IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Dinesh Kumar Sharma

C.O. 4276 of 2023
+
CAN 1 of 2024
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CAN 2 of 2024

Bangla Bijuli Power Technologies Pvt. Ltd.
Vs.
IDBI Bank Ltd. & Anr.

For the petitioner:	**Mr. Saptansu Basu, Adv.,** **Mr. Sabyasachi Mukhopadhyay, Adv.,** **Ms. Koushikee Banerjee, Adv.,** **Mr. Sarbajit Choudhuri, Adv.,** **Mr. Abhirup Das, Adv.**
For the respondent:	**Mr. Arijit Bardhan, Adv.,** **Mr. Shashwat Nayak, Adv.,** **Mr. Gourab Mondal, Adv.**
Reserved on:	**13.05.2026**
Judgment on:	**24.09.2026**

Dinesh Kumar Sharma, J.:

1. The petitioner filed the present petition challenging the order dated October 12, 2023 passed by Debt Recovery Tribunal, Kolkata in Appeal No. 33 of 2018 arising out of SA No. 104 of 2014. The facts in brief as canvassed by the

petitioner that the petitioner applied for term loan and cash credit loan from the IDBI Bank. The bank upon mortgage of property sanctioned term loan of Rs.70,00,000/- and cash credit loan of Rs. 1,40,00,000/-. The petitioner mortgaged property no. 4/1A Ambika Mukherjee Road, Belghoria, Kolkata 700056. The petitioner alleged that only an amount of Rs. 28,00,000/- was disbursed out of the sanctioned term loan of Rs.70,00,000/- up to December 23, 2009. The cash credit loan of Rs.1,40,000/- was allowed from October 6, 2009. The petitioner alleged that the full term loan amount was not disbursed on account of which the petitioner could not start their business. It was alleged that though the complete loan amount was not sanctioned, yet the bank did not reduce the EMI. It was further alleged that despite moratorium of nine months as mentioned in Sanction Letter dated June 1, 2009, the bank started deducting EMI of Rs.4,12,000/- from April 1, 2010 i.e., right after just three months on disbursing the part time loan of Rs. 28,00,000/-. The petitioner also alleged that the cash credit account was illegally debited by the bank.

2. The petitioner alleged that the bank wrongfully declared the account as an NPA despite the fact that a cheque dated June 5, 2012 for Rs. 1,25,000/- was duly deposited and credited on June 14, 2012. The petitioner alleged that an illegal notice under Section 13(2) of the SARFAESI Act, dated August 29, 2012 demanding Rs. 1,67,58,707/- towards cash credit amount and Rs.12,95,266/- towards term loan account as on July 31, 2012 was served. The petitioner made a representation under Section 13 (3A) of the SARFAESI Act which was not appropriately considered. The petitioner further alleged that possession

notice was wrongly published in the newspaper against the rule on September 28, 2014. The petitioner aggrieved of this filed the petition under Section 17 of the SARFAESI Act, which was registered as S.A. 104 of 2014. The Debt Recovery Tribunal *vide* order dated March, 2016 allowed the petition and quashed the notice under Section 13(2) of the SARFAESI Act. The bank illegally took the physical possession on June 12, 2015.

3. The respondent, IDBI Bank, filed a review application bearing RA 1 of 2016 before the Debt Recovery Tribunal and the same was allowed *vide* order dated October 28, 2016. However, the application filed by the petitioner for restoration of possession was dismissed.

4. The petitioner aggrieved of this filed WPA No. 27330 of 2016. The Coordinate Bench of this Court dismissed the writ petition *vide* order dated January 18, 2017. This order was taken before the Hon'ble Division Bench *vide* MAT 196 of 2017. The Hon'ble Division Bench remanded the matter back to the Debt Recovery Tribunal *vide* order dated March 23, 2017.

