

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE**

Present:

**The Hon'ble Justice Rai Chattopadhyay**

**WPO 2585 of 2022**

***Maan Steel and Power Limited and Anr.***

***Vs.***

***Indian Bank***

**For the petitioners** : Mr. Mainak Bose, Id. Sr. Adv.  
: Mr. Amitabh Ray  
: Mr. Rishabh Karnani

**For the respondent bank** : Mr. Om Narayan Rai, Id. Sr. Adv.  
: Mr. Piyash Choudhury  
: Ms. Biyas Banerjee  
: Mr. Aayush Sharma  
: Mr. Vineeth Tiwari

**Judgment on** : **10.06.2026**

**Uploaded on** : **10.06.2026**

**Rai Chattopadhyay, J. :-**

- 1) The petitioner No.1 / company has obtained credit facility to the tune of Rs. 94 Crores, from a consortium of lenders, which included Allahabad Bank [presently known as Indian Bank/respondent herein]. On and from November 10, 2020, the existing credit facilities enjoyed with the Indian Bank have been taken over by the ICICI Bank Limited, upon remittance of the entire due and outstanding amount to the tune of Rs.11,50,98,000/-.
- 2) The ICICI Bank Limited, in addition to having *pari passu* charge in respect of the assets of the petitioner No.1/company, insisted that the company should furnish additional security in the nature of Fixed Deposit Receipts.
- 3) In response to the writ petitioner's letter dated November 4, 2020, the respondent/Indian Bank provided the outstanding

statement. Monies were accordingly transferred by the ICICI Bank Limited. After such transfer of money, the petitioner wrote to the respondent Indian Bank to release the Fixed Deposit Receipts and issue a 'No Due Certificate', to the petitioner.

- 4) The respondent Bank instead has issued a demand of Rs. 42,46,557/- being alleged unrealized charges from the writ petitioner.
- 5) Being aggrieved the petitioner has made complaint to the Banking Ombudsman, but in vain as it closed the complaint by observing that the complaint is beyond the domain of it.
- 6) Therefore, in this writ petition the petitioner has challenged the alleged illegal, unauthorized and wrongful withholding of the Fixed Deposit Receipts and the 'No Due Certificate', by the respondent Bank. Issuance of the impugned demand of Rs. 42,46,557/- has also been challenged.
- 7) The petitioners have made prayers inter alia that the impugned letter of the respondent Bank dated February 8, 2021 may be set aside and quashed; the respondent Bank may be directed to release the Fixed Deposit Receipts, as sought for by the writ petitioner vide the letter dated November 19 and December 11, 2020; the Bank may also be directed to issue the 'No Due Certificate', by acting upon those two letters.
- 8) Three letters of the petitioner No.1 may be mentioned in this regard, as follows;
  - a. Letter dated November 4, 2020, on the "Sub – Takeover of credit facilities by ICICI Bank Limited". The following portion thereof may be mentioned;

*"In continuation of our earlier letter dated 05.09.2020, this is to inform you that ICICI Bank Limited has sanctioned credit facilities in favour of our company whereby they will take over the existing credit*

*facilities with your bank. We will transfer our credit limit with your bank to ICICI Bank. In this connection we request you the following –*

- 1. Give us the outstanding balance of Term Loan and Cash Credit account as on date.*
- 2. CIR Report as desired by ICICI Bank Limited.*
- 3. After receipt of the outstanding balance, ICICI bank will transfer fund to our CC Account (A/c No: 50468441827) against the total outstanding amount including Term Loan.*

*We request you after the receipt of fund from ICICI Bank to transfer the outstanding amount of Term Loan from CC to Term Loan account i.e. 50442552275 immediately.*

*You are further requested to kindly provide and execute the followings after takeover of the limits:*

- 1. Issue of NO Due Certificate.*
- 2. Release of ROC Charge & Mortgage.*
- 3. Satisfaction of CERSAI Charge.*
- 4. Release of FDR kept against the DSCRA.”*

