A Very Large Problem of Interbank Loan Transactions

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The recent judgment of General Manage Telecom v. M. Krishnan and Another states that if there is a claim regarding telephone bills, then the special remedy provided in Section 7B of the Indian Telegraph Act, 1885 is applicable and the remedy under the Consumer Protection Act is by implication barred and hence the claim in the instant case has been said to be governed by the Indian Telegraph Act to be resolved by Arbitration.

Although this judgment relies on the principle of Generalia specialibus non-derogant, it does not address to the principle of harmonious construction or the doctrine of election which means that Validity of plural remedies, if available under the law, cannot be doubted. If any standard book on the subject is examined, it will be found that the debate is directed to the application of the principle of election, where two or more remedies arc available to a person. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action accordingly.

The principle of Generalia specialibus non-derogant is to be used where it is necessary to interpret the laws in case of a conflict, not to force the law on someone. Hence, when the doctrine of election is available to the claimant, he should have an option to choose which laws he wants to be governed with. It is only then that the true intention of the legislature will be satisfied.

Securing a loan, be it for an individual or for a bank is always a tricky question. It gets more complicated when the same is to be secured by a domestic bank from an overseas counterpart and therefore the first question that arises is, what should an Indian Bank do while securing a loan from an overseas bank? The obvious answer would be to follow the RBI notifications regarding the same. But what if the notifications are ambiguous? Should they just proceed with their own interpretation of the circular, or should they wait for new and corrected guidelines?

When a domestic bank seeks to take a loan from an overseas bank, it is governed majorly by three circulars:

1. IECD No.7/04.02.02/2003-04 – Master Circulars – Export Credit in Foreign Currency dated 1st July, 2003.
2. Master Circular No. 14/2010-11 – Master Circular on Risk Management and Inter-Bank Dealings dated 1st July, 2010.
3. Notification No. FEMA 3/2000-RB dated 3rd May, 2000.

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The aforesaid circulars when read collectively lay down the basic guidelines with respect to the rate of interest of these loans, the sectors in which this loan amount can be utilised and other similar queries. Regarding the amount of loan that can be raised from abroad, the RBI Circular on Risk Management and Inter-Bank Dealings states in Part C:

> "5. Loans/Overdrafts
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> (a) All categories of overseas foreign currency borrowings of AD Category I banks (except for borrowings at (c) below), including existing External Commercial Borrowings and loans/overdrafts from their Head Office, overseas branches and correspondents and overdrafts in nostro accounts (not adjusted within five days), shall not exceed 50 per cent of their unimpaired Tier I capital or USD 10 million (or its equivalent), whichever is higher. The aforesaid limit applies to the aggregate amount availed of by all the offices and branches in India from all their branches/correspondents abroad and also includes overseas borrowings in gold for funding domestic gold loans."[1]

Master Circular on Export Credit in Foreign Currency states the following:

> "1.1.4 ***Source of Funds for Banks:***
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> **(*iii*)** (b) Banks should draw on the line of credit arranged only to the extent of loans granted by them to the exporters under the PCFC. However, where the overseas bank making available the line of credit stipulates a minimum amount for drawals which should not be very large, the small unutilised portion may be managed by the bank within its foreign exchange position and Aggregate Gap Limit (AGL) limit. Similarly, any pre-payment by the exporter may also be taken within the foreign exchange position and AGL limits."[2]

The RBI stipulates that the loan from an overseas bank shall not exceed 50 per cent of the domestic bank's unimpaired Tier I capital or USD 10 million, whichever is higher, that is, the minimum amount of drawal as determined by the overseas bank should be adhered to, and RBI further guides as to how to manage the unutilised portion. What the RBI fails to clarify is that what it means when it says that the overseas bank can stipulate a minimum amount of drawal which should not be very large. The ambiguity thus creeps in when undefined terms such as "very large" are loosely used.

To understand the opacity at hand, say a domestic bank A wants to raise a loan of 10 USD from an overseas bank B. B states their minimum amount of drawal is 20 USD and hence A can take a loan of 20 USD or more only. Now in this situation, what is going to determine whether the amount of 20 USD is very large or not? It may be very large for A and not for B or vice versa. But how does one determine what is "very large" when no clear definition or criterion is being laid down by the RBI?

It is an understood fact that the head office of A would impose restrictions on the various branches of A that they cannot raise a loan of more than a certain amount from an overseas bank, keeping in mind the outer limit prescribed by the RBI as 50 per cent of the domestic bank's unimpaired Tier

I capital or USD 10 million, whichever is higher. It is also an understood fact that B would also have certain similar restrictions on them that they cannot issue a loan of an amount exceeding a certain stipulated amount. But even in this situation, it is not clear as to how the minimum amount of drawal could be determined and how it could be quantified in the terms of the term "very large".

There could be various possible interpretations of this term. It could be derived by a general consensus as to what the majority of the banks collectively understand by the term. It could also mean a figure that is large in terms of the ongoing market practice and conditions. Or just based on a simple mindset, any figure may seem very large. The interpretations are endless but no one, especially in absence of a clear mandate from the RBI, can suggest as to how the RBI itself would interpret it. "Very large" is a subjective term that unless clearly specified, it can have numerous meanings attached to it.

This ambiguity takes a magnanimous form especially for those banks which have not been transacting with overseas banks on a regular basis or are new to this field. The old established banks still go by their old norms. But anyhow, domestic banks at some stage or the other will need to know that what minimum amount of drawal can be termed as very large. It is further important to realise that with the ever-steeping globalisation, it is impossible to imagine a scenario where there are no interbank dealings. There are loans which are raised from abroad on a daily basis. It will be impossible for the Banks to rush to the RBI, to get a permit from it for every loan they raise from an overseas bank. In such a scenario, it is imperative that the RBI comes out with very clearly laid down guidelines as to how the banks are to transact amongst themselves.

The RBI, being the sole regulating authority of these banks, should definitely look into this issue and lay out clearer guidelines as to what it means when it states "very large" in its circular. The Banks cannot act on their discretion or wait for an RBI approval for every transaction.

Ironically this is just one ambiguity and there can very well be many more. RBI should strive to stay clear from such ambiguities for, their circulars and notifications are the only guiding principles of domestic banks. Any such opaqueness in the guidelines may cause unnecessary delay and impair the growth of the economy.

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1. Master Circular No. 14/2010-11 - Master Circular on Risk Management and Inter-Bank Dealings dated July 1, 2010.
2. IECD No. 7/04.02.02/2003-04 - Master Circulars Export Credit in Foreign Currency dated July 1, 2003.