rajshree/Arati

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL APPEAL NO.26 OF 2025

IN

COMMERCIAL SUMMARY SUIT NO.57 OF 2022

Special Situation Advisors (India) Pvt. Ltd. .. Appellant

vs.

Bank of India .. Respondent

Ms.Soumya Mishra a/w Mr.Chinmay Babhulkar i/b Akash Menon, for the Appellant.

Mr.S.U. Kamdar, Senior Advocate a/w Mr.Yashesh kamdar and Ms.Kirti Singh i/b Nahush Shah Legal for the Respondent.

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ

DATE : 4th MAY 2026

JUDGMENT (PER BHARATI DANGRE, J) :

1. Being aggrieved by the dismissal of the Commercial Summary Suit filed by the Plaintiff, Special Situation Advisors (India) Pvt. Ltd. , Navi Mumbai (SSA), the Commercial Appeal is filed.

We have heard the learned counsel Ms.Soumya Mishra for the Appellant and the learned senior counsel Mr.S.U. Kamdar for the Respondent.

The learned counsel for the Appellant has placed on record the convenience compilation, comprising of the necessary documents filed in the Suit and by consent of the respective counsel, the Appeal is heard finally.

2. The Appellant is a company duly incorporated under the provisions of the Companies Act, 1956, and is a registered MSME under the provisions of The Micro, Small and Medium Enterprises Act, 2006 and is engaged in the business of providing financial advice and other consultation to Banks and other financial institutes.

The Respondent is an Indian Nationalized Bank and is, *inter alia*, in the business of providing banking services in India.

The Appellant/Plaintiff filed Summary Suit No.57/2022 for recovery of total amount of Rs.7,55,96,767/- towards the fees due and payable to SSA as on 02/04/2019, in terms of the Agreement executed between them, together with interest *pendent-elite*.

As per the Plaint, the Plaintiff was appointed as a Financial

Advisor by the Bank of India (BoI) in terms of its request letter responding to the advertisement dated 21/06/2017. The engagement came vide the communication issued by BoI on 01/07/2017 as Financial Advisor for carrying out the activities relating to the preparation of port-folios of NPAs such as (but not limited to) due diligence, evaluation and related matters set out in the communication, for the banks proposed sale of NPAs to Asset Reconstruction Company (ARC) and others.

The said communication, broadly highlighted the scope of services of the Financial Advisor which included Phase I- Sale Preparation, which included Guidance to be provided to the bank on the estimated realizable value of the individual asset/portfolio, which could serve as a basis for settling the reservation price.

It also included the coordination with the bank in setting up the data room, while the bank personnel will be primarily responsible for collecting relevant information and all the information shall be validated by the Financial Advisor.

It also included the task of initiating formal contact, soliciting follow up, and engage for bidding an appropriate number of qualified buyers through a range of media, including, direct telephone, written and email contact, through the use of the banks website for the sale and through one-to-one meetings with prospective buyers.

In addition, in Phase II – Execution, the Financial Advisor was expected- i) to develop a complete and thorough transaction(s), timeline(s), that outline all contemplated steps , identifying key milestone dates and work with the bank team to identify the agencies responsible for each of the task. ii) Design a process and means of communication with bidders including initial contact, provision of general information, accumulating and organizing all bidder correspondence and questions and relaying them to the appropriate bank personnel.

3. The Contract also contemplated general terms and conditions, stipulating that the empanelment shall be valid for a period of one year from the date of its approval from the bank and the most relevant clause is as regards the success fee to which the advisor was entitled to and it was specifically worded as below :

> III. Conditions
> 1) ....
> 2) Bank may engage you from time to time for all or anyone or more of the identified accounts on negotiated fee mentioned below. Further Bank may entrust any such work

to any of the Financial Advisor in the panel or otherwise sell by themselves and no right exists to engage Financial Advisor to claim that he/she alone should be entrusted with Bank's work.

Sr. No.	Particulars	Quotation
a)	Success based fee on cash received from the bidder (excluding Bank SRs)	0.50%
b)	Success based fee on sale amount received from the bidder (including Bank SRs)	0.0749%
The bank, at is discretion, may choose 'a' or 'b' payable on successful bids. The option will be exercised by the Bank initially for the portfolio.		

The bank reserved its right to amend/alter any of the items of the empanelment of the Financial Advisor without giving any prior notice. Similarly, it also expected the Financial Advisor to execute non-disclosure Agreement and Service Level Agreement in bank's format and to the satisfaction of the bank.

4. A limited conspectus of the dispute between the Parties revolve around the aforesaid clause of the Mandate Letter, where the Bank is required to pay to the Appellant, its success base professional fees as stipulated therein. It is the case of the Financial Advisor/Plaintiff that as per 2007 RBI Guidelines, Security Receipts (SRs) are quasi equity instruments, predominantly backed by impaired financial assets that get

redeemed only at the time of recovery. In effect, it is contended that SR is a Promissory Note issued by the ARC itself and the recovery is redeemed only after deduction of management expenses, akin to a deferred payment made by the bidder. The value of the cash bid is diverted/diluted when combined with SR and it is the contention of the Appellant that there is no additional security nor an independent guarantor in respect of an SR, nor there is any certainty when or if the SR would be redeemed.

It is the further case of the Appellant that in respect of 100% cash bids the bank get the amount upfront with no deduction whereas in case of cash + SR bids, there is a risk involved for the bank and this is sought to be justified before us through the following Chart :-

Sr.No.	Cash Bids	Cash + SRs Bids
1	100% cash recovery for the bank For example in Rs.100 cr. Cash bid, Bank can claim entire 100% cash recovery i.e. Rs.100 crore	15% minimum cash recovery for the Bank as per RBI guidelines Rest 85% can be Security Receipts (SRs) which are unguaranteed deferred payment promissory note received by the Bank
2	Certain recovery	SR redemption are not guaranteed and linked to

		future recovery from the portfolio as and when and to whatever extent it happens No legal recourse available to Bank on ARC to enforce SR redemption
3	No further expenditure/charges for recovery	ARC charge following additional expenses from recovery amount which reduces the net redemption of SRs : - Yearly management fee (1.5-2% of Total SRs) - Resolution expenses (litigation, enforcement, advt) - Resolution incentive (5-10% of recovery) Acts as disincentive for ARC to resolve the NPLs early as ARC will lose management fee which accrues on a yearly basis and safe guards their 15% cash investment. Very poor trace record of redemption of SRs by ARCs hence Banks prefer 100% cash bids.