- b. Letter dated November 19, 2020, on the “Sub – Request for closure of accounts (term loan and cash credit) & issue ‘No Due Certificate’. The following portion thereof may be mentioned;

*“In continuation to our earlier letter dated 09.11.2020 on the captioned subject, where after our term loan account maintained with you vide no. 50442552275 have been repaid in full. Also we would like to state that the balance in our cash credit account maintained with you vide no. 50468441827 have also been kept as unutilised as on date and request you to kindly zeroised the limit set under the said account.*

*We are hereby requesting you to close all the accounts (Term Loan A/c No.50442552275 and Cash Credit A/c No.50468441827) maintained with your bank and issue us 'No Due Certificate' and further release the FDR no. 50491075484 kept against DSRA as requested in our earlier letter.”*

- c. Letter dated December 11, 2020, on the “Sub – Reminder Letter for Closure of accounts (term loan and cash credit) & issue us ‘No Due Certificate’. The following portion thereof may be mentioned;

*“We refer to our earlier letter dated 19.11.2020, whereby we had requested you for closure of our all accounts and issue us ‘No Due Certificate’, copy of the letter is enclosed herewith. We draw your attention that we are yet to receive ‘No Due certificate’ and the release of FDR against DSRA is still pending. We are losing interest on FDR since rate is very low as compared to the lending rate the maturity proceeds will help us to utilize the fund for our business purposes.*

*We once again request you to kindly release FDR and issue us ‘No Due Certificate’ against all the credit facilities availed from you earlier.”*

- 9) It is also necessary to see the contents of the impugned letter of the respondent Bank dated February 8, 2021, which is as follows:

**“Sub: Closure of the Credit facilities/release of security and issuance of No Dues Certificate**

This has reference to your request for closure of credit facilities and release of security held with us. In this connection, our Competent Authority has accorded permission for the above and such you are advised to make payment of the under noted dues/unrealized charges at the earliest: -

S No	Facility	Amount including S Tax (in Rs.)
1	Cash Credit limit Processing Fee	Nil
2	Term Loan Processing Fee	Rs. 1,88,328/-
3	Cash Credit Commitment charges	Rs. 13,41,915.21
	Term Loan Pre payment Charges	Rs. 27,16,314.62
	<b>Total</b>	<b>Rs. 42,46,557.83</b>

Please note that, in case any charges/dues which remained unclaimed by the bank and came to our knowledge in future may be claimed for payment to us.”

- 10)** Mr. Mainak Bose, Learned Senior Counsel has represented the writ petitioner. It has been submitted that the petitioner company availed credit facilities from a consortium of Banks, including the respondent Bank. Owing to the comparatively higher rate of interest charged by the respondent, the petitioners decided to shift the credit facilities to ICICI Bank. Pursuant to the respondent's approval and the execution of the requisite facility agreements, ICICI Bank agreed to take over the entire exposure. The respondent thereafter communicated the foreclosure amount payable, which was duly remitted by ICICI Bank, resulting in the complete discharge and transfer of the loan accounts from the respondent Bank. That, according to the petitioners, as part of the sanction conditions they had furnished a Fixed Deposit Receipt (FDR) of Rs. 62.5 lakhs as a Debt Service Reserve Account (DSRA). The FDR was not an independent deposit but a specific security created exclusively for securing repayment obligations under the term loan. Since the term loan stood fully repaid and transferred to ICICI Bank, the purpose for which the FDR had been furnished ceased to exist. Consequently, the respondent Bank became obligated to release the FDR and issue a 'No Due Certificate'.
- 11)** Mr. Bose, Learned Senior Counsel has argued about the binding effect of the takeover arrangement. It is contended that the respondent Bank actively participated in the takeover process by furnishing the foreclosure figures and accepting the entire outstanding amount remitted by ICICI Bank. Having facilitated and completed the transfer of the credit facilities, the respondent is said to be estopped from subsequently asserting fresh monetary claims that were neither disclosed nor adjusted at the time of closure. According to the petitioners, all dues capable of being claimed ought to have been reflected in the foreclosure statement itself, and any later demand is inconsistent with the finality attached to the takeover transaction.
- 12)** The petitioners further submit that despite repeated requests after closure of the loan accounts, the respondent Bank

