

(2017) 02 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : CWP 7175 of 2009 (O&M)

Alchemist Reality Ltd.

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Contract Act, 1872 — Section 126, Section 6, Section 7
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : (2017) AIRCC 1285

Hon'ble Judges : M.M.S. Bedi, J.

Bench : Single Bench

Advocate : Mr. Sanjeev Sharma, Sr. Advocate with Mr. Shekhar Verma, Advocate, for the Petitioners; Mr. I.P. Singh, Advocate, for the Respondent Nos. 1 and 2; Ms. Harpreet Kaur for Mr. Amit Jain, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

M.M.S. Bedi, J.—The present case is an astonishing instance of unreasonable and unfair attitude exhibited by the officials of Punjab and Sind Bank, a nationalized Bank, by unlawfully and fraudulently forfeiting the proceeds of the Fixed Deposit Receipt of year 2007 for a sum of Rs. 5 crores on the flimsy defence that the bidder failed to deposit the balance of sale consideration of non-performing financial assets of M/s Tensile Steels Pvt. Ltd. despite the fact that the sale is absolutely impossible on account of judicial orders and the defaulter Company having settled the matter with Bank on payment of all dues.

2. Petitioner No.1 is a Company registered under the Companies Act, 1956. Petitioner No.2 is a share holder of the Company and it carries on the business of petitioner No.1 through the agency and/or instrumentality of petitioner No.1 Company. In the course of business, petitioner No.1 indulges in acquiring and entering into the agreements with interested parties for purchase of assets of sick companies or the companies in liquidation having suitable immoveable

properties for the purpose of development. Respondent No.1 is a scheduled Bank as stated in the First Schedule of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980. Respondent No.2 is its branch and is an instrumentality of the State. As per the declaration on the website of respondent No.2, working Directors of respondent No.1 are Sh. A. Bhattacharaya, Director, Ministry of Finance, Department of Financial Services, New Delhi, Sh. R. Sadanandam, RBI, Nominee Director, Sh. R. Gandhi, Additional Director (Regional Director, RBI New Delhi), Sardar Avtar Singh Mann, Officer's Director, and Sardar Mohan Singh Sekhon, Workman Employee Director. Respondents No.1 and 2 would fall under the definition of the State within the meaning of Article 12 of the Constitution of India. Punjab and Sind Bank, respondent No.1 had been a lender to M/s Tensile Steel Limited. By virtue of a Notice published in newspaper on May 17, 2007, annexure P-2, as per the RBI guidelines, the Punjab and Sind Bank, respondent No.1 had decided to put on sale the Non-performing assets, by way of assignment on "without recourse basis". The parties interested were required to submit demand draft of Rs. 10 lacs per account towards earnest money deposit (EMD) by June 20, 2007. Respondent No.3-Corus Infrastructure Pvt. Ltd., a company constituted under the Companies Act, 1956 having its registered office at Plot No.249, Sector 22, Gandhi Nagar, Gujarat, approached petitioner No.1 and informed that it had submitted a bid of Rs. 32.13 crores with respondent No.1 Bank for purchase of impaired financial assets of M/s Tensile Steel Limited, Manjalpur, Vadodara, Gujarat, hereinafter referred to as "M/s Tensile Steels". It was informed that the bid of respondent No.3 had been accepted hence respondent No.3 requested petitioner No.1 to associate itself in acquisition of the impaired assets by rendering financial assistance. Vide letter dated July 9, 2007, annexure P-1, the Punjab and Sind Bank had intimated respondent No.3 that its bid for sum of Rs. 32.13 crore had been found to be highest and the matter was pending consideration of the competent authority. In the said letter it was clarified that the acceptance of the bid offer would depend upon the concerned litigation pertaining to the impaired financial assets of M/s Tensile Steels and acceptance by the competent authority. Petitioners were informed that respondent No.3 had obtained a Bid Form, Draft Non-Disclosure Agreement and Terms and Conditions of Sale by depositing bank drafts aggregating to Rs. 1 lac with the Bank. Thereupon, under cover of a letter dated June 19, 2007, respondent No.3 submitted a further sum of Rs. 9 lacs thus totalling a sum of Rs. 10 lacs by way of earnest money deposit as contemplated under Clause 6 of the Terms and Conditions of Sale. Vide letter dated June 19, 2007, respondent No.3 had submitted its bid for purchase of the above said impaired financial assets of the Company. Respondent No.3 informed the petitioner that after acceptance of the bid for purchase of above said impaired assets of Company, respondent No.1 Bank was insisting on a deposit of Rs. 5 crores by way of a Fixed Deposit with it so as to show its bona fide to acquire the assets of the Company. Being interested in the above said proposal, the petitioners made inquiries from respondent No.1 Bank and came to know that although respondent No.1 had accepted the bid of respondent No.3 but

respondent No.1 was yet to finalise the same due to the pendency of litigation and the stay granted by Vadhodra Court in a suit filed by the Company in respect of its assets. In view of the said circumstances, petitioner No.1 entered into a Memorandum of Understanding on November 8, 2007, copy of which has been appended with the petition as annexure P-4. Petitioner No.1 had agreed to provide funds of Rs. 5 crores in "No Lien" Account solely to be utilized for part payment of the impaired financial assets of the Company upon completion of all litigations. Petitioner No.1 had also further agreed that all necessary funds would be paid directly to respondent No.1 in the event of completion of litigations and all other formalities with regard to the sale. It was agreed that in the event the assets of the Company were ultimately Not assigned to respondent No.3 for want of permission from the concerned Courts or for any other reason, the amount would be reimbursed to petitioner No.1. On November 12, 2007, petitioner No.1 and respondent No.3 opened two current accounts with Punjab and Sind Bank at the branch of respondent No.2 being Current Account No.328 and Current Account No.329 respectively. Upon the request of respondent No.3, respondent No.2 represented to and gave an undertaking in favour of petitioner No.1 that in case the arrangement with respondent No.3 was Not approved by the competent Court, the entire money under the said "Fixed Deposit Receipt" would be credited in the current account maintained by petitioner No.1. Relying upon the said assurance, petitioner No.1 deposited sum of Rs. 5 crores in Current Account No.328. This amount was thereafter transferred to Current Account No.329 and then deposited under a scheme of "Fixed Deposit" floated by respondent No.2 for a period of six months, the maturity value whereof stood at a sum of Rs. 5,18,92,578/-. The aforesaid amount of Rs. 5 crores was deposited by petitioner No.1 and the aforesaid arrangement had been entered into by petitioner No.1, relying upon the aforesaid representation of respondent No.2. A copy of the Fixed Deposit receipt No. 815937 dated November 12, 2007 was made over by respondent No.2 to petitioner No.1. Petitioner No.1 has appended a copy of the FDR as annexure P-5. Respondent No.2 also confirmed about the arrangement by a letter dated November 12, 2007 to petitioner No.1 which reads as follows:-

"Punjab & Sind Bank

SCO 251, Sector 16,

Panchkula.

To,

M/s Alchemist Reality Ltd.

Date: 12.11.2007

SCO 12-13, Sector 9-D,

Chandigarh.

Dear Sir,

Reg: FDR No. 815937 dated 12.11.2007 in favour of M/s Corus Infrastructure P. Ltd. for 5 corre.

We have issued the above FDR today for 6 months. We confirm that in case arrangement of M/s Corus Infrastructure P. Ltd. is Not approved by the competent Court the entire money of FDR will be credited in you're a/c No. 328 with us without any recourse/demur either to M/s Corus Infrastructure P. Ltd./ Punjab & Sind Bank or any other agency.

We further confirm that we will Not allow change of the authorised signatory in the current account of the said company and also will Not allow the company to file any resolution for suppression/closure the account or in any matter without the written consent from you.

Thanking you,

Sd/-Chief Manager."

