IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

Present :- **Hon'ble Mr. Justice I. P. Mukerji**
Hon'ble Mr. Justice Biswaroop Chowdhury

APO 100 of 2021
With
WPO 146 of 2020

BMW Industries Ltd.
Vs.
UCO Bank & Ors.

For the Appellant :- **Mr. Kalyan Bandyopadhyay, Sr. Adv**
Mr. Subrata Mukhopadhyay,
Mr. Bhaskar Ghosh,
Mr. Subhajit Das, Advs.

For the Respondents :- **Mr. Pranit Bag, Bar-at-law**
Mr. Arjun Mookerjee,
Mr. Sourjya Roy, Advs.

Judgment On :- **02.12.2022**

I. P. Mukerji, J.:-

The writ petitioner/appellant claims to be a manufacturer of iron and steel products. To run its business from time to time from 2005, it obtained loans and advances from UCO Bank which were sanctioned and disbursed from its flagship corporate branch at 2, India Exchange Place, Kolkata – 700001. In keeping with banking practice several accounts of the appellant relating to this loan and advance were maintained by the respondent bank, namely, term loan account, cash credit account, working capital account, overdraft account and so on. The appellant asserts that its conduct in obtaining and making repayment of loan amounts was so much appreciated by the respondent bank that the Circle Office level, Credit Approval Committee had approved a favourable review of the term loan and cash credit limits. The credit facilities enjoyed by the appellant appear to have been reviewed on 29th September, 2014.

On 24th February, 2015 the appellant wrote to the respondent bank that they should not increase their interest rate of BR + 2.25 % i.e. 12.45% to BR + 3.75%. They wanted this concession with retrospective effect.

On 22nd May, 2015, the bank acceded to the appellant's request for reduction of interest rate on the following terms and conditions:-

> *"1. Continuation of Concessional Rate of interest @ Base Rate + 2.25% i.e. 12.45% as against card Rate i.e. Base Rate + 4.75% i.e. 14.95% at present for the period starting from 01.10.2014 to 30.11.2014.*
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> *2. Reduction in rate of interest in cash credit account of the company from Core Rate i.e. Base Rate + 4.75% (Considering Credit Rating B+) to United bank of India Base Rate (10.00%) + 2.35 i.e. 12.35% p.a. i.e. a concession of @2.60% from Card Rate from 01.12.2014 to fall in line with lead bank (UBI) of the consortium.*
>
> *While approving the reduction of rate the Competent Authority has observed:*
>
> 1. *If any Member bank charges higher rate of interest, the same shall be charged by our bank also.*
> 2. *Reduction in rate of interest be allowed from Prospective date once the company submit similar reduction by all other tenders."*

Acting in terms of the above representation of the respondent bank, the appellant by their letter dated 5th September, 2015 sought payment from the respondent bank of the excess interest received by them from the appellant for the period from December, 2014 to May, 2015 in its cash credit account. By November, 2015 according to the appellant this amount was Rs.42,96,330.64/-. By 31st March, 2016 the figure rose to Rs.61,34,431/-. On 25th May, 2016 the Chief Manager of the respondent bank made a rather vague reply. It was like this:

> *"Please refer to your letter dated 25.05.2016 on the captioned subject. In this connection we wish to state that the following sanction stipulation "if any Member bank charges higher rate of interest the same shall be charged by our bank".*
>
> *Accordingly, the interest is charged basing on the member banks of the consortium and interest charged by us is in order."*

It is contended on behalf of the appellant that apart from the rate charged by the respondent bank, the highest rate charged by "any bank" in the cash credit account was 12.85%. The respondent bank charged 14.70% which was 1.85% higher than the highest rate (see paragraph 13 of the writ petition). However, in paragraph 19 of the writ petition it is alleged that the respondent bank charged @ 14.95% per annum from 1st October, 2014 till 31st October, 2015. The appellant has in their letter dated 23rd November, 2018 to the respondent bank inter alia stated that "the flagship corporate branch was convinced and have forwarded letter dated 28th May, 2018 to you on the aforesaid refund since December, 2014 to March, 2016 amounting to Rs.37,97,689.78/-.....we have been reminded that the amount will be refunded within a month i.e. before 15th December, 2018....we request you to close the matter by refunding the same."