neither released the FDR nor issued the 'No Due Certificate'. Instead, by a communication dated February 8, 2021, the Bank raised a fresh demand of Rs. 42,46,557.83/- and sought to retain the FDR. Mr. Bose has argued that once the entire debt had been discharged and the borrower-bank relationship had come to an end, the respondent could not unilaterally withhold the security on the basis of disputed claims that were never part of the original settlement and transfer process. Mr. Bose has submitted that absence of prior demand before closure should invalidate a claim of the respondent Bank raised at a later stage. That, no demand for commitment charges, processing fees or any other alleged liability was raised prior to the closure of the accounts. The demand surfaced only after the loan had been fully repaid and the release of securities was sought. This sequence of events, according to the petitioners, demonstrates that the subsequent claim is an afterthought devised solely to justify the continued retention of the FDR.

- 13)** A substantial part of the petitioners' challenge is directed against the respondent's reliance upon an alleged banker's general lien. The petitioners argue that such a plea was absent at the first instance, when the respondent Bank filed its affidavit-in-opposition and was sought to be developed only during oral submissions with reference to internal circulars and authorities. Relying upon the settled principles governing the banker's lien, the petitioners contend that a general lien is unavailable where there exists an agreement to the contrary. In the present case, the FDR was earmarked for a specific purpose, namely maintenance of one-quarter DSRA as security for the term loan, thereby excluding any wider right of appropriation by the Bank. It has been further argued that specific security cannot be converted into general security. That, the DSRA FDR constituted a dedicated security linked to a particular credit facility and could not, by unilateral action of the bank, be transformed into a general security for all conceivable claims. Since the FDR was created for a limited and identifiable purpose, the respondent's attempt to invoke a general lien over the same is alleged to be contrary to the contractual framework governing the parties.

- 14)** According to the petitioners the respondent Bank has indulged into arbitrariness and unfair banking practices. That, the respondent's conduct defeats legitimate commercial expectations. That, once ICICI Bank stepped into the shoes of the lender and the respondent received complete satisfaction of its dues, the respondent ceased to have any subsisting security interest over the borrower's assets or deposits. Consequently, continued retention of the FDR amounts, in substance, to unauthorized withholding of the petitioners' property without any adjudicated entitlement in favour of the Bank. It is submitted that a borrower who has liquidated the entire debt through a takeover arrangement is entitled to obtain release of securities and closure documents within a reasonable time. The refusal to do so despite full repayment is alleged to be arbitrary, unreasonable and violative of fair banking norms, causing prejudice to the petitioners in their ongoing banking relationship with the transferee bank.
- 15)** Finally, the petitioners submit that even assuming that the respondent Bank has a claim towards commitment charges, processing charges or any other amount, such claim must first be established before a competent forum in accordance with law. The Bank cannot, under the guise of an unadjudicated claim, continue to retain a security furnished for a loan that has already been extinguished. The withholding of the FDR and refusal to issue a 'No Due Certificate' are therefore alleged to be arbitrary, capricious, mala fide and contrary to the contractual arrangement between the parties, warranting interference under Article 226 of the Constitution.
- 16)** The respondent Bank is represented by Mr. Om Narayan Rai, Learned Senior Counsel. He contends at the outset that the writ petition is not maintainable under Article 226 of the Constitution. According to the Bank, the dispute arises purely out of commercial and contractual transactions between a borrower and a lending institution and involves seriously disputed questions of fact. The principal controversy concerns the petitioner's liability to pay

prepayment charges, commitment charges and processing fees. Determination of such liabilities requires examination of contractual documents, correspondence and the conduct of the parties, which cannot appropriately be undertaken in a summary writ proceeding. The Bank further points out that the petitioner had already approached the Banking Ombudsman and the complaint stood rejected, yet the petitioner has not challenged that order of rejection by the Banking Ombudsman. The respondent also contends that the relief sought by the petitioners is, in substance, a declaration that no amount is payable to the bank coupled with a direction for release of security. Such relief necessarily involves adjudication of contractual rights and obligations. A writ court is not expected to undertake a detailed examination of accounts, contractual clauses and rival calculations. The appropriate remedy, if the petitioners dispute the bank's claim, lies before a competent civil forum or other adjudicatory mechanism where evidence can be led and contractual disputes can be fully tried.

