

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 18.07.2012*

+ **CO.A(SB) 40/2007**

CEMENT CORPORATION OF INDIA Appellant
Through Mr. Rakesh Tikku, Sr. Advocate
with Ms. Tanu Priya and Mr.
Mukesh Kumar, Advs.

versus

POPULATION FOUNDATION OF INDIA Respondent
Through Mr. Rajiv Bansal, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal has been directed against the two impugned orders of the Company Law Board; the first is dated 31.08.2007; it reads inter-alia as follows:-

“Heard the parties. In view of the Delhi High Court dated 29.05.2006 and considering the fact that the respondent has chosen not to file reply to the applicant/petitioner’s letter dated June, 20 2006 wherein the petitioner reiterated its claim for the interest due on the amount of Rs. 75 lakhs paid to the petitioner on

17.05.2007 the interest amount as calculated (as per calculation sheet at A I to the order) totaling to Rs.33,22,602/- is due applicant petitioner is view of the CLB's order dated 16.01.2004. The respondent is directed to pay the due amount to the petitioner forthwith."

2 The second order is dated 18.10.2007; it had noted that since the Company Law Board has no power to review its earlier order, the order dated 31.08.2007 cannot be interfered with.

3 The case of Population Foundation of India (hereinafter referred to as the 'respondent') is that certain deposits had been made with Cement Corporation of India (hereinafter referred to as the 'petitioner'); the said amounts not having been returned back to the respondent, an application under Section 58 (A) of the Companies Act was filed before the Company Law Board. The defence of the petitioner was that the company has been declared as a sick company by the BIFR (Board for Industrial and Financial Reconstruction) on 08.08.1996 and in terms of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) recovery of the aforementioned amount could not be made. The receipt of deposits by the petitioner with the respondent was however not denied.

4 The Company Law Board after considering the respective contentions of the parties passed the following order on 16.01.2004:-

“Accordingly, I order that the respondent company namely, M/s Cement Corporation of India should refund the deposits of the aforesaid three petitioners alongwith interest at the contracted rate till the date of maturity and thereafter at the rate of 5 % per annum till date i.e. the date of actual payment.”

5 Against this order, an appeal was preferred by the petitioner before this Court; the appeal was withdrawn on 29.05.2006; the following order was passed:-

“Learned counsel for the petitioner seeks permission to withdraw the present petition. In view of the prayer made, the petition is dismissed as withdrawn.

“It is however clarified that if Population Foundation of India has any grievance or a legal right, it would be entitled to pursue the same. This order of withdrawal will not adversely affect its right.”

6 Contention of the respondent before this Court is that the order of 16.01.2004 had thus become final; since after 29.05.2006 only the principal amount of Rs.75 lacs had been paid and not the interest quotient, the respondent was constrained to re-agitate the matter before the Company Law Board.

7 The Company Law Board as noted supra had passed the

aforenoted impugned orders i.e. the orders dated 31.08.2007 and 18.10.2007.

8 These two orders are now the subject matter of appeal before this Court.

9 Learned counsel for the petitioner contends that after the withdrawal of the appeal by the petitioner before the High Court on 29.05.2006, the parties had settled their disputes and a one time settlement had been arrived at between the parties. Attention has been drawn to the communication dated 31.03.2006 (page 100 of the paper book); contention being that the sum of Rs.75 lacs was offered to the respondent as a full and final settlement of all his outstanding dues; there was a clear rider attached in this communication that in case this proposal was not acceptable to the respondent, the enclosed cheque may not be encashed and the same may please be returned.

10 This was reiterated vide a subsequent communicated dated 10.05.2006. This letter reads as follows:-

“As per Rehabilitation Scheme sanctioned by Hon’ble Board for Industrial and Financial Reconstruction (BIFR) in its hearing held on 21.03.2006, we have prepared a bearing cheque No. 915772 dated 31.03.2006 for Rs. 75 lakhs (Rs. Seventy Five lacs only) drawn on State Bank of Hyderabad, New Delhi (photocopy

of the cheque enclosed), towards full and final settlement of your outstanding dues on OTS basis.