It was, therefore, the stand of the Plaintiff in the Suit that SR is an uncertain form of recovery for the bank, as a result the banks prefer a 100% cash bid since the recovery is guaranteed and obviously the fees payable for 100% cash bid is higher. That is the reason why according to the Plaintiff, there were two options indicated in the Expression of Interest (EoI). Cash payment being direct in nature and resulting in 100% recovery/ higher realization of the bid to the bank is more favourable and required more efforts to solicit. This could be considered as a down payment for the bid at its face value and the higher fees under Option ‘a’ reflected superior outcome based upon 100% cash as against the deferred and contingent recovery through SRs i.e. Cash + SR where two options are available.

According to the Plaintiff, when it applied for position as Financial Advisor by billing in the bid documents, it is its case that it filled in ‘0.50%’ for Option ‘a’ and “0.0749%’ for Option ‘b’ in the format for commercial bids and submitted the same.

Thus, as per the Appellant, it gave two quotations as per the EoI stipulations, i.e. i) for 100% cash which is equal to 0.5% fee and ii) for combination of cash + SR (0.5% - 15% cash + 0% - 85% SR) which is equal to 0.075% fee.

5. As per the pleaded case before the trial Court and urged before us the Financial Advisor charged 0% for the SRs and 0.5% towards the cash component in both options where the rate on cash is identical. The only difference between two quotations is the composition of the transaction and not the rate, as Option ‘b’

contemplated a blended rate of 0.0749% and it is arrived by applying 0.5% to the 50% cash component with 0% applied to the 85% SR component.

6. Relying upon the Mandate Letter issued by the BoI in favour of the Appellant, to act as Financial Advisor for sale of NPAs to ARCs and others, according to the Appellant's understanding the following position emerged :

> "1. Thus, in the event a 100% Cash Bid was received {which necessarily excludes Bank Security Receipts (SRs)}, the fee payable to the Appellant would be at the rate of 0.50% as there are no SRs. If the bid received included Cash and Bank SRs, then the Respondent had the option to pay 0.50% for only the Cash received in the sale amount without SRs, or 0.0749% for the entire sale amount received including SRs. As per the EOI, the Respondent had to exercise its option, initially, i.e. prior to the sale.
>
> 2. The Appellant provided its services to the Respondent as Financial Advisor from July 2017 to March 2019. The Mandate Letter specified the period of provision of services as 1 (one) year, but the said mandate was extended by the Respondent, by its email dated 2 January 2019 (Ex. E to the Plaint @ Pg. 263 of the Convenience Compilation.
>
> 3. In terms of the mandate issued by the Respondent, it was required to choose right at the inception of each portfolio as to whether it wanted to exercise Option A or Option B. These options were not to be exercised after the sale took place. Furthermore, if the Bank decided to opt for 100% cash bids, the question of exercising Option B would not arise as Option B required Bank SRs to be a part of the mix. The interpretation accepted by the Court would effectively result in rewriting the contract as Option B can be exercised only when SRs are part of the Sale Amount. Any other interpretation for Option B in the case of a 100% cash sale would require the Court to rewrite the contract which is impermissible in law. It is respectfully submitted that it is not open for a Court to rewrite the contract between the parties."

In the wake of the Mandate Letter, the BoI exercised its option between June 2017 to March, 2018 and it chose to accept Cash + SR bids. Based upon the aforesaid, the Financial Advisor raised invoices at the rate of 0.0749% with respect to the Cash + SR bids during the said period. However, post March 2018 till February, 2019 the BoI exercised its option and chose to accept only 100% cash bids till February 2019 and this prompted the Financial Advisor to raise invoices at the rate of 0.50% during the period from June, 2018 to February, 2019.

It is the grievance of the Plaintiff that prior to the issuance of the tender document, the bank had issued another tender document in which it provided for Cash + SR bids, however, in the tender document, pursuant to which the services of the Plaintiff were engaged, the bank had exercised the option of cash only. It is, therefore, the contention advanced that having exercised this option there was no further discretion vested in the bank.

The Plaintiff raised four invoices at the rate of 0.50% with respect to 100% cash deposits on 02/04/2019 and on the same day a meeting was held between the Parties in regard to the invoices raised at the rate of 0.50% and as per the Plaintiff, the purpose of the meeting was to explain the invoices, the entries therein and the calculations for arriving at the amount mentioned in the invoices. Despite offering detailed explanation, according to it, the bank disputed the calculations and the amounts under the invoices. This was followed by communications exchanged between the two and the bank remaining consistent in its stand that it was required to make payment to the Appellant at the rate of 0.50% on the 100% cash bids and it continued to assert that discretion was available to it to choose the payment to the Appellant either under Option 'a' or Option 'b' of Clause III (2) of the Mandate Letter. The stand of the bank was very specific that the bids being in cash only, Cash + SR was immaterial.

During the period of this discord, the bank remitted an amount of Rs.1,17,54,518/- (at the rate of 0.0749%) on 31/05/2019, but this amount according to the Appellant was against the billed amount of Rs.8,73,51,270/- (i.e. at the rate of 0.50%).

All the while the remittance was made by the BoI by reiterating that as per the discretion included in the engagement letter dated 01/07/2017 formally stating that the bank had sole discretion to decide on Option 'a' or 'b' and it has chose to exercise Option 'b' for all transactions, irrespective of their nature and very categorically it stated thus :

"......Having exercised option "b", whether the consideration could be in "only cash" or under "cash+ SR", is immaterial."

7. However, according to the Financial Advisor, there was need to have two different options for the proposed commercial bids to the following effect :-

(i) SRs being quasi equity instrument get redeemed only when recovery happens subject to deduction of management fees, hence uncertain.
(ii) ARCs can offer 100% cash or a combination of Cash + SRs (with Cash being minimum 15% of the bid value)
(iii)It is easier to process the bids on 100% Cash basis, absolute recovery is ensured.
Evolution of Structure :
As it is seen the need for such structure arise due to the dilution of 100% cash bid with SRs the starting point is 100% cash bid and freezing the success fee based on cash received which is captured by quotation a.

Evolution of Structure

Bid = 100% Cash basis	→	Quotation a)
	Diluted with Sr	
	% of Cash → Quotation a)	
Bid = Cash + SR		
	% of Sale (Cash + Sr) → Quotation b	

Despite various correspondence being exchanged, since the bank maintained its stance and failed to indulge the Appellant further and as per the Appellant there was failure to make the payment at the rate of 0.50% as agreed in respect of "cash only" transactions, the Commercial Summary Suit was filed for payment of balance amount of Rs.7,55,96,767/- together with interest *pendent-elite*.