3. Copy of the said letter has been appended with the petition as annexure P-6. As per the letter annexure P-6, dated November 12, 2007, the respondent Bank had committed under the instructions of the petitioners to credit the entire amount of FDR in Current Account No. 328 in case the arrangement of M/s Corus Infrastructure Pvt. Ltd. was Not approved by any competent Court. Admittedly, there was litigation pending between M/s Tensile Steels and the respondent Punjab and Sind Bank and the High Court of Gujarat, in proceedings arisen out of Section 13 (9) of the Securitisation of Assets, Reconstruction and Enforcement of Financial Interest Act, 2002, and Gujarat High Court had restrained respondent No.1 Bank from taking any action against the properties of said company pursuant to a Notice dated December 19, 2003. Respondent Bank had opted to file LPA No.32 of 2008 challenging the interim order of Gujarat High Court. Vide order dated February 27, 2007, the Division Bench of Gujarat High Court had directed the Company to restore possession of properties and assets to respondent Bank and respondent No.1 Bank was restrained from alienating or transferring or selling of the property in dispute. The operative part of the order dated February 27, 2008 passed by Division Bench of Gujarat High Court in LPA No.32 of 2008 reads as follows:-

"We have given direction for restoration of the possession as there was No compliance of the provisions of sub-section (3A) of Section 13 of the Act and when matter is pending before the learned Single Judge and there is No restriction on the third letter regarding possession; restriction as only on sale or otherwise transfer of the properties and assets of the company. The direction which we have given for restoration of the possession in the earlier order was based on the fact that the representations are Not disposed of as required under sub-section (3A) of Section 13 of the Act. Now that has been complied with. For the time being, we are of the view that the possession should be restored back to the appellant Punjab and Sind Bank. But if the possession is handed over to the appellant Punjab and Sind Bank, Bank is restrained from alienating or

transferring or selling of the property in question. If there is any dispute as to whether the consent was given or Not for the possession, this order will be subject to modification on the views expressed by the Bank of India on clarifying their intention regarding possession in their third letter dated 3.7.2007."

4. In view of the above said clear dictum of the Court, the respondent Bank was Not capable of accepting the bid of respondent No.3 and alienating the assets of M/s Tensile Steels in favour of respondent No.3 M/s Corus Infrastructure Pvt. Ltd. but respondent No.1 by a letter dated February 27, 2008 intimated respondent No.3 that it shall execute the appropriate Assignment Deed on completion of all contractual prerequisites. As the bid of M/s Corus Infrastructure Pvt. Ltd. had been accepted subject to the terms and conditions of the bid form, the broad guidelines issued by the Reserve Bank of India dated July 13, 2005 governing and regulating the transfer assignment of financial asset and the laws to which the parties thereto were subjected, Respondent No.3 M/s Corus Infrastructure Pvt. Ltd., the successful bidder, had informed the petitioners that the transaction could Not be completed for want of necessary permission from the competent Court and that the respondents were in the process of having their inter-se dispute resolved through arbitration. Respondent No.3 had filed a misc. application in the litigation between M/s Tensile Steels and respondent No.1 Bank seeking an audience after being impleaded as a party to the proceedings in LPA No. 2210 of 2007. Since respondent Bank had an intention to transfer the Nonperforming assets of M/s Tensile Steel to third party, Gujarat High Court vide order dated May 22, 2008 annexure P-9, had permitted the petitioner to approach the Registry for release of sum of Rs. 10 crores.

5. In view of the pending litigation, the petitioners claimed the withdrawal of sum of Rs. 5 crores which had been deposited with the respondent Bank as it was lying in "No lien" account, along with accrued interest. In order to enforce their right of withdrawal of the amount of Rs. 5 crores, through letter dated January 28, 2009, a request was made to respondent Bank demanding the proceeds of FDR No.815937 dated November 12, 2007 along with interest thereupon to be credited to the account of petitioner No.1 being Current account No.328 in Panchkula Branch of respondent No.1 Bank vide letter annexure P-10, sent through registered post and received by respondent No.2 vide acknowledgement receipt annexure P-11. The petitioners have claimed that the amount of Rs. 5 crores in the above said account is the property of the petitioners and the petitioners cannot be deprived of its property without any authority of law by respondent Bank which is an instrumentality of the State. Since the respondent Bank was incapable of assigning or transferring the Nonperforming assets of M/s Tensile Steels in favour of respondent No.3, interalia on account of restrictions contained in the Court order dated February 22, 2008 passed by Gujarat High Court in LPA No. 32 of 2008, the respondent Bank was not in a position to perform its obligation under the contract and could not have called upon respondent No.3 to deposit the balance consideration and having already entered into a settlement with the Company-M/s Tensile Steels, there was no reasons for

respondent No.1 to forfeit the proceeds of the Fixed Deposit. Even if the terms and conditions of the bid, annexure P-2 (colly), are perused, on account of failure to deposit the balance amount of sale consideration within the stipulated period, the respondent Bank, at the most was entitled to forfeit the EMD as per Clause 6 which was a sum of Rs. 10 lacs as deposited by respondent No.3. The respondent Bank having not fulfilled their contractual obligation to deposit the sum of Rs. 5 crores as per annexure P-6, cause of action accrued to the petitioners to enforce the legal right by filing the writ petition.

6. A reply has been filed by Punjab and Sind Bank on behalf of respondents No.1 and 2 resisting the claim by raising a plea that the writ petition is not maintainable as the petitioners have alternative remedy to file suit for establishing its right, if any, to the proceeds of FDR, especially after forfeiture of the deposit of FD and termination of contract by respondent Bank due to default by respondent No.3-bidder in making payment of balance sale consideration. It is claimed that disputed questions of fact arise as the parties are at variance on the terms of the agreement, the dispute could be settled by trial on the basis of the evidence. A preliminary objection has also been raised by the respondent Bank that contractual privity in respect of participation in sale/ assignment of NPFA in question is exclusively between the respondent Bank and respondent No.3 i.e. M/s Corus Infrastructure Pvt. Ltd and the FDR annexure P-5 having been issued in favour of respondent No.3, the respondent Bank is not bound by the terms of Memorandum of Understanding, annexure P-4, between respondent No.3 and the petitioners. The respondent Bank claimed that the forfeiture and termination of contract cannot be allowed to be agitated in writ proceedings. Another objection raised by Bank is that the contract of sale of NPFA in question by way of assignment between respondent No.1 and respondent No.3-bidder contains an arbitration clause providing inter-alia for settlement of dispute by reference to Arbitrator and respondent No.3 is pursuing its claim in arbitration proceedings before the Arbitrator praying for reversal of entries and putting the amount in dispute, back in the form of FDR as it stood prior to its appropriation, the writ petition is not maintainable.

7. It is important to observe here that the respondent Bank has admitted that the Arbitrator has allowed the claim of respondent No.3. On asking of the Court, counsel for the Bank has made available a copy of the order of Prem Kumar, Sole Arbitrator, pertaining to the dispute between M/s Corus Infrastructure Pvt. Ltd. and Punjab and Sind Bank which has come into existence during the pendency of the petition. Copy of the order dated May 8, 1990 passed by the Arbitrator indicates that the Bank has been restrained from appropriating the amount as its own amount in its books and is to preserve this amount as an interim measure or to refund the amount to the claimant subject to a bank guarantee.

8. In the written statement in para 15, the respondent Bank has pleaded as follows:-

"?..On 31.5.2008, the respondent Bank has received the entire settlement

amount of Rs. 35.00 crore. Consequently, the account of M/s Tensile Steel Ltd. has been closed in the books of respondent Bank."

