NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

Principal Bench, New Delhi

Comp. App. (AT) (Ins) No. 1513 of 2022

IN THE MATTER OF:
Rajeev Gupta ...Appellant
Vs.
Standard Chartered Bank (Singapore) Ltd. & Anr. ....Respondents

For Appellant: **Mr. Mohit Chaudhary, Mr. Prakhar Mithal, Adv**
For Respondent: **Mr. Krishnendu Datta, Sr. Adv. with Ms. Vatsala Rai, Mr. Sushvut Garg, Ms.Varsha Himatsinghka Adv. for R1**
Mr. Vishal Ganda, Ms. Akansha Mathur, Ms. Aashta, Bansal, Ms. Deepika Singha, Advocates for R2

O R D E R

Per : Justice Rakesh Kumar Jain (Oral)

01.05.2023: This appeal is directed against the order dated 25.11.2022 passed by the National Company Law Tribunal, New Delhi Bench –III in IB – 2688/ND/2019 by which an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as to 'the Code') by the Standard Chartered Bank Singapore (ltd.) for the resolution of USD 2,997,506.93, equivalent to INR 21,05,65,569.56, has been admitted and Mr. Brijesh Singh Bhadauriya was appointed as Interim Resolution Professional (IRP) who has now been appointed as Resolution Professional (RP), after the approval of the CoC, by the Adjudicating Authority.

2. Brief facts of the case are that M/s.Sizer Metals Pte Limited (Supplier), engaged in trading of Base Metals listed on the London Metal Exchange, entered

into a Receivables Purchase Agreement (RPA) with the Operational Creditor dated 11.07.2017 (executed on 01.08.2017) assigning all its receivables (present and future) in relation to supply of goods and services to the Operational Creditor. The supplier sent a notice of Assignment of Debt to the Corporate Debtor on 03.05.2018 which was acknowledged by the Corporate Debtor on the same day. The notice of Assignment was also sent by way of email by the Supplier on 09.07.2019 in which it was averred *"Standard Chartered Bank Singapore has entered into a receivables purchase agreement (the agreement) with Sizer Metal Pte Ltd (the customer) enclosed is the copy of the notice which you have already acknowledged. As mentioned in the notice of assignment, regarding amounts due to the customer from you and which have been or will be assigned to us, payment of the invoices for such amounts (the customer's invoices) are to be made to us. Only payment in full to us will constitute full discharge of your payment obligations under the customer's invoices. Any variation to the instructions set out in the notice of assignment will require our prior written consent. Kindly confirm with us on the following: - (1) what is the payment mode (cheques, telegraphic transfer, others)? (2) what is the payment cycle (once a month, fortnightly, weekly, others)? (3) Reference to the below table, have you received the invoice? If there is other invoice(s), please advise invoice details.*

Invoice Number	*Invoice Amount*	*Invoice Date*
SMPL/786/075	*USD500,250.00*	*06 July 2018"*

The aforesaid email was replied on 31.07.2018, that *"the confirmation is done against each point, I have kept Ms. Shefali Chopra, our Sr. Banking Manager to*

promptly respondent to your mail in future, please mark all mails to her keeping me in loop."

Dear Mr. Rajiv

Sorry for the confusion as the information provided earlier was based on proforma invoice. Please refer to the below invoice details instead.

Kindly confirm with us on the following:

(1)Is RCI Industries & Technologies Ltd. agreeable to make direct payment to Standard Chartered Bank Singapore as per the Notice of Assignment ? Yes

(2) What is the payment mode (cheques, Telegraphic Transfer, others)? TT

(3) Reference to the below table, have you received the invoice? If there is other invoice(s) please advise invoice details:

Invoice Number	*Invoice amount*	*Invoice date*
SMPL/786/075	*USD566,952.47*	*12 July 2018*

Thereafter, the Respondent sent email dated 12.04.2019 referring to all six invoices. The said email is also reproduced as under:

"Dear Rajiv/Shefali,

Although there is time to pay the first invoice, this is a friendly reminder that you must honour your commitments. There is no harm in paying a bit earlier as that will only strengthen our confidence in your commitment and will have a positive effect on our view on your company.

As I mentioned in the beginning, we support thousands of suppliers and numerous banks all over the world and keeping a clean track record with us will be of Great benefit of RCI

Number	*Date*	*Initial due date*	*Currency*	*Net Amount*	*New Due dates*
SMPL786100	*28/09/2018*	*25/1/2019*	*USD*	*491950.5*	*25/04/2019*
SMPL786109	*09/10/2018*	*06/02/2019*	*USD*	*495989.1*	*7/05/2019*
SMPL786111	*11/10/2018*	*8/2/2019*	*USD*	*499262.8*	*9/05/2019*
SMPL786147	*31/12/2018*	*30/4/2019*	*USD*	*407259.9*	*30/4/2019*
SMPL786156	*1/1/2019*	*1/5/2019*	*USD*	*559763.8*	*1/5/2019*
SMPL786161	*16/1/2019*	*16/5/2019*	*USD*	*4543280.9*	*16/6/2019*