This letter of the flagship corporate branch dated 28th May, 2018 has not been disclosed in this proceeding either by the appellant or by the respondent bank.

Nevertheless, it is quite clear from this correspondence by the appellant that they would be satisfied if Rs.37,97,689.78/- was refunded.

The respondent bank took a decision to refund Rs.19,14,372.83/- to the appellant on account of overcharged interest. Rs.13,53,747.66/- was admittedly credited to the appellant's account. The appellant did not consider it as a settlement and claimed a sum of Rs.98,74,477.77/- on account of over charged interest till 10th September, 2019. The appellant demanded this refund from the respondent bank through a letter dated 11th September, 2019 written by their Advocate.

The principal relief prayed for in the writ petition is formulated in prayer 'b' which is as follows:-

> *"b. A writ of or in the nature of Mandamus do issue directing the respondents and each of them, their servants, men agents, subordinates and/or agencies to consider the representation dated September 11, 2019 of the petitioner as per the scope and/or specification of the said letter to calculate the excess amount of*

interest repayable to the petitioner without raising arbitrary demand of sanction letters from other member and/or lender banks beyond the scope and/or specification of the letter upon giving hearing to your petitioner."

The writ petition was affirmed on 25th February, 2020.

On 16th April, 2020 the respondent bank wrote to the appellant that they were agreeable to refund Rs.14,05,735/- as excess interest charged in the cash credit account for the period 1st December, 2014 till 4th May, 2016, on the condition that the appellant would accept the payment as full and final settlement and withdraw the writ application. On 20th November, 2020 the appellant replied to this letter by asking the respondent bank to give them the basis on which the above figure was arrived at by them. By their letter dated 7th December, 2020 the appellants told the respondent bank that the latter should not insist on their accepting the offered amount and that they should be given a hearing by the respondent bank to arrive at an acceptable figure.

These correspondences, post filing of the writ application were brought on record by the appellant by a supplementary affidavit affirmed on 7th December, 2020.

On 20th January, 2021 the respondent bank filed its affidavit-in-opposition. In paragraph 3(b) they urged that the dispute was to be more properly tried in a civil court.

Without denying the material facts as pleaded in the writ petition, the respondent bank stated in the said affidavit "no working capital consortium materialized and no consortium was formed". The appellant was asking for reduction of interest rates on the only ground that the other banks were charging less interest. The appellant was reminded by the respondent bank from time to time that their request for reduction of interest charged was under active consideration by the respondent bank, the respondent bank averred. The appellant was unable to furnish to the respondent bank sanction letters of other banks charging lower rate of interest, it contended.

DISCUSSION

I would like to discuss the point of maintainability of this writ application. Under Article 226 of the Constitution, the High Court is clothed with writ jurisdiction. It is unlimited if the respondent bank is amenable to it and there is a cause of action for its exercise. The field within which it can operate has not been circumscribed by the Constitution. Throughout the territory in which it exercises its jurisdiction the High Court has the power to issue to any government or person writs, directions and orders to enforce the fundamental rights or for any other purpose. A mere reading of the article, indicates the amplitude and the breadth of the power of the High Court.

The procedure for its exercise has been made simple enough by the rules made by the High Courts. A writ application is decided on affidavits. It is thus a much shorter procedure than that to be undergone in ordinary litigation by way of a civil suit or any other civil proceeding.

Although the extent of the writ jurisdiction of the High Court has not been delineated by the Constitution, the Supreme Court and the High Courts by various pronouncements have limited it. One of the self imposed restrictions by the courts for the exercise of its power is that this jurisdiction would not be exercised if there was a disputed question of fact.