**17)** The respondent relies on the following judgments in support of its contention that a matter involving disputed questions of fact may not be entertained in a writ proceeding. These are as follows :-

(i) ***Joshi Technologies International INC Vs. Union of India and Others*** reported in **(2015) 7 SCC 728**

(ii) ***Union of India and Others Vs. Puna Hinda*** reported in **(2021) 10 SCC 690**

(iii) ***Subodh Kumar Singh Rathour Vs. Chief Executive Officer, Kolkata Metropolitan Development Authority and Others*** reported in **2023 SCC OnLine Cal 940**

**18)** The respondent submits that the petitioner availed substantial credit facilities aggregating Rs. 24 crores under a consortium arrangement and accepted the sanction terms by executing the relevant security documents. One of the conditions required creation of a Fixed Deposit Receipt which was pledged with the Bank as security for repayment of the

entire debt. The petitioner subsequently sought reduction of interest rates and, upon the Bank's refusal to accept the borrower's proposed conditions, decided to transfer the facilities to ICICI Bank. At the time of communicating the closure figures, the Bank specifically informed the petitioner that, apart from the outstanding balance, interest and all other applicable charges would also be payable under the contractual arrangements. The bank further argues that the petitioner cannot contend that nothing remains due. According to the respondent, the petitioner's own officer, Mr. Rajiv Sachdeva, exchanged communications with the bank and even furnished a calculation sheet acknowledging, in principle, the liability to pay commitment charges, disputing only the quantum. The bank therefore submits that the existence of liability is an admitted fact and only the amount remains disputed. Such dispute regarding calculation and quantification of dues is itself a disputed question of fact which renders the writ petition unsuitable for adjudication under Article 226.

- 19)** A major plank of the respondent's argument is that repayment of a loan does not mean payment merely of principal and interest. The expression "debt", as defined under the Recovery of Debts and Bankruptcy Act, 1993, is of the widest amplitude and includes every liability legally recoverable by a bank in connection with the credit facility. Consequently, prepayment charges, commitment charges and processing fees are also components of the debt due to the Bank. Since these liabilities remain unpaid, the respondent contends that the borrower-creditor relationship has not come to a complete end and the Bank is entitled to retain the pledged security until the entire liability is discharged. The Bank's position is that release of securities is not dependent merely upon closure of the principal loan account. What is relevant is whether there has been a complete and final settlement of all obligations arising from the lending relationship. The Bank contends that since substantial dues of the petitioner remaining unpaid, the security cannot be released until all liabilities are liquidated, any direction for release of the FDR at this stage would effectively deprive the

Bank of its contractual security before adjudication of its claim.

- 20) The respondent places considerable reliance upon the definition of the term "debt" contained in Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993. It is contended that the legislature has deliberately employed language of the widest amplitude so as to encompass every liability claimed by a bank during the course of its business activity, whether payable presently or in future, whether secured or unsecured, and whether arising under statute, contract or otherwise. According to the respondent, the expression is not confined to the outstanding principal and accrued interest alone but extends to all ancillary and incidental liabilities flowing from the lending transaction, including commitment charges, processing fees, prepayment charges and other contractual dues. The Bank therefore argues that the petitioners' attempt to segregate such charges from the principal borrowing obligation is legally untenable. Since such liabilities constitute part of the "debt" recoverable by the bank, the discharge of the principal loan amount by ICICI Bank did not bring about complete satisfaction of the debt, and consequently the respondent remained entitled to retain the pledged FDR as security until all components of the debt stood fully discharged.
- 21) To buttress his argument on this aspect, Mr. Om Narayan Rai, Learned Senior Counsel has relied on a Supreme Court decision in **J. Jermons Vs. Aliammal and Others** reported in **(1999) 7 SCC 382**, on the proposition that 'debt' in accordance with law, is not the principal loan amount including interest but ordinarily means any amount the debtor is obliged to pay as discharge of his liability. He has also submitted that debt may be contingent on happening of certain event which may or may not occur in future and becomes due and payable on happening of that event. He has further referred to **United Bank of India Vs. Debts Recovery Tribunal and Others** reported at **(1999) 4 SCC 69**.