8. In this Suit, on 30/09/2022, Summons for Judgment (L) No.31548/2022 was filed, which prayed for the following reliefs :-

> "That this Hon'ble Court be pleased to pass a decree in favour of the Plaintiff that the Defendant pay unto the Plaintiff an amount of Rs.7,55,96,767/- (Rupees Seven Crore Fifty-Five Lakh Ninety-six Thousand Seven Hundred and Sixty-Seven), together with *pendente lite* interest at the rate of 18% p.a. or such other rate as this Hon'ble Court may deem fit from the date of institution of the Suit till actual payment or realization."

The aforesaid relief was supported by an Affidavit filed by the authorized signatory of the Plaintiff Company, reiterating its stand that in terms of the Mandate Letter the BoI is required to pay to SSA its success based professional fees at 0.50 % of the bid value for 100% cash bids and there was refusal on the part of the Defendant to make the amount due and payable and lesser amount was paid by making calculations in complete disregard to the terms of the Mandate Letter.

Emphasis was laid upon the Mandate Letter, clearly specifying that the BoI shall not arbitrarily select either option, after the conclusion of the transaction, but would instead inform the Advisor, at the outset, during the initial portfolio stage itself, so that there is clarity as to whether the Plaintiff would be remunerated taking into account only the cash component or both, SR and cash component, so that it could offer clarity to the

Plaintiff and expected it to incentivise and obtain certain kinds of bids. The Affidavit in support stated that there exist no logic which could justify treating the 100% cash bid at par with Cash + SR bid as the bidder get 6 time more leverage when the bids are Cash + SR, whereas, the Bank has to further pay the management fee and expenses to the bidder which gets adjusted against the recovery. It was, therefore, pleaded that the BoI's interpretation of having absolute discretion irrespective of the bids structure yielded the benefit and on the basis of the benefit accruing to the bank it rendered existence of two quotations for two separate bids structure in terms of the Mandate Letter absolutely futile. Claiming that there is no scope of any ambiguity in the Mandate Letter which clearly differentiated between Cash bids and Cash +SR bids , the relief was sought by pleading that the bank sought to arbitrarily choose the option which benefits it the most without giving any regard to the terms of the Mandate Letter.

The Summons for Judgment filed by the Plaintiff resulted into an order passed on 28/11/2022 permitting the Respondent conditional leave to defend the captioned Suit, by making it subject to deposit of entire claim amount of Rs.7,55,96,767/- or furnishing of bank guarantee in the said amount within a period of six weeks. While granting the conditional leave, the learned Single Judge recorded thus :-

> "In this backdrop, in my view, the contention of the defendant bank that despite having received the sale proceeds in cash alone, it could still pay the fees at the ratio prescribed for cash plus bank security receipts does not raise a substantial or strong defence. At best, it is a plausible but highly improbably defence. Therefore, the defendant does not deserve an unconditional leave to defend the suit."

9. Being aggrieved, the bank filed Commercial Appeal No.1334/2023 which was dismissed by the Division Bench as being not maintainable under Section 13 of the Commercial Courts Act, 2015 on 17/01/2023. Being aggrieved, a Special Leave Petition was filed before the Apex Court , which stayed the effect and operation of the order and by permitting the bank to defend the Suit subject to it giving an Affidavit that in event it succeed, the decreetal amount shall be deposited in the Court within a period of one month and the SLP was disposed of on 24/02/2023.

10. Pursuant to this development, written statement was filed by the Bank and following issues were frame for consideration in the Suit :-

> "i) Whether the Defendant has the option/discretion to pay success based fee @ 0.0749% even in respect of transactions which were 100% cash based, as per clause III(2) of the Mandate Letter dated 1st July

2017?

ii) If answer to issue No. 1 is in the negative, whether the Plaintiff is entitled to a decree?

iii) If yes, in what sum, at what rate of interest and since when?”

11. On 13/07/2023, the Single Judge recorded the submission of both the Parties, that neither of the Parties are leading any evidence in the matter and hence the Suit be placed for final hearing.

Admittedly, the decision not to lead evidence was mutual and consensual as both the Parties were of the view that the dispute between hem turned entirely on the interpretation of the written contractual clause.

The outcome of the proceedings, is the impugned order dated 25/02/2025 (as corrected in the order 04/03/2025) and the learned Single Judge dismissed the Suit by holding that, as urged by the Plaintiff, two constructions are not possible in the present case and even if it was so, the interpretation by the bank of Clause III (2) of the Mandate Letter makes business common sense. It is held that the Plaintiff chose not to lead any evidence, because it was garnering under the impression that the case merely involved interpretation of Clause III(2) of the Mandate Letter, but this belief was held to be entirely wrong as the learned

Judge observed that its argument of business efficacy and business common sense was required to be backed by supporting pleadings and evidence and it was imperative for the Plaintiff to have pleaded and proved that the practice consistently followed in the banking industry to pay agreed percentage fees to the Financial Advisor on the entire transaction value, where the bank opts for 100% cash sale. Since the Plaintiff did not lead any evidence to prove that the Bank at any time followed the practice of choosing Option 'a' in case of 100% cash sale either in the Plaintiff's own case or with the contracting parties nor any evidence is lead to prove that the other banks or financial institutions followed such practice, it was held that it cannot be assumed that the payment of fees under Option 'a' on entire transaction is an obvious stipulation in banking industry or financial market.

In absence of the Plaintiff discharging the burden of proving its contention of extra efforts being taken in 100% cash sale transactions, existence of any business practice, put the Plaintiff in trouble and though Issue No.1 was answered in the affirmative, Issue No.2 was answered in the negative and the Suit was dismissed.

12. The learned counsel Ms.Mishra has criticized the impugned Judgment and she has interpreted before us the relevant clause in the Mandate Letter as according to her, it contemplated the quotation to be given for both options, (a) - success fee based on cash received from the bidder (excluding bank SRs) and (b) success fee based on sale amount received from the bidder (including SRs). According to her, the Bank, at its discretion may choose option (a) or (b) payable on successful bids and this option will be exercised by the Bank initially for the portfolio. According to her, the relevant clause which is the bone of contention between the parties included three essential components viz. Option, Quotation and Discretion and according to her 'Option' formed the basis for success fee calculation and in option (a), the base is - cash received from the bidder (excluding bank SRs) (here the SR is Zero. In Option (b) the base is sale amount received from the bidders (including Bank SRs) (Cash + SRs), where the SR is more than '0' (Zero).

She would submit that excluding bank SRs and including bank SRs are to antithetical words and in successful bid there is exclusion of SRs in option (a) whereas in option (b) there is inclusion of SRs reflecting that SR is more than '0'.