Now, what is a disputed question of fact? What kind of a factual dispute is to be avoided by the writ court?

If the facts constituting the disputes are not very intricate or complex and can be established on affidavit evidence the court should not relinquish its jurisdiction on the above ground but proceed to resolve them and thereafter decide the writ application. But if enquiry into the facts require heavy and voluminous evidence to be sifted and evaluated by the court then such an exercise should be avoided by it and the parties relegated to a civil forum to establish those facts by trial on evidence and to obtain relief.

If at all a writ petitioner has to be relegated to a civil forum it is done at the time of admission of the writ. After admission and exchange of affidavits it is harsh on a party to be turned out of the court with an observation that he should seek remedy in a civil forum.

As would appear from the discussion above and of my esteemed brother that the facts involved in this case can easily be decided through affidavit evidence. The observation of the learned first court that highly disputed questions of fact necessitating full scale trial is required in this case, is with respect, not correct. The learned Judge ought to have indicated the nature of the disputes, the type and quality of evidence required to prove it and why it could not be resolved on affidavits and required full scale trial.

In my opinion, there is no dispute with regard to the facts. No evidence needs to be taken. All the documents are admitted documents. The court has only to adjudicate whether the rate to which the respondent bank has proposed to lower the rate of interest charged is justified or not. The court is also required to adjudicate whether the action of the respondent bank, lowering the rate is unreasonable or arbitrary.

It is difficult to understand why on determination of these two issues where mixed question of fact and law are involved, the writ court should have felt helpless.

Even in an ordinary commercial transaction between a private person and a public body where some element of public law is involved, the jurisdiction of the writ court can be invoked. In this case, there is the question of legality, arbitrariness, unfairness or unreasonableness of the action of the respondent bank in charging interest or lowering it. In my opinion, the writ court can make an enquiry into this conduct of the respondent bank. This writ application is perfectly maintainable.

Now, I propose to discuss the merits of this case.

There is no doubt that the respondent bank was satisfied with the availment and repayment of loans and advances by the appellant,

inasmuch as, by their letter dated 29th September, 2014 the respondent bank had decided to favourably review the cash credit limit enjoyed by them. On 24th February, 2015 the appellant wrote to the respondent bank telling them that their earlier rate of interest of 12.45% was according to the rate of interest charged by other banks and that if the current rates charged by the respondent bank of BR + 3.75% was reduced to BR + 2.25%, that is to say 12.45% with retrospective effect from the date the increased rate of interest was enforced, it would be beneficial to them.

On 16th May, 2015 the appellant provided to the respondent bank the interest rate charged by select other banks as follows:-

	BANKS	**Int. rate**
1.	United Bank of India	BR + 2.35%
2.	Indian Overseas Bank	BR + 2.25%
3.	Allahabad Bank	BR + 2.25%
4.	Bank of India	BR + 2.50%
5.	Bank of Baroda	BR + 2.50%
6.	Dena Bank	BR + 2.50%
7.	Union Bank of India	BR + 2.25%

By its said letter dated 22nd May, 2015 the bank inter alia agreed to reduce the rate of interest to 12.35% “to fall in line with lead bank UBI of the consortium” with the condition that if any other bank charged a higher rate it would also be charged by the respondent bank.

According to the respondent bank, the consortium was never created. Hence, the condition for lowering of interest rate as mentioned in the letter dated 22nd May, 2015 was not fulfilled. Therefore, the respondent bank was entitled to charge the rate that it did.

Nevertheless, the respondent bank took a decision to reduce interest charged by Rs.19,14,373/- for a specific period and credit a part of the excess sum to the account of the appellant.

Therefore, the respondent bank acted partially in terms of its promise contained in the letter dated 22nd May, 2015 by lowering the rate to the extent thought fit and proper by them. The appellant wanted a larger concession.

The respondent bank admitted that higher interest had been charged to the appellant and its willingness to consider reduction of the rate with retrospective effect which would result in refund of interest to them.