Apropos, they replied vide their email dated 16.04.2019, that *"Dear Sir, We will try to pay a litter earlier but offcourse the same should be paid on due dates".* The aforesaid email was followed by the email dated 02.05.2019 which is also reproduced as under:

> *"Hi,*
>
> *It is really disappointing to not have heard from you despite you committing several times that payment will be made as per the schedule mentioned below:*
>
> *Rajiv confirmed to me by WhatsApp on 26th of April that payment could not be made on 25th but will be done on 29th but we have not heard from you. This obviously means that you don't seem to value keeping your commitment and hence going forward, we will need to seek legal intervention at the earliest.*
>
> *As of today, USD 1,458,974.2 is due, if not paid today, we will be forced to go to NCLT"*

3. Thereafter, the Respondent sent a demand notice dated 18.05.2019 in terms of Section 8 of the Code calling upon the Corporate Debtor to pay the outstanding dues. It is pertinent to mention that no reply to the notice was given

by the Corporate Debtor. As a result, the Respondent filed an application under Section 9 of the Code on 15.10.2019 on the basis of six invoices and the Assignment Deed. The Corporate Debtor filed reply to the application filed under Section 9 of the Code on 20.08.2020 but no averment was made in the reply that the Assignment Deed was not duly stamped in terms of the Indian Stamp Act, 1899 (hereinafter referred as to 'The Act'). Thereafter, the Respondent filed the rejoinder on 12.03.2020. The Corporate Debtor filed an additional affidavit on 01.12.2020 in which also no averment was made that the Assignment Deed is inadmissible in evidence on the ground that it does not bear the requisite stamp in terms of the provisions of the Act. The Respondent filed their reply to the said additional affidavit on 27.01.2021. It is alleged that the arguments were orally initiated before the Adjudicating Authority and the Respondent herein (petitioner in the application under Section 9 of the Code) concluded its arguments on 17.12.2021. The matter, thereafter, notified for the arguments of the Corporate Debtor and on 11.03.2021, for the first time, an argument was raised by the Corporate Debtor about the inadmissibility of the RPA (Assignment Deed) in evidence on the ground that it has not been duly stamped. Thereafter, the Corporate Debtor filed an application bearing IA No. 1408 of 2022 before the Adjudicating Authority for examining the Assignment Deed in terms of Section 33(2) of the Act for the purpose of impounding it and further prayed that the Assignment Deed may not be relied upon because it has not been stamped in terms of Section 35 of the Act. Order on the said application was reserved by the Adjudicating Authority on 06.04.2022 and was ultimately pronounced on

21.04.2022 dismissing the application. The Corporate Debtor filed appeal before this Tribunal challenging the order dated 21.04.2022 but the said appeal was dismissed by this Tribunal on 05.05.2022. The order dated 05.05.2022 read as under:

> *05.05.2022: Heard Learned Counsel for the Appellant and Learned Counsel for the Respondent.*
>
> *2. This Appeal has been filed against the order dated 21.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Special Bench, Court-III in I.A-1408 of 2022 which was filed by the Appellant. I.A was filed by the Appellant when proceedings in IB-2688/(ND)/2019 were part heard and the Court was proceeded to hear the parties.*
>
> *3. Learned Counsel for the Respondent submits that the issues which were sought to be raised by the Appellant in I.A- 1408 of 2022 has already been submitted by the Respondent before the Court during the course of the submission. It is submitted that there was no necessity to file Application which was only filed to delay the proceedings.*
>
> *4. In view of the facts as noted above, we are of the view that the order of rejection passed by the Adjudicating Authority on the Application need no interference in this Appeal. We, however, make it clear that any observations made by the Adjudicating Authority while rejecting the Application I.A-1408 of 2022 have no bearing when the issues are decided by the Adjudicating Authority in accordance with law and merits. All contentions of both the parties are left open.*
>
> *5. With these observations, the Appeal is dismissed."*

4. Thereafter, the application under Section 9 of the Code was finally argued and the order was reserved on 09.05.2022. However, it was relisted on 27.05.2022 for clarification regarding non-filing of the Written submissions by the Corporate Debtor. It was noted that the right of the Corporate Debtor to file written submission was exhausted and the order continued to be reserved. The

workers of the Corporate Debtor filed an application bearing IA No. 2675 of 2022 in which they prayed for their impleaded as party and that their statements may be taken on record regarding the financial health of the Corporate Debtor. The Adjudicating Authority dismissed the said application on 09.06.2022 on the ground that the matter has already been reserved and thus the application was not found maintainable. However, the matter was again listed on account of retirement of the Technical Member on 05.08.2022 and on 11.08.2022 arguments on behalf of the Respondent was heard. The matter was listed for arguments of the Corporate Debtor but adjourned due to the non-availability of the Counsel and in the meantime, the Corporate Debtor filed a Revision Petition bearing CM(M) 932/2022 & CM APPL. 39695/2022, CM APPL. 39696/2022 under Article 227 of the Constitution of India before the Hon'ble High Court of Delhi for the issuance of a direction to the Adjudicating Authority to hear and consider the arguments on the issue that the Assignment Deed is not duly stamped and, what is the effect, in terms of the provisions of the Act and the Factoring Regulations Act, 2011. However, the said Revision Petition was disposed of by the Hon'ble High Court of Delhi by passing the following orders:

> *"1. The prayer in this petition, under Articled 227 of the Constitution of India, is essentially to guide the learned National Company Law Tribunal ("the learned NCLT") on how to adjudicate cases pending before it.*
>
> *2. Such a prayer, in my view, is completely untenable in law and an attempt at even countenancing such a prayer would amount to serious judicial overreach.*

3. The proceedings emanate from a petition under Section 9 of the Insolvency and Bankruptcy Code (IBC), instituted by the Standard Chartered Singapore (SCS) before the learned NCLT. It appears that, on the basis of transactions covered by invoices issued between 28th September 2018 and 6th January 2019, SCS contended that the petitioner owed, to it, an amount of ₹ 22 crores. In view of the alleged default of the petitioner in liquidating the said debt, SCS apparently invoked the provisions of the IBC.

4. The petitioner has sought to contend, before the learned NCLT, that the documents cited by SCS in its support could not be relied upon in view of Sections 33 and 35 of the Indian Stamps Act, 1899.

5. IA 1408/2022 was filed by the petitioner, highlighting the staid objection. The application exhorted the learned NCLT to examine the aforesaid documents in terms of Section 33(1) and 33(2) of the Stamp Act and to rule, even at that interlocutory stage, that, as the documents were not stamped in terms of Sections 33 and 35 of the Indian Stamp Act, they could not be relied upon.

6. The objection was rejected by the learned NCLT vide order dated 21st April 2022. The learned NCLT opined that, in view of Section 238 of the IBC, which had, according to the petitioner, overriding effect over the provisions of the Stamp Act, the prayer of the petitioner was not sustainable.

7. The petitioner appealed against the said decision of the learned NCLT before the learned National Company Law Appellate Tribunal ("the NCLAT").

8. The appeal was disposed of, by the learned NCLAT vide order dated 5th May 2022, which reads thus:

"05.05.2022: Heard Learned Counsel for the Appellant and Learned Counsel for the Respondent.

2. This Appeal has been filed against the order dated 21.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Special Bench, Court-

III in I.A-1408 of 2022 which was filed by the Appellant. I.A was filed by the Appellant when proceedings in IB-2688/(ND)/2019 were part heard and the Court was proceeded to hear the parties.

3. Learned Counsel for the Respondent submits that the issues which were sought to be raised by the Appellant in IA-1408 of 2022 has already been submitted by the Respondent before the Court during the course of the submission. It is submitted that there was no necessity to file Application which was only filed to delay the proceedings.

4. In view of the facts as noted above, we are of the view that the order of rejection passed by the Adjudicating Authority on the Application need no interference in this Appeal. We, however, make it clear that any observations made by the Adjudicating Authority while rejecting the Application I.A-1408 of 2022 have no bearing when the issues are decided by the Adjudicating Authority in accordance with law and merits. All contentions of both the parties are left open."

5. With these observations, the Appeal is dismissed."

9. The petitioner is thus back before the learned NCLT.

10. The petitioner's grievance is that the learned NCLT is ignoring Sections 33 and 35 of the Stamp Act, in proceeding with the matter. The said provisions were to be taken into account, submits Mr. Mohit Chaudhary. It would become clear that the documents on which SCS seeks to base its case cannot be relied upon at all.

11. The matter being at this stage, the petitioner has moved the present petition under Article 227 of the Constitution of India, with the following prayer :

"In view of the facts and circumstances of the present case, it is most respectfully prayed that this Hon'ble Court may be pleased to:

1. Issue appropriate Order or Direction, to regulate ·practice and proceedings before Adjudicating Authority (NCLT-III),

New Delhi, in respect of the procedure where the provisions of stamp act are urged, and/or

ii. Issue appropriate Order or Direction, upon Adjudicating Authority (NCLT-III), New Delhi, to consider the prayers of impounding of the documents in terms of the provisions of Stamp Act before proceeding in merits of the

matter, and/or

iii. Issue appropriate Order or Direction, upon RBI to check and take remedial measures to avoid the business. Of factoring being done in violation of 'Factoring Regulation Act, 2011' by unregistered entity. And/or

iv. Issue appropriate Order or Direction, upon the Chief Controlling Revenue Authorities through Collector of Stamps/'Sub Divisional Magistrate to assess the stamp duty payable on the assignment documents being 'receivables purchase agreement' and 'factoring agreement' which is being produced before he Courts/Tribunals in India for execution, by undertaking the process of law, And/Or

v. Issue appropriate Order or Direction, declaring that the proceedings being CP (IB) No.2688 of 2019 pending before NCLT-III, New Delhi is without jurisdiction, and/or

vi. Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

12. It appears that the petitioner has completely misconstrued the scope of Article 227 of the Constitution of India. Article 227 is a power which recognises the superintending jurisdiction of the High Courts over courts or judicial fora hierarchically below it. The jurisdiction vested by the Article 227 of the Constitution of India is supervisory in nature. Where authorities who are subject to the superintendence of the High Court function in a manner which calls for supervisory correction, the High Court can step in. In no other circumstance is the High Court expected to exercise jurisdiction under Article 227.