- 22)** Building upon the aforesaid submission, the respondent argues that the petitioners proceed on an erroneous assumption that the borrower-creditor relationship stood extinguished immediately upon transfer of the principal exposure to ICICI Bank. The Bank contends that so long as any component of the debt, within the meaning of Section 2(g) of the 1993 Act, remains outstanding, the relationship between the parties continues for the limited purpose of enforcing recovery and preserving securities furnished in connection therewith. The petitioners' claim for unconditional release of the FDR is therefore said to be inconsistent with the statutory conception of "debt" and the settled banking practice of retaining security until full and final liquidation of all contractual liabilities.
- 23)** The respondent also disputes the petitioner's contention that the Fixed Deposit Receipt was earmarked solely as a Debt Service Reserve Account [DSRA] and therefore became automatically releasable upon repayment of the principal loan amount. According to the Bank, the very purpose of the DSRA was to secure repayment of the borrower's debt obligations in their entirety. Since the debt includes all contractual charges and liabilities, the security continues to subsist until complete satisfaction of all dues. The Bank relies upon the principles governing a banker's lien and contends that there is no contractual stipulation demonstrating any contrary intention that the FDR would be released merely upon payment of principal and interest, while other contractual liabilities remained outstanding.
- 24)** On merits, the respondent asserts that the prepayment charges were contractually recoverable under the consortium financing documents and the facility agreement executed by the parties. The sanction letter expressly incorporated the terms applicable to consortium members, while the subsequent facility agreement specifically provided for prepayment charges upon premature closure of the loan. The bank emphasizes that corporate loan prepayment charges are recognised banking practice intended to compensate lenders for asset-liability mismatches, liquidity risks, loss of

anticipated interest income and disruption of long-term financial planning caused by premature foreclosure. Since the petitioner chose to terminate a loan sanctioned for a long tenure within less than two years by shifting to another Bank, the respondent says that the impugned charges are both contractually justified and commercially reasonable, thereby entitling it to retain the FDR until all dues are satisfied.

- 25)** The respondent alleges that the writ petition suffers from suppression of material facts. According to the Bank, the petitioner failed to candidly disclose the correspondence exchanged between the parties, acknowledging liability towards commitment charges and other dues. Equally significant is that the petitioners did not disclose the rejection of their complaint by the Banking Ombudsman. On that ground alone, the respondent contends, that the petitioners are disentitled to any discretionary relief under Article 226. The respondent submits that the equities of the case do not favour the petitioners. The bank has not appropriated the FDR towards its own benefit but has merely retained it as security pending resolution of the outstanding claims. If the petitioners ultimately succeed in establishing that no amount is payable, the security can always be released. On the other hand, immediate release of the FDR would leave the bank unsecured in respect of claims which, according to the respondent, arise directly from the financing arrangement itself. The respondent argues that the petitioners willingly accepted the sanction terms and executed the facility agreements with full knowledge of the consequences flowing therefrom. Having enjoyed the benefits of the credit facilities for a substantial period, the petitioners cannot subsequently challenge individual clauses relating to charges and fees merely because they have become commercially inconvenient. The challenge is therefore hit by the principle that a party cannot approbate and reprobate in respect of the same contract.
- 26)** On behalf of the respondent, it has been argued that commercial wisdom of the bank is not subject to judicial

review. That, determination of interest rates, commitment charges, prepayment penalties and other banking charges lies within the realm of commercial decision-making. Such decisions are based upon financial risk assessment, treasury management and business considerations. Unless shown to be arbitrary, discriminatory or prohibited by law, the Court ought not to substitute its views for that of the lending institution in matters involving commercial banking policy.