In their affidavit-in-opposition the respondent bank stated that a sum of Rs.19,14,373/- was refundable on the said account. Out of that amount, Rs.5,08,638/- has already been credited.

At the time of hearing of this appeal, Mr. Pranit Bag, learned Advocate for the respondent bank handed up to this court a calculation sheet which showed how the sum of Rs.19,14,372.83/- was derived. It appears from these calculation sheets that from 10.12.2014 till 31st March, 2015 the respondent bank had charged interest @ 13.75% and that for this period they were not agreeable to reduce it. From 1st April, 2015 they started charging interest @ 14.95% which was reduced after two months to 14.7% and continued till 11th January, 2016. This rate for the said period would be reduced to 13.75%. Again from 12th January, 2016 the respondent bank charged interest @ 13.85% till 16th February, 2016. This they were prepared to reduce to 13.75%. Again from 17th February, 2016 upto 30th April, 2016 they charged interest @ 13.85% which again they were prepared to reduce to 13.75%. This resulted in a total refund of Rs.19,14,372.83/-.

From the facts of this case as are revealed in the writ petition and the affidavits filed, it is not at all clear whether the consortium was formed or not. From one set of correspondence, it would appear that it was the stand of the respondent bank that whether the consortium was formed or not formed, the rate of interest to be charged would be in consonance with the rates charged by member banks who would constitute the consortium. If the consortium was formed, it would be in accordance with the respondent

bank's letter dated 22nd May, 2015. If any member of the consortium charged a higher rate, the respondent bank would also charge a rate higher than 12.35%. If the consortium was not formed, even then the rate of the respondent bank would not be much in disparity with the consortium rates. What the respondent bank needs to explain is on what basis it charged rates much higher than the highest rate charged by any consortium bank at different periods of time and also on what principle it reduced it to a flat rate of 13.75% during the whole period resulting in the said refund of Rs.19,14,372.83/-. This is the arbitrary element and unfairness in the conduct of the respondent bank.

The respondent bank was obliged to act fairly and reasonably and according to the set and uniform standards as far as charging interest from borrowers is concerned. The decision of the respondent bank in this regard ought to have been transparent, clear cut and reasoned. It is not. This makes it a fit ground for intervention of the court in its writ jurisdiction.

In ***Comptroller and Auditor-General of India, Gian Prakash, New Delhi and Anr.*** reported in ***(1986) 2 SCC 679*** cited by Mr. Bandyopadhyay, learned Senior Advocate, the Supreme court said:-

> *".....a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."*

For this reason, without setting aside the respondent bank's decision I remit this matter back to the respondent bank with a direction upon the Chairman to reconsider himself or by any other officer not below the rank of Chief General Manager the rate of interest to be charged from the appellant in respect of the subject loan from 10th December, 2014 till 30th April, 2016, upon giving a short hearing to the appellant and by a reasoned

decision to be made and published within three months of communication of this order. It is made clear that while reconsidering its decision the respondent bank may only further reduce the rate of interest charged. I also make it clear that any amount determined to be refunded shall not exceed the sum of Rs.37,97,689.78/- to which the appellant has agreed. In the meantime, any amount not credited to the account of the appellant from the sum of Rs.19,14,373/- already decided to be refunded by the respondent bank may be forthwith refunded to the appellant if not already made not later than four weeks from the date of communication of this order. If the appellant becomes entitled to refund of interest by virtue of the decision to be pronounced by the Chairman or his delegate on the basis of this order, the sum may be paid to them within four weeks from pronouncement of the said decision.

The appeal is disposed of by this order.

(I. P. Mukerji, J.)

Biswaroop Chowdhury, J.:-

I have perused the judgement propose to be delivered by my brother. However I would like to add the following observations.

The appellant before us is the writ Petitioner before the trial Court in WPO No – 146 of 2020, and is aggrieved by the order of dismissal of the said writ petition.