13. The scope of Article 227 may be chartered through a scan of five decisions, namely, Estralla Rubber v. Dass Estate (P) Ltd., Garment Craft v. Prakash Chand Goel, Ibrat

Faizan v. Omaxe Buildhome Pvt. Ltd., Puri Investments v. Young Friends and Co. and Sadhana Lodh v. National Insurance Co. Ltd, the relevant paragraphs of which may be reproduced thus:

Estralla Rubber

"7. This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh v. Amarnath. This Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarte has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal."

(Emphasis supplied)

Garment Craft

"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no

evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd has observed: (SCC pp. 101-102, para 6)

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

(Emphasis supplied)

Ibrat Faizan

"28. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of Estralla Rubber v. Dass Estate (P) Ltd, which has been consistently followed by this Court (see the recent decision of this Court in the case of Garment Craft v. Prakash Chand Goel. Therefore, while exercising the powers under Article

227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India."

Puri Investments

"14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse.

Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are: —

(i) Erroneous on account of non-consideration of material evidence, or

(ii) Being conclusions which are contrary to the evidence, or

(iii) Based on inferences that are impermissible in law.

15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum. ....."

(Emphasis supplied)

Sadhana Lodh

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

(Emphasis supplied)

14. Article 227, therefore, does not even permit the High Court to examine the correctness of the order under

challenge. All that the High Court can examine is whether the authority passing the order has actually acted in a manner which calls for supervisory correction. The factual or legal correctness of the order becomes a subject of consideration under Article 227 only where the manner in which the facts or law has been applied is so manifestly illegal as would require the High Court to correct the erroneous impression of fact or law harboured by the court below. Else, findings of facts or law are not amenable to challenge or reversal in exercise of the jurisdiction vested in the High Court by Article 227 of the Constitution of India.

15. The court, while exercising jurisdiction under the said provision, is more concerned with that the processual correctness of the order passed by the court below, rather than the factual or the legal correctness thereof.

16. In the present case, ironically, the petitioner does not challenge any order of the learned NCLT which is presently holding fort. The petition itself is in fact manifestly premature.

17. The learned NCLT has adequately taken a view, albeit at an interim stage, that Section 238 of the IBC would prevail over Sections 33 and 35 of the Stamp Act. That view may be right or may be wrong. The petitioner appealed against the said decision. The learned NCLAT has relegated the petitioner to the learned NCLT keeping in mind all issues of fact and law alive. The learned NCLAT has wiped the slate clean. The tabula is, thus, once more rasa. It is open, therefore, to the petitioner to again attempt to convince the learned NCLT regarding the interpretation that the petitioner seeks to place on Sections 33 and 35 of the Stamp Act.

18. The learned NCLAT has already protected the petitioner in that regard, by directing that the learned NCLT would proceed in the matter uninfluenced by the order passed by it on 21st April 2022.

19. That is about all that the petitioner can expect at this juncture. It is for the petitioner to press its case before the learned NCLT. Equally, it would be open to the respondent to contest the case that the petitioner seeks to put up.

> *20. It is for the learned NCLT to take a call, de novo, on the applicability of the Stamp Act vis-a-vis the IBC, after hearing both sides.*
>
> *21. The grounds that either party, aggrieved by the decision that the learned NCLT may take, would remain open.*
>
> *22. Beyond this, the court cannot come to the aid of the petitioner, as it would be completely improper for the court to direct the manner in which the learned NCLT exercises its jurisdiction or to guide the view that the learned NCLT would take on the rival contentions of the parties.*
>
> *23. No case, therefore, exists for this court to interfere at this stage, under Article 227 of the Constitution of India.*
>
> *24. With the aforesaid observations, this petition is accordingly disposed of.*

5. At last, the main application was heard and the order was reserved on 14.09.2022, the judgment was pronounced on 25.11.2022 and hence the present appeal has been filed.