5. The Debt Recovery Tribunal *vide* dated February 7, 2018 again quashed the demand notice issued by the bank.

6. The bank filed an appeal before the Debt Recovery Appellate Tribunal against an order of the Debt Recovery Tribunal dated February 7, 2018. The Debt Recovery Appellate Tribunal *vide* order dated March 22, 2023 remanded the matter back to Debt Recovery Tribunal- II for hearing it afresh. This order was challenged before this Court in CO 1636 of 2023 and the Coordinate Bench of this Court *vide* order dated June 20, 2023 set aside the order of the Debt

Recovery Tribunal and remanded the matter back to the Debt Recovery Tribunal for fresh hearing.

7. Learned DRAT consequent upon the remand of the matter thoroughly discussed in detail the facts as presented by both the parties and after taking into account the RBI Circular dated July 1, 2010 as well as the pleadings of the parties, *inter alia*, set aside the judgment and order dated February 7, 2018 passed by Debt Recovery Tribunal- III, Kolkata whereby SA No. 104 of 2014 was allowed.

8. The petitioner aggrieved of this order invoked the jurisdiction of this Court. Mr. Saptansu Basu, learned senior counsel for the petitioner has argued vehemently that after sanction of the loan amount by the bank on June 1, 2009, the hypothecation-cum-loan agreement was duly signed on September 16, 2009. Learned senior counsel submits that thereafter various communications dated December 1, 2009, December 14, 2009, December 17, 2009, and December 22, 2009 were made to the bank for early disbursal. However, only Rs.28,00,000/- out of Rs.70,00,000/- was disbursed up to December 26, 2009. Learned senior counsel submits that moratorium of nine months was also not adhered to by the respondent bank. It has further been submitted that a communication dated December 24, 2010 was duly sent by the petitioner for renewal of loan account. Learned senior counsel submits that the petitioner's account was wrongly declared as NPA on December 31, 2010. Learned senior counsel has invited the attention of the Court to an e-mail dated January 1, 2011, wherein it was simply stated the account shall be

slipped into NPA, if the information is not submitted to the bank. Learned senior counsel submitted that there was no mention that the account had already been slipped into the NPA.

9. Learned senior counsel submits that on March 22, 2011 request was made to the bank for not deducting the installment of Rs.4,12,000/- until resettlement/ correction of the said amount which was allegedly due on April 1, 2011. Learned senior counsel submits that this EMI could not have been deducted as the total term loan had not been disbursed. Learned senior counsel also submits that though the bank verbally agreed, however, it proceeded to deduct the EMI. Learned senior counsel submits that again *vide* letter dated August 4, 2011 the petitioner requested for not deducting the EMI as full loan amount had not been disbursed. However, the bank continued to deduct the same and wrongfully contended that the moratorium started on June 1, 2009, whereas at that time no loan amount was disbursed. Learned senior counsel further submitted that in the letter dated March 9, 2012 *vide* which the petitioner was informed that the account had become NPA, it was admitted that only Rs.28,00,000/- had been disbursed. Learned senior counsel that the demand notice under Section 13(2) of the SARFAESI Act, 2002 was totally illegal. The bank did not take into account that the petitioner suffered huge loss on account of non-disbursal of loan account. Learned senior counsel submitted that the petitioners duly deposited Rs.1,25,000/- with the bank.

10. Learned senior counsel further submitted that the petitioner's representation/ reply under Section 13 (3A) dated October 17, 2012 was not taken into account

was not properly dealt with. Learned senior counsel submitted that the bank wrongfully took the physical possession of the property. Learned senior counsel submitted that the Debt Recovery Tribunal in its order dated February 7, 2018 rightly, *inter alia*, held that the bank did not disclose the reason for non-disbursement of the full term loan and for not restructuring the EMI. Learned senior counsel further submitted that the DRT rightly held that the demand notice was not issued correctly. Learned senior counsel submitted that when the entire loan amount had not been disbursed, the bank should have reduced the sanction limit and revise the repayment installment. Learned senior counsel submitted that the bank by not reducing the installment of the term loan account and by debiting installment amount in cash credit account acted irrationally. Learned senior counsel submitted that the prayer of the petitioner for restructuring of the account was not considered. Learned senior counsel submitted that the DRT rightly held that the bank action in classifying NPA is erroneous and the action of the bank not to revise/reduce the EMI was not correct, particularly in view of the fact that full amount was not disbursed.

