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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) (COMM) 18/2018 and CM No. 3890-92/2018

PUNJAB & SIND BANK

..... Appellant

Through: Mr. Pallav Saxena, Ms. Bindu Das
and Mr. Ashutosh Shandilya,
Advocates.

versus

CORUS INFRASTRUCTURE PVT LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **02.02.2018**

CM APPL. 3891/2018 (*for exemption*)

Allowed subject to just exceptions.

CM No. 3892/2018 (*for condonation of delay*)

For the reasons mentioned in the application, the delay of 33 days in filing the present appeal is condoned.

CM stands disposed of.

FAO(OS) (COMM) 18/2018 and CM No. 3890/2018 (*for stay*)

The appeal challenges the order of the learned Single Judge, which rejected the petition under Section 34 of the Arbitration and Conciliation Act, 1996. By an award the appellant-Punjab and Sind Bank (hereinafter referred to as the 'appellant bank') was directed to

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repay the sums of ₹10,00,000/- (Rupees Ten Lac only) and ₹5,18,92,578/- (Rupees Five Crore Eighteen Lac Ninety Two Thousand Five Hundred and Seventy Eight Only) along with interest @ 9% p.a.

The facts are rather tangled; the appellant put up for sale the non-performing assets (NPA) relating to one of its borrower-Tensile Steel Limited (hereinafter referred to as 'TSL'). It received an offer from the respondent-claimant (hereinafter referred to as 'CORUS'). In the meanwhile, a controversy arose with respect to the offer; the Gujarat High Court had apparently by an interim order interdicted the sale of the properties mortgaged to the appellant bank. The appellant was of the opinion that the NPA offered for sale was not covered by the stay order and that the auction could proceed – its contention was that the ultimate purchaser would step into its shoes. The High Court proceedings culminated; the CORUS approached the Supreme Court but withdrew its Special Leave Petition. The borrower-TSL had deposited the amounts as part of the consideration claiming that the CORUS had deposited some part of the consideration. In the meanwhile, claiming that the CORUS breached its contract, the appellant bank sought to forfeit the amount. It is a matter of record that in the meanwhile the appellant entered into a settlement with the borrower-TSL for a total consideration of Rs.35 crore on 28.04.2008, after the revocation of the contract. When the respondent claimant sought for refund of the amount deposited by it towards the purchase of the NPA, the appellant contended that it lawfully forfeited the

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amount and there was no impediment in the performance of the contract at the relevant time.

The Arbitrator, after considering the submissions of the parties and also going through the materials on record, was of the opinion that the appellant bank's insistence that it had the right to retain the amount notwithstanding the events that occurred upon his interpretation of the documents as well as the orders of the Court, resulted in an award directing the appellant bank to refund the amounts paid by CORUS. The impugned order has upheld the award.

Learned counsel for the appellant urged that both the Tribunal and the learned Single Judge overlooked the material circumstances, such as the fact that in respect of the same amount paid by CORUS, a third party claimed to have been funding agencies, and that it sought refund through writ proceedings before the Punjab and Haryana High Court and that, in those proceedings, the bank's appeal is pending. It is submitted, furthermore, that in principle, at the relevant time, instead of proceeding to deposit the amounts that it had to under the contract and given that there was no legal impediment, CORUS's omission to do so amounted to breach of contract entitling the forfeiture of the sums. It was urged that the forfeiture is perfectly in order and in consonance with Section 74 of the Contract Act, 1872, and that the contract between the parties was neither void nor voidable—only circumstances, in which the amounts were refundable.

Learned Single Judge has reasoned by the impugned judgment that the scope of jurisdiction to interfere with the Tribunal's

determination lies in an extremely circumsquare case i.e. in an event the award discloses a patent error of law or contains glaring omissions or overlooks the approach, which is palpably unreasonable. Learned Single Judge has also relied upon authorities on this aspect.

In the present case, the Court is of the opinion that the appellant has not been able to demonstrate any error that would call for appellate review of the learned Single Judge's order, as is sought to be urged in this case. The ground urged i.e. that the auction of the NPA was not, in any manner, covered by the Gujarat High Court's interim order is only "a legal issue" and not a mistake of law, is debatable. As a purchaser of the NPA, the CORUS could well argue that there ought to have been no cloud or possibility of a cloud or doubt about its right to step into the shoes and that in the foreseeable future, the process of execution of sale ought not to have been imperilled at the time it was undertaken. In these circumstances, the view expressed by the learned Single Judge that the Tribunal's opinion is plausible one, cannot be brushed aside.

For the above reasons, there is no merit in the appeal. It is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 02, 2018

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