6. Counsel for the Appellant has argued that even as per the case of the Respondent the transactions of supply of goods was between the Supplier and the Corporate Debtor and the Supplier had assigned its rights in regard to receivable purchase facility, in present and future, by way of an Assignment Agreement which was though executed in Singapore but when it was brought to India for the purpose of using it as a tool to initiate proceedings in terms of the provisions of the Code, it was not duly stamped in terms of Section 18 of the Act which provides that if a documents is executed outside India and is brought to India then it must be stamped within a period of three months. He has further submitted that as per Article 11 R/w Article 23 of Schedule-1 of the Act, the

stamp duty on assignment is to be affixed at the rate of 1% of the total amount and in this manner the total sum which is to be affixed as stamp is Rs. 22 lakh approximately. It is further submitted that the Respondent herein is not the original Operational Creditor but is an "Assignee". In this regard, he has referred to Section 5(20) of the Code in which it is provided that *"operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred".* He laid emphasis on the word "Legally Assigned". He has further referred to definition of Operational Debt provided under Section 5(21) of the Code which says that *" a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority".* He categorically referred to the word "claim" in the definition of Operational Debt and once again referred to the definition of "claim" which is provided in Section 3(6) of the Code that *"claim means— (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured; (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured".* In this regard, it is submitted that it is right to remedy for the breach of contract and has thus challenged the right to remedy for the breach at the instance of the Respondent while referring to Section 35 of the Act in which it is provided that *"No instrument chargeable with duty shall be admitted*

in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped". It is argued that though the Appellant has acknowledged the Debt in the communications with the Respondent after the rights of erstwhile Operational Creditor was assignment to it but it is not estopped from taking protection of Section 35 of the Act as there is no estoppel against law. It is argued that the document (Assignment Deed) is not stamped after it was executed in Singapore and brought to India, therefore, the application under section 9 of the Code filed on its basis is per se illegal and the application should have been dismissed by the Adjudicating Authority instead admitting the same and imposing the moratorium. He supported his submission placing reliance on a constitution bench judgment, recently rendered by the Hon'ble Supreme Court, in *M/s. N.N.Global Mercantile Private Limited Vs. M/s.Indo Unique Flame Ltd. & ors. in Civil Appeal No.(s) 3802-2803 of 2020 decided on 25.04.2023*. He has also relied upon two more judgments of Hon'ble Supreme Court rendered in the case of *Avinash Kumar Chauhan Vs. Vijay Krishna Mishra MANU/SC/8502/2008* and *Hindustan Steel Ltd. Vs. Dilip Construction Company MANU/SC/0474/1969.*

7. On the other hand, Counsel for Respondent has submitted that once the Assignment has been accepted by the Corporate Debtor, the Appellant being one of the Director of the Suspended Board of Directors cannot raise this issue in appeal for the first time that the document executed in Singapore and brought to India for the purpose of filing an application under Section 9 is not duly

stamped and cannot be taken into evidence. In this regard, he has referred to Section 36 of the Act which read as under:

> *"36. Admission of instrument where not to be questioned.— Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not duly stamped."*

8. Counsel for Respondent has contended that the application filed under Section 9, on prescribed form-VI, containing the pleadings in respect of Assignment Deed and the said Assignment Deed was appended with the said form as an evidence. However, the Corporate Debtor, though had the opportunity to challenge the validity and admissibility of the Assignment Deed in their reply but the challenge was conspicuous by its absence. It is also submitted that when the Corporate Debtor even filed an additional affidavit, during the pendency of the proceedings, no objection was raised regarding the admissibility of the said document. It is thus submitted that the document was admitted by the Appellant and has been admitted in evidence for the purpose of taking into consideration by the Adjudicating Authority for relying upon it for passing the impugned order. In this regard, it is submitted that the Corporate Debtor has actually missed the bus for not challenging the admissibility of the document in evidence, at the time when it was to be raised and in this regard relied upon two decisions of the Hon'ble Supreme Court rendered in the case of *Javer Chand And Others vs Pukhraj Surana AIR1961SC1655* and *Shyamal Kumar Roy Vs. Sushil Kumar Agarwal (2006) 11 SCC 331*. He also submitted that the judgments relied upon by counsel for the Appellant are not applicable to the facts and circumstances of

the present case, especially, the judgment in the case of *N.N.Global Mercantile Private Limited (Supra)* as there was no issue regarding the applicability of Section 36 of the Act vis. a vis. the execution and presentation of the documents as an evidence. It is rather submitted that the question framed in the case of *N.N.Global Mercantile Private Limited (Supra)* was *"Whether the statutory bar contained in Section 35 of the Stamp Act, 1899 applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Act, would also render the arbitration agreement contained in such an instrument, which is not chargeable to payment of stamp duty, as being non-existent, unenforceable, or invalid, pending payment of stamp duty on the substantive contract/ instrument?".*

9. We have heard counsel for the parties and perused the record with their able assistance. The facts are not much in dispute insofar as the execution of the Receivable Purchase Agreement. As a matter of fact, the Corporate Debtor approached the Supplier to purchase Tin Ingots and Nickel Full Plate (hereinafter referred to as 'goods'). There were various transactions between the said parties on account of which Debt accrued to the tune of Rs. INR 21,05,65,569.56. The Supplier, based in Singapore, entered into the Receivable Purchase Agreement, the Respondent (a bank based in Singapore) on 11.07.2017 got assignment of all the receivables (present and future) in relation to supply of goods and services rendered to the Operational Creditor. Consequently, the Respondent entered into the shoes of the supplier and became the Operational Creditor of the Corporate Debtor.