11. Learned senior counsel submitted that the DRAT in the impugned order set aside the order of the DRT only by taking into account the submissions of the bank. Learned senior counsel submitted that the DRAT fell into a factual error by, inter alia, holding that after disbursal of Rs.20,00,000/- on December 26, 2009 no further request was made for disbursement. Learned senior counsel submitted that the DRAT was also factually incorrect, when it stated that the

bank asked the petitioner for disbursement of amount. Learned senior counsel further submitted that the bank never asked for restructuring of EMI.

12. Learned senior counsel submitted that the bank is illegally holding back the property. Learned senior counsel further submitted that the petitioner had approached the bank several times for one time settlement. Learned counsel submitted that DRAT has fallen into error in calculating the period of moratorium and wrongly rejected the submission of the petitioner that the moratorium period was not granted in accordance with the sanction letter. Learned senior counsel categorically stated that DRT had rightly held that provisions of SARFAESI Act can be invoked only after the account becomes NPA. It has further been submitted the recovery of full instalment amount of term loan by debiting the cash credit account was erroneous and cannot be sustained. Learned senior counsel submitted that DRAT did not follow the procedure prescribed under Recovery of Debt and Bankruptcy Act, 1993. It was further submitted that DRAT also did not take into account the relevant provisions of Section 13 and 17 of the SARFAESI Act.

13. Learned senior counsel submitted that the bank failed to follow the relevant guidelines of Reserve Bank of India and wrongly classified the account of the petitioner as NPA. Learned senior counsel reiterated that the bank deducted the full EMI and debited the cash credit account despite the fact the full loan amount was not disbursed. Learned senior counsel submits that DRAT did not take into account the material on record and wrongly set aside the order of the DRT which was based on the materials and reasons. Learned senior counsel

further submitted that since the order of DRAT is erroneous, this court should set aside the same. Reliance has been placed upon **Vindhyachal Prasad Jaiswal vs. VIIth Additional District Judge, Varanasi and Ors., 1994 Suppl. (2) SCC 137.** Reliance has further been placed upon **Santosh Hazari v. Purushattom Tiwari (Deceased) by LRS, 2001 (3) SCC 179.**

14. Learned senior counsel for the opposite party/ Bank has vehemently refuted all the averments made by the petitioner. Learned senior counsel submitted that the petitioner was sanctioned loan facility on June 1, 2009 within the aggregate limit of Rs.2,10,00,000/- comprising a cash credit within a capital of Rs.1,40,00,000/- and a term loan of Rs.70,00,000/-. Learned senior counsel submitted that the tenure and validity of cash credit was within a working capital of one year with a validity of six months from the date of sanction. The tenure/validity of term loan was five years including moratorium of nine months with a reset clause after one year from the date of first disbursement. Learned senior counsel submitted that the repayment of term loan was by way of 17 quarterly installments starting from January, 2010. It was submitted that the equitable mortgage of land and building at 4/1A, Ambika Mukherjee Road Belgharia, Kolkata, was duly executed.

15. Learned senior counsel submitted that the term loan was disbursed in installments commencing from June 1, 2009 pursuant to the requests made at the instance of the petitioner and subject to the compliance of all relevant terms of sanction, particularly pre-disbursement provisions from time to time limited to the amount santioned. Learned senior counsel submitted that the

principle of term loan was to be repaid and the interest was to be paid on the amount actually disbursed. Admittedly a sum of Rs.28,00,000/- was disbursed from time to time and lastly on December, 2009. Learned senior counsel submitted that *vide* communication dated December 22, 2010 the bank inquired from the petitioner regarding undisbursed term loan, to which the petitioner *vide* communication dated January 21, 2011 expressed its intention not to avail of balanced sanction amount.