The relief sought by the writ petitioner/appellant in the writ petition was for a writ in the nature of Mandamus directing the respondents and each of them their servants' men agents and subordinates to consider the representation dated September 11 2019, of the petitioner and to calculate the excess amount of interest repayble to the petitioner.

The main grievance of the writ petitioner/appellant is the arbitrary act of the respondent authorities in charging excess interest in the cash credit account. It is the contention of the appellant, that on the request of the appellant/writ petitioner to the respondent UCO Bank for reduction in rate of interest on the credit facilities and renewed on September 29, 2014 the respondent authority considered and allowed the request for reduction and approved the following scheme:

"a) continuation of concessional Rate of interest @ Base Rate T 2.25 i.e. 12.45 as against Card Rate i.e. Base Rate T 4.75,14.95 at present for the period starting from 1.10.2014 to 30.11.2014.

b) Reduction in rate of interest in cash credit account of the company from Card Rate i.e. Base Rate T 4.75 (considering Credit Rating BT to united Bank of India Base Rate (10.00) T 2.35 i.e. 12.23.p.a. i.e. A concession of @ 2.60 from Card Rate from 01.12.2014 to fall in line with lead bank (UBI) of the consortium. Further the letter mentioned the following observations.

a) *It any member bank charges higher rate of interest the same shall be charged by the respondent Bank also.*
b) *Reduction in rate of interest be allowed from prospective date once the company submits similar reduction by all other lenders."*

According to the appellant, the respondent authorities charged more interest than agreed upon. The appellant by letters dated September 5, 2015 and January 1, 2016 brought to the notice of the respondent authorities about their charging of excess interest. On or about May 25, 2016, the appellant/writ petitioner made a representation for refund of the excess amount of interest deducted by the respondent no-1 for the period December 2014 to May 2015 in its cash credit account. By the said letter the writ petitioner/appellant pointed out that the respondent Bank charged interest in its cash credit account @ Base Rate T 4.75 [inclusive of 1% of penal interest for non-compliance of security perfection] from December 1,

2014 withdrawing the existing concession allowed to the petitioner @ 2.25 over Base Rate on non-formation of a single consortium. It also contained a calculation sheet stipulating that an amount of Rs 61,34,431/- had been charged in excess from its cash credit account for the period December 2014 to March 31,2016. Chief Manager of the respondent bank informed the petitioner that since it was stipulated that if any member bank of the consortium charges higher rate of interest the respondent will charge the same and the interest charged in the cash credit account of the petitioner was in order. It is the contention of the appellant/writ petitioner that no such WC consortium was formed during the pendency of the cash credit limit enjoyed by the petitioner with the respondent no.1. Thus according to them the contention of the respondent bank that the excess interest charged was dependent upon the interest charged by other member banks is absolutely false arbitrary and unjustified. On or about September 9, 2016, the appellant/writ petitioner issued a letter to the respondent no. 5 enclosing a chart showing the list of member banks and the rate of interests charged by them and from the same it appeared that the highest rate of interest was charged by ICICI Bank at the rate of 12.85 whereas the respondent no. 1 continued to charge interest in the cash credit account of the petitioner at the rate of 14.70 per annum i.e. 1.85 higher than the maximum rate charged by any member bank. ICICI Bank however by their letter dated January 7, 2015 already declared that they were not interested in participating in the consortium. It is also contended that the refund sought of the excess interest charged from the petitioners/appellants account is lawful and justified. It is contended that due to non-formation of any consortium, the stand taken by the respondent bank justifying it deduction of interest unlawful and not in conformity with its letter dated May 22, 2015. According to the petitioner such consortium was formed in June 2016 when the petitioner had already liquidated its working capital limit enjoyed with the respondent no.-1 and thus the claim of the petitioner is just and rightful. From September 2015 till July 2017 the petitioner kept

