Rs.8,00,00,000/- (Rupees Eight Crores) of Cash Credit Limit as authorized to it, the bank authorities are at no fault, if the petitioner not being able to utilize the said cash credit limit to its maximum.

13. Mr. Dutta, learned counsel for the respondents has further submitted that the said Cash Credit Limit was so extended to the petitioner on 05.11.2009 and the processing fee was so furnished by it on 11.01.2010, the petitioner had at no point of time before 2013, more specifically before 19.01.2013, demanded refund of the purported surplus amount charged from it as processing fee. He submits that the said demand came to be made by the petitioner only after the closure of the loan account and the same was so made vide representation dated 19.01.2013.

14. In the above premises, Mr. Dutta, learned counsel for the respondents submits that the petitioner's claim for being refunded the excess processing fee purportedly received from it by the Bank authorities, would not mandate an acceptance from this Court.

15. I have heard the learned counsel for the parties and have also perused the materials available on record.

16. The facts as noticed, hereinabove, is not in dispute. It is further not in dispute that the petitioner was authorized a credit limit of Rs.8,00,00,000/- (Rupees Eight Crores) by the Bank authorities vide a communication dated 05.11.2009 and the same was so authorized basing on a request made in the matter by the petitioner. As per the terms and conditions attached to the authorization of Cash Credit Limit to the petitioner, the petitioner was required to deposit an upfront processing fee which was to be computed @1% of the sanctioned amount plus service charges. The amount payable being Rs.8,82,400/- (Rupees Eight Lakhs Eighty Two Thousand Four Hundred), the same was paid by the petitioner.

17. The petitioner was, thereafter, basing on the further processing made in the matter, authorized a drawing limit of Rs.2,00,00,000/- (Rupees Two Crores) by the Bank authorities. The petitioner drew Rs.1,00,00,000/- (Rupees One Crore) against the Cash Credit Limit extended to it. The amount as drawn by the petitioner not being refunded, within the period mandated, the said amount was converted as a "Working Capital Demand Loan".

18. It is projected that the petitioner had not renewed his cash credit account and for the reasons of which the Cash Credit Limit as sanctioned to the petitioner was not available to it for utilization.

19. The records as produced by Mr. Dutta, learned counsel for the respondents, has also been perused by this Court and it is seen that the petitioner without any objection had continued to enjoy the Cash Credit Limit only to the extent of Rs.1,00,00,000/- (Rupees One Crore) till the closure of the "Working Capital Demand Loan" extended to it on conversion of the Cash Credit Limit drawn by it. It is after the closure of the said loan that the petitioner had approached the bank authorities vide the representation dated 19.01.2013, praying for refund of the amount, purportedly, received in excess as upfront processing fee from it.

20. The materials brought on record demonstrates that the bank had authorized to the petitioner a Cash Credit Limit of Rs.8,00,00,000/- (Rupees Eight Crores) vide communication dated 05.11.2009 and it was open to the petitioner to operate the same at the maximum limit. However, on account of

the non-fulfillment by the petitioner of the conditions put in the matter, the petitioner having only been able to draw an amount of Rs. 1,00,00,000/- (Rupees One Crore) there from, the same also having been defaulted in repayment, leading to conversion of the same as "Working Capital Demand Loan", this Court considering the policy of the respondent Bank that the upfront processing fee received from a customer would not be permissible to be refunded and can be refunded only in the event the financial facility for which such upfront processing fee was received is not authorized to the customer concerned, finds that no error was committed by the Bank in not entertaining the request of the petitioner for refund of the purported excess processing fee received from it.

21. The Bank authorities having taken a stand that the processing fee received to be not refundable and it also having come to the notice of this Court that the petitioner not being prevented by the bank authorities from utilising the Cash Credit Limit to the maximum extent and the same not being so utilised on account of the fact that the petitioner had not complied with the conditions under which such Cash Credit Limit was extended to it and further no approach being made by the petitioner for modification of the limit of Cash Credit as extended to it and for fixation of the same at a lower level, this Court is of the considered view that the claim made by the petitioner for refund of the upfront processing fee would not mandate an acceptance.

22. Accordingly, in view of the above conclusions, the present writ petition is held to be devoid of any merit and the same stands dismissed. However, there would be no order as to cost.

JUDGE

Comparing Assistant