10. It has come on record and not denied that before the initiation of the proceedings in terms of provisions of the Code, letters and emails were exchanged by the Corporate Debtor and the Respondent in which the Corporate Debtor had admitted its liability to make the payment but because of the financial constraints on its part the payment could not be made. Ultimately, the Respondent initiated the proceedings by issuance of a notice under Section 8 of the Code which is mandatorily required and to which no reply was filed by the Corporate Debtor. The application under Section 9 was filed on the prescribed form in which it was pleaded that the right to seek resolution of the debt, is based upon the Assignment Deed and the Deed was also made part of the application as an evidence. There was not a whisper by the Corporate Debtor in its reply to the legality and admissibility of the Assignment Deed. It has also come on record that there was another opportunity available to the Corporate Debtor to challenge the validity and admissibility of the assignment deed when the Additional Affidavit was filed. However, when the Respondent bank concluded its argument in affirmative, the Corporate Debtor, for the first time raised the issue of admissibility of the Assignment deed on account of it being not duly stamped in terms of Section 18 of the Act and cannot be taken into consideration in view of Section 35 of the Act. When these argument was not accepted orally by the Adjudicating Authority then the Corporate Debtor filed a Miscellaneous Application for the purposes of taking this plea but the said application was dismissed. The said order was further challenged before this Tribunal but the appeal was also dismissed. However, liberty was granted to the parties to raise

all the issues before the Adjudicating Authority. Thereafter, the Appellant filed a Revision Petition Invoking Article 227 of the Constitution of India before the Hon'ble High Court of Delhi for the issuance of a direction to the Adjudicating Authority to decide the issue regarding the admissibility of the Assignment Deed. Dehors the aforesaid facts and circumstances, the application was admitted and the present appeal has been filed.

11. We found from the argument of Counsel for the Appellant that as per Section 5(20) of the Code, there should not merely an assignment but the assignment has to be legally done. Since the assignment has been done by way of execution of a document, therefore, it is to be seen as to whether the said document has been legally executed or not? It is also not in dispute that the Assignment Deed was executed in Singapore beyond the territory of India. Therefore, had it been a case that the document is executed in India then Section 17 of the Act would have applied but since it's a case where the document has been executed out of India, the provisions of Section 18 of the Act become applicable as per which once the document is to be used in India then it has to be duly stamped in accordance with the provisions of the Schedule and Articles provided in the Act, within a period of three months and if it is not done then the said document is not considered duly executed. It is the argument of the Appellant that since the document is not duly stamped in terms of the provisions of the Act, therefore, as per Section 35 of the Act it is inadmissible in evidence and once it is inadmissible in evidence, then no relief could have been granted by the Adjudicating Authority on the basis of the said assignment deed.

Therefore, it is argued that the application filed under Section 9 of the Code should have been dismissed by the Adjudicating Authority instead of allowing the same. Counsel for the Appellant has relied upon the judgment of M/*s. N.N.Global Mercantile Private Limited (supra). H*e has referred to the discussion in this judgment at paragraph 62 which read as under:

> *"62. While the Stamp Act is a fiscal enactment intended to raise revenue, it is a law, which is meant to have teeth. The point of time, at which the stamp duty is to be paid is expressly provided for in Section 17 of the Stamp Act. There cannot be any gainsaying, that call it a fiscal enactment, it is intended that it is to be implemented with full vigour. The duty of a Court must be to adopt an interpretation which results in the enforcement of the law, rather than allowing the law to be flouted with impunity. Once this principle is borne in mind, the task of the Court becomes less difficult. The law, as contained in Section 33 read with Section 35 of the Stamp Act, would result in the following conclusions:*
>
> *i. Every person having, by law or consent of parties, the authority to receive evidence, before whom, an instrument is produced, is duty-bound to immediately impound the same. This is upon his forming the opinion that the instrument is not duly stamped. In a case, where the instrument does not bear any stamp at all, when it is exigible to stamp duty, there can be little difficulty in the person forming the opinion that it is not duly stamped. No doubt, under Section 33(2), in cases of ambiguity, the person shall examine the instrument to arrive at the liability. Apart from a person having authority to receive evidence, which, no doubt, would include a court and an Arbitrator, every person In-charge of*

a Public Office, before whom, such instrument is produced or comes in the performance of his functions, has the duty to impound the unstamped or insufficiently stamped document, arises. This is no doubt after 'examining' the instrument and ascertaining as to whether the instrument was stamped as required when the document was executed or first executed [See Section 33(2)]. One exception in Section 33 is an Officer of the Police. In other words, the Officer of the Police has no authority to impound an unstamped or insufficiently stamped document produced before him. No doubt, a Criminal Court is not under compulsion vide the proviso. Section 33, no doubt, authorises delegation of power.