9. A perusal of the written statement filed by the Bank indicates that so far as the factual position depicted in the petition is concerned, the same has been admitted. It has been admitted that respondent No.3 has submitted its bid of Rs. 32.13 crores which was found to be highest and the said fact had been conveyed to respondent No.3 vide letter dated July 9, 2007, annexure P-1. The Memorandum of Understanding between the petitioners and respondent No.3 dated November 8, 2007, annexure P-4 regarding financial and commercial arrangement has not been denied but the Bank claims that it being not a privy to the said arrangement, it will not be bound by the terms of the said MoU. Respondents No.1 and 2 have admitted letter annexure P-6, dated November 12, 2007 confirming the acknowledgement of the FDR of Rs. 5 crores in favour of respondent No.3 by petitioner No.1 Company and simultaneously admitting that the FDR had been issued for six months and that in case arrangement of respondent No.3 is not approved by competent Court, the entire amount of FDR will be credited in the account of petitioner No.1 bearing Current Account No.328. The order passed by the Division Bench of Gujarat High Court, annexure P- 7, has also been admitted. Respondents No.1 and 2 have pleaded that petitioners are waging a proxy litigation against the bank on behalf of respondent No.3 who had failed to abide by the terms and conditions of the agreement resulting in forfeiture of the deposit. It is pleaded that respondent No.3 has invoked arbitration clause wherein respondent No.3 has also claimed the amount of FDR along with interest subject to the decision in present writ petition. In order to justify the withholding and forfeiture of the amount furnished by petitioners No.1, the Bank has pleaded that respondent No.3 had agreed to execute deed of assignment and completion of other legal formalities and failed to deposit within 15 days, the balance sale consideration, despite demand annexure R-2 dated March 5, 2008. The respondent Bank has pleaded that letter annexure R-3 dated March 19, 2008 requiring the Director of respondent No.3 to deposit balance bid amount within 15 days was not responded to as such vide letter dated March 29, 2008, annexure R-4, the offer of sale of impaired financial assets was withdrawn and the amount deposited stood forfeited. The respondent Bank has pleaded in the written statement-

"??The petitioner has no right or case to claim the proceeds of FDR, now on the default by respondent No.3 in honouring its contractual obligations resulting in forfeiture of deposit and termination of contract."

10. So far as the stay order dated February 27, 2008 passed by the Hon"ble High Court of Gujarat restricting the Bank to alienate the sale of the property of M/s Tensile Steels is concerned, an excuse has been made that the High Court of Gujarat did not restrict the sale of debt on assignment basis.

11. It has been averred in the written statement that there was no embargo on the assignment of NPFA in favour of respondent No.3 but the Bank had not been

restrained from alienating or transferring or selling the property of M/s Tensile Steel.

12. Separate written statement had been filed by respondent No.3 supporting the claim of the petitioners to the extent that respondent No.1 Bank should credit the proceeds of FDRs dated November 12, 2007 in Current Account No.328 maintained by petitioner No.1 with respondent Bank, in particular, respondent No.2 Branch. Respondent No.3 admitted that it was the highest bidder in successful auction in respect of the impaired assets of M/s Tensile Steels and that a sum of Rs. 5 crores by way of an FD was advanced by petitioner No.1 Company to respondent No.3 towards purchase of the impaired assets. It has been pleaded by respondent No.3 that on refusal of the respondent Bank to create the proceeds of the Fixed Deposit, it invoked arbitration clause where sole Arbitrator was appointed. It is admitted that as per the conditions of sale an earnest money of Rs. 10 lacs was deposited vide three bank drafts of Rs. 1 lacs and a cheque of Rs. 9 lacs drawn on Corporation Bank. It is admitted that respondent No.3 was the highest bidder. Vide letter dated July 9, 2007, acceptance of bid was intimated to respondent No.3 but it was for the first time, that pendency of a litigation was referred to in the letter. An application filed under Order 7, Rule 10 CPC for rejection of the civil suit filed by M/s Tensile Steels was allowed on the ground that SARFAESI action had already been taken. M/s Tensile Steel had initiated proceedings before the Gujarat High Court under Articles 226/ 227 of the Constitution of India seeking a direction to the Civil Court to hear and dispose of the suit on merits. M/s Tensile Steel had informed the Court that a settlement had been arrived wherein an amount of Rs. 275 lacs had been agreed upon. The High Court vide order dated November 1, 2007 had granted interim stay on SARFAESI action. It is further pleaded that the orders passed in various proceedings directing interim stay of action taken pursuant to the notice dated December 19, 2003 under SARFAESI Act, respondent No.3 Bank had demanded a sum of Rs. 5 crores as part payment to the bid amount. As it did not have any knowledge of the various proceedings pending the Gujarat High Court, it being the highest bidder, wanted to fulfil its contractual obligations, entered into Memorandum of Understanding dated November 8, 2007 with the petitioners and agreed to provide sum of Rs. 5 crores in "No Lien" account solely to utilize it for part payment of impaired financial assets of M/s Tensile Steel. Respondent No.3 pleaded that letter annexure C-8 (Colly), was sent to the Punjab and Sind Bank, Panchkula, stating as follows:-

"In this connection we hereby request you to prepare a Fixed Deposit for Rs. 5 crores for a period of 6 months and we will lodge with you the above FDR duly discharged by us with request of mark bank's lien on it for appropriating the proceeds of the said FDR towards the part payment of the total consideration price of Rs. 32.13 crores at the time of assigning the debit of M/s Tensile Steel Limited in favour of M/s Corus Infrastructure Pvt. Ltd., after the vacation of stay of sale of debt on assignment basis by the Vadodara Court."

13. Copy of the letter dated November 12, 2007 has been appended as annexure C-8. Regarding the conduct of the Bank, it is pleaded by respondent No.3 that vide order dated February 27, 2008, the High Court of Gujarat had restrained the alienation and transferring or selling of the property of M/s Tensile Steel and on the other hand the Bank, in blatant breach of the stay order issued a letter of acceptance dated February 27, 2008. The said conduct of the Bank is the evidence of the malafide of the respondent Bank who from the very inception never intended to sell and assign the debt of the collateral property of M/s Tensile Steel or to perform its contractual obligation. The only endeavour of the Bank was to illegally with-hold whatever money it had received in the conduct of the auction. Respondent No.3 has stated that despite the stay order operating against the respondent Bank, on March 3, 2008, it sent an SMS to respondent No.3 stating as follows:-

"Mr. Bharat Nayak and Mr. Gandhi, Advocates have taken order copy from Gujarat High Court today. There is no bar on assignment of debt of Tensile Steel NPA a/c. Please, deposit the balance consideration amount of Rs. 27.13 crores without any further delay and execute the deed of assignment GM (L&R), P&SB."

14. It is further pleaded that the respondent Bank on account of various stay orders passed by the High Court of Gujarat in various writ petitions and appeals therefrom, could not have proceeded in furtherance of the notice dated December 19, 2003 under SARFAESI Act. The respondent Bank, as an after thought and solely to dislodge an allegation of contemptuous conduct, had come out with an indigenous argument to explain its conduct including the message as reproduced above, to the effect that the respondent Bank merely sought to assign the debt of M/s Tensile Steel Pvt. Ltd. and not the collateral property and therefore, assignment of debt alone was not restrained by any of the orders of stay passed by the Hon"ble High Court of Gujarat. It is further submitted in the reply that the falsity of the defence of the respondent Bank is apparent that as an action to assign a debt and/ or sell the collateral property thereunder would include an action in furtherance of notice under SARFAESI Act, which had been restrained by the Hon"ble High Court of Gujarat. It is a trite in law that the Contract for sale of non-performing financial assets would necessarily include the debts as well as the assets i.e. the collateral in the form of moveable and immoveable properties of M/s Tensile Steel Pvt. Ltd. On March 5, 2008, the respondent Bank addressed a letter to respondent No.3 demanding the payment of the balance amount in terms of the bid latest by March 12, 2008 vide letter annexure C-10. Respondent No.3 addressed a letter to respondent Bank acknowledging the receipt of the letter dated March 5, 2008 and informed that a decision on the legal formalities will be taken only after consultation with legal counsel for which a Board meeting has already been called, as it was necessary for respondent No.3 to understand the legal import of the interim stay granted by the Hon"ble High Court of Gujarat vide order dated February 27, 2008 which has been appended as annexure C-11, equal to annexure P-7. On March 14, 2008, the respondent Bank addressed another letter to respondent No.3

