

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

GA (COM) No. 3 of 2024

In

CS (COM) No. 767 of 2024

Durgapur Ispat Udyog Private Limited & Ors.

Versus

Central Bank of India

Mr. Krishnaraj Thaker, Sr. Adv.

Mr. Ishaan Saha

Mr. Shivam Bhimsaria

Ms. Akansha Singhania

... for the plaintiffs.

Mr. Mainak Bose, Sr. Adv.

Ms. A. Rao

Ms. N. Dutta

Mr. S. Tibrewal

... for the defendant.

Hearing Concluded On : 14.02.2025

Judgment on : 28.02.2025

Krishna Rao, J.:

1. The defendant has filed the present application for rejection of plaint on the ground that the suit filed by the plaintiffs is not covered under the Commercial Dispute as per the Commercial Courts Act, 2015.
2. The defendant bank sanctioned credit facilities in favour of the plaintiff no.1 on 10th June, 2011 and the plaintiff nos. 2 and 3 had issued their personal guarantees to secure credit facilities. The plaintiff no.4 had provided collateral security against the credit facilities and is also the corporate guarantor to such credit facilities availed by the plaintiff no.1 from the defendant bank.
3. The bank account of the plaintiff no.1 was classified as Non Performance Asset account on and from 22nd December, 2015. The Bank has initiated proceeding for the recovery of dues being O.A. No. 448 of 2017 under Section 19 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 for recovery of Rs. 32,45,92,142/.
4. During the pendency of the proceeding, the parties entered into a Settlement under a One Time Settlement Scheme (OTS) on 15th September, 2018. As per the One Time Settlement, the plaintiff no.1 was required to pay only Rs. 12.00 Crores out of the total outstanding of Rs. 23,97,08,828/- in four installments within 30th September, 2019. The One Time Settlement Scheme provided that in case of default in

payment as per the terms of sanction, the same would automatically be treated as cancelled.

5. A joint compromise petition was filed before the Learned Debts Recovery Tribunal-II at Kolkata on 1st March, 2019, wherein the Learned Tribunal has disposed of the said proceeding by directing for issuance of recovery certificate in favour of the defendant bank for a sum of Rs. 12 Crores.
6. Mr. Krishnaraj Thaker, Learned Senior Advocate representing the plaintiffs submits that in terms of One Time Settlement, the plaintiff no. 1 has paid an amount of Rs. 4,10,00,000/- as on 12th March, 2019 in six tranches. He submits that in terms of the compromise decree dated 1st March, 2019 passed by the Learned Debts Recovery Tribunal-II, Kolkata on 29th June, 2019, the Learned Tribunal has issued recovery certificate in favor of the bank.
7. Mr. Thaker submits that the defendant bank has obtained a valuation report in respect of the mortgaged property measuring an area of 299 decimals along with building, shed, plant and machinery etc. He submits that as per the valuation report dated 8th January, 2018, the value of the property at Rs. 6,71,76,000/-. He submits that one Onkar Parivahan Finance Private Limited had expressed interest in purchasing the mortgaged land measuring an area of 299 decimals together with all building, shed, plant and machinery etc. for a total sum of Rs. 6,25,00,000/-. He further submits that the said Onkar

Parivahan Finance Private Limited had also expressed interest to purchase the mortgaged properties measuring an area of 997.88 decimals for a sum of Rs. 7.5 Crores.

- 8.** Mr. Thaker submits that on receipt of the proposal of Onkar Parivahan Finance Private Limited, the plaintiffs have requested the defendant bank to allow the plaintiffs to sell the said properties and the sale proceeds will be directly credited into the OTS account of the plaintiff no.1 or for assignment of the mortgaged properties to Phoenix ARC Private Limited towards the OTS account of the plaintiff no.1. He submits that inspite of receipt of the request from the plaintiffs, the defendant bank has not responded to the request of the plaintiffs.
- 9.** Mr. Thaker submits that the defendant bank instead of granting permission to the plaintiffs for part sale of the mortgaged properties by remitting the total sale price in the OTS account of the plaintiffs or permission of assignment to Phoenix ARC (P) Ltd. and 100% cash balance payment, the bank has issued a letter dated 22nd July, 2020 withdrawing the OTS and called upon the plaintiffs to pay an amount of Rs. 46.39 Cr. as on 30th June, 2020 along with further interest.
- 10.** Mr. Thaker submits that the bank has filed an application before the Debts Recovery Tribunal praying for modification of the recovery certificate dated 29th June, 2019 for Rs. 12 Crores and prayed for issuance of fresh recovery certificate for a sum of Rs. 51,11,44,574/- . The application filed by the bank was rejected by the Learned Tribunal

by an order dated 28th July, 2022. Being aggrieved and dissatisfied with the said order, the bank has preferred an appeal before the Appellate Authority and the appeal is pending for consideration.