trying to get the attention of the respondent authorities to the continuing deduction of interest but no detailed and/or explanation and/or any assurance was forthcoming. On or about August 8, 2017 the respondent no. 5 issued a letter referring to one dated September 30, 2014 wherein it was stated that the stipulated rate of interest therein was 13.95 and thereon was the imposition of 1% of penal charges for security non-compliances. The petitioner/appellant again on October 6, 2017 replied to the respondent No.5 stating that the respondent Bank failed and/or neglected to consider the rate of reduction approved by the competent authority and therefore further requested the release of the differential amount deducted in excess within 15 days from the date of receipt of such letter. On or about May 18, 2018, the respondent no. 4 communicated to the petitioner that the interest charged by the branch had been found to be just and appropriate based on the prevailing terms and conditions till the adjustment of the account of the petitioner with the said branch and the fact that the petitioner unconditionally accepted such terms and condition it had no such right to seek refund. The appellant/writ petitioner contended that by the said letter the said respondent no.4 unequivocally also accepted that the continued rate of interest charged from the petitioner was at the rate of 14.95 p.a. from October 1, 2014, till October 31, 2015. The respondent No.4 further mentioned that the concession at rate of interest charged by the bank was at the rate of 12.85 although the allowed concessional rate was 12.35 and this the appellant/petitioner treated as an admission on the part of the respondent bank that it had been charging the petitioner in excess all along. On or about May 28, 2018, the writ petitioner/appellant enclosed a detailed calculation chart based on the discussion it had with the respondent no. 5 on May 25, 2018. Such calculation sheet proved that even upon considering the highest rate of interest charged by other member banks of the consortium an excess amount to the tune of Rs.37,97,689/- was lying recoverable from the respondent on or about November 13, 2018. On the petitioners visit to the

said branch an amount of Rs.15,22,321.67/- was adjusted against the excess interest charged. In a meeting held between the director of petitioner and one Ananda Chaki, it was assured by the said authority that the rest of the outstanding amount would be refunded within December 15, 2018. On or about November 23, 2018, the petitioner wrote to the respondent no.4. acknowledging the said adjustment of Rs.15,22,321.67/- against a calculation of Rs.60,29,954.95/- as per sanction for the period of December 2014, to January 2015, even though the actual amount the respondent No.1 had deducted was Rs.76,87,877/-. Upon exchange of several correspondences the issue was not resolved and the appellant moved writ application before this Court. The said writ application was dismissed upon exchange of affidavits.

Heard learned Advocates for the parties and perused the materials on record. Upon hearing the Learned Advocates and upon perusing the materials on record the issue which comes for consideration is whether the respondent has acted lawfully in charging interest in excess rate than that provided by their letter in annexure 'P-3 to writ application'. Now in order to decide as to whether the interest rate should be strictly as per letter of the bank dated 22-05-2015 it is necessary to consider the terms and conditions of letter dated 22-05-2015. Letter dated 22-5-2015 PCB/ICOL/CR 26/11/2015-16, was issued by Assistant General Manager of respondent UCO Bank and accepted by director of Writ Petitioner/Appellant. The said letter contains the signatures of both Assistant General Manager of UCO Bank and director of BMW Industries limited. Thus both the Writ Petitioner/Appellant and respondent Bank agreed to the terms and conditions. It was observed by the respondent Bank that on the prayer for reduction of rate of interest on the credit facilities renewed on 29-09-2014 the competent authority has approved the reduction of interest rate under two different categories. In the first category it was provided that continuation of concessional rate of interest @ Base Rate + 2.25 i.e. 12.45

as against card rate i.e. Base Rate + 4.75 i.e. 14.95 at present for the period starting from 1.10.2014 to 31.11.2014. In the second category it was provided that reduction in rate of interest in cash credit account of the company from Card rate i.e. base rate + 4.75 (considering credit rating B+) to united Bank of India Base Rate (10.00) + 2.35 i.e. 12.35 p.a. a concession of @ 2.60 from card rate from 1.12.2014 to fall in line with lead bank (UBI), of the consortium. While approving the reduction of rate the competent Authority has made the following observation.

