IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 512 of 2017 (O&M)

Date of Decision : 15.03.2018

Punjab & Sind Bank and another

....Appellants

Versus

Alchemist Reality Limited and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

...

Present: Mr.I.P.Singh, Advocate
for the appellants.

Mr.Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate
for respondent No.1.

...

MAHESH GROVER, J. (Oral)

This Letters Patent Appeal is directed against the judgment of the learned Single Judge dated 09.02.2017.

Briefly stated the facts are that a company by the name of Corus Infrastructure Private Limited had submitted a bid of Rs.32,13,000,00/- with the Punjab and Sind Bank for purchase of the impaired financial assets of one M/s Tensile Steel Limited, Manjalpur Vadodara Gujarat (hereinafter known as 'the bidder company'). The bid having been accepted the respondent No.3 requested the writ petitioner M/s Alchemist Reality Limited (hereinafter known as 'the petitioner company') to associate itself in acquisition of the impaired assets by rendering financial assistance. It was projected by the bidder company to the petitioner company that all conditions required for the transaction were in place arousing the petitioner company's interest in the proposal. Upon verification with the bank it was informed that even though the bid had been accepted, the sale had yet to be finalised due to the pendency of some litigation and the stay given by the Courts at Vadodara.

The petitioner company then entered into the Memorandum of Understanding on 08.11.2007 at Chandigarh with the bidder company agreeing to provide funds of Rs.5 crores in "no lien account" to be maintained with the Punjab and Sind Bank and to be utilised for part payment of the impaired financial assets of the affected company i.e. M/s Tensile Steel Limited. It was also contemplated under the Memorandum of Agreement that the petitioner company will provide all necessary funds directly to the bank in the event of conclusion of litigation clearing the way for the financial sale. Both the parties had agreed that the amounts paid by the petitioner company would be reimbursed to it in the event of the sale not fructifying. For the purpose of reference the relevant portion of the Memorandum of Agreement is extracted below :

> "That in case Punjab & Sind Bank is not able to give the necessary permission for sale of above referred impaired financial assets or the litigation is decided against the sale of the assets, the proceeds of Rs.5 crores kept in FDR alongwith all the necessary accruals in the form of interest

will be the property of M/s Alchemist Realty Limited. M/s Corus Infrastructure Pvt. Limited will give necessary letters/authorities whatsoever required in favour of M/s Alchemist Realty Limited for encashment/transfer of the proceeds of the above said FDR."

The petitioner company then did the needful and floated a fixed deposit of Rs.5 crores with the Punjab and Sind Bank.

These facts are not in dispute.

Eventually the sale could not fructify in favour of the bidder company for the reason that the bank and M/s Tensile Steel Limited whose financial impairment was under consideration settled their disputes.

Admittedly, there was litigation pending between M/s Tensile Steel Limited and the Punjab and Sind Bank where the Gujarat High Court had restrained the bank from taking any action against the properties of the company. The bank had also filed LPA No.32 of 2008 challenging the interim order of the Gujarat High Court. Vide order dated 27.02.2008 the Division Bench of the Gujarat High Court had directed the company to restore the possession of the assets to the bank with a rider that it would not alienate or transfer any property in dispute. Despite this the bank accepted the bid of the bidder company to alienate the assets of M/s Tensile Steel Limited and created an arrangement where the bank agreed with the bidder company to create an FDR of Rs.5 crores in the no lien account. Upon discovering such facts the petitioner company sought to withdraw the sum of Rs.5 crores and made a request in this regard to the bank which was denied leading to the filing of the writ petition where the bank raised an issue of maintainability of the writ petition in view of an alternate remedy, apart from a contest on merits.

What is important to note here is that M/s Tensile Steel Limited and the Punjab and Sind Bank raised a dispute before the arbitrator who gave an award on 09.05.2017 which was upheld by the High Court of Delhi vide its order dated 08.09.2017 in OMP (COMM) No.338/2017. Pursuant thereto the bank had received the entire amount of Rs.35 crores from M/s Tensile Steel Limited but strangely enough continues to deny the release of Rs.5 crores deposited by the petitioner company. The arbitrator in its award had specifically dealt with this issue and the relevant portion may be extracted herebelow :

> "160.The Prayer-D in the prayer clause of the claim petition seeks award of Rs.5,18,92,578/- (maturity value) being the amount in fixed deposit (Punjab and Sind Bank Panchkula Branch, in the name of Corus Infrastructure Ltd., Vide Serial No.1077/07 issued on 12.11.2007). On this I have held above that the respondent bank is not entitled to forfeit the amount of Rs.5,18,92,578/- which was deposited in the fixed deposit. The claimant is entitled to this amount from the respondent bank. As regards interest, in the facts and circumstances of the present

case I allow interest @ 9% per annum on the amount of Rs.5,18,92,578/- from 12.05.2008 till realization."

Once the award of the arbitrator had been upheld in entirety and the amount of Rs.35 crores paid to the bank in satisfaction of the award by M/s Tensile Steel Limited, there was absolutely no occasion for the bank to retain the amount any further. One does not have to look far but only to the conditional agreement at the time of creation of the FDR to understand that bank's stand is unfair. The condition extracted in the foregoing paras, clearly shows that petitioner company would get its amount if the result of the litigation rendered the sale of assets inexecutable. The award certainly did so, particularly when it has been acted upon. It is thus clearly an unethical stand of the bank to retain the FDR once it had settled the matter with M/s Tensile Steel Limited. The amount of Rs.5 crores was intended for the sale transaction in the offing in favour of the bidder company with a purpose to facilitate the process of purchase of assets of M/s Tensile Steel Limited now rendered illusory on account of the settlement as per the arbitrator's award. The bank's claim has been satisfied in totality and the bidder company has also walked away with no consequence leaving the petitioner company in a lurch. Looking at from any angle the bank cannot hold on to this amount once the main transaction has fallen through. Even otherwise the bank could not have initiated the sale process in view of the Gujarat High Court order restraining the sale of any assets of M/s Tensile Steel

Limited. Be that as it may, once the arbitrator's award had satisfied the claim of the bank and M/s Tensile Steel Limited settling all accounts, the petitioner company cannot be deprived of the amount that it had deposited with the bank.

We thus do not find any ground to interfere with the well reasoned judgment of the learned Single Judge. We would have imposed costs on the bank for its unethical approach but restrain our hands from doing so.

The amount be released to the petitioners as per direction of the learned Single Judge within a period of four weeks of the date of receipt of certified copy of the order.

Appeal dismissed.

(MAHESH GROVER)
JUDGE

15.03.2018
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No