ii. Under Section 35, the Law-Giver has disabled the admission in evidence of an instrument not stamped or insufficiently stamped, for any purpose. This would include even a collateral purpose. This is in stark contrast with a document, which is compulsorily registerable but which is not registered. Under Section 49 of the Registration Act, 1908, an unregistered document may be used for proving a collateral transaction. Even this is impermissible, if the document is not stamped or insufficiently stamped. Section 35 further proceeds to declare that such an unstamped or insufficiently stamped document shall not be acted upon. It is important to juxtapose the embargo cast on an unstamped document as aforesaid with Section 2(h) of the Contract Act. Section 2(h) of the Contract Act provides that an agreement, which is enforceable in law is a contract whereas Section 2(g), an agreement not enforceable is void. The words 'enforceable in law' or 'not enforceable in law', understood in the context of Sections 33 and 35 of the Stamp Act, would

mean that upon there being an occasion, which necessitates one of the parties to the agreement having to enforce the same through recourse to sanctions available in law, the same should be vouchsafed to him. Ordinarily, agreements are enforced through actions in Civil Courts. Remedies may be sought before Public Authorities. Both the Civil Courts and the Public Authorities are tabooed from giving effect to an unstamped instrument. Section 33 does not give a choice to the person, who has authority by law, or with consent, to take evidence, or to any Public Officer, but to impound the agreement. The unstamped or insufficiently stamped document cannot be used as evidence for any purpose. It would be inconceivable, as to how, it could be in the same breath, be found that an unstamped document is yet enforceable in law or that it is not enforceable in law. It is another matter that the parties may act upon it. Goods or services may change hands, for instance, under a document, which may be otherwise exigible to stamp duty. What is, however, relevant is that the State will not extend its protection, by appropriate sanctions. The rights, which would otherwise have been available, had the agreement been stamped, would remain frozen or rather they would not exist. We are further reinforced in our view, therefore, that the views expressed by this Court in Garware (supra) in paragraph-22, following SMS Tea Estates (supra), represent the correct position in law.

iii. Next, we must pass on to the correctness of the views expressed in paragraph-29 of Garware (supra). The Court drew upon the Judgment in United India Insurance Company Limited and another v. Hyundai Engineering & Construction Company Limited and others."

Counsel for the Appellant has categorically pointed out that it has been observed by the Hon'ble Supreme Court in the aforesaid judgment that the unstamped or insufficiently documents cannot be acted upon and used for any purpose. In the case of *Avinash Kumar Chauhan (supra),* he has referred to para 12 &21 which read as under:

> *"12. The Parliament has, in Section 35 of the Act, advisedly used the words "for any purpose whatsoever". Thus, the purpose for which a document is sought to be admitted in evidence or the extent thereof would not be a relevant factor for not invoking the aforementioned provisions.*
>
> *21. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes."*

While referring the aforesaid paragraphs, it is submitted that even these type of documents cannot be used for collateral purposes. He has also relied upon the judgment in *Hindustan Steel Ltd. (supra) para 4* which read as under*:*

> *"An instrument which is not duly stamped cannot be received in evidence by any person who has authority to receive evidence, and it cannot be acted upon by that person or by any public officer. Section 35 provides that the admissibility of an instrument once admitted in evidence shall not, except as provided in s. 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Relying upon the difference in the phraseology between ss. 35 and 36 it was urged that an instrument which is not duly stamped may be admitted in evidence on payment of duty and penalty, but it cannot be acted upon because s. 35 operates as a bar to the admission in evidence of the instrument not duly stamped as well as to*

> *its being acted upon, and the Legislature has by S. 36 in the conditions set out therein removed the bar only against admission in evidence of the instrument. The argument ignores the true import of S. 36. By that section an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. The doubt, if any, is removed by the terms of s. 42(2) which enact, in terms unmistakable, that every instrument endorsed by the Collector under S. 42(1) shall be admissible in evidence and may be acted upon as if it had been duly stamped."*

He has submitted that in the aforesaid decision it has been held that unstamped documents cannot be acted upon.

12. On the other hand, in the case of Javer Chand and Others (supra), the Hon'ble Supreme Court has observed *"It is not necessary to set out the defendant's written statement in detail. It is enough to state that the defendant admitted the execution of the hundis but alleged that they had been drawn for purchasing gold in future and since the plaintiff did not send the gold, the hundis were not honoured or accepted. It was denied that the defendant owed any amount to the plaintiffs or that the hundis were drawn in payment of any such debt. It was thus contended that the hundis were without consideration. The most important plea raised by the defendant in bar of the suit was that the hundis were inadmissible in evidence because they had not been stamped according to the stamp law. 4. On those pleadings, a number of issues were joined between the parties, but the only relevant issue was Issue 2 in these terms: "Whether the two*