1. If any member bank charges higher rate of interest the same shall be charged by the respondent Bank also.
2. Reduction in rate of interest will be allowed from prospective date once the petitioner company submits similar reduction by all other lenders.

Apart from the conditions with regard to approval the said letter also contained the provision of 1% Penal interest over and above the normal rate of interest for not complying with security perfection. Thus upon reading the approval letter regarding reduction of interest it is crystal clear that the reduced rate on which the Bank authority decided to charge interest shall not be varied unless there is change of circumstance. The circumstance under which the interest rate would be valid was also provided in the said approval. The Bank Authority had the power to vary and increase the rate of interest if any member bank, charges higher rate of interest. Hence from the conditions made in the approval letter dated 22-05-2015 it is clear that the interest rate will be varied only when there is fulfilment of the said conditions. In the absence of changed circumstances the interest will be continued to be charged at reduced rates in terms of approval letter dated 22-05-2015. The letter dated 22-05-2015 also mentions about lead bank member banks and consortium. The petitioners/appellant although made several correspondences with the respondent bank regarding charging of excess interest but those correspondences remained undecided. It is only on 25-05-2016 the Bank Authority by letter informed that rate of interest

over and above the normal rate of interest for not complying with security perfection. Thus upon reading the approval letter regarding reduction of interest it is crystal clear that the reduced rate on which the Bank authority decided to charge interest shall not be valid unless there is change of circumstance. Under what circumstance the interest rate will be valid was also provided in the said approval. The Bank Authority had the power to vary and increase the rate of interest if any member bank, charges higher rate of interest. On the other hand the petitioner/appellant was entitled further reduction prospectively if the petitioner could submit similar reduction by all other lenders. The Bank Authority contended that interest is charged basing of the member banks of the consortium and interest charged by them is in order. Thus in the letter dated 25-05-2016 the Bank Authority relied upon the condition mentioned in letter dated 22-05-2015, which contained a condition that if any Member bank charges higher rate of interest the same shall be charged by the respondent bank also. It is undoubtedly a right of the bank authority to charge higher rate of interest if member bank charged higher rate of interest but it has certain procedures to follow. First of all the bank authority upon considering the higher rate of interest charged by any member bank has to take a policy decision as to whether the said rate will be charged or not and if so from which date. Upon taking policy decision it is incumbent upon the bank authority to intimate the same to the petitioner. As the petitioner has an obligation to submit particulars about reduction of interest by other lenders for the purpose of claiming further reduction in interest as per letter dated 22-05-2015, similarly there is an implied obligation on the part of bank authority to intimate the petitioner in the event the said authority decides to charge higher rate of interest. Unless the petitioner/appellant is intimated about policy decision of the Bank regarding enhancement of the rate of interest the petitioner will not be in a position to know about enhanced rate as the petitioner is not the member of any association like that of bank. Moreover, if the petitioner receives the intimation about

enhancement of rate of interest he will be in a position to make representation for consideration or take further steps in accordance with law, and plan the business activity accordingly. Industrial organisations require planning and budgeting which is to be done on the basis of facts and information of various issues. Thus absence of important information prevents industrial units to make proper planning. In the instant matter the bank authority approved the prayer of the petitioner/appellant for reduction of interest, on the representation of the petitioner by taking into consideration different factors, but charged excess interest than that provided in the letter dated 22-05-2015. It was incumbent on their part to take a specific decision and intimate the petitioner of the decision to enhance interest. The act of not intimating the petitioner is arbitrary and against principles of natural justice.

Moreover the act of charging interest at different rates on different periods, goes to show non-application of mind by respondent authority.

Thus the matter is remitted back to the bank with directions given by my learned brother in his judgment and order.

Urgent certified photo copy of this judgment and order, if applied for, be furnished to the appearing parties on priority basis upon compliance of necessary formalities.

(Biswaroop Chowdhury, J.)