acknowledging that it had informed the Bank about the legal counsel being sought but at the same time reminding respondent No.3 for balance bid amount was to be paid and the period for payment had expired. Vide letter annexure C-12, again on March 29, 2008, the respondent Bank by a letter withdrew the said assignment of debt without issuing a legal notice formally terminating the assignment of debt. The respondent Bank was fully cognizant of the fact that it had been restrained by an order dated February 27, 2008 passed by the Gujarat High Court for transferring the properties being collateral for the debts which were to be assigned to respondent No.3 and the LPA No.32 of 2008 which was pending before the High Court. The Bank was also aware of the pendency of Special Civil Application No. 28183 of 2007 wherein it had been restrained vide order dated November 1, 2007 and the said writ petition came to be disposed of only on April 21, 2009. The respondent Bank was thus fully aware that it could not as such proceed with the assignment of debt or transfer the property in question due to operation of the stay orders yet it proceeded with the auction process and accepted the money from respondent No.3 solely with an intention to illegally withhold the said money against the contractual terms and conditions of sale.. Copy of the letter dated March 29, 2008 has been appended as annexure C-13 equal to annexure R-4. Copy of the judgment of Gujarat High Court at Ahmedabad dated April 21, 2009 has been appended as annexure C-14 in Special Civil Application No. 28183 of 2007. Respondent No.3 claimed that it was unaware of the fraudulent intention of the bank and the factum of stay orders passed by the High Court of Gujarat by virtue of which the respondent Bank could not have proceeded to auction/ assign of the debt or sale of property. Respondent No.3 addressed a letter to the General Manager (L&R) of the respondent Bank on March 31, 2008, seriously objecting to the withdrawal of the assignment by sending a letter annexure C-15, dated March 31, 2008 which reads as follows:-

"In response to your subject letter dated 29.3.2008, I have to say that the assignment deed for assigning the debt of M/s Tensile Steel Limited cannot be executed in light of the order of Hon'ble High Court passes on 27.2.2008 in Letter Patent Appeal No. 32 of 2008 because your Bank is restrained from transferring the assets of M/s Tensile Steel Limited in any manner whatsoever and you are assigning the debt of M/s Tensile Steel Limited on secured assets which you are required to transfer and hands over to us as soon as the assignment deed is executed. I, therefore, state that you cannot withdraw your decision to assign the debt of M/s Tensile Steel Limited without hearing us and also cannot forfeit the amount deposited by us with you.

I request your kind self to wait till the Gujarat High Court finally decided the Letters Patent Appeal No.32 of 2008 and oblige us."

15. The respondent Bank in order to protect itself from the allegations of the contempt to conceal the fraud, it had committed upon respondent No.3, addressed a letter to respondent No.3 for the first time stating that the notice

dated May 17, 2007 did not promise transfer of the properties i.e. real assets on signing of the Assignment Deed. Respondent No.3 claims that while the respondent Bank was, on one hand, pressurizing respondent No.3 to pay further sum towards consideration amount under the assignment/ sale of debt and collateral property, on the other hand the respondent Bank was negotiating consent terms with M/s Tensile Steels reflecting that the respondent Bank never intended to transfer the property of respondent No.3 and the intention of the respondent Bank was solely to procure as much as money from respondent No.3 and illegally with-hold and forfeit the same. It has been vehemently denied that the respondent Bank was entitled to forfeit the amount deposited by respondent No.3 on account of failure to deposit the stipulated amount with the Bank. The letter of the Bank has been appended as annexure C-16. Respondent No.3 on being informed that respondent Bank was in process of assigning the debt and assets of M/s Tensile Steel Private Limited to a third party thereby seriously prejudicing and frustrating the rights and claims of respondent No.3, it approached High Court of Delhi in an Application under Section 9 of the Arbitration and Conciliation Act and also invoked arbitration. The Delhi High Court vide order dated May 27, 2008 appointed Sh. Prem Kumar, Additional District and Sessions Judge, (Retd.), as Sole Arbitrator and directed respondent No.3 to approach the sole Arbitrator under Section 17 of the Act for interim measure. The sole Arbitrator vide order dated June 2, 2008 entered into reference and issued a status quo order in relation to the NPFA of M/s Tensile Steel Pvt. Ltd. vide order marked C-18. A fraudulent act of respondent Bank has been pointed out by respondent No.3 pleading that the respondent Bank neither intimated respondent No.3 about the pendency of the writ petition before the High Court of Gujarat nor did the Bank intimated the High Court of the factum of bid or the actions taken thereunder thus playing a fraud on respondent No.3 as well as on the High Court of Gujarat. Respondent No.3 has emphasized that it is only an afterthought to evade the consequence of contempt act that the respondent Bank invented an indigenous argument that the assignment proposed was only of the debt of M/s Tensile Steel and not the collateral property thereunder. Respondent No.3 submitted that the terms and conditions of sale do not in any manner, provide for sale of only the debts of M/s Tensile Steel without the attending assets. It would be absurd to assume that the offer of respondent No.3 was to take only the debts / liabilities of the NPFA without the collateral assets. The action of the respondent Bank in withdrawing the assignment of debt is an action unknown to law and the consequential forfeiture of the money deposited by petitioners and respondent No.3 is patently dishonest and illegal. It was further clarified by respondent No.3 that plain reading of Terms and Conditions of Sale and item 26 of list of impaired assets put on sale annexed to the Terms and Conditions of Bid leaves no doubt in the mind of a reasonable commercial person that the respondent Bank sought to transfer the debt as well as the assets including the real assets of M/s Tensile Steel and other companies. The intention of the parties, as evident from the contract, pertained to debt as well as the real assets in terms of the collaterals of the debt. It has been submitted in the written

statement without prejudice to the earlier submissions that the respondent Bank, at the first instance, could not have proceeded with the auction/ bidding of the debt and property of M/s Tensile Steel in view of the stay orders passed by the Hon"ble High Court of Gujarat in various petitions but respondent Bank having accepted lien on the FDR account of Rs. 5 crores was, even otherwise, estopped from withdrawing the assignment. The respondent Bank at no point in time terminated the sale contract it had entered into with respondent No.3, and so the respondent Bank could not forfeit the amount paid towards the consideration without such termination. It was further pleaded that as per the terms and conditions of the sale the only amount which could, if at all, be forfeited by the respondent Bank, in the event of default by respondent No.3 from fulfilling its obligations under the contract, was the earnest money deposit i.e. EMD which has been quantified as Rs. 10 lacs, as per the terms and conditions of the sale.

16. In view of the pleadings of the parties and going through the documents appended with the petition and the written statements filed by respondent Bank and respondent No.3, the short question which requires to be adjudicated upon is-

Whether the respondent Bank is not legally obliged to adhere to its commitment in annexure P-6, to credit the account of petitioner No.1 with the proceeds of the FDR annexure P-5 dated November 12, 2007 which was initially for a period of 6 months, with interest;

Whether the act of respondent Bank of retention of the above said amount is illegal, arbitrary, unconstitutional, discriminatory and volative of the terms and conditions of the sale published by it pursuant to the bid for transfer of NPFA of the Company M/s Tensile Steels;

Whether the transaction entered into between the parties could have been executed despite the orders of the competent Courts including the order of Gujarat High Court dated February 22, 2008 annexure P-7;

Whether the principle of estoppel and promissory estoppel enable the respondent Bank to claim that the petitioners have got no right to claim the proceeds of above said FDR on account of default of respondent No.3 in honouring its contractual obligations by payment of the balanced bid amount besides the EMD of Rs. 10 lacs;

Whether respondent Bank having already received the entire settlement amount of Rs. 35 crores (for all liabilities and assets of M/s Tensile Steels) and having closed the account of M/s Tensile Steel in its books can claim an additional sum of Rs. 32.13 crores or on account of non-payment of the bid money, could forfeit the sum of Rs. 5 crores deposited towards balance of bid money solely on the excuse that the Court order annexure P-7 and the other orders passed by the Courts and other forums did not restrain the bank from alienating/transferring the property and also did not restrain the Bank from assigning its rights and claims in the loan account in favour of the assignee; and

Whether a writ in the nature of mandamus could be issued to direct the respondent Bank to credit the account of the petitioner with the proceeds of the FDR annexure P-5, as committed by the Bank.