- 11.** Mr. Thaker submits that defendant bank sold the mortgaged property measuring an area of 299 decimals on 19th September, 2023 for a sum of Rs. 2,94,15,000/- and the property measuring an area of 997.88 decimals on 12th January, 2024 for a sum of Rs. 5,00,56,000/-. He submits that the plaintiff no.1 has paid a sum of Rs. 4,10,00,000/- to the defendant bank in terms of the sanctioned OTS scheme and the defendant bank has realised an amount of Rs. 7,94,71,000/- by selling the mortgage properties, the plaintiffs are entitled to get “No Dues Certificate” from the defendant bank.
- 12.** Mr. Thaker submits that on 23rd July, 2024, the defendant bank has wrongfully and unlawfully issued a notice to the plaintiff nos. 2 and 3 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy process for Personal Guarantors to Corporate Debtors) Rules, 2019 claiming total amount of Rs. 81,03,38,633/- as on 23rd July, 2024. Mr. Thaker submits that the defendant bank only with the malafide intention to harass the plaintiffs has not granted permission to the plaintiffs to sell the mortgaged properties to the intending purchaser and have sold the properties at a very low price than the price offered by the proposed purchaser of the plaintiffs.

- 13.** Mr. Thaker submits that due to fraudulent and unlawful act of the defendant bank, the plaintiffs have suffered damage of Rs. 6,55,67,487/- along with interest.
- 14.** Mr. Mainak Bose, Learned Senior Advocate representing the defendant bank submits that the plaintiffs have filed the suit against the defendant bank claiming damages of Rs. 87,59,06,120/- on the pretext that the Onkar Parivahan Finance Private Limited had offered to purchase the mortgaged land measuring an area of 299 decimals together with all building, shed, plant and machinery etc. for a total sum of Rs. 6,25,00,000/- and the land measuring an area of 997.88 decimals for a sum of Rs. 7.5 Crores but the defendant bank sold the said property in the lesser rate, thus the plaintiffs are entitled to damages.
- 15.** Mr. Bose submits that the claim of the plaintiffs is not connected with any mercantile documents as defined under Section 2(1)(c)(i) of the Commercial Courts Act, 2015. He submits that the letter dated 22nd July, 2020 wherein the bank has terminated the OTS is not a mercantile document.
- 16.** Mr. Bose submits that the claim of the plaintiffs is of alleged damages suffered by the plaintiffs by not allowing the plaintiffs to sell the mortgaged properties to the proposed seller of the plaintiffs. The said damage is neither connected with any mercantile document nor the claim of the plaintiffs is of commercial in nature.

17. Mr. Bose submits that in Section 2(1)(c)(i) of the Commercial Courts Act, 2015, the word “such as” is only illustrative and not exhaustive. He submits that as per Section 2(1)(c) “Commercial Dispute” means to be a dispute “arising out of” (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile document, including enforcement and interpretation of such documents but in the case of the plaintiffs, there is no mercantile document. He submits that the plaintiffs have simply claimed damages by comparing the sale price of proposed purchaser of the plaintiffs and the sale price on which the bank has sold the mortgaged property of the plaintiffs. In support of his contention, Mr. Bose relied upon the Judgment in the case of **State of Maharashtra and Other vs. Shri V.S. Naik** reported in **1980 Supp SCC 229** and **Goodyear India Ltd. vs. Collector of Customs, Bombay** reported in **(2000) 10 SCC 489**.