13. Coming to another component quotation, the learned counsel has submitted that the rate for pure cash and rate for blended cash and SRs differ in option 'a' and 'b' and the quotation varied based upon the option offered. As far as the component of discretion is concerned, she would submit that to choose between Base 1 and Base 2 payable on successful bids, there existed a discretion to be exercised initially for the portfolio and this discretion is based at three levels :

> "i. Selection of type of the bid
>
> ii. Selection of the Base in the successful bid which inadvertently governs the fee payable to the Appellant
>
> iii. Such Selection of the Base between Base 1 and Base 2 payable on Successful Bids to be done initially for the portfolio"

However, it is her specific contention that interchanging the option and rate under the guise of 'discretion' is not permissible and when a particular option is chosen then the corresponding rate interlinked gets triggered.

Therefore, as per clause III (2) of the Mandate Letter , Option 'a' contemplated success fee based on cash received from the bidder which had the quotation of 0.50% whereas in Option 'b' success fee based on sale amount received from the bidder including bank SR the quotation was of 0.0749% and the bank was given discretion to opt for ‘a’ or ‘b’ payable on the successful bids.

14. According to the learned counsel, the interpretation of Clause III(2) of the Mandate Letter gave rise to the following contingency :

> “Option (a) stands when Sale Amount=100% only in Cash-hence Appellant gets 0.5% of the 100%
>
> Option (b) being the blended structures Sale Amount =Cash+Promissory SRs-then Appellant gets 0.5% only on the Cash part and 0% on the SRs
>
> **[R=Rate]**
> Rate (Cash)=0.5% Rate (SR)=0%
> The individual Rates for Cash and for SR were consistent for both the **options**
> Thus, Blended Rate =% Cash x R(C)+% SR x R(SR)”

15. Further, it is contended that as per the RBI guidelines the blended deals ought to have atleast 15% cash and SR is permissible upto 85%. However, since, BoI did not mention the ratio, it would consider the following formula for a blended transaction based on the mathematical calculation as below :-

- 15% Cash x 0.50% (Sale Amount) = **0.075%**
- 85% SR x 0% (Sale Amount) = **0**
- Total Quotation for Option 'b' = **0.0749%**

Hence, 0.0749% is merely on average when majority portion of the bid includes SRs. This rate is therefore nothing but a weighted average, where 85% of the consideration carries zero fee.”

16. The learned counsel would, however, submit that the learned Single Judge has misconstrued the actual computation and has wrongly recorded that the BoI is right in its interpretation that it can consider the sale receipts after sale of a particular NPA and examine whether an element of SR is included therein and then the Bank would decide whether option ‘a’ is more beneficial to it than option ‘b’ and vice versa.

Citing an illustration, she would submit that if a particular NPA is sold for Rs.10 crores and then the consideration is received by the Bank in form of 10% cash and 90% SR, the fees payable under option ‘a’ and option ‘b’ would be as below :-

Option ‘a’	0.50% of cash component of 1.00 crores (excluding SR)	50,000
Option ‘b’	Fees of 0.0749% of entire value of 10 crores (Cash+SR)	74,900

17. However, according to Ms.Mishra, the blended bid of 10% cash with 90% SR is not legally permissible in lieu of RBI Regulations of 2014. According to her, the finding recorded in the impugned judgment with the illustration stated in paragraph 41 is purely hypothetical, as according to her, the exclusion of SR

can be achieved by another method, where it is decided that at the commencement of the bidding stage itself and this was done by the Bank, when it decided to exclude SR and invite only 100% cash bids post March 2018, and this, according to her, led to elimination of Base-2 of option 'b' i.e. sale amount received from the bidder (including Bank SRs), as there is no existence of SRs in 100% cash bid. This is sought to be explained by her by relying upon the following chart:-

Availability of Options of Success Fee calculation on Successful Bids of Bank's Choice				
Sr.No.	*Particulars*	*Quotation*	*C+ SR* *Successful Bids*	*100% cash* *Successful Bids*
Option a)	*Base 1 : cash received from the bidder (excluding Bank SRs)-(Cash)*	***R(C)***	***Base-1 Present***	***Base-1 Present***
Option (b)	*Base 2 : sale amount received from the bidder (including Bank SRs)-(Cash+SRs)*	***Blended Rate for (C+SR)***	***Base-2 Present***	***Base-1 Absent***
	Discretion availability		***Yes***	***No***

18. The learned counsel has urged before us that the observation in paragraph 40 where the learned Single Judge took a composite transaction is correctly depicted, as it is recorded that for a composite transaction of Rs.6 crores cash, Rs.4 crores Security Receipts, two options are available; option 'a' - 0.50% on

cash only, SRs excluded from the fee base and option 'b' – 0.0749% on total including SRs and the learned Single Judge has given meaning to both the words ‘excluding Bank SRs’ and ‘including Bank SRs’ and this is the correct standard, according to the learned counsel. However, in para 51, she finds a flaw as the learned Single Judge has held that ‘including Bank SRs’ is ‘only for the purpose of determining the overall value of the sale amount’- a valuation mechanic of no operative significance for applicability. She would submit that on this reclassification, the Judge has observed that option 'b' is available on every transaction including 100% cash, but this observation, according to her, is irreconcilable with observations in paragraphs 40-42. According to her, asymmetric treatment of antithetical words within the same order wherein ‘(Excluding)’ has been held definitional in para 41 and ‘(Including)’ has been held merely computational at para 52.

19. The learned counsel for the Appellant further urge that on reviewing the concluding sentence of Para 51 of the impugned order, it has to be noted that the three important words that acts as a differentiator between the two types of transactions are

absent:

"Option (b) is applicable on entire sale amount received from the bidder where such sale amount is through 100% cash basis as well."

On bare reading of this sentence in isolation, it appears to be coherent and conclusive without any error apparent on face of the record. However, on restoring the three words as given in Clause III(2) the same sentence is now read as, Option 'b' is applicable on entire sale amount **(including Bank SRs)** received from the bidder where such sale amount is through 100% cash basis as well, it is apparent that this is a self-destructive finding- in one breath it holds that, two diametrically contradictions to be true.

It is further urged that "Sale amount received from the bidder (including Bank SRs)" requires SR > ₹0.

20. A sale amount including Bank SRs presupposes that Bank SRs exist. If they do not exist, there is nothing to include. "Through 100% cash basis" mandates SR = ₹0. A 100% cash transaction is by definition a transaction from which SRs have been eliminated. Hence, there cannot be any Logical, Commercial

and Real Transaction where both SR > 0 and SR = 0 can exist in the same transaction. Thus, the inference made by the Single Judge is not merely wrongful construction of the Contract but it exhibits Logical impossibility which cannot be realized into existence. It is submitted that such a perverse and arbitrary finding in the impugned order directly violates the settled principles of law as held by the SC Judge in various cases.