17. Learned senior counsel for the petitioners Mr. Sanjeev Sharma, has referred to the documents annexure P-6, dated July 12, 2007, a letter sent by the respondent Bank to petitioner No.1 wherein it has been admitted that in case arrangement of M/s Corus Infrastructure Pvt. Ltd. is not approved by the competent Court, the entire money of FDR will be credited in the Current Account No. 328 without any recourse/ demur either to M/s Corus Infrastructure Pvt. Ltd./ Punjab and Sind Bank or any other agency and in view of the terms and conditions of the sale of non-performing financial assets vide annexure P-2 (colly), and contended that as per clause 6 of the terms and conditions, in case of acceptance of the bid, the bidder was required to deposit the balance amount of sale consideration within 15 days of acceptance and in the event of default to pay the balance amount, it was only EMD which could be forfeited by the respondent Bank which in the present case was only Rs. 10 lacs. He contended that in the present case neither the bid price money could be forfeited nor any amount which was deposited towards the balance of bid money could be forfeited as on account of the restraint order dated February 27, 2008, annexure P-7, it had incapacitated the respondent Bank from accepting the bid money and alienate/ transfer/ sale the assets of the Company in favour of respondent No.3.

18. On the other hand, Mr. I.P. Singh, learned counsel for respondents No.1 and 2 has admitted that the bid of respondent No.3 had been accepted being highest for the sale of NPFA for consideration of Rs. 32.13 crores. The restraint orders and the litigation including the order passed by Division Bench of Gujarat High Court dated February 27, 2008, annexure P-7, have also been admitted but the learned counsel objected to the jurisdiction of this Court in the exercise of writ jurisdiction to issue a direction to order to credit the proceeds of the FDR of Rs. 5 crores dated November 12, 2007 with interest in the Current Account No.328 maintained by petitioner No.1 with the respondent Bank. He has submitted that the petitioners should have either gone to the Arbitrator or should have filed a civil suit. He has vehemently urged that though there were restraint orders against the Bank from alienating or transferring the property of M/s Tensile Steels but there was absolutely no order to restrain the Bank from assigning its rights and claims in the loan account in favour of the assignee.

19. Counsel for respondent No.3 has virtually admitted the claim of the petitioners and supported the petitioners.

Effect of Restraint Orders of The Courts On The Sale of NPFA :

20. The written statement of respondent No.3 and the documents appended with the petition, as mentioned herein above make the picture clear regarding the scope and legal impact of the different communications which are relevant for determining the rights of the parties. The claim of respondent No.3 is that the

respondent Bank has created a defence as an after-though to defeat the rights of respondent No.3 and the petitioners by claiming that on account of failure of respondent No.3 to deposit the balance bid amount by the stipulated date the offer of sale of NPFA stood withdrawn and the amount deposited would stand forfeited. Respondent No.3 has also clarified that the respondent Bank had not informed respondent No.3 that it was even negotiating with M/s Tensile Steel and was simultaneously trying to procure the money in the garb of bid money with a malafide intention to fraudulently with-hold as much money from respondent No.3 and petitioner No.1 and to illegally with-hold and forfeit the same. It was urged that the respondent Bank had invented an indigenous argument that the arrangement proposed was only of assignment of debt of M/s Tensile Steel and not the collateral property thereunder.

21. After hearing counsel for the petitioners and counsel for the respondents, it is undoubted that the respondent Bank had launched proceedings against M/s Tensile Steel and had issued notice under SARFAESI Act to the said defaulting unit. It had initiated action under Section 13 of the said Act and details of the proceedings have been admitted in the pleadings. From the pleadings it is apparent that action was taken in furtherance of the notice under SARFAESI Act which included an action to assign a debt and sell the collateral property thereunder. The High Court of Gujarat had restrained the action in furtherance of the notice under SARFAESI Act. As per law, the contract for sale of non-performing assets would necessarily include the debts as well as the assets i.e. the collateral property in the form of moveable and immoveable properties of M/s Tensile Steel. Moreover, no distinctions had earlier been made at any stage regarding assigning of the debt or sale of collateral property. The order of Division Bench of Gujarat High Court dated February 27, 2008, annexure P- 7, clearly indicates that the restraint order had been passed against the Bank from alienating or transferring or selling the property which forms the subject matter of the notice under Section 13 (2) of the Securitization of Assets, Reconstruction and Enforcement of Financial Interest Act, 2002. The malafide of the respondent Bank is apparent from the letter dated February 27, 2008, annexure P-8 to respondent No.3 accepting the bid informing them that the bid of M/s Corus Infrastructure Pvt. Ltd. has been accepted being the highest bidder and they would be required to deposit the balance amount immediately. The malafide is also apparent that on one hand, in the litigation they had been restrained by Gujarat High Court, on the other hand, on the same day, they were issuing a letter, in contemptuous manner to respondent No.3 asking to deposit the balance amount of Rs. 32.13 crores immediately. The action of the respondent Bank is apparently contemptuous and an afterthought to wriggle out of the restraint order of the Court by taking a plea that contract of sale of NPFA would not include the sale of moveable property of M/s Tensile Steel. The plea is absolutely absurd that there was no restraint order against the Bank from assigning its rights and claims in the loan account in favour of the assignee but restrain order was only regarding alienating or transferring the property. The said plea is

absolutely a fraud played on respondent No.3, the petitioners as well as on Court. It is, therefore, held that the plea of the respondent Bank that there was no restraint order against Bank from assigning rights and claims in the loan account but restraint order was only pertaining to transfer of the property, is not acceptable and is rejected. If the said unfair and fraudulent plea of the respondent Bank is accepted it would permit the Bank to receive Rs. 32.13 crores from respondent No.3 and another sum of Rs. 35 crores from M/s Tensile Steel whereas now the Bank has closed the entire proceedings on receipt of Rs. 35 crores from M/s Tensile Steels as admitted in written statement. At present neither any debt is due to the Bank nor the Bank has any right in the property of M/s Tensil Steels.

Status And Role Of The Bank:

22. The relationship of the banker and customer in normal course of business is contract which governs the rights and obligations of the parties. The relationship of the Bank and the customer varies in different types of transactions but it is settled principle of law that the role of the Bank is that of a trustee. If customer deposits security or valuable with the banker for safe custody, the status of the Bank is that of a trustee to its customers. The customer is the beneficiary and the ownership remains with the customer. A trustee holds property for the beneficiary and the profit earned from this property belongs to the beneficiary. Section 6 of the Banking Regulation Act, 1949 authorizes the Bank to act as trustee as a part of its banking function. However, the standard of care that a bank has to adopt in such cases is higher than that of a standard of ordinary prudence. Being a professional corporate trustee; Bank owes a higher duty of care and is liable for a loss caused to a trust by neglect to exercise the special care of expertise that it professed to possess. The bank holds money for the customers/ subscribers as agent of the Company and holds the money in a fiduciary capacity. The bank holds the amount as a specific deposit for a specific period so as to ensure refund to the customer in the event of refund becoming payable.