You are therefore requested to depute your authorized representative to collect the above cheque from our office within 7 days from the date of the receipt of this letter. In case the above cheque is not collected within the above stipulated time period, appropriate action in this regard will be taken by us.”

11 In response to the above letter dated 10.05.2006, the petitioner has given his response dated 17.05.2006; it reads as under:-

“ Kindly refer to your letter No. AC/BIFR/OTS-06/53 dated 10th May, 2006 regarding the payment of the principal amount of Rs.75 lakhs due to the Foundation.

As desired we are deputing Mr. CSN Murthy, Accounts Officer, PFI as our authorized representative to collect the cheque No. 915772 dated 31st March, 2006 for Rs.75 lakhs (Rupees Seventy five lakhs only) drawn in favour of Population Foundation of India from your office. Signature of Mr. CSN Murthy is attested before kindly handover the above cheque to Mr. CSN Murthy.”

12 The vehement submission of the learned counsel for the respondent is that in this communication dated 17.05.2006 there is a clear reference to the receipt of Rs.75 lacs only on account of the principal figure; interest quotient was yet alive; the impugned order in this background, calls for no interference.

13 The question which has to be answered is whether the petitioner is

liable to pay interest on the aforementioned sum of Rs.75 lacs made by him or whether this payment of Rs.75 lacs made by him as s full and final settlement between the parties.

14 The stand of the respondent is forceful and is answered in his favour by the documents on record. Record shows that admittedly on 16.01.2004, the petitioner had been directed to refund the deposits of the respondents along with the interest at the contracted rate till the date of maturity and thereafter at the rate of 5 % per annum till date i.e. the date of actual payment. This order has since attained a finality by the withdrawal of the appeal by the petitioner on 29.05.2006.

15 The payment of Rs.75 lacs had been paid by the petitioner to the respondent vide a cheque dated 31.03.2006. The rider attached in the order dated 29.05.2006 also shows that the respondent was not satisfied with the receipt of this amount of Rs.75 lacs and the High Court on 29.05.2006 gave him the liberty to pursue his grievance/legal right and noted that the order of withdrawal of the appeal by the petitioner would not affect the rights of the respondent. The communication of the respondent dated 17.05.2006 answering the letter of the respondent dated 10.05.2006 also makes a clear reference to the receipt of the

amount of Rs.75 lacs as the principal amount. The quotient of interest was definitely alive. The one sided offer made by the petitioner in his letter dated 10.05.2006 was answered in the reply dated 17.05.2006 wherein the respondent had clearly stated that he was receiving this amount of Rs. 75 lacs as payment of the 'principal amount'.

16 Argument of the learned counsel for the petitioner enjoined upon the statutory provision as contained in Section 63 of the Indian Contract Act is misplaced. There is no dispute that if A owes a sum of money to B and B accepts an amount which is only a partial amount of the full payment due to him as a full and final satisfaction of the whole debt, the whole debt would be discharged. However in the instant case, facts are distinct. The communication of the petitioner to the respondent dated 10.05.2006 had made an offer of Rs.75 lacs as a one time settlement; the reply of the respondent dated 17.05.2006 had however clearly stated that this amount of Rs. 75 lacs was a payment of principal amount; it was accepted as the principal figure which is further clarified by the order dated 29.05.2006 when the petitioner had withdrawn his appeal, at that point of time also, the respondent not being satisfied with the amount of Rs.75 lacs which he had received had got the benefit of the Court

permitting him to get his grievance/legal right addressed. This was accordingly followed up by his filing an application before the Company Law Board pursuant to which the aforementioned two impugned orders had been passed.

17 Reliance upon the judgment of the Allahabad High Court reported as AIR 1966 ALL 104 Amrit Banspati Co. Ltd. Vs. Union of India is also inapplicable. This was a case based on the provisions of Section 8 of the Contract Act.

18 The next submission of the learned counsel for the petitioner is that the respondent is bound by the order of the BIFR which had approved the scheme of rehabilitation of the petitioner company on 03.05.2006; attention has been drawn to para 7.1 of the said scheme; submission being that the respondent was entitled to receive only the principal sum and no interest quotient was permitted which order of the BIFR was approved by the AIFR vide its order dated 28.03.2000; further submission being that this scheme has been approved by the High Court and finally by the Supreme Court in the year 2009; the petitioner is bound by the terms contained therein; on this count also, he is not entitled to any interest.