16. Learned senior counsel submitted that upon default committed by the petitioner the petitioner account was declared NPA on December 31, 2010 for which a notice was duly issued on March 9, 2012. The demand notice under Section 13(2) was issued on August 29, 2012. The representation of the petitioner dated October 17, 2012 was considered and duly responded by the bank while communication dated 29.10.2013. Learned senior counsel submitted that the symbolic possession of the mortgaged property was taken by the bank on September 28, 2014.

17. Learned senior counsel submitted that the petitioner in December, 2010 made a request for revision of structure of the term loan based on actual amount disbursed for which the bank agreed subject to a petitioner sending him a confirmatory letter saying that petitioner would not require further disbursement. Learned senior counsel further submitted that such confirmatory letter was never sent by the petitioner. Learned senior counsel submitted that the petitioner/borrower had not objected to the terms and conditions at any point of time and now, therefore, after he had committed the

default, the petitioner cannot assail such grounds. Learned senior counsel submitted that the bank is the trustee of public funds and the petitioner being borrower was duty bound to repay the amount strictly in accordance with law with the terms of the contract.

18. Learned senior counsel submitted that the period of moratorium is to be taken into account from the date of sanction and not from the date of disbursement. Learned senior counsel submitted that the petitioner's account was declared as NPA in accordance with the prevalent guidelines of Reserve Bank of India- The master Circular on Provincial Norms on Income Recognition, asset classification and provisioning pertaining to advancement dated July 1, 2010. Learned senior counsel referred to the RBI's Circular dated July 1, 2010.

19. Learned senior counsel submitted that the request for renewal by the petitioner was made at a much later stage. It has further been submitted that the cash credit account also slipped into NPA. Learned senior counsel submitted that Para 4.2.7 of the RBI's circular specifically provides that asset classification is to be borrower wise not facility wise. It has been submitted that if anyone facility becomes irregular all the facilities granted by a bank to a borrower will have to be treated as NPA.

20. Learned senior counsel submitted that the guidelines of the Reserve Bank of India had a statutory force. Learned senior counsel submitted that Section 13(3) of the SARFAESI Act, 2002 only provides that the notice should give details of the amount payable by the borrower and the detail of the secured assets itself intended to be enforced by secured creditor on the non-payment of

secured debts by the borrower. It has been submitted that there has been no statutory mandate that the said notice should contain the date on which the account of the borrower has been classified as NPA.

21. Learned senior counsel submitted that the reliance of the petitioner upon **Santosh Hazari v. Purushattom Tiwari (Deceased) by LRS, 2001 (3) SCC 179**, is misplaced and not relevant to the present proceedings. Learned senior counsel submitted that Section 18(2) of the SARFAESI Act 2002 provides that the appellate tribunal shall, as far as, may dispose of the appeal in accordance with the provisions of the Recovery of Debts and Bankruptcy Act, 1993. Learned senior counsel further submitted that Recovery of Debts and Bankruptcy Act, 1993 provides that the tribunal and the appellate tribunal shall not be bound by the procedure laid down by the CPC and shall be guided by principle of natural justice. Learned senior counsel submitted that the account of the petitioner was declared as NPA in accordance with the law.

22. Learned senior counsel submitted that the order of the DRT dated February 7, 2018 was erroneous and contrary to the law. Learned senior counsel submitted that Section 13(2) of Act does not mandate any disclosure other than the particulars required under Section 13(3) of the Act. Learned senior counsel submitted that the bank could not have reduced the repayment structure as the petitioner failed to send a confirmatory letters saying that it did not require further disbursements.

23. Learned senior counsel submitted that there was default on the part of the petitioner. It has been submitted that there is no error in the order of Debt Recovery Appellate Tribunal.