Apart from this, it is her submission that if the interpretation of the Bank is accepted, it would result into absurdity, which no commercial party would have intended, as on success, the Appellant secured 100% cash realization for the Respondent and it cannot be construed that the Appellant is paid less and this inverts the commercial incentive structure that the dual-option framework was designed to create. Reliance is placed upon the decision of the Apex Court in the case of ***Nabha Power Ltd. Vs. Punjab State Power Corporation Ltd.***[1], where it is held that an interpretation producing commercial absurdity must be rejected in favour of the one giving sensible effect to the parties' bargain.

The learned counsel would submit that the reliance placed

1 (2018) 11 SCC 508

by the learned Single Judge upon the decision in the case of ***Silppi Constructions Contractors Vs. Union of India & Anr.***[2], is inapplicable to the case in hand and if this is permitted to stand, it would defeat the foundational purpose of the Commercial Courts Act, 2015. It is also submitted by her that under the binding principle of ***Life Insurance Corporation of India & Anr. Vs. Dharam Vir Anand***[3], *"Where the same clause of a contract makes use of two different expressions held, the two expressions cannot be taken to have the same meaning- Further held, when parties have agreed to the terms of a contract it cannot be contended that a particular term was never intended to be acted upon."* Thus by holding the Respondent Bank's interpretation as valid, the learned Single judge has turned the variance in the two expression of contract into a single option which renders the entire contract as otiose, contrary to the argument of discretion as submitted by the Respondent.

The subject matter consists of two commercial entities before a Commercial Court in a suit for recovery of professional fees, and the only question is what the words of their contract mean.

2 (2020) 16 SCC 489
3 (1998) 7 SCC 348

21. Contesting the aforesaid submission and supporting the impugned order, the learned senior counsel Mr.Kamdar would submit that the Plaintiff chose not to lead evidence and when it says that it was required to put extra efforts, where is a proof of such statement. He deny the submission that for the extra efforts put by the Plaintiff, it must gain more, and particularly, in absence of any evidence being brought on record to that effect. According to Mr.Kamdar, the Tender was floated before sale of any assets, which was based on 100% cash, but it has no connect to the decision taken after the bids are received, when the bank is entitled to make the choice. According to Mr.Kamdar, the fee structure mentioned in the Engagement Letter of 01/07/2017 was clearly exhibiting two options; 'a' or 'b' payable on successful bids, the Bank being vested with the discretion and according to him, the Bank exercised its discretion and made payment to the Plaintiff as per option 'b' and he would rely upon the table set out in the written statement, clarifying the mechanism of payment as below :-

Sr. No.	**Invoice No.**	**Sale Amount**	**Payment as per bank's approval @ 0.0749%**	**GST**
1.	FY 19-20/BOI/0001	281,59,00,000	2109109.10	3,79,639.62
2.	FY 19-20/BOI/0002	1,047,71,00,000	7847347.90	14,12,522.62

3.	FY 19-20/BOI/0003	85,53,00,000	640619.70	1,15,311.46
4.	FY 19-20/BOI/0004	65,70,00,000	492093.00	88,576.74
	TOTAL	**1,480,53,00,000**	**1,18,09,169.70**	**19,96,050.44**

22. According to the learned senior counsel, the Engagement Letter is clear and unambiguous as against the payments to be made to the Financial Advisor by the Bank upon rendering the agreed services, strictly in terms with the Engagement Letter. According to him, the letter is accepted and signed by the Plaintiff, which is a clear admission on its part, which gave the Defendant the discretion to choose either option 'a' or 'b' for payment of invoices in respect of the transaction contemplated in the Engagement Letter.

Since the Mandate Letter clearly contemplated that the Defendant shall have the sole discretion to decide amongst both options, either 'a' or 'b' and it was at liberty to determine the management fee payable, no other interpretation is now permissible as parties have acted *ad idem* and signed the contract. Having exercising the option “b”, whether the consideration could be in “only cash” or under “cash+Security Receipts (‘SR’)” is immaterial, according to Mr.Kamdar. He would submit that the Plaintiff was aware of this arrangement and this is clear from its earlier invoice raised on 15/01/2018, where the Plaintiff claimed the amount of Rs.14,17,333/- as per option "b" of the Engagement Letter, however, if the invoice raised was as per "cash component" i.e. as per option "a" then the amount payable by the Bank would have been on a higher side as compared by the invoice raised by exercising option "b". According to the learned senior counsel, the Engagement Letter spoke of two options and it was the discretion of the Bank to choose one option initially and as per the tender document issued in June 2018, the Bank made its intention clear of having 100% cash bids, but the Plaintiff agreed to provide services to the Bank on terms and conditions set out in the Engagement Letter of 01/07/2017 and it must, therefore, adhere to the same and cannot wriggle out from the contract. According to him, the Engagement Letter gave the discretion to the Bank to choose option 'a' or 'b', but is nowhere mentioned in the Engagement Letter that this discretion is subject to sale based on cash component or SR component or both. On the other hand, according to him, the clause in the Engagement Letter mentioned that it is the discretion of the Bank to choose the option for payment mechanism.

23. With these rival contentions, we shall not turn our attention to the actual dispute that surfaced before the Commercial Court and was ultimately adjudicated, resulting into the passing of the impugned order.

At the outset, we must note that the discord between the parties only revolve around one clause in the agreement i.e. the payment of success base fee. It is the case of the Plaintiff that after it responded to the advertisement issued by the BoI for empanelment as Financial Advisor, the Mandate Letter was issued in its favour on 01/07/2017 for providing services of carrying out activities relating to the preparation of portfolio of NPAs such as due diligence, evaluation and related matters for BoI's proposed sale of NPAs to ARCs.

As a Financial Advisor, the Plaintiff was under an obligation to advise the Bank on sale of its Impaired Financial Assets i.e. NPAs and the scope of work included preparation of portfolio of such financial assets, marketing the portfolios to bidders and executing the final sale of assets. For the sale of assets, ARCs would offer the purchase consideration to the Bank in two ways, depending upon the bid structure; (i) by 100% cash bid or (ii) by a combination of cash plus security receipts issued by ARC (with cash component being to the minimum of 15% of the bid value). This contemplation was clearly in accordance with RBI's regulatory framework dated 05/08/2014.

As per the RBI guidelines, Security Receipts (SR) are quasi equity instruments predominantly backed by impaired assets that can be redeemed only at the time of recovery and to the extent of recovery after management expenses are deducted. Obviously, banks prefer cash bids over SR bids, as the latter involve some risk. As per the Mandate Letter, the Defendant-Bank was to receive a success-based fee on the amount received from the bidder in a successful bid and this was estimated at 0.50% when the entitlement of success based fee was premised on cash received from the bidder and this excluded Bank SRs. However, it contemplated 0.0749% of success based fee on the sale received from the bidder including Bank SRs.

