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Deutsche Bank AG Singapore Branch v ARJ Holding Ltd and another [2025] SGHC 163

[Private Banking Disputes – Bank’s exercise of discretion to reduce value of client’s collateral]

In *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd and another [2025] SGHC 163*, the Singapore High Court affirmed the claimant bank’s entitlement to reduce the value of the collateral in the portfolio of its client (the 1st defendant), resulting in a shortfall in the 1st defendant’s accounts. When the shortfall was not regularized, the claimant bank terminated the 1st defendant’s loan facilities and demanded full repayment of the 1st defendant’s loans.

Amongst other findings on the factual disputes, the Singapore High Court affirmed that there was an implied term of good faith in law to the bank’s exercise of its absolute discretion as contractually provided for, in that the claimant bank had to exercise its contractual discretion in a manner that is not arbitrary, capricious or perverse. On the facts, the Singapore High Court was satisfied that this implied term of good faith had not been breached by the claimant bank.

Background Facts

The 1st defendant, ARJ Holding Ltd (“**ARJ**”), obtained a loan facility from the claimant bank, Deutsche Bank AG Singapore Branch (“**DB**”) for up to USD 400million. The loan facility was secured by several securities which ARJ had transferred into accounts with DB. Apart from the facility agreements, ARJ had also entered into a Wealth Management Service Agreement (“**Service Agreement**”) with DB. ARJ had agreed that its accounts with DB would be governed by, amongst other terms, the terms of the Service Agreement.

Under Clause 18 of the Service Agreement:

- a) The collateral provided by ARJ would be valued at such percentage of its market value as determined by DB in its sole discretion; and
- b) DB had the absolute discretion to prescribe the amount of collateral required to secure ARJ’s liabilities. Where DB determined that there was insufficient or ineligible collateral, ARJ had to deliver additional collateral acceptable to DB within 1 business day’s notice. Any failure to do so would be an event of default entitling DB to terminate the facilities.

At several instances from January to June 2022, DB informed ARJ that the collateral value of ARJ’s portfolio of securities had declined below ARJ’s total indebtedness. Several margin call letters were issued to ARJ, which ARJ met.

In July 2022, one of the securities offered by ARJ as collateral failed to pay coupon payments. DB then informed ARJ that it would progressively reduce the collateral value of these securities. By August 2022, due to further information regarding the securities which came to DB’s attention, the collateral value of these securities was reduced to nil. DB proceeded to terminate the loan facilities and demanded repayment of the entire loan amount

Decision

One of the defences raised by ARJ was that there was an implied term in Clause 18 of the Service Agreement requiring DB to exercise its discretion to determine the value of the collateral and the amount of additional collateral required in good faith (the “**implied Good Faith Term**”), and that DB had breached this implied term.

The Judge agreed that there was an implied Good Faith Term in law, in relation to the exercise of contractual discretion in Clause 18 of the Service Agreement. The scope of the implied Good Faith Term was that the exercise of discretion should not be arbitrary, capricious or perverse.

On the facts, the Judge was satisfied that DB’s exercise of its discretion was not made with arbitrariness, capriciousness and perversity, and that DB had good reasons to reduce the value of the securities pledged as collateral. In this regard:

- (a) One of the securities, the LS Bonds, exceeded 30% of the total lending value of the securities of the portfolio. This was a breach of a “*diversification condition*” agreed between the parties.
- (b) DB had not received coupons payable on the securities pledged as collateral, which was factually true. This was explained to ARJ as one of the reasons for DB’s decision to reduce the value of the collateral.
- (c) ARJ’s assurances that it would transfer additional securities to its portfolio with DB had proven to be unreliable. ARJ had previously promised to transfer 20million AED to DB, but this had been abruptly cancelled. Another transfer from ARJ’s accounts with NatWest also never materialized, despite DB allowing ARJ some 5 – 6 months to arrange for the transfer.

In the circumstances, the Judge found that DB did not act irrationally, arbitrarily or perversely in its exercise of its discretion under Clause 18 of the Service Agreement.

Comments

This decision serves as a reminder that contractual clauses affording the bank an absolute discretion to determine the sufficiency of collateral will contain an implied term of good faith, in that the exercise of discretion should not be arbitrary, capricious or perverse. The bank’s decision to reduce the value of collateral and subsequently call an event of default should be well documented with sufficient reasons in order to avoid allegations that the bank had breached such an implied term of good faith.

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