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

% *Judgment Reserved on : January 12, 2016*
Judgment Delivered on : January 18, 2016

\+ **W.P.(C) 6724/2015**

SURINDER SINGH SACHDEV .....Petitioner
Represented by: Mr.Rahul Gupta, Advocate with Ms.Ayesha Chaudhary and Mr.Apoorv Kurup, Advocates

versus

CANARA BANK & ORS. ..... Respondents
Represented by: Ms.Seema Gupta, Advocate for R-1
Mr.Gautam Gupta, Advocate for R-4 and R-5

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

PRADEEP NANDRAJOG, J.

CM No.13508/2015

Allowed subject to just exceptions.

CM No.32325/2015

Allowed. Additional grounds are permitted to be urged.

WP(C) 6724/2015

1. Challenge in the writ petition is to a order dated March 23, 2015 passed by the Debts Recovery Appellate Tribunal, Delhi, allowing Appeal No.408/2012 which arose out of an order dated October 15, 2012 passed by the Debts Recovery Tribunal-II dismissing OA No.151/2008 filed by Canara Bank and as a consequence decreeing the claim of the bank as prayed for in OA No.151/2008 and simultaneously disposing of Appeal No. 407/2012,

setting aside another order of even date passed by the Debts Recovery Tribunal-II allowing SA No.23/2012 filed by the writ petitioner and remanding the matter back to the Debts Recovery Tribunal to decide SA No.23/2012 afresh.

2. While dismissing OA No.151/2008 filed by Canara Bank and allowing SA No.23/2012 filed by the petitioner and the company and quashing the proceedings initiated by the bank under Section 13 of SRFAESI Act, by two separate orders, each dated October 15, 2012, the reasoning of the Debts Recovery Tribunal is that there was an accord between the borrower and the bank; the accord was as per a one time settlement and under the settlement the borrower i.e. the company, required to pay ₹1.25 crores, had paid the same and therefore the mortgaged properties stood free from the lien as also the account maintained by the bank stood squared up.

3. The view taken by the Debts Recovery Appellate Tribunal is that there was no accord and there was no one time settlement.

4. Our concern in the writ petition with the impugned order dated March 23, 2015 passed by the Debts Recovery Appellate Tribunal would be to see whether the tribunal has applied the correct legal principles while adjudicating the appeal and further whether the appreciation of the facts does not suffer from any perversity. We would steer clear from acting as a Second Appellate Court.

5. The undisputed facts are that the company M/s.Global Elec-Tech Ltd., impleaded as respondent No.2 in the writ petition, availed various credit facilities from Canara Bank and, by way of equitable mortgage, offered four properties as collateral security, one property at Pondicherry, one at Daman, one at Chittaranjan Park, New Delhi and the fourth in Gurgaon. Lien over

the property at Daman was relinquished by the bank. The company became a defaulter. The bank instituted recovery proceedings in the year 2008 when OA No.151/2008 was filed under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act.

6. About a year prior to the bank instituting recovery proceedings, the Director of Global Elec-Tech Ltd. wrote a letter to the branch of respondent No.1 bank which has extended the credit facility to the company. An offer was contained therein to be granted permission to sell the property at Pondicherry which was mortgaged. The letter reads as under:-

Global Elec-Tech Limited
Regd. Office
A-15, 2nd Floor, Hauz Khas,
New Delhi – 110016
Ph.011-26856421

To,
The Asst. General Manager,
Canara Bank,
H-54, Connaught Place
New Delhi – 110001 *Dt.12.02.2007*

Dear Sirs,

Sub: Permission to sell that Factory at Pondicherry

Kindly refer to the discussion that the undersigned had with your goodselves, the GMO recovery)

Mr.Wasan, in the presence of the GM (North) Mr.Prabhu and others at your regional office on 06.02.2007. Kindly also refer to our earlier only Time settlement proposal submitted you on 03.02.2007.

As a part of OTS Proposal it was envisaged that the Factory at Pondicherry be sold off to an intended buyer and a sum of

₹1.00 crore be deposited with the bank.

For the sake of record the last valuation done by the bank's valuer was ₹1.05 crore and the bank had earlier accorded its sanction to sell for a value of ₹90 lacs.

We have now got a buyer in hand who wishes to buy the factory and deposited with the bank a sum of ₹1.00 crore nett (after deducting the statutory dues of ₹3.6 lacs towards pending electricity bill and ₹50,000 towards panchayat tax).

Allow me to emphasize that the property value in our factory's area has not appreciated at all as one by one all other factories i.e. Neycer Ceramic, F.G. Wilson, Pondy Paper, East Coast Steel Mills, Silical, etc. have closed down and our own factory now wears a withered look (i.e. rotting iron gates, overgrowth, moss growth over the building, damaged roof sheets).

In the view of above it is our humble submission that we accept this offer as the buyer intends to settle at the soonest possible.

We therefore sincerely request you to accord a fresh sanction for the sale of factory. A letter for the same will be highly appreciated.