24. In the wake of the aforesaid, it is evident that when 100% cash bid is received, which excludes SRs, the fee payable shall be 0.50%, but when a bid is received and include SRs then the fee payable to the Advisor would be at rate of 0.0749%.

In option 'b', BoI may either exercise its discretion to pay

0.50% for the cash received in the sale amount without SRs or 0.0749% for the entire sale amount received with SRs. Reading of the Mandate Letter would reveal that two different types of bids would get invoiced at different rates while exercising option 'b'- cash okys SR bid and here the Bank has the discretion to pay the stipulated percentage of either the cash received in the sale amount excluding SRs (0.50%) or the stipulated percentage of the entire sale amount including SRs (0.0749%). It is the argument advanced on behalf of the Appellant that the choice is available at the second stage, but this in our view, on careful reading of the Mandate Letter, does not appear to be correct and this is what even the learned Single Judge has held in the impugned order.

In accordance with the Mandate Letter, the Plaintiff raised invoices to the Bank at 0.0749% with respect to cash plus SR bids between June 2017 to March 2018. However, post March 2018 till February 2019, since the Bank chose to only accept 100% cash bids, the Plaintiff raised invoices at 0.50% with respect to 100% cash bids. On 02/04/2019, Plaintiff raised four invoices for NPAs whose sale has been concluded and all these sales were 100% cash bids, the invoice amount was calculated on 0.50% of the cash amount as per option 'a'.

Though the Plaintiff has adopted a stand that the genesis of the format designed for inviting the bid is on the basis of the fact that 100% cash bid brings in higher cash realization to the bank in comparison when the cash bid has been diluted by SRs and cash bid require more efforts as compared to cash plus SR bids and, therefore, the incentive for getting cash bids must be different.

25. The Defendant-Bank has specifically adopted a stand that the invoices ought to be raised at 0.0749% as per option 'b'. The Defendant-Bank has clearly stated before us that it resorted to sale of NPAs by way of assignment because of long delay in realization of the dues by adopting a general procedure laid down under the relevant laws of the land. The assignee may also experience such delay and in general scenario, the sale takes place at a discounted value, which caused loss to the Defendant and keeping in view, this time value of money, the Plaintiff was engaged to provide for consultancy services for disposal of stressed NPAs. Admittedly, the fee structure mentioned in the Engagement Letter, provided two options 'a' and 'b' with a stipulation that the Bank may choose the option 'a' or 'b' on

successful bids and this option shall be exercised by the Bank initially for the portfolios.

The Bank chose its discretion to opt option 'b' and since the discretion is vested in the Bank, we find that the Appellant can in no way call it into question. Availing this option, the Defendant has chose option 'b' and this was informed to the Plaintiff. It is the case of the Bank that merely because the portfolio is sold only under the 'cash basis', it would not automatically entitle the Plaintiff to claim higher fee, as under both options, sale on cash basis is covered and more particularly, after having clearly agreed to fixation/choosing of rate of fee, at the whims and fancies of the Plaintiff, there can be no reversion to clause 'a'.

26. Worth it to note that the engagement of the Plaintiff through the Engagement Letter was accepted by it for a period of one year i.e. upto June 2018 and then it was extended upto 31/03/2019 on the same terms and conditions. Admittedly, the services were provided by the Plaintiff upto 31/03/2019.

During the period of 2017-18, invoices were raised on the Bank, as per the discretion exercised in terms of option 'b' and the amount was duly accepted by the Plaintiff. Post March 2018, the sale of NPA by the Bank, as a policy decision was based on cash component and the exercise of discretion to choose option 'b' was communicated to the Plaintiff, but the Plaintiff continued to exercise option 'a'.

We find that in various communications addressed by the Defendant, which are the part of the record, being the communication of 04/10/2019, 22/08/2019 and 10/06/2019, a detailed explanation was offered by the Defendant to the Plaintiff explaining that it was its discretion to choose, whether fee is to be paid based on option 'a' or 'b' and in one of its communication, the Bank categorically communicated thus :-

> "...6. By no stretch of imagination, it can be said that in "only cash sale:option "a" would automatically apply. It was the clear understanding that the Bank would have the sole discretion to decide on the option i.e. "a" or "b", which Bank has exercised. Having exercised option "b", whether the consideration could be in "only cash" or under "cash + SR" is immaterial. The fact that you were clearly aware of the arrangement is evident from your earlier invoices. Your invoice dated 15.01.2018 itself would go to show that you had claimed only an amount of Rs14,17,333/- when the fee calculated as per "cash component" more than the said amount.
>
> 7 You having accepted the terms and conditions as mentioned in the engagement letter, it is binding on you and your claim for higher amount as per option "a" is unjust and not as per the agreed terms. Hence we are unable to accede to your request.
>
> Please note that no further correspondence will be entertained in this regard."

It is the case of the Defendant specifically pleaded before the trial

Judge that inspite of explaining to the Plaintiff time and again that as per the agreed Engagement Letter dated 01 July 2017, it shall be the sole discretion of the Defendant to decide the payment terms i.e. either as per option "a" or "b", however, the Plaintiff vide letter dated 26 August 2019 alleged that the sale was based on cash basis hence, the Defendant had to pay the fee as per option (a) i.e. at 0.50% of the total sale, which is totally against the agreed contractual term that the Defendant has the discretion to choose the payment method as mentioned in the Engagement letter and the Plaintiff was made aware about the exercise of option (b) by the Defendant. The Defendant states and submits that after having accepted the Defendant's right to choose the fee payable i.e. under option (a) or (b), the Plaintiff cannot turn around and question the contract and claim the fee as per option 'a' upon expiry of the term of the engagement. When further, it is categorically mentioned in the Engagement Letter which is a binding contract on the parties that it is the Defendant's discretion to choose option "a" or option "b" and the Plaintiff cannot decide the payment option. What is most important to note is that the Plaintiff has raised an invoice based on option 'b' on 15/01/2018 and claimed a sum of Rs.14,17,333/-

and no evidence is tendered, as to why the Plaintiff should subsequently deviate.