18. The plaintiffs have filed the suit against the defendant praying for the following reliefs:

“a. A Decree for a sum of Rs. 87,59,06,120/- as prayed for in paragraph 39 hereinabove.

b. Alternatively, an enquiry into the damages and further damages suffered by the plaintiffs on account of wrongful and unlawful refusal of the defendant bank to grant the plaintiffs permission to sell the mortgaged properties and/or assign the same to Phoenix ARC Private Limited as far back as on 1st April, 2019, and a decree for such sum as may be found upon such enquiry;

c. Interest on the decreed amount @ 18% per annum up till payment;

d. Receiver;

e. Injunction;

f. Attachment;

g. Costs;

h) Such further and/or other relief or reliefs to which the plaintiffs may be entitled.”

- 19.** The defendant has raised the issue that the suit filed by the plaintiffs is not coming under the purview of Commercial Disputes in terms of Section 2(1)(c) of the Commercial Courts Act, 2015.
- 20.** The dispute between the plaintiffs and the defendant arose when the defendant bank initiated proceeding against the plaintiffs before the Debts Recovery Tribunal for recovery of Debts Due to the bank. During the pendency of the said proceeding, the parties have come to a One Time Settlement. As per the settlement, the plaintiff no. 1 was required to pay Rs. 12 Crores in four instalments within 12 months out of total outstanding of Rs. 23,97,08,828/-. The plaintiffs have paid an amount of Rs. 4,10,00,000/- up till 12th March, 2019. Regarding payment of further dues, the plaintiffs requested for permission from the bank to sell mortgaged properties to the proposed seller of the plaintiffs but the bank has not granted permission and on the other hand, the bank has sold the two properties in the lesser amount than the amount of the proposed seller of the plaintiffs.
- 21.** The plaintiffs have filed the suit claiming damages with regard to the differential amount of sale of mortgage properties of the plaintiffs by the

defendant bank and the sale price offered by the proposed purchaser of the plaintiffs.

22. Section 2(1)(c)(i) of the Commercial Courts Act, 2015 reads as follows :

“2.(1) *In this Act, unless the context otherwise requires,-*

(c) “commercial dispute” means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents.”

23. In the case of **Venkatesh Vincom Private Limited vs. Spice of Joy, Multicuisine Restaurant cum Bar and Others** reported in **2022 SCC OnLine Cal 3010**, the Hon’ble Division Bench of this Court held that :

“7. *Reverting to the core issue the eventuality enshrined in Clause (i) of Section 2(1)(c) of the said Act postulates that a dispute arising out of the ordinary transaction of financier relating to mercantile documents including its enforceability and interpretation are the important factors to be borne in mind. The said Clause can be segregated into 3 parts. Firstly, the dispute must arise out of ordinary transaction of financier and secondly, such ordinary transaction must relate to a mercantile document and thirdly, the enforceability and the interpretation of such document is involved. Admittedly, the appellant is a non banking financial corporation which would be evident from the averments made in the plaint and the certificate of incorporation annexed thereto. The primary function of the non banking corporation is to extend financial supports and can be regarded as an ordinary transaction of the financier. We find no ambiguity in this regard that lending money by the appellant is fundamentally the transactions which it does and can be regarded as the ordinary transaction. The parties are not ad idem on the*

expression “mercantile document” appearing in the said clause for the reason that there was no agreement in writing nor any document evincing the money given as loan to the respondents. The mercantile document is not defined in the said Act. However, the said Act defines ‘document’ in Section 2(1)(f) to mean any matter expressed or described upon any substance by means of letters, figures, or marks, or electronic means or, by more than one of those means, intended to be used, or which may be used, for the purpose of recording that manner. The definition of a document is expansive and is not restricted to any agreement to be executed by and between the parties recording the transactions at the beginning thereof. The definition is wide enough to include any expression or a description of any substance by means of letters, marks or figures or electronic means which would be sufficient enough to bring clarity of the matter. The word ‘mercantile’ in ordinary parlance means a document relating to a merchant or trading or a document which is commercial in nature. In Black's Law Dictionary, 8th Edition ‘mercantile’ is defined as in “BLD”.