Thanking you,

Yours faithfully,
(For Global Elec.Tech Ltd.)
Vinod Kumar
(Director)"

7. Shortly thereafter on March 01, 2007 the company submitted a comprehensive proposal for settlement, which has been annexed as Annexure P-4 to the writ petition, and appears to be as per a proforma prescribed by the bank. The proposal was to pay to the bank in full and final settlement of all dues a sum of ₹1.25 crores; and if the proposal was accepted, it hardly needs any emphasis that the lien of the bank under the

equitable mortgage of the properties, including the one at Chittaranjan Park in Delhi would be removed.

8. The facts get a little hazier at this stage since neither, the two orders passed by the Debts Recovery Tribunal on October 15, 2012 throw any light nor the composite order dated March 23, 2015 passed by the Debts Recovery Appellate Tribunal throw any light nor the respective pleading of the parties. The haziness is a lack of clarity as to how the bank proceeded with the one time settlement proposal contained in the communication sent by the company on March 01, 2007. The company as also the petitioner are responsible for the haziness because their claim that the proposal resulted in an acceptance evidenced by the competent authority of the bank signing the approval on the relevant part of the proposal which was sent as per a proforma has not been accepted by the Debts Recovery Appellate Tribunal, and we concur because no document has been produced showing signatures of the competent authority while granting the so called acceptance to the proposal on the proposal itself or in any other independent document. We note at this stage, and would deal with the argument immediately, that the second string in the bow of the petitioner is a letter dated March 26, 2007, which learned counsel for the petitioner heavily relied upon to urge as conveying the acceptance of the compromise proposal dated March 01, 2007.

9. The letter dated March 26, 2007, relied upon by the petitioner is written by the Acting Senior Manager of Canara Bank, Branch at H-54, Connaught Circus, New Delhi – 110001 to M/s.Global Elec-Tech Ltd. It reads as under:-

"CANARA BANK
H-54 CONNAUGHT CIRCUS

NEW DELHI-110001
(HO BANGALORE)

Ref: LPD : H-54 : 2007
Date : March 26, 2007

To,
Mr.Vinod Kumar
Director,
M/s. Global Elec-Tech Ltd.
H-36/18, I Floor, DLF Qutub Enclave Phase I
Distt: Gurgaon, Haryana

Dear Sir,

Sub: Your compromise proposal Dt. 01.03.2007

Your aforesaid compromise proposal dated 01.03.2007 has been permitted by the controlling authorities as under:

"title deeds pertaining to property at Pondicherry shall be released by the Branch after receiving credit of ₹105.00 lacs in your a/c with our Branch on or before 31.03.2007."

Yours faithfully,
D.K.Gupta
Acting Senior Manager"

10. Another letter dated March 30, 2007 addressed by Ag Senior Manager of Canara Bank Branch at H-54, Connaught Circus, New Delhi – 110001 to M/s.Global Elec-Tech Ltd. was also written which reads as under:-

"CANARA BANK
H-54 CONNAUGHT CIRCUS
NEW DELHI-110001
(HO BANGALORE)

Ref: LPD : H-54 : GLOBAL : 07
Date : March 30, 2007

To,
Mr.Vinod Kumar
Director,
M/s. Global Elec-Tech Ltd.
H-36/18, I Floor, DLF Qutub Enclave Phase I
Distt: Gurgaon, Haryana

Dear Sir,

Sub: Your compromise proposal Dt. 01.03.2007

With reference to your compromise proposal dated 01.03.2007 we confirm having received Demand Draft No.371094 dt. 23.03.2007 for ₹1.25 crores only drawn on ICICI Bank, Connaught Place, New Delhi.

Title deeds pertaining to property at Pondicherry shall be handed over to you against acknowledgment consequent upon realization of the process through clearing.

Yours faithfully,

D.K.Gupta
Ag.Senior Manager"

11. Another letter dated June 20, 2008 addressed by the Assistant General Manager of Canara Bank Branch at H-54, Connaught Circus, New Delhi – 110001 to M/s.Global Elec-Tech Ltd. reads as under:-

"CANARA BANK
H-54 CONNAUGHT CIRCUS
NEW DELHI-110001
(HO BANGALORE)

Ref: LPD : H-54 : 2008 : DKT
Date : 20.06.2008

To,

Mr.Vinod Kumar
Director,
M/s. Global Elec-Tech Ltd.
H-36/18, I Floor, DLF Qutub Enclave Phase I
Distt: Gurgaon, Haryana

Dear Sir,

Sub: Your OTS proposal regarding M/s.Global Elec-Tech Ltd.

With reference to your subject OTS proposal, we wish to inform you that on placing the proposal before the appropriate authority, it is advised that in view of the substantial value of remaining properties you are requested to improve your offer and submit the revised proposal afresh.

On receiving the same we shall forward it for placing before the appropriate authority.

Yours faithfully,

Assistant General Manager

CC: Recovery section co Delhi w.r.t. your letter DCR 12411/34 RG 2008 Dt.9.6.2008 for information."