Maintainability of Writ Petition Against Bank

23. In *Ashok Amritraj v. Reserve Bank of India*, 2012 (5) CTC 763, the petitioner had invested Rs. 6.35 crores with the Bank for a period of one year. On maturity, the Bank failed to release the amounts. Aggrieved by the said approach, a writ petition was filed seeking a writ of mandamus to the Bank to discharge the FDRs of the petitioner to the tune of Rs. 6.80 crores. Referring to the maintainability of the writ petition and duty of obligation of the Bank it was observed as follows:-

"Banking system is based on trust and faith. The banks act as custodian of public money and they are accountable. The second respondent cannot function in an irresponsible and negligent manner. The respondent is a public sector nationalised bank performing public duties and they should function fairly whereas the way in which the officials acted fraudulently and unlawfully would

definitely erode the image of the bank and demolish the confidence of the public in the banking system, which is not good for banking institution and general public."

24. The Apex Court in *State of Madhya Pradesh and another v. Bhailal Bhai and another* reported in AIR 1964 SC 1066 had held that repayment can be ordered in the exercise of discretion and the said discretion will depend in each case on its own facts and circumstances. The Apex Court had stated that the discretionary power can be exercised to give relief in the facts and circumstances of each case. Regarding maintainability of the writ petition despite the availability of an alternative remedy of civil suit, the Apex Court in *Hyderabad Commercialise v. Indian Bank and others*, (1991) Supp (2) SCC 340 has held that bank is an instrumentality of the State and it must function honestly to serve its customer. It was held that writ petition is maintainable seeking mandamus to re-credit the amount which were unauthorisedly transferred from one account to another. In *State of West Bengal and others v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571, a Constitutional Bench of the Supreme Court held that the High Courts are authorised under Article 226 of the Constitution of India to issue a direction or orders or writ to any person or authority including any government to enforce fundamental rights and for any other purposes. In *Shalini Shyam Shetty and another v. Rajendra Shankar Patil*, (2010) 8 SCC 329, it was held that even in civil or private dispute, the High Court can interfere if there is any violation of statutory duty or it can be shown that a individual is acting in collusion with statutory authority. In *Praga Tools Corporation v. Shri C.A. Imanuel*, AIR 1969 SC 1306, it was held that mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226. In *Bank of India and others v. O.P. Swarnkar and others*, (2003) 2 SCC 721, it was held that nationalized Banks come under the statute within the meaning of Article 226 of the Constitution of India and the writ petition is maintainable against Banking Companies. In *Zonal Manager, Central Bank of India v. Devi Ispat Limited and others*, (2010) 11 SCC 186, it has been held that where the Bank had failed to return title deeds despite having acquired the outstanding dues, the order passed by the High Court for returning the title deeds was valid, rejecting the contention of the Bank that proper forum is civil Court. In *Century Spinning and Manufacturing Company Ltd. and another v. Ulhasnagar Municipal Council and another*, (1970) 1 SCC 582, which was followed in *ABL International Limited v. Export Credit Guarantee Corporation of India Limited*, (2004) 3 SCC 553, it was held that it was not an absolute rule that in all cases involving disputed question of fact, the party should be relegated to the Civil Court.

25. Since the respondent Bank in the present case has exhibited an unreasonable action plan by making an attempt to with-hold the bid money for the sale of NPFA of M/s Tensile Steel on one side and simultaneously having enforced its right under SARFAESI Act as a creditor to recover the debt along with interest with an attempt to play fraud with the Courts and where the effort

of the respondent Bank to acquire the property and assets of the defaulter Company M/s Tensile Steel was being resisted in the cases, the interference in writ jurisdiction is warranted. The Bank has attempted to achieve unreasonable enrichment by entering into a conditional agreement with respondent No.3 by keeping the bid open subject to the litigation without disclosing that matter was sub-judice before the Courts and the Arbitrator. In *Eureka Forbes Limited v. Allahabad Bank and others*, (2010) 6 SCC 193, it was held that doctrine of full faith and credit applies to the act done by the officials of the Bank. The emphasis has been laid in the said judgment by the Apex Court on the concept of public accountability and the performance to the instrumentalities of the State like Banks. It was held that inaction, arbitrary action or irresponsible action would normally result in dual hardship. Firstly, it jeopardizes the interest of the Bank and public funds are wasted and secondly, it affects the borrower's interest adversely provided such person was acted bona fide. It was held that both these adverse consequences can be avoided by the Bank authorities by timely and coordinated action. The Banks are required to have more practical and pragmatic approach to provide solution to such matters. The nationalized Bank which is a State as per Article 12 of the Constitution of India is required to act fairly, justly and reasonably in the interest of public and public good.

26. In view of the above discussion, I am of the considered opinion that the circumstances of the present case clearly depict that the act of respondent Bank is not above board and is malafide from the very beginning. Attempt has been made at every stage to deceive and mislead respondent No.3 and the petitioners as well as the Court without clearly disclosing the facts. The act of the Bank, in not fairly disclosing the pendency of litigation before the acceptance of the bid and having received the bid money to the extent of Rs. 5 crores without disclosing earlier that some litigation or negotiations for settlement with the defaulter Company i.e. M/s Tensile Steel was underway, is dubious. Not only this, the conduct of the respondent Bank to grab sum of Rs. 35 crores from M/s Tensile Steel and the similar amount from respondent No.3 M/s Corus Infrastructure Pvt. Ltd. warrants interference and issuance of a writ in the nature of mandamus.

Relationship of The Respondent Bank And Respondent No. 3 - M/s Corus Infrastructure Pvt. Ltd. In Context To Provisions of Contract Act:

27. In context to the provisions of Indian Contract Act, no contract had come into existence between Bank and respondent No.3 which could be said to be an agreement which is enforceable by law. As per provisions of Section 5 of the Contract Act, a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. Section 6 of the Contract Act provides that a proposal is revoked by the communication of notice of revocation by the proposer to the other party, by the failure of the acceptor to fulfil a condition precedent to the acceptance. Section 6 of the Contract Act reads as follows:-

"6. Revocation how made.- A proposal is revoked -

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance."

Section 7 of the Contract Act reads as follows:-

"7. Acceptance must be absolute: In order to convert a proposal into a promise the acceptance must ?

(1) be absolute and unqualified.

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted; and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance."

28. In the present case, the invitation of bids by the banker to sell the NPFA as per the notice annexure P-2 (Colly) was an invitation of offer in the shape of bid. Pursuant to the said invitation of offer, the proposal was given by respondent No.3 which was accepted by the respondent banker by communication annexure C-5 (Coly) dated July 9, 2007 . The acceptance was conditional and was not absolute and unqualified as per Section 7 (1) of the Contract Act. The offer of M/s Corus Infrastructure Pvt. Ltd. was accepted vide annexure P-1, dated July 9, 2007, which reads as follows:-

"M/s Corus Infrastructure (P) Ltd.

Plot No. 249, Sector 22, Gandhinagar,

Gujarat-382022

Dear Sir,

Reg.: Sale of Impaired Financial Assets-Submission of Bids-Case of M/s Tensile Steels Ltd.

With reference to your letter dated 6.7.2007 on the subject, we have to advise that your bid for a sum of Rs. 3213 lacs submitted in the said case has been found to be the highest and the matter is pending consideration of the Competent Authority.

As disclosed during due diligences and also immediately prior to commencement of sale proceedings on 20.6.2007, the acceptance of your bid offer would be dependent upon the outcome of concerned litigation prior to the captioned impaired asset and acceptance by the Competent Authority, which please, note.

Yours faithfully,

Sd/-General Manager (L&R)"

29. As per the terms and conditions of the sale, the intending bidders were required to deposit EMD of Rs. 10 lacs per account for each bid filed and it was further mentioned in the conditions that in case bid is accepted they will have to deposit balance sale consideration within 15 days of acceptance of the bid. In the event of failure to pay balance amount, the EMD shall be forfeited by the Bank. Para 6 of the terms and conditions of sale of non-performing financial assets is reproduced as follows:-

"6. Intending bidders will have to deposit an EMD of Rs. 10 lac per account for each bid filed by Pay order/ Banker's Cheque/ DD, favouring Punjab & Sind Bank, payable at Delhi, along with the bid application. In case their bid is accepted, they will have to deposit balance sale consideration within 15 days of acceptance of the bid. In the event of failure to pay balance amount, the EMD shall be forfeited by the Bank."