19 This submission of the learned counsel for the petitioner is also without force.

20 A Bench of this Court in LG Electronics Ltd. Vs. Usha (India) Ltd. & another EFA (OS) No.16/2003 dated 16.03.2007 has held that the deposit amounts by 'A' company with 'B' company where 'B' company is declared as a sick company would not attract the provisions of Section 22 of the SICA; the said amounts having been deposited as a trust money, provisions of Section 22 of the SICA would not be applicable; relevant extract of the said order reads as follows:-

7. *The term “deposit” has been defined by the Explanation to Section 58A as a deposit of money with a company including an amount borrowed by it but excluding such categories of amount as may be prescribed in consultation with the Reserve Bank of India. The learned Single Judge has considered this question in detail. He has place reliance on the decision of this Supreme Court (sic) in Vijay Mills Co. Ltd. v. State of Gujarat [1990] 68 Comp Cas 597. The Apex Court had occasion in that case to decide the question whether the provisions contained in Section 22(1) of the Act extended to criminal prosecution of the company for its failure to pay the amount of sales tax recovered by it on behalf of the Government from the customers. The Apex Court held that the amount recovered from the customers by the company does not belong to it but it is held in trust to be passed over to the Government and in that view of the matter held that Section 22(1) of the Act would not extend to the criminal prosecution for failure to pay the sales tax as the same does not come under the ambit of Section 22(1) of the Act.*

8. *A deposit by the depositor is not a sum lent to the company but is a sum deposited with the company to be held in trust by the company till the time of maturity. It is not a loan in the strict sense of the term. Therefore, any claim for return of a deposit made with the company cannot be termed as a suit for recovery of money due. Section 22(1) prohibiting as it does the taking up of certain proceedings against the company, without the consent of the Board, which proceedings in the natural course of things can be resorted to against the company without any reservation whatsoever by the person or persons interested, it goes without saying that the prohibitions contained in Section 22(1) do not lent themselves to any liberal interpretation. The said provisions must be interpreted in a limited sense and cannot be said to cover situations where there really is no element of execution, distress or the like against any property owned by the industrial company. Interpreting the term “no suit for recovery of money” thus, we find that it certainly would not cover a simple claim made by depositors for the return of their deposits after maturity. As held by the Apex Court in the decision, supra, it is a sum kept with the company by the depositors in trust for return after maturity. The learned Single Judge has on proper and detailed appreciation of the matter has come to the correct conclusion. The reasons assigned by the learned Single Judge for arriving at the said conclusion are well-founded and do not for any interference.”*

21 The Division Bench of this Court had noted that a deposit made by a depositor to a company is not a loan; it is money which is given in trust; bar of Section 22 (1) of the SICA is not applicable; as such the amount due to the respondent could not come within the ambit of the scheme promulgated by the BIFR; the BIFR was only dealing with the assets of the sick company; the deposits made by the respondent with

the petitioner being a trust money with the respondent were not encompassed within this scheme; the terms of the scheme would thus even otherwise not be binding upon the respondent.

22 That apart this argument of the petitioner has been considered in the order of the Company Law Board dated 16.01.2004 which has since attained a finality as the appeal against the said order was withdrawn by the petitioner on 29.05.2006.

23 Further, the order of the BIFR is dated 03.05.2006; the petitioner had withdrawn his appeal before the High Court on 29.05.2006 against the order of the CLB (dated 16.01.2004) which order had thus become final; this order of the CLB had clearly stipulated the interest quotient; the order of the High Court dated 29.05.2006 had also permitted the respondent to get his grievance addressed which he had got addressed which was his grievance for the interest quotient not having been paid to him which was answered by the impugned orders.

24 Reliance by the learned counsel for the petitioner on the judgment reported as AIR 2012 Supreme Court 1440 Raheja Universal Limited Vs. NRC Limited and others is clearly misdirected. This judgment had not considered the scope of a 'deposit' made to a sick company.

25 On all counts, the impugned orders calls for no interference.

26 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

JULY 18, 2012
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