27. It is trite position in law that it is not open for the Court to re-write the contract and when the terms and condition are clearly and explicitly set out in an unambiguous language and the parties have acted upon the same, we do not find any justification in the Plaintiff now deviating from its stand. The words in a contract should be construed as per the understanding of the parties and the Plaintiff was aware of the arrangement and rather acted in pursuance of the same, when it raised its invoice on 15/01/2018, which was purely based on option 'b'. The success fee and portfolio being decided by the Defenant-Bank, right upon the commencement of the period, when the services were rendered by the Plaintiff, the suit is instituted for recovery of the fees at 0.50% against certain invoices as oppose to the fee at 0.0749% paid by the Defendant Bank in terms of the expressed terms of the Engagement Letter. Once having accepted the terms and conditions mentioned in the Engagement Letter, it binds both the parties and, therefore, the Plaintiff is now estopped from denying its engagement once having accepted and acting upon the same.

The contention of the Plaintiff that it was required to put in more efforts to get 100% cash bids is also not acceptable as it has taken a conscious decision to give its quotation and subject to its acceptance, the Engagement Letter was issued initially on 01/07/2017, which was further extended.

The Plaintiff has agreed to provide services to the Bank on terms and conditions set out in the Engagement Letter of 01/07/2017 and rather the Bank agreed to assign it the duty of Financial Advisor only because it agreed to provide services as stipulated. It is worth to note that the Engagement Letter/ Mandate Letter dated 01/07/2017, would clearly discern that the services of the Plaintiff were engaged as Financial Advisor, with the scope of the services being clearly set out covering phase 1 and phase 2.

The terms of payment provided that the fees shall be paid based upon the invoices raised only for successful sale of NPAs out of the list of accounts advised. Clause III provided that the empanelment will be valid for one year and clause (2) determined the success based fee by bifurcating it in clause 'a' and 'b', with the discretion being vested with the Bank to choose option 'a' or 'b' payable on successful bids. We do not find any sort of ambiguity in the clear understanding.

28. When we turned our attention to the Tender document published by the BoI in June 2018 for sale of NPAs, we find that the said tender notice clearly specified the bid structure as 100% cash basis and the bid was invited for purchase of NPA Portfolio of 21 accounts with principal outstanding of approximately Rs.446.12 Crores on “as is where is and whatever there is” basis. The details of these 21 accounts, clearly specified the Reserve Price (100% Cash Basis).

The bid also contain a specific clause wherein the Bank of India has reserved the right to add or delete the accounts or modify the composition of the Financial Asset Portfolio/ Tranches or the single accounts offered for sale and the sale structure at any stage without assigning any reason. Thus, when two options were available clearly for the portfolios, in that case, the Bank chose to exercise option 'b' i.e. success based fee on sale amount received from the bidder, which included the SRs and this entail a fee of 0.0749% to the Financial Advisor.

29. The learned Single Judge has rightly captured the essence

of the agreement entered between the parties and answered the issues raised before him in absence of any evidence, as both the parties made it clear that they are not desirous of adducing evidence.

He clearly noted that rendering of services by the Plaintiff for the value of sales effected for the Defendant Bank is not in dispute, but the only dispute is about the rate at which the fees are payable. A specific stand adopted by the Bank was in regard to the misrepresentation and misreading of the terms and condition of the Mandate Letter and it was urged that the Plaintiff had erroneously mixed together two separate concepts of the Bank's activity of sale of its NPAs in the market with its engagement as Financial Advisor to provide assistance in the matter of such sale.

A clear distinction was drawn by the learned counsel representing the Respondent-Bank that the contact executed between the Plaintiff and the Bank does not govern the rights and obligations of the Defendant Bank in the matter of sale of its NPAs in the market and there is nothing in the Mandate Letter, which would govern the Bank's entitlement to opt for a particular method of sale of its NPAs and the manner in which the Bank could sale its NPAs in the market is completely outside the purview of contract executed with the Bank, which was at its complete discretion as to how it should sale its NPAs.

It was clearly averred that the word ‘discretion’ in the Mandate Letter refers to the discretion either choosing of option 'a' or 'b' for payment of fees to the Plaintiff, but this discretion has no connection with the choice made by the Bank to opt for particular method for sale of its NPA.

30. The learned Judge was persuaded to accept the submission that in a tender document, if two views are possible, the one made by the employer would prevail and for this purpose reliance was placed on ***Silppi Constructions Contractors*** (supra) in submitting that interpretation by the Bank must prevail over the one suggested by the Plaintiff. The true and correct interpretation of the Mandate Letter was placed before the learned Single Judge by specifically asserting that the Mandate Letter issued to the Plaintiff would mean that the fee payable to the Plaintiff is to be computed as a percentage of cash received from the bidder i.e. percentage of cash component of the total sale consideration by excluding the value of the security receipts i.e. option 'a' and if it

is in terms of percentage of sale amount received from the bidder i.e. percentage of total sale consideration including the value of the security receipts then it is option 'b'. The discretion was, therefore, vested in the Bank to choose, whether to make the payment to the Plaintiff as a percentage of cash receipt from the bidder by opting for option 'a' or to pay fees as a percentage of sale amount received from the bidder under option 'b' and it was specifically pointed out by the learned senior counsel representing the Defendant-Bank that the Plaintiff was already being paid the due amount of the fees in accordance with the bids submitted by and nothing is due and payable to the Plaintiff.

It is in this context, the learned Single Judge answered the two issues, by noting that the only point for consideration is whether the Defendant has option/discretion to pay success fee at rate of 0.0749% even in respect of 100% cash based transaction as per clause III(2) of the Mandate Letter dated 01/07/2017. The issue that arose for consideration was, therefore, clearly carved out as below :-

> "25. Thus, the short issue that arises for consideration in the present Suit is about the entitlement of the Plaintiff to its fees based on particular percentage of the sale amount of Rs.1480.53 crores, either under option 'a' or option 'b' of the Mandate Letter."

31. Reading of the Mandate Letter alongwith the scope of the understanding, it is held that no distinction was made in respect of 100% cash sale or sale comprising of cash plus SRs.

In a very precise manner, the learned Single Judge noted the difference between the two concepts, which is to be found in paragraph 28.

> "28. It would now be necessary to understand the difference between the concepts '100% cash sale' and sale comprising 'cash plus SR' components. When NPA account of a bank is sold to either ARCs, Banks, FIs/NBFCs, etc., the purchaser may choose to offer the consideration either in the form of 100% cash or in a given case, purchaser may offer part cash and part Security Receipts **(SR)**. A Security Receipt broadly means a receipt or other security, issued by an ARC to any Qualified Buyers (QBs) pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation. Section 7(1) and (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act)** provides for issue of Security Receipts after acquisition of financial assets under Section 5(1) to the qualified institutional buyers (QIBs) and raising of fund from QIBs for formulating scheme for acquiring financial assets. The scheme for the purpose of acquiring security receipts under Section 5(1) can be in the nature of a Trust to be managed by the securitisation company or reconstruction company. Such Trust issues Security Receipts to QIBs and hold and administer the financial assets for the benefit of QIBs. The special features of Security Receipts are that the security receipts issued by the securitisation company or reconstruction company are predominantly backed by impaired assets as the same cannot be strictly characterized as debt instruments since they combine the features of both equity and debt. The cash flows from the underlying assets of Security Receipts cannot be protected in terms of value and intervals."