Para 10 of the said conditions is also important which reads as follows:-

"10. Unsuccessful bidders shall be refunded the EMD amount without any interest thereon within 10 days from the date of opening of bids i.e. 20.6.2007. Interest @ 8% p.a. shall be payable for delay in refunding the bid amount beyond 10 days."

30. After a sum of Rs. 5 crores had been credited to the respondent Bank as part of the sale consideration of non-performing financial assets even then the bid of respondent No.3 M/s Corus Infrastructure P. Ltd. and the amount towards the part payment of the sale consideration of Rs. 5 crores by petitioners had not become absolute, as is apparent from annexure P-6, dated November 12, 2007 addressed to petitioner No.1 Company wherein it is mentioned that in case arrangement of M/s Corus Infrastructure Pvt. Ltd. is not approved by the competent Court, the entire money of the FDR will be credited in the account of petitioner No.1 Current Account No.328 without any recourse either to M/s Corus Infrastructure/ Punjab and Sind Bank or any other agency.

31. The above said circumstances indicate that the bid of respondent No.3 and the payment of Rs. 5 crores made by the petitioner in association with respondent No.3 towards the sale price, had not culminated into a contract which could be said to be enforceable by law. Section 2 (h) of the Contract Act provides that an agreement not enforceable by law is said to be void, as the bid of respondent No.3 had not been converted into an absolute and unqualified promise, as per Section 7 of the Contract Act which requires that in order to

convert a proposal into promise, the acceptance must be absolute and unqualified. It is pertinent to mention that till date no communication has been sent by respondents No.1 and 2 to the respondent No.3 or the petitioners regarding the acceptance of the bidding offer of respondent No.3. In *Muthu Pillai v. Secretary of State*, AIR 1923 Madras 528 and *Union of India v. Bhim Sain Valaiti Rak*, AIR 1971 SC 2295, it was held that even if a bid or tender is conditionally accepted i.e. it is subject to the approval of other person or authority, the bidder or tenderer will be bound only if such approval is given and this is communicated to him. It follows that the bid or tender can be revoked at any time before that. The respondent Bank has not specifically sent any communication for revoking its proposal till date. Communication annexure R-4 sent by respondent Bank to respondent No.3 indicating that respondent No.3 having failed to deposit the balance bid amount till March 29, 2008, the offer of sale of impaired financial assets of M/s Tensile Steels on assignment basis given by the Bank vide letter dated February 27, 2008, stood withdrawn and the amount deposited by respondent No.3 stood forfeited. It is interesting that till date no communication has been sent to respondent No.3 or the petitioners regarding the result of the litigation between respondent Bank and M/s Tensile Steels, whereas the acceptance of the bid was subject to the fulfilment of the condition precedent i.e. the finalization of the litigation. On one hand, the respondent Bank had issued a letter annexure R-3 dated March 19, 2008 to M/s Corus Infrastructure Pvt. Ltd. requiring it to deposit the balance bid amount within 15 days and by writing another letter annexure R-4, dated March 29, 2008, stating therein that on account of having failed to deposit the balance bid amount, the offer of sale of impaired financial assets of M/s Tensile Steels stood withdrawn. But surprisingly, the respondent Bank had itself entered into a settlement with M/s Tensile Steels on April 28, 2008 and it had received on May 31, 2008 the entire settlement amount of Rs. 35 crores and the account of M/s Tensile Steels Limited was closed in the books of the bank. The relevant part of the written statement reads as follows:-

"The copy of letter dated 19.03.2008 is also annexed herewith as Annexure R-3. As there was stoic silence from the side of respondent No.3, therefore, the respondent Bank was constrained to issue letter dated 29.3.2008 conveying that the contract stood revoked and the amount deposited by respondent No.3, with the respondent Bank stood forfeited. The copy of letter dated 29.3.2008 is also annexed herewith as Annexure R- 4. Thereafter, the borrower/ mortgagor M/s Tensile Steel Ltd. on 28.4.2008 entered into an amicable out of Court settlement with the respondent Bank, wherein, it was inter-alia, stipulated that the borrower M/s Tensile Steel Ltd. shall pay a sum of Rs. 35.00 crore to the respondent Bank towards full and final settlement of the claim of the respondent Bank. On 31.5.2008, the respondent Bank has received the entire settlement amount of Rs. 35.00 crore. Consequently, the account of M/s Tensile Steel Ltd. has been closed in the books of respondent Bank."

32. The sequence of above said events clearly indicates that the bid of

respondent No.3 which was accepted vide annexure P-1 subject to the outcome of litigation pertaining to the impaired assets and acceptance by the competent authority, was never finalized by any communication of acceptance of the bid of respondent No.3 and no promise much less enforceable had come into existence as the acceptance was never absolute nor qualified as per Section 7 of the Contract Act. As the acceptance was conditional and no communication of acceptance on fulfilment of the condition had been sent, the respondent Bank had not acquired any enforceable legal contractual right on account of having failed to fulfil the condition of acceptance i.e. by getting the litigation finalized for converting the proposal into a promise.

33. By adopting unreasonable, discriminatory and unconstitutional means, the Bank which is an undertaking of Government of India cannot be permitted unreasonable enrichment. The only right which could be claimed by the respondent Bank was the forfeiture of earnest money deposit of Rs. 10 lacs as per the terms and conditions of the sale in case of any fault of respondent No.3 or the petitioners. As mentioned herein above, no enforceable right had accrued to the Bank by a valid contract which had come into operation by acceptance of a proposal unconditionally and there being no fault of respondent No.3 and the petitioners, the alienation of nonperforming financial assets of the Company M/s Tensile Steel in favour of respondent No.3 became impossible on account of the restriction imposed by order dated February 22, 2008 passed by Gujarat High Court in LPA No. 32 of 2008 as such the respondent Bank was not in a position to perform its obligation under the contract to transfer the NPFA nor it could have called respondent No.3 to deposit the balance consideration as respondent No.3 had also sought intervention in the litigation by seeking to be impleaded in the said litigation as is apparent from order annexure P-9. Therefore, neither EMD could be forfeited nor the amount of Rs. 5 crores paid by the petitioners in association with respondent No.3 towards the part sale consideration for the transfer of NPFA could be with-held.

34. Since the entire pleadings of the petitioners have been admitted by the respondent Bank, there does not appear to be any disputed question of fact. The present writ petition involves the determination of the rights of the parties in the light of the admitted facts and admitted documents. It is an admitted fact that the respondent Bank had invited expression of interest for sale of non-performing financial assets as per the RBI guidelines, vide annexure P-2 dated May 17, 2007 pertaining to different locations of 60 firms. It is also not disputed that respondent No.3-M/s Corus Infrastructure Pvt. Ltd. had furnished a bid for acceptance of Rs. 32.13 crores for purchase of impaired financial assets of M/s Tensile Steel Pvt. Ltd., Vadodhra, Gujarat. Respondent No. 3 had been handed over copy of the terms and conditions for sale of non-performing financial assets which certainly included the entire property of M/s Tensile Steel, as every reasonable commercial person would know that the debts as well as the assets including the real assets in terms of the collateral debt are sold. There was no dispute that the respondent's offer was to take over the debts/liabilities of the

