

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**REVIEW PETITION (L) NO.47 OF 2019
IN
ARBITRATION PETITION NO.1189 OF 2014**

M/s Steel Tubes of India Limited ... Petitioner
Versus
Saraswat Co-operative Bank Ltd
And Another ... Respondents

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Mr. Chiraj Modi a/w Mr. Sunil Gangan and Mr. Amol Bagat i/b RMG
Law Associates for the Petitioner.

Mr. Ganesh Kale i/b Mr. Bhupesh Samant for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATE : 9 JANUARY 2020

P. C. :

. There is an objection by the department on the ground of delay in filing the review petition. An Interim Application has been filed by the review Petitioners for condoning the delay, if any. For the reasons stated, the Interim Application is allowed by condoning delay, if any. The review petition is taken up for admission forthwith.

2 This review petition seeks review of an order passed by this court on 18 February 2019 in the arbitration petition. The arbitration petition was in challenge of an award passed by a sole arbitrator under Section 84 of the Multi-State Co-operative Societies Act, 2002

The order under review discusses the only contention of the Petitioners before the court, which concerns limitation. It is, however, submitted that the challenge of the Petitioners involves one more issue concerning accord and satisfaction, and despite this issue being argued before this court, the same is not decided by the court in the order under review.

3 Going by plain memory, it is difficult to reach any conclusion whether this issue was in fact argued before the court, when the order under review was passed. Be that as it may be, since this issue is being raised on admitted documents, I propose to consider the same. What is submitted is that the first Respondent bank had actually compromised its dues on the principle of accord and satisfaction, when the Petitioners were before BIFR and the sale was effected of one of the main assets of the first Petitioner company in pursuance of BIFR orders. The defence of accord and satisfaction is based exclusively on minutes of meeting between the company and its secured creditors including the first Respondent bank. The minutes indicate that the representatives of the creditors, including the first Respondent bank herein, were generally agreeable to the proposal of sale of assets of the first Petitioner company. A specific assertion on the part of the representative of the first Respondent bank is noted in the minutes. The assertion is to the effect that consent was given by the first Respondent bank for sale of the secured assets and that all other rights of the bank against the promoters/guarantors were to continue for recovery of balance dues. Based on this, it is submitted

that there was a waiver on the part of the first Respondent bank to its claim against the principal debtor, i.e. the first Petitioner company, other than what was coming to it as its pro-rata share in the sale proceeds of the secured assets; the only claim left out was the claim against the promoters of the first Petitioner, who had guaranteed its debt. This submission was certainly advanced before the learned arbitrator, who was of the view that merely from the statement of the representative of the first Respondent bank, which was recorded in the minutes, it could not be said that the bank's right to recover balance monies from the borrowers was foregone. The learned arbitrator observed that waiver of right to recover legitimate dues has to be clear and unequivocal, and that it was not shown that the question of waiver by the lenders was on the anvil at the time when these minutes were made. The arbitrator further observed that the minutes did not seem to be a well-drafted document by legal personnel and seemed to be prepared merely for the purpose of the creditors' consent for sale of properties. The finding of the learned arbitrator on this aspect is clearly a possible finding, which is supported by some evidence and cannot be termed as a finding based on no evidence; it is also not opposed to any provision or principle of law. It cannot be termed either as an impossible or perverse view, that is to say, a view which no reasonable person duly instructed in law would take, or something which would shock the conscience of the court. The award, accordingly, does not merit any interference even on the issue of accord and satisfaction.

3 The review petition is accordingly disposed of by holding that the order of 18 February 2019 does not merit any review.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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Rajesh V. Chittewan
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