24. Before proceeding further, it would be advantageous to examine the scope of jurisdiction available to the Court under Article 227 of the Constitution of India. The jurisdiction under Article 226, though wide in nature, but has to be exercised by circumspection. The High Court can exercise its jurisdiction under Article 227 only in the cases of erroneous assumption by the Court below or in the case wherein the Court below had acted beyond its jurisdiction. The High Court can also interfere if there is a refusal of the exercise jurisdiction, error of law as distinguished by way of illegality, arbitrary, capricious exercise of its authority or discretion. The High Court can also interfere, if the impugned order is perverse or based on material resulting in manifest injustice. Reliance can be placed upon **Achutananda Baidya vs. Prafullya Kumar Gayen & Ors., (1997) 5 SCC 76** and **Bathutmal Raichand Oswal vs. Laxmibat R. Tarta & Anr., (1975) 1 SCC 858**. The Apex court has in catena of judgments, *inter alia*, held that the jurisdiction of the High Court under Article 227 is limited only to see that the Coordinate Court's functions within its limit of its authority. The High Court's jurisdiction does not extend to correction of facts by examining the evidence and re-appreciating it. It was specifically cautioned that the High Court in guise of its jurisdiction under Article 227 cannot convert itself to the court of appeal. Furthermore, it is also a settled proposition that the High Court cannot substitute its opinion with the opinion expressed by the court

below, only because an alternative possible view is available. Thus, the Court has to examine the present case within the contours of the jurisdiction confered upon it. Perusal of the impugned order passed by DRAT indicates that the learned DRAT had taken into account the contentions raised by both the parties as well as the material available made on record. The learned DRAT also took into account the RBI Circular dated July 1, 2010 as well as the affidavit in opposition to take into account the outstanding against the petitioner. It would be advantageous to refer to para 23, 24, 25, 26 and 27 of the DRAT which are reproduced below:

> *"23. Much emphasis has been laid on the issue that the loan account has been wrongly classified as NPA. Much emphasis has also been laid on the EMI message dated 01.01.2011 sent by the appellant bank. Relevant EMI message dated 01.01.2011 reads as under :*
>
> *"Please refer to our telecon with regard to renewal proposal of the facilities permitted to the company:*
>
> *Please be informed that the following information / details are still pending from the company.*
>
> *i) Sales and net profit earned till date during the CFY 2010-11*
>
> *ii) Net worth statements of directors and guarantors (C.A. certified copy enclosed format)*
>
> *iii) Projection till loan tenure in the CMA format as enclosed.*
>
> *iv) Details of CMS, salary accounts, tax collection accounts and others services availed (if applicable) the bank name, volume of iv) figures etc.*
>
> *v) Form No. 32 for Sampa Balsya*

vi) List of directors as on date.

vii) Brief profile of the Directors.

viii) Please specify whether the balance term loan is proposed to be availed

ix) The proposed machinery was Installed. If yes, please specify the details of the same and if no, then please specific the changes and their status as on date.

x) Copies of the orders in hand

xi) C.A. Certificate specifying the utilisation of term loan till date and promotor's contribution brought in till date.

While analysing the ABS 2010, it is observed that the company has achieved sales values of Rs.108.77 lakhs vis-à-vis estimated sales turn over of Rs.713.65 lakhs which is very low is Informed by you that in the CFY 2010-11 also, the company has achieved sales turn over of only Rs.80.00 lakhs (approx.) till current date. Further we observed that though out the sales level are very low, the CC limit is fully utilised from above, it is observed that funds released from CC limit have not been utilised for WC requirement and WC fund has been diverted.

In the backdrop of above, we find that company's performance have been unsatisfactory during Fy 2009-10 and FY 2010-11 also. Further, despite repeated follow ups from our side, the company has not yet submitted the total information / details required for renewal of the facilities which is long pending. The account shall slip to NPA if all the information required are not submitted to us immediately without any delay.

Further, considering the performance of the company we shall have to revisit the facilities permitted to the company and the limit shall have to be re-assessed based on the actual performance of the company; therefore, we request you to call on us at our Delhi office at Videocon Towers immediately along with the pending information from your side. Please inform your date of visit to our office

Further, term loan instalment of Rs. 4.12 lakhs has become due on 01.01.2011. We request you pay the instalment immediately."

