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

\+ W.P.(C) 10137/2017

M/S. CHERUBIC CONSTECH PRIVATE LIMITED ..... Petitioner

Through: Mr Saran Suri and Mr Roshan Kumar, Advocates.

versus

UNION BANK OF INDIA ..... Respondent

Through: Mr Gautam Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 08.08.2018

1. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "a. Issue a writ/direction setting aside the wrongful, illegal and arbitrary action of Respondent of withholding the FDRs created by the Petitioner and arbitrarily marking lien on the said FDRs.
>
> b. Direct the Respondent to credit the account of the Petitioner with the amount of the said FDRs with interest forthwith."

2. The petitioner's grievance is that the Fixed Deposits made by the petitioner with the respondent bank are not being redeemed despite the petitioner repeatedly approaching the respondent bank. It is stated that the respondent bank has illegally marked a lien on the said deposit.

3. The petitioner claims that it had entered into a transaction for availing

loan from AVJ Developers Pvt. Ltd. whereby the said company had agreed to advance a sum of ₹1,75,00,000/- to the petitioner on interest at the rate of 6% per annum. It is claimed that the first tranche of ₹39,50,000/- of loan was disbursed by AVJ Developers Pvt. Ltd. on 02.05.2016. On 13.11.2016, AVJ Developers Pvt. Ltd. remitted a sum of ₹87,00,000/- as an advance. This was followed by two other tranches of ₹25,00,000/- and ₹10,00,000/- ,which were remitted on 25.11.2016 and 07.12.2016 respectively. On 24.11.2016, the petitioner transferred funds in the fixed deposits – five deposits of ₹20,00,000/- each – aggregating to ₹1 crore. The Fixed Deposits were for a period of 30 days. However, the respondent bank has failed to redeem the said deposit despite repeated requests made by the petitioner. This has led the petitioner to file the present petition.

4. The respondent states that the sum of ₹87,00,000/- which was deposited in a fixed deposit emanated from the cash that was deposited by AVJ Developers Pvt. Ltd. in its bank account on 12.11.2016, immediately after the high value currency notes had been demonetized. On the same date, the said funds were transferred to the bank account of the petitioner and thereafter utilized for the purpose of making the fixed deposit. The respondent bank further submits that M/s AVJ Developers Pvt. Ltd. owes substantial amounts to several banks including the respondent and the deposit of cash and transfer of funds is fraudulent.

5. Although, allegations made by the respondent bank are refuted, none of the factual averments have been questioned. In other words, it is not disputed that AVJ Developers Pvt. Ltd. had deposited cash in its account on 12.11.2016, which was remitted on the same date to the account of the petitioner. It is not disputed that such a deposit was most unusual as AVJ

Developers Pvt Ltd. had not deposited cash of such an amount in the past. The petitioner is also not in a position to dispute that AVJ Developers Pvt. Ltd. owes money to several banks.

6. The limited controversy that arises in this case is whether the respondent bank is within its right to withhold the fixed deposits.

7. It is apparent that the aforesaid controversy entails certain disputed questions of fact. As stated above, the respondent bank claims that the fraud has been perpetuated by AVJ Developers Pvt. Ltd. by transferring the funds to the petitioner. The respondent further alleges that AVJ Developers Pvt. Ltd. and the petitioner are related parties. This Court does not consider it apposite to examine such disputes in a proceeding under Article 226 of the Constitution of India.

8. Indisputably, if AVJ Developers Pvt. Ltd. owes any money to the banks, the stated transaction of lending money to the petitioner at a fraction of the interest rate charged by the banks, would be difficult to justify. Further, the bank would also be entitled to recover funds owed by AVJ Developers Pvt. Ltd. from its debtors, which admittedly includes the petitioner.

9. Mr. Saran Suri, the learned counsel appearing for the petitioner has referred to the decision of the Madras High Court in ***Ashok Amritraj v. Reserve Bank of India***: ***(2012) 6 MLJ 509***, in support of his contention that such disputes could be examined in these proceedings. The said decision is inapplicable in the facts of the present case. In that case, the allegations were that the bank officials had fraudulently paid the amount due to the petitioner, to the third parties. There was no dispute that the bank owed the money to the petitioner and the only controversy was whether the bank had

discharged the FDRs by disbursing the amount in accordance with its procedure. The petitioner therein claimed that it had not received the amount and the accounts in which money had been remitted were not his accounts. As is apparent, the facts in the present case are materially different.

10. In view of the above, the present petition is disposed of by leaving it open for the parties to institute appropriate recovery proceedings as may be advised.

11. All contentions of the parties are reserved.

VIBHU BAKHRU, J

AUGUST 08, 2018
MK/dr