- 27)** Since the respondent has questioned the maintainability of the writ petition and has also pointed out the existence of disputed contractual issues, it would ordinarily be appropriate to first examine whether the writ petition deserves to be entertained at all. However, both sides have addressed the Court extensively on the merits of the controversy and the relevant documents forming the foundation of the dispute are not in serious dispute. Since the matter has remained pending for a considerable period and the controversy lies within a narrow compass, this Court considers it appropriate to examine the rival claims on merits rather than relegating the parties to another round of litigation. Even while exercising such jurisdiction, the Court remains mindful of the settled principle that judicial review in contractual matters involving Banks is directed not towards rewriting contractual obligations but towards testing the legality, arbitrariness or perversity of the impugned action.
- 28)** The principal issue which falls for consideration is whether the respondent Bank was justified in retaining the Fixed Deposit Receipts and declining to issue a 'No Due Certificate', despite repayment of the principal outstanding together with accrued interest at the time of takeover of the loan account by ICICI Bank. The answer to such question depends upon the true nature of the liabilities that survived after the takeover transaction and the contractual rights flowing from the sanction letter, facility agreement and security documents executed between the parties.
- 29)** Instruction Circular of the respondent Bank dated June 30, 2017 has been relied on by both the parties. The respondent

says that Processing fees and prepayment charges have been duly stipulated therein whereas the petitioners have argued that these charges to become applicable. has to be notified by wide display and publication, which procedure has not been followed by the respondent in case of the present writ petitioners. Accounting Standard (AS) 16 has been relied on by the respondent to say that provision under clause 4 (a) thereunder has made the interest and commitment charges as obligatory on bank borrowings. It is submitted that prepayment and settlement of cash-credit loan has a long lasting ramification on the financial health and policy of the Bank. He refers to the Banker's Manual 24th Edition, 2011, for the following :-

*“58. Cash Credits*

*Advances by Indian Banks, generally take the following three forms, i.e., cash credits, overdrafts and loans. A cash credit is an arrangement by which a banker allows his customer to borrow money up to a certain limit against the values of his stocks and book debts for his day to day requirement. This is the most favourite mode of borrowing by large commercial and industrial concerns in India, on account of the advantage that a customer need not borrow at once, the whole of the amount he is likely to require, but can draw such amounts as and when required. He can put back any surplus amount which he may find with him for the time being.*

*The banker granting Cash Credit Limit (C/C Limit) and overdraft facilities has to estimate the amount of his customer's requirements, and in case the actual drawings fall much below his estimate, he may lose interest on the funds remaining idle.”*

- 30)** From the first sanction letter dated March 15, 2018, it would be evident that as per 'Annexure H' thereof, the processing fee at a stipulated rate, commitment charges and other charges are provided as to be payable, as per the circular. The Facility Agreement dated April 16, 2018, may also be looked into, to find under Article III, Section 3.5 therein, that the borrower is obliged to make proportionate prepayment to the lenders and comply with such conditions (including payment of prepayment charges) as may be stipulated by the lenders. Also, it appears that the agreement has an overriding effect in

case of any inconsistency, with any other instrument, as per Article II clause 2.1 of the same. As per Annexure-H of the Bank's letter dated August 17, 2020, which also has stipulated the terms and conditions of loan, the various charges and fees are mentioned along with the events as to when those may accrue.