NPFA along with collateral assets. After acceptance of the bid, respondent No.3 had entered into an agreement on June 20, 2007, a non-disclosure agreement, annexure C-1. As per paras 6 and 10 of the terms and conditions of the sale, the bidder was required to deposit EMD of Rs. 10 lacs along with bid application. There was a specific condition that in case the bid was accepted, they will have to deposit balance amount of sale consideration within 15 days of the acceptance of the bid and in the event of failure to pay the balance amount, the EMD would be forfeited by the Bank. The unsuccessful bidders had a right to be refunded the EMD amount without any interest within 10 days from the date of opening of bids i.e. June 20, 2007. It was mentioned in the condition that the Bank will not undertake any liability existing or future arisen out of any litigation or otherwise relating to the financial assets after the sale. It is also not a disputed fact that though respondent No.1 had accepted the bid of respondent No.3 but the Bank was yet to finalise the sale due to pendency of the litigation and the stay granted by Vadodhra Court in a suit filed by the Company in respect of its assets. It is admitted that the respondent Bank had accepted the offer of respondent No.3 subject to the outcome of said litigation. Respondent No.3 in its written statement has pleaded that it had received a letter dated July 9, 2007 that there was some litigation pending pertaining to the impaired assets. The letter annexure C-5 sent by Punjab and Sind Bank, respondent No.1 to M/s Corus Infrastructure Pvt. Ltd,- respondent No.3, reads as follows:-

"Reg: Sale of Impaired Financial Assets-Submissions of Bids-Case of M/s Tensile Steels Ltd.

With reference to your letter dated 6.7.2007 on the subject, we have to advise that your bid for a sum of Rs. 3213 lacs submitted in the said case has been found to be the highest and the matter is pending consideration of the Competent Authority.

As disclosed during due diligence and also immediately prior to commencement of sale proceedings on 20.6.2007, the acceptance of your bid offer would be dependent upon the outcome of concerned litigation pertaining to the captioned impaired asset and acceptance by the competent authority, which please, note.

(emphasis supplied by underlining)"

35. A perusal of the above letter indicates that the communication regarding acceptance of bid was not absolute and unqualified but was dependent upon the outcome of the litigation pertaining to the impaired financial assets in case of M/s Tensile Steels Pvt. Limited. The communication regarding acceptance of the bid, annexure C-5, clearly indicates that the respondent Bank had kept the acceptance open and it was a conditional acceptance subject to the result of the litigation pertaining to the impaired assets. The factum of respondent No.3 having deposited sum of Rs. 5 crores with the respondent Bank towards the part payment of the sale consideration for the NPFA and the collateral property, as per the provisions of Section 7 of the Contract Act, the offer of respondent No.3 had

not been finally accepted and was kept in abeyance. No right had accrued to the respondent Bank to demand the balance of the sale consideration till the bid was finally accepted on conclusion of the litigation. The sum of Rs. 5 crores deposited in "no lien" account solely to be utilized for part payment of the impaired financial assets of the Company on completion of litigations pursuant to a Memorandum of Understanding entered into between the petitioners and respondent No.3, annexure P-2, is also not a disputed fact. The FDR deposit of Rs. 5 crores vide annexure P-5, dated November 12, 2007 is an admitted fact. Though the bid of respondent No.3 had not been finalized but sum of Rs. 5 cores had been retained by the respondent Bank in its Panchkula Branch (respondent No.2). The agreement between the respondent Bank and the petitioner is reflected from the contents of the letter dated November 12, 2007 sent by respondent Bank to petitioner No.1 which is again reproduced hereunder:-

"Punjab & Sind Bank

SCO 251, Sector 16,

Panchkula.

Date: 12.11.2007

To

M/s Alchemist Reality Ltd.

SCO 12-13, Sector 9-D,

Chandigarh.

Dear Sir,

Reg: FDR No. 815937 dated 12.11.2007 in favour of M/s Corus Infrastructure P. Ltd. for 5 corre.

We have issued the above FDR today for 6 months. We confirm that in case arrangement of M/s Corus Infrastructure P. Ltd. is not approved by the competent Court the entire money of FDR will be credited in you're a/c No. 328 with us without any recourse/ demur either to M/s Corus Infrastructure P. Ltd./ Punjab & Sind Bank or any other agency.

We further confirm that we will not allow change of the authorised signatory in the current account of the said company and also will not allow the company to file any resolution for suppression/ closure the account or in any matter without the written consent from you.

Thanking you,

Sd/-Chief Manager."

36. A perusal of the above said letter clearly indicates that the Bank had given a word that in case the arrangement of M/s Corus Infrastructure Pvt. Ltd. is not

approved by the competent Court, the entire money of FDR would be credited in Current Account No.328 with the Bank without any recourse/ demur either to M/s Corus Infrastructure Pvt. Ltd./ Punjab and Sind Bank or any other agency. The Bank is statutorily bound being a nationalized Bank to act fairly, justly and reasonably. Since neither the bid had become final after unqualified acceptance of the bid and on account of non-fulfilment of the condition of acceptance i.e. finalization of the litigation by the competent Court and determination of the rights of contesting parties, the Bank did not have any jurisdiction to demand the balance of the sale consideration or to retain any amount in the name of balance sale consideration but the respondent Bank adopted a dubious mode to grab the amount deposited towards the sale consideration by issuing a letter dated March 29, 2008 to respondent No.3-M/s Corus Infrastructure Pvt. Ltd. informing that on account of respondent No.3 having failed to deposit balance bid money, the offer of sale of the impaired financial assets of M/s Tensile Steel given by letter dated February 27, 2008 stood withdrawn and the amount deposited by respondent No.3 stood forfeited. It is highly unreasonable that no reference was made to the result of the litigation before withdrawal of the offer of sale. The offer of sale itself was conditional as is apparent from the above said letters. The petitioners had addressed a letter dated January 28, 2009 to respondent No.2 demanding the proceeds of the FDR, annexure P-5, along with interest requesting that same be credited to the account to petitioner No.1 but respondent No.2 failed to reply the said letter. The said act of the respondent Bank is absolutely contrary to Clause 6 of the terms and conditions of sale proceeds (Annexure P-2 Colly) and the act of respondent Bank in not crediting the proceeds of the FDR of Rs. 5 crores to the account of petitioner No.1 is illegal, unreasonable as the High Court of Gujarat on February 22, 2008 in LPA No.32 of 2008 had restrained the respondent Bank to alienate, assign or transfer NPFA of the Company in favour of respondent No.3. The arrangement between the petitioners and the respondents could not thus be concluded on account of the concealment of facts from the very inception by the respondent Bank and on account of breach of contractual obligation accruing from annexure P-6. Once the respondent Bank had accepted the bid subject to the litigation and the respondent Bank already settled the controversy in the litigation on receipt of sum of Rs. 35 crores and having closed the account of M/s Tensile Steel in its books, (as admitted in para 15 of the written statement), there is no right vested in the respondent Bank to unjustly enrich itself by retaining sum of Rs. 5 crores which was deposited by the petitioners pursuant to the arrangement between the parties.

37. A false and frivolous plea has been raised by the respondent Bank that it had right to assign the debt of M/s Tensile Steel Pvt. Ltd., and the stay order passed by the Courts pertained only to the collateral property and assignment of debt alone was not stayed by any orders passed by the High Court. The respondent Bank has neither taken this plea before the High Court nor any such false plea of defence has been taken in any communication or in the bid proceedings. This issue has already been considered above in a page 25.

38. In view of the above circumstances, the writ petition is allowed and a direction is issued to respondents No.1 and 2 to credit the proceeds of FDR No.815937 dated November 12, 2007, annexure P-5, along with interest at the rate of 7.5% accrued thereon, in the current Account No. 328 maintained by petitioner No.1 with respondent No.2, within a period of 15 days treating the amount of Rs. 5 crores as if it is continuing in FDRs till date with the same rate of interest till the amount is paid by the Bank. An exemplary cost of Rs. 5000/- is imposed upon the respondent Bank for having committed the breach of trust and faith as expected by petitioner No.1 and the Court, in proceedings.