A bare perusal of above EMI message will show that there is a recital that the account will slip to NPA if all the information required are not submitted immediately without any delay.

25. It is submitted by the learned counsel for the respondents that after the loan account has been classified NPA on 31.02.2010, why the same was not mentioned in the EMI message dated 01.01.2011? Per contra, learned counsel for the appellant submitted that account was declared NPA as per RBI circular.

25. RBI circular dated 01.07.2010 at Para 2.1 defines NPA. Paras 2.1.1 to 2.1.3 and 4.204 read as under:

"2.1.1 An asset including lease asset becomes non-performing when it ceases to generate income for the bank.

2.1.2 - a NPA is a loan or any advance where;

i) interest and or instalment of principal remain over ndue for a period of more than 90 days in r/o of a term loan.

ii) the account remains out of order' as indicated at paragraph 2.2 below, in r/o an overdraft / cash credit (OD/CC)

iii) the bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted.

iv) the instalment of principal or interest thereon remains overdue for two crop seasons for short duration crops

v) the instalment of principal or interest thereon remains over due for one crops season for long duration crops

vi) the amount of liquidity facility remains outstanding for more than 90 days in respect of securitization transaction undertaken in terms of guide lines on securitization dated 01.02.2006.

ii) in r/o derivative transaction, the over due receivables representing positive mark to market value of a derivative contract, if these remain unpaid for a period of 90 days from the specified due date for payment.

> *2.1.3 Banks should classify an account as NPA only if the interest due and charged during any quarter is not serviced fully within 90 days from the ends of the quarter.*

4.2.4 The classification of an asset as NPA should be based on the record of recovery. Bank should not classify an advance account as NPA merely due to the existence of some deficiencies which are temporary in nature such as non-availability of adequate drawing power based on the latest available stock statement, balance outstanding exceeding the limit temporarily, non-submission of stock statements and non-renewal of the limits on the due date, etc. In the matter of classification of accounts with such deficiencies banks may follow the following guidelines:

> *1) Banks should ensure that drawings in the working capital accounts are first appropriated in times of distress. Drawing power is required to be arrived at based on the stock statement which is current. However, considering the difficulties of large borrowers, stock statements relied upon by the banks for determining drawing power should not be older than three months. The outstanding in the account based on drawing power calculated from stock statements older than three months, would be deemed as irregular.*
>
> *A working capital borrowal account will become NPA If such irregular drawings are permitted in the account for a continuous period of 90 days even though the unit may be working or the borrower's financial position is satisfactory.*
>
> *ii) Regular and ad hoc credit limits need to be reviewed/regularised not later than three months from the due date/date of ad hoc sanction. In case of constraints such as non-availability of financial statements and other date from the borrowers, the branch should furnish evidence to show that renewal/review of credit limits is already on and would be completed soon. In any case, delay beyond six months is not considered desirable as a general discipline. Hence, an account where the regular/ad hoc credit limits have not been reviewed/renewed within 180 days from the due date/dat3e of ad hoc sanction will be treated as NPA."*

26. Bare perusal of the RBI circular shows that discretion is given to the bank at sub-para (ii) of para 4.2.4 that an account where the regular / ad hoc credit limits have not been reviewed /renewed within 180 days from the due date / date of ad hoc *sanction will be treated as NPA. Request was made by the respondent on 24.12.2010 for renewal of the loan account. In the sanction letter Tenor was one year, i.e., upto 31.05.2010 as the loan was sanctioned on 01.06.2009. Request for renewal was made on 24.12.2010 which was not permissible in accordance with RBI circular. Thereafter, certain documents were called from the respondent by EMI message 01.01.2011 with the condition that if the documents are received loan account may be renewed, but the same were not received. Ultimately, on 09.03.2012 was communicated by the appellant to the respondent that the account has become NPA on 31.12.2010. As far as NPA is concerned RBI circular gives a discretionary power to the bank. That was exercised by the bank but despite granting sufficient time no payment was made. In the meantime, as would appear from the affidavit-in-opposition that outstanding was in excess of the sanction limit / drawing power for a period of more than 90 days.*