- 31)** The materials on record reveal that the petitioner had availed substantial credit facilities from a consortium of lenders of which the respondent Bank was a constituent member. It is not disputed that as a condition of sanction, the petitioner was required to create Fixed Deposit Receipts which stood pledged with the respondent Bank as security. Significantly, the security was not created merely for repayment of the principal amount or interest component alone. The condition of sanction contemplated that the security would stand as security for repayment of the "entire debt" arising out of the lending arrangement. Such expression cannot be read in a truncated or artificial manner so as to confine its operation only to the principal amount disbursed under the facility.
- 32)** At the time when the petitioner sought transfer of the facilities to ICICI Bank, the respondent communicated the closure figures vide dated November 5, 2020. The records further indicate that the respondent expressly stipulated that apart from the outstanding balance and accrued interest, all applicable charges payable under the contractual arrangement would remain recoverable. Let relevant portion thereof be quoted as below: -

*"This has reference to your letter dated 04.11.2020 on the captioned subject. in this connection we have to advise that the total closure balance of the Term loan & Cash Credit limit maintained with us as on 04.11.2020 are as under,*

*Cash Credit Closure Balance: Rs.Nil*

*Term Loan Closure Balance Rs. 11,52,30,814.00*

*Over and above interest and all other charges to be applicable in terms of our sanction letter."*

- 33)** Thus, the petitioner was put on notice that closure of the account did not ipso facto extinguish every liability arising under the contractual framework. The contention that the respondent became irrevocably bound by the numerical figure mentioned in the closure statement and thereby lost the right to recover any contractual charge otherwise payable under the governing documents, is not acceptable.
- 34)** The Court finds considerable substance in the respondent's submission founded upon Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993. Let it be quoted herein below: -

*"2. Definitions-*

*\*\* \*\* \* \* \**

*(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person [or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)] by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application [and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;"*

The statutory definition of "debt" has been couched in language of remarkable breadth and includes any liability claimed as due from any person by a bank during the course of its business activity, whether secured or unsecured, assigned or otherwise, and whether payable under a decree, order, contract or any other legally enforceable source. The legislative intent behind such expansive definition is to ensure that banking liabilities are not artificially compartmentalized into principal and ancillary obligations.

The doctrine underlying the provision is that a banking debt constitutes the entirety of the legally recoverable obligation arising from the lending transaction and not merely its core component of principal and interest. Viewed in the aforesaid light, this Court finds no reason to exclude prepayment charges, commitment charges and processing fees from the ambit of "debt". These charges do not arise dehors the contract. They are contractual incidents of the lending arrangement itself. The sanction letter and the facility agreement expressly contemplate such charges. A borrower who accepts the benefits of a commercial lending arrangement cannot selectively accept favourable clauses while repudiating obligations which become operative upon premature closure or restructuring of the facility. The doctrine that a party cannot approbate and reprobate with respect to the same contract squarely applies in the present case.

- 35)** Significantly, the petitioner has not demonstrated before this Court that the sanction letter or the facility agreement did not provide for the charges now claimed by the respondent. The challenge is not directed against the existence of such contractual clauses. The principal grievance is that the closure statement did not specifically quantify those charges and, therefore, the subsequent demand should be treated as an afterthought. Such contention, in the opinion of this Court, confuses quantification of liability with the existence of liability. Where the contract itself authorises recovery of particular charges, mere omission to include them in a provisional closure computation cannot extinguish the underlying contractual entitlement unless there is a clear waiver, accord and satisfaction, or novation established in accordance with law. No such material has been produced before this Court. The Court also cannot overlook the fact that the petitioner's own representative, Mr. Rajiv Sachdeva, had acknowledged in principle the liability towards commitment charges and had furnished calculations disputing primarily the quantum thereof. Such correspondence assumes significance because it demonstrates that the existence of liability was not wholly

repudiated at the relevant point of time. The dispute, therefore, appears to be one relating to quantification rather than applicability. Once such acknowledgement exists on record, the petitioner's attempt to contend that no liability whatsoever survived becomes unsustainable.

