IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO.24286 OF 2019

M/s. Shyam Traders ..Petitioner
Versus
Capri Global Capital Limited & Anr. ..Respondents

Mr. Sumit Goswami, Advocate for the Petitioner.
Mr. Sidharth Samantaray a/w Ms. Dimple Tejani i/by Mr. Sanjay Anabhawane, Advocates for the Respondents.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 4th DECEMBER, 2019

P.C.

1] Heard learned counsel for the parties.

2] The Writ Petitioner relies upon a letter dated 26.03.2019 issued by the 1st Respondent to argue that since Petitioner has paid ₹ 1.85 crores in terms of the letter, no dues remain payable by the Petitioner to the 1st Respondent.

3] The letter in question reads as under :-

"To
M/s. Shyam Traders,
Thru its Proprietor Mr. Amit Amarshi Gala

Sub:-Payment towards Loan Account
No.LNCGCMUMTL0000003133

Dear Sir,

1) *As you know that you have availed a secured loan of INR 2,60,50,000/- (Rupees Two Crore Sixty Lakh Fifty Thousand Only) vide Loan agreement No.LNCGCMUMTL0000003133 which was executed between you and CGCL. It is also pertinent to mention here that your loan account is in huge default due to non-payment of installments as per agreed terms.*

2) *Upon your request and offer to settle the loan outstanding/EMIs under discussion, we may consider and may agreeable your offer to settle the account for an amount of Rs.1,85,00,000/- (Rupees One Crore Eighty Five Lakhs Only), towards payment/settlement of the outstanding overdue amount/EMI's in the captioned Loan Account as per the terms of said loan agreement.*

3) *However, the proposed settlement amount by you of Rs.1,85,00,000/- is subject to the adjustment of the payment made in March 2019. This amount shall be payable on or before 10th of each month starting from March 2019 to June 2019, by way of DD/RTGS, of Rs.45,00,000/- (Rupees Forty Five Lakhs Only) for each month from April 2019 to June 2019 and however for the month of March 2019, an amount of Rs.50,00,000/- (Rupees Fifty Lakhs Only) to be paid by 29/3/2019.*

The payment must be made in favor of Capri Global Capital Ltd., by way of Demand Draft/RTGS only as per payment scheduled mentioned above. It is to be noted that that the time and our approval is the essence of the settlement of the above mentioned loan agreement and failure to make the payment in agreed time line each *time or any part thereof will result in automatic cancellation of this partial settlement and the payments made by you will be appropriated as a normal payment towards total outstanding together with all interest and applicable charges, in accordance with the terms and conditions of the prevailing Loan Agreements.*

It may be noted that once the said loan account is terminated and closed in our system fully, as per the terms of said loan agreements, we shall be in a position to release the charge on the property mortgaged under the said loan agreement and accordingly documents submitted with us shall be released.

This settlement letter is being issued without prejudice to our rights and interest as may be available under the said loan agreement.

Sd/-	*Sd/-*
Capri Global Capital Ltd.	*Accepted By:"*

4] A perusal of the letter would show that the 1st Respondent has clearly informed the Petitioner that the request made by the Petitioner to settle the account '*may*' be considered by the 1st Respondent. Paragraph 3 of the letter clearly records that the proposed settlement amount of ₹ 1.85 crores is subject to the adjustment of the payment made in March 2019.

5] Interestingly the Petitioner responded to the said letter on 27.03.2019. The said letter has been suppressed by the Petitioner in the Writ Petition. The letter reads as under :-

"Date-27/03/2019
To,
Capri Global Limited
Andheri, Mumbai

Sub: Payment towards Loan Account Number - LNCGCMUMTL0000003133 with the name of M/s. Shyam Traders (Mr. Amit Amarshi Gala)

Respected sir,

Please be notify that we have avails the secured loan of Rs.2,60,50,000/- vide above mention loan agreement.

In our various personal meetings at delhi and mumbai we have proposed for settlement of account for Rs.1,85,00,000/- in EMI in caption loan account. accordingly we will paid you Rs.50,00,000/- in month of march 2019 and balance Rs.45,00,000/- in month of april to june 2019. We will manage to pay installments of Rs.45,00,000/- on or before of each month.

The payment will be made in favor of Capri Global Capital Limited by way of demand draft/RTGS only.

You Will Furnish us the list of security provided to you as soon as possible.

You will also keep every legimate action by you by way of court case/arbitration etc. on hold till the final payment made by us.

You will also filled consent letter at ongoing court case at Ahmadabad.

Please issue settlement letter without prejudice to our and yours rights and interest as may be available under the above mention loan agreement.

Once again we are very much thank full to you for your kind co operation granted in the matter.

Thanking you

Yours faithfully

For, Shyam Traders

Sd/-
Proprietor

Note- Enclose

(1) DD No.000068 Dated – 26/03/2019 Drawn on Bank The Wai Urban Co Op Bank Limited, APMC Branch, Vashi in your favour for Rs.45,00,000/-

(2) DD No.000070 Dated – 27/03/2019 Drawn on The Wai Urban Co Op Bank Limited, APMC Branch Vashi in your favor for Rs.5,00,000/-"

6] The letter dated 27.03.2019 written by the Petitioner itself records that the settlement letter which Petitioner requires would be without prejudice to the rights of the Petitioner as also the rights of the 1st Respondent as also the interests as may be available under the agreement.

7] It is settled law that acceptance of an offer must be unconditional for a binding agreement enforceable by law to come into force.

8] Learned counsel for the Petitioner then argues that the communication made by 1st Respondent's counsel to the learned Chief Metropolitan Magistrate annexed as Exh.-H shows that a settlement has been arrived at. Learned counsel for the 1st Respondent informs that the lawyer made the statement under misconception of facts and that an application has been filed before the Chief Metropolitan Magistrate, Ahmedabad for recall of the order annexed as Exh.-H.

9] Under the said instances, we cannot declare a binding settlement took place between the parties and therefore cannot direct the 1st Respondent to return the title documents pertaining to the secured asset i.e. the prayer made in the Writ Petition.

10] The Writ Petition is dismissed.

Balaji G. Panchal

Digitally signed by Balaji G. Panchal
Date: 2019.12.04 17:41:48 +0530

SMT. BHARATI DANGRE, J **CHIEF JUSTICE**