32. Appreciating the case of the Plaintiff that the Bank preferred 100% cash sales of NPAs over sale through combined components of cash puls SRs, the learned Single Judge recorded

that efforts are required to be taken by a Financial Advisor for selling NPA on 100% cash basis, than it is to be sold on cash plus SRs transaction, but it is noted that Plaintiff has not chosen to lead any evidence and in the wake of the denial of the Plaintiff's assertion to that effect, this contention was held to be not acceptable.

While construing the argument advanced on behalf of the Plaintiff, to the effect that the Bank exercised its discretion as per rights vested in it under condition appearing at the foot of the table in clause III(2) of the Mandate Letter by declaring that the sale would be on 100% cash basis, without involving any element of SR, as in the Tender document of June 2018, it was declared that bid structure was 100% cash basis, the learned Single Judge found this contention to be not acceptable, as the Plaintiff was under the belief that the Defendant Bank shall exercise the discretion of option 'a' or 'b' with respect to the manner in which the Bank NPAs are to be sold. In this regard, it is relevant to note the observations of the learned Single Judge, which are very pertinent.

> "38. In my view, there is a fundamental error in the above belief of Plaintiff that the right vested in the Defendant-Bank to exercise the discretion for choosing option 'a' or b' is with respect to the manner in Which Bank's NPAs are to be sold. Plaintiff has erroneously mixed its

contract for rendering services as Financial Advisor and receipt of fees therefor with the Bank's right to sale its NPAs in the open market. The contract entered into with the Plaintiff cannot determine the manner in which the Bank would sell its NPAs. It would be absurd to expect that the Bank would take upon itself any obligation in respect of sale of its NPAs while entering into contract with Financial Advisor whose role is restricted to assist the Bank in effecting of such sale. It would be like to expect a contract with a broker for payment of brokerage fee governing the manner in which the owner would sell his property. In my view, condition appearing at the foot of the table in Clause III (2) of the Mandate Letter '*The bank, at is discretion, may choose option 'a' or 'b' payable on successful bids.*' is essentially referable to the manner in which the fees are to be paid to the Plaintiff-financial advisor. It has nothing to do with the way in which Defendant-Bank was to sell its assets in the open market. Thus the contact executed with the Plaintiff cannot govern the right of the Defendant-Bank to sell its assets in a particular manner in the market. For the purpose of securing assistance of a Financial Advisor, it was not necessary for the Defendant-Bank to make known to the Financial Advisor the manner in which it would sell its NPAs. This position is further clear from the Clause 29 of the tender document, which reads thus:-

> "29. Bank of India reserves the right to add or delete accounts or modify the composition of the Financial Assets Portfolio/Tranches or the single accounts offered for sale and the sale structure at any stage without assigning any reason."

39. Thus, though the bids were invited on 100% cash basis, the Defendant-Bank had the discretion of altering the bid structure and opting for 'Cash plus SR' sale in respect of a particular NPA. Thus, the broader right of the Bank to choose the manner in which it would receive the consideration for sale of NPAs cannot be confused with the limited right of Plaintiff to receive fees for services rendered by it under the Mandate Letter. I am therefore of the view that condition at the foot of the table in Clause III (2) of the Mandate Letter does not govern discretion of the Bank to choose the manner in which it would receive consideration for sale of a particular NPA. The said condition governs discretion of the Defendant-Bank about the manner in which fees would be paid to the Plaintiff in either option 'a' or option "b'. Therefore, it cannot be contended that in every sale transaction where 100% cash element is involved, the fees must be necessarily 0.50% of the entire cash value or that the lesser percentage of fees of 0.0749% becomes applicable only where the sale transaction involves 'Cash plus SR'."

33. Since the learned Single Judge has rightly interpreted the

terms in the contract, and inferring that both, options 'a' and 'b' are available with the Bank in respect of every sale effected by it and the contention that in every case, where the sale is effected on 100% cash basis, the Bank is precluded from exercising option ‘b’ is rejected. It is rightly held that option ‘b’ is applicable on entire sale amount received from the bidder, where such sale amount is through 100% cash basis as well. The finding that the use of words ‘ cash received’ and ‘excluding Bank SR’ would necessarily mean that option 'a' also covers transactions involving composite sale comprising i.e. 'Cash plus SR' and the Bank would exclude the SR component and compute 0.50 % fees only on cash component. The finding that the option 'a' cannot be construed to mean that the same becomes applicable in every case where there is 100% cash sale without involving an element of SR or that option 'b' becomes inapplicable where the sale is on 100% cash basis.

34. We concur with the view of the learned Single Judge that option ‘b’ is also available to the Bank where the sale occurs on 100% cash basis and that both options are available with the bank in respect of every sale effected by it and, therefore, the Plaintiff

definitely cannot claim a vested right that this option 'b' would further have a bifurcation about the amount received in cash or the amount received in form of SR.

35. The learned Judge has supported his finding with appropriate precedents and we do not find any legal error/lacuna in the reasoning, which is based upon the true and correct interpretation of a contract entered between the parties and we must note that even the Plaintiff understood it to be so, but subsequently deviated from the said interpretation and raised invoices by staking its claim of 0.50% on the basis of presence of cash component in the transaction.

Admittedly, the contract is executed between the parties in terms of the offer invited by the Bank, when the interest parties were called upon to quote their commercial bids. The Bank considered and accepted the quote of the Plaintiff on the basis of its interpretation of the terms in the advertisement that Option 'a' and 'b' would both remain available for it to be chosen after conclusion of sale of portfolio, with full discretion conferred on it to choose either of the options. Option 'a' was never understood by the Bank to mean payment of quoted percentage of fees on entire sale transaction merely because the sale is conducted on 100% cash basis. Rather the Bank agreed to pay the higher rate with an understanding that the same would apply in case where the Bank decides to pay fees as a percentage of cash component out of the total sale component. In case of commercial liability, the settled principle being that the Court shall not impose its views and substitute the contract, but shall permit the parties to be governed by the understanding, and particularly when, the contract is of commercial nature.

36. Finding no reason to interfere with the well reasoned order passed by the learned Single Judge and the view taken, being acceptable in a commercial sense, we dismiss the Appeal.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**