12. Letter dated March 26, 2007, while making a reference to the compromise proposal dated March 01, 2007 has a strange mix of communication. On the one hand the company was informed that the compromise proposal dated March 01, 2007 has been permitted (*sic* <u>and the word used is not accepted)</u> by the controlling authority, but immediately conveys the proposal permitted by referring to that title deeds pertaining to the property at Pondicherry shall be released after receiving a credit of ₹1.05 crores from the company.

13. The company admittedly sent a demand draft to the bank in sum of ₹1.25 crores, concerning which the Senior Manager of the bank wrote the

letter dated March 30, 2007, acknowledging receipt of the demand draft but informing that only title deeds pertaining to the property at Pondicherry would be handed over.

14. There is once again a lull in the pleading in the documents filed and hence a haziness as to what happened thereafter, but we have the letter dated June 21, 2008 written by the Assistant General Manager informing that the proposal needs to be made better.

15. The statement of law invoked by the Debt Recovery Tribunal reads as under:-

> *"34. To prove concluded contract, Mr.Heman Chaudhary has invoked the provisions of the Contract Act. Section 7 of the Contract Act provides that the acceptance must be absolute. This section provides that in order to convert a proposal into a promise the acceptance should be absolute and unqualified and it must be expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it is to be accepted. This section further provides that if the proposal prescribes a manner in which it is to be accepted and the acceptance is not made in such a manner the proposal may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance. Section 8 of the said Act talks of acceptance by a performing conditions, or receiving consideration. It provides that performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.*
>
> *35. It can thus be noticed that the acceptance must be unqualified and without condition. It is a well-settled proposition that the offer and acceptance must be based or founded on three components – certainty, commitment and communication. It any one of the three components is lacking either in the offer or acceptance there cannot be a*

> *valid contract (See **Kilburn Engineering Ltd. Vs. Oil Natural Gas Corporation Ltd.** AIR 2000 Bom 405). An acceptance with variance is no acceptance. It would simply be a counter proposal which must be accepted by original promise before a contract is made."*

16. Now, there is no material to show that the competent authority of the bank accorded sanction to the one time proposal to receive in full and final satisfaction of the claim of the bank a sum of ₹1.25 crores. The only evidence with the writ petitioner is the letter dated March 26, 2007 written by the acting Senior Manager of the bank, contents whereof have been reproduced in paragraph 9 above and our comments on the letter have already been penned in paragraph 12 above. Keeping in view the statement of law penned by the Debts Recovery Appellate Tribunal, contents whereof we have noted in paragraph 15 above, and agreeing with the statement of law to be applied, it cannot be said that the letter dated March 26, 2007 conveys acceptance of the proposal. The statement of law with reference to Section 7 and 8 of the Contract Act written by the Debts Recovery Appellate Tribunal correctly records that the acceptance of a proposal to become a promise has to be unequivocal and absolute as also unqualified. The letter dated March 26, 2007 is callous in its language and the acting Senior Manager of the bank appears to be a lazy man. He makes a reference to the compromise proposal, but conveys the acceptance only concerning the title deeds pertaining to the property at Pondicherry upon the condition that the company pays ₹1.05 crores to the bank by March 31, 2007. What appears to have happened is that there was a proposal dated February 12, 2007 from the company, as per its letter dated February 12, 2007, contents whereof have been noted by us in paragraph 6 above. The said proposal was limited to the property at Pondicherry. The core content of the acceptance conveyed in the

letter dated March 26 2007 relates to the property at Pondicherry. The lazy acting Senior Manager, rather than make a reference to the proposal dated February 12, 2007 has referred to the proposal dated March 01, 2007.

17. We concur with the view taken by the Debts Recovery Appellate Tribunal and would further add reasons to the same. If what the writ petitioner claims is the correct position, one would have expected the company to immediately start protesting as to why title deeds of other properties were not released. There would have been a protest to the letter dated March 26, 2007 written by the bank which confirming having received ₹1.25 crores inform the company that title deed pertaining to the property at Pondicherry alone would be returned. The protest would have been : Why only title deeds of the property at Pondicherry and not the two others.

18. The error committed by the Debts Recovery Appellate Tribunal is to remand SA No.23/2012 and allow OA No.151/2008 for the reason OA No.151/2008 was dismissed by the Debts Recovery Tribunal-II only on the reasoning that there was a one time settlement. Other defences raised were not dealt with by the Debts Recovery Tribunal-II. This warranted OA No.151/2008 to be revived with a direction to the Debts Recovery Tribunal-II to decide OA No.151/2008 on merits with reference to other defences raised by the respondents therein.

19. The writ petition is accordingly disposed of setting aside the impugned order dated March 23, 2015 limited to the order decreeing the claim of the bank as per OA No.151/2008. Said part of the impugned order is set aside and OA No.151/2008 filed by the respondent No.1 bank is revived before the Debts Recovery Tribunal-II for adjudication afresh along with adjudication afresh of SA No.23/2012 which has been revived for adjudication afresh by the Debts Recovery Appellate Tribunal itself.

20. Parties shall bear their own costs.

<u>CM No.32323/2015</u>

Dismissed as infructuous because the writ petition has been disposed of.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

JANUARY 18, 2016
mamta