- 36)** The argument that the debt stood fully discharged upon payment of the principal outstanding together with interest is equally untenable. Repayment of a loan amount and accrued interest may result in closure of the principal exposure, but it does not necessarily amount to complete satisfaction of every debt arising under the lending relationship. Commercial lending arrangements often contain obligations relating to commitment fees, foreclosure charges, processing charges and other ancillary liabilities. If such liabilities are contractually stipulated and remain unpaid, the debt cannot be regarded as having been extinguished in its entirety. The concept of complete discharge of debt must therefore be understood in the context of the totality of contractual obligations and not merely with reference to repayment of the disbursed amount. The petitioner's argument that the demand raised after takeover is necessarily arbitrary also does not appeal to this Court. The charges now claimed are not founded upon any new source of liability discovered after closure of the account. Rather, they trace their origin directly to the contractual documents executed between the parties. Consequently, the demand cannot be characterized as an obligation created *ex post facto*. At the highest, the petitioner may have a dispute regarding the precise computation of such charges. That, however, is fundamentally different from asserting that the respondent lacks any contractual entitlement to claim them.
- 37)** The question of retention of the Fixed Deposit Receipts must be examined in the aforesaid backdrop. The doctrine of a banker's lien is founded upon the equitable principle that a banker is entitled to retain securities and assets of the customer in its possession as security for the general balance due, unless there exists a contract inconsistent with such right. Even assuming that the FDRs were originally created

as DSRA securities, the decisive factor remains the purpose for which such security was furnished. The documents placed before this Court indicate that the FDRs stood pledged as security for repayment of the entire debt. Once the debt is understood in the manner contemplated by Section 2(g) of the 1993 Act and the contractual documents, the security cannot be said to become automatically releasable merely because the principal and interest components have been paid.

- 38)** The Court is unable to accept the proposition that the respondent was under an unconditional obligation to release the FDRs immediately upon takeover of the principal exposure by ICICI Bank. The governing principle in secured transactions is that security follows the debt and continues until the secured obligations are fully discharged. So long as liabilities arising under the contractual arrangement remain unpaid and legally recoverable, the creditor is ordinarily entitled to preserve the security furnished for satisfaction of those obligations. Any contrary interpretation would deprive the lender of the very protection for which the security was originally created. The petitioner has also failed to establish any waiver on the part of the respondent. Waiver is an intentional relinquishment of a known right and cannot be lightly inferred. Mere communication of closure figures or acceptance of repayment of the principal exposure does not, in the absence of clear language, amount to abandonment of contractual claims expressly preserved under the governing documents. The Court finds no material from which such intention to waive can reasonably be inferred.
- 39)** There is yet another aspect of the matter. The charges claimed by the respondent arise from commercial banking arrangements entered into between sophisticated commercial entities. Courts exercising jurisdiction under Article 226 of the Constitution do not ordinarily sit in appeal over the commercial wisdom of banks in structuring lending transactions or prescribing contractual charges, unless such stipulations are shown to be unconscionable, illegal or opposed to statutory provisions. No such ground has been established in the present case. The challenge proceeds

essentially on the footing that the charges ought not to have been demanded after closure of the account. For reasons already discussed, such contention does not withstand scrutiny.

- 40)** For all the aforesaid reasons, this Court holds that prepayment charges, commitment charges and processing fees constitute recoverable liabilities arising from the lending transaction and fall within the ambit of "debt" as contemplated under Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993. Since such liabilities admittedly remain unpaid and no material has been produced to establish their waiver or extinguishment, the debt cannot be said to have been fully discharged. Consequently, the respondent Bank was entitled, in terms of the sanction letter, facility agreement and governing principles relating to retention of security, to continue holding the pledged FDRs until satisfaction of the outstanding contractual liabilities. The impugned action of the respondent, therefore, cannot be characterized as arbitrary, illegal or unreasonable warranting interference in exercise of writ jurisdiction. The challenge put forth by the petitioners in this writ petition is accordingly devoid of merit. The writ petition No. WPO 2585 of 2022 stands dismissed. Pending applications, if any, shall also stand disposed of. There shall, however, be no order as to costs.
- 41)** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Rai Chattopadhyay, J.)**