Sl No.	date	Outstanding balance in Rs.
1	26.07.2011	1,44,26,922.08
2	31.07.2011	1,44,26,922.08
3	31.08.2011	1,48,88,027.00
4	30.09.2011	1,47,64,052.00
5	31.10.2011	1,44,58,151.00
6	24.11.2011	1,46,84,921.00
7	25.11.2011	1,49,17,283.00
8	31.12.2011	1,51,53,691.00
9	31.01.2012	1,53,89,982.00
10	29.02.2012	1,56,57,936.00
11	31.03.2012	1,59,21,761.00
12	30.04.2012	1,61,98,974.00
13	30.06.2012	1,64,71,915.00
14	31.07.2012	1,67,58,707.00

> *27. Above statement shows that on different dates the outstanding balance in the cash credit account was in excess of the sanction limit. Accordingly, the notice u/s 13(2) of the Act demanding the amount of Rs. 1,67,58,707/- was shown as outstanding on 31.07.2012".*

27. Learned DRAT also took into account the contention of the petitioner regarding quantization of the EMI and *inter alia* held, that in absence of the petitioner sending a confirmatory letter for non-disbursal of further account the EMI could not be rescheduled by the bank. It is also pertinent to mention here that the terms and conditions were known to the petitioner at the time of the sanction of the loan amount. The petitioner never objected to the same, till the dispute arose between the parties. The loan was sanctioned only after the petitioner agreed to the terms and conditions and, therefore, at this stage, it will not be open for the petitioner to challenge the terms and conditions. In **Indian Bank vs. Blue Jaggers Estate Limited & Ors., (2010) 8 SCC 129**, the Apex Court emphasised upon the fact that the bank is a trustee of public funds and it cannot compromise the public interest for benefiting private individuals. The Apex Court, *inter alia*, held as under:

> *"**25.** The Court cannot lose sight of the fact that the bank is a trustee of public funds. It cannot compromise the public interest for benefiting private individuals. Those who take loan and avail financial facilities from the bank are duty-bound to repay the amount strictly in accordance with the terms of the contract. Any lapse in such matters has to be viewed seriously and the bank is not only entitled but duty-bound to recover the amount by adopting all legally permissible methods. Parliament enacted the Act because it was found that legal mechanism available till then was wholly insufficient for recovery of the outstanding dues of*

> *banks and financial institutions. Reference in this connection deserves to be made to the judgments of this Court in Delhi Transport Corpn. v. D.T.C. Mazdoor Congress, [1991 Supp (1) SCC 600: 1991 SCC (L&S) 1213], Central Bank of India v. State of Kerala, [(2009) 4 SCC 94] and United Bank of India v. Satyawati Tondon, [(2010) 8 SCC 110]".*

28. Perusal of the record indicates that as per terms and conditions the term loan was to be disbursed in installments on the basis of request made by the borrower. It is also a matter of record that after December, 2009 that the petitioner *vide* communication dated January 21, 2011 expressed its intention not to avail any balance sanction amount. It is also a matter of record that the request for renewal was made after the expiry of the agreed period. It is also a matter of record that the petitioner had enjoyed the cash credit limit. It is not the case of the petitioner that further term loan was not disbursed despite the request made by the petitioner. The material available made on record indicates that moratorium is to take effect from the sanction and not from the disbursement. It is also pertinent to mention here that the guidelines of the Reserve Bank of India are to be followed scrupulously, having the statutory force. The Court considers that the Learned DRAT has taken into account the entire material on record and there is no manifest illegality or perversity.
29. Thus, in view of the discussion made hereinabove the petition is dismissed.
30. All parties shall act on basis of the server copy of this judgment duly downloaded on the official website of this Court.

(Dinesh Kumar Sharma, J.)