24. In the present case, the plaintiffs have filed the suit for damages. The claim of the plaintiffs is as follows:

PARTICULARS OF CLAIM FOR DAMAGES

Srl No.	Particulars	Claim Amount
1.	<p><i>Difference between the price offered by Onkar Parivahan Finance Limited in 2019 for the mortgaged properties and the amount realized by the defendant bank on sale of the said mortgaged properties</i></p> <p><i>(Rs. 13,75,00,000 – Rs. 7,94,71,000)</i></p> <p style="margin-left: 20px;"><i>a. For mortgaged property measuring 299 decimals = Rs. 3,30,85,000/- (Rs.6,25,00,000 – Rs.2,94,15,000)</i></p> <p style="margin-left: 20px;"><i>b. For mortgaged property measuring 997.88 decimals = Rs.2,49,44,000/- (Rs. 7,50,00,000 – Rs.5,00,56,000)</i></p>	<p><i>Rs. 5,80,29,000/-</i></p>

2.	<p><i>Interest on said amount as claimed under serial no. 1 @ 18%</i></p> <p><i>a. For mortgaged property measuring 299 decimals from 19th September, 2023 till 31st July, 2024 = Rs. 50,90,558/-. (18% on Rs. 3,30,85,000/- for 312 days)</i></p> <p><i>b. For mortgaged property measuring 997.88 decimals from 12th January, 2024 till 31st July, 2024 = Rs. 24,47,929/- (18% on Rs.2,49,44,000/- for 199 days)</i></p>	Rs. 75,38,487/-
3.	<p><i>Having procured the breach of the OTS by wrongfully and unlawfully withholding permission to sell the mortgaged properties the defendant bank has proceeded to seek amendment of the recovery certificate dated 29th June, 2019 issued as per the compromise decree and is demanding a sum of Rs.81,03,38,633 against the plaintiffs in light of the purported cancellation and withdrawal of the OTS scheme by the defendant bank. Without admitting the claim of the bank for such amount in excess of the recovery certificate which stands satisfied, the plaintiffs state that the plaintiffs are entitled to damages for the wrongful acts of the bank, corresponding to the amount of Rs.81,03,38,633 wrongfully and unlawfully claimed by the defendant bank on the basis of the purported withdrawal of the OTS.</i></p>	Rs. 81,03,38,633/-
	Total	Rs. 87,59,06,120/-

- 25.** Damages claimed in Clause 1 is difference between the price offered by the proposed seller of the plaintiffs and the amount realized by the

defendant bank on sale of the mortgaged properties. The said claim is no way connected with any mercantile documents or any business transaction between the plaintiffs and the defendant.

In Clause 2, the plaintiffs have claimed interest at the rate of 18 % per annum on the claim of Clause 1. Claiming of interest is also not coming under any mercantile document or any commercial dispute.

Clause 3 is the claim relating to breach of the OTS by wrongfully and unlawfully withholding permission to sell the mortgaged properties, demand of Rs. 81,03,38,633/- by the bank against the plaintiffs due to cancellation of the OTS. The plaintiffs have not prayed for any declaration with regard to the withdrawal/termination/ cancellation of the OTS in the present suit. In the alternative, the plaintiffs have prayed for an enquiry into the damages and further damages on account of wrongful refusal of the defendant bank for grant of permission to the plaintiffs to sell the mortgaged properties or to assign the same to Phoenix ARC Private Limited in the year 2019.

In the case of **Goodyear India Ltd. (supra)** and in the case of **State Bank of Maharashtra and Others (supra)**, the Hon'ble Supreme Court held that user of the expression "such as" which follows the expression "public grounds" clearly shows that the two categories of public ground are illustrative and not exhaustive. In the Commercial Courts Act, 2015 Section 2(1)(c)(i) describes that: *ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such*

documents. In the case in hand, the claim of the plaintiffs is not with regard to any commercial transaction. The plaintiffs have claimed damages by comparing the price of sale which the bank realized and the sale price of the proposed purchaser of the plaintiffs. The termination of OTS is not a mercantile document, it is only a communication by the defendant bank to the plaintiffs informing about the withdrawal of the OTS and the said withdrawal is not the subject matter of the suit.

- 26.** Considering the above, this Court finds that the case of the plaintiffs is not covered under any of the clauses of Section 2(1)(c) of the Commercial Courts Act, 2015.
- 27.** In view of the above, the department is directed to return the plaint along with all documents by keeping the copy of the same on record to the plaintiffs. The plaintiffs are at liberty to file the suit before the appropriate Court of law.
- 28. G.A. (Com) 3 of 2024 is allowed. C.S. (Com) No. 767 of 2024 is dismissed.**

(Krishna Rao, J.)