hundis, the basis of the suit, being unstamped, were inadmissible in evidence? (OD)" (*which perhaps are meant to indicate that the onus was on the defendant in respect of this issue). It appears that the defendant led evidence first, in view of the fact that the onus lay on him. He was examined as DW 5, and in his examination -in-chief he stated, "I did not receive any gold towards these hundis. I asked them to return the hundis, but they did not return them. I had drawn the two hundis marked Ext. P-1 and Ext. P-2. They are written in Roopchand's hand. I did not receive any notice to honour these hundis". His other witnesses, DWs 1, 2 and 4 were examined and crossexamined with reference to the terms of the hundis and as to who the author of the hundis was. All along during the course of the recording of the evidence on behalf of the parties, these hundis have been referred to as Ext. P-1 and Ext. P-2. The conclusion of the learned trial Judge on Issue 2 was in these terms: "Therefore, in this case the plaintiff having paid the penalty, the two documents in suit having been exhibited and numbered under the signatures of the presiding officer of court and the same having thus been introduced in evidence and also referred to and read in evidence by the defendant's learned counsel, the provisions of Section 36 of the Stamp Act, which are mandatory, at once come into play and the disputed documents cannot be rejected and excluded from evidence and they shall accordingly properly form part of evidence on record. Issue 2 is thus decided against the defendant." The suit was accordingly decreed with costs, as stated above. On appeal by the defendant to the High Court, the High Court also found that the hundis were marked as Exts. P-1 and P-2, with the endorsement "Admitted in evidence" and signed by the*

Judge. The High Court also noticed the fact that when the hundis were executed in December 1946, the Marwar Stamp Act of 1914 was in force and Sections 9 and 11 of the Marwar Stamp Act, 1914 authorised the Court to realise the full stamp duty and penalty in case of unstamped instruments produced in evidence. Section 9 further provided that on the payment of proper stamp duty, and the required penalty, if any, the document shall be admissible in evidence. It was also noticed that when the suit was filed in January 1949, stamp duty and penalty were paid in respect of the hundis, acting upon the law, namely, the Marwar Stamp Act, 1914. The High Court also pointed out that the documents appear to have been admitted in evidence because the trial court lost sight of the fact that in 1947 a new Stamp Act had come into force in the former State of Marwar, amending the Marwar Stamp Act of 1914. The new law was, in terms, similar to the Indian Stamp Act. The High Court further pointed out that after the coming into effect of the Marwar Stamp Act, 1947 the hundis in this case could not be admitted in evidence, in view of the provisions of Section 35, proviso (a) of the Act, even on payment of duty and penalty. With reference to the provisions of Section 36 of the Stamp Act, the High Court held that the plaintiffs could not take advantage of the provisions of that section because, in its opinion, the admission of the two hundis "was a pure mistake". Relying upon a previous decision of the Rajasthan High Court reported in ILR (1953) Rajasthan 833, the High Court held that as the admission of the documents was pure mistake, the High Court, on appeal, could go behind the orders of the trial court and correct the mistake made by that court. In our opinion, the High Court misdirected itself, in its view of the provisions of

Section 36 of the Stamp Act. Section 36 is in these terms: "Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped." That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognised by the section is the class of cases contemplated by Section 61, which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the court. The court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exts. P-1 and P-2 and bore the endorsement "admitted in evidence" under the signature of the court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to

the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction. 5. In our opinion, the High Court has erred in law in refusing to act upon those two hundis which had been properly proved — if they required any proof, their execution having been admitted by the executant himself. As on the findings no other question arises, nor was any other question raised before us by the parties, we accordingly allow the appeal, set aside the judgment and decree passed by the High Court and restore those of the trial court, with costs throughout. Appeal from the Judgment and Decree dated the 8th October, 1956, of the Rajasthan High Court in Civil Regular Appeal No. 1 of 1953. Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of

this text must be verified from the original source. parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the court. The court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exts. P-1 and P-2 and bore the endorsement "admitted in evidence" under the signature of the court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction. 5. In our opinion, the High Court has erred in law in refusing to act upon those two hundis which had been properly proved — if they required any proof, their execution having been admitted by the executant himself. As on the findings no other question arises, nor was any other question raised before us by the parties, we accordingly allow the appeal, set aside the judgment

and decree passed by the High Court and restore those of the trial court, with costs throughout."

13. In the case of Shyamal Kumar Roy (Supra) the Hon'ble Supreme Court has observed at para 14, 16, 17, 20 & 21 as under:

> *"14. Section 36, however, provides for a 'stand alone' clause. It categorically prohibits a court of law from reopening a matter in regard to the sufficiency or otherwise of the stamp duty paid on an instrument in the event the same has been admitted in evidence. Only one exception has been made in this behalf, viz., the provisions contained in Section 61 providing for reference and revision. In a case where Section 33 of the Act, as amended by West Bengal Act would be applicable, the proviso appended to Sub-Section (5) carves out an exception that if no action would be taken after a period of four years from the date of execution of the instrument.*
>
> *16. The said decision, therefore, is an authority for the proposition that Section 36 would operate even if a document has been improperly admitted in evidence. It is of little or no consequence as to whether a document has been admitted in evidence on determination of a question as regards admissibility thereof or upon dispensation of formal proof therefor. If a party to the lis intends that an instrument produced by the other party being insufficiently stamped should not be admitted in evidence, he must raise an objection thereto at the appropriate stage. He may not do so only at his peril.*
>
> *17. objection as regards admissibility of a document, thus, specifically required to be taken that it was not duly stamped. On such objection only the question is required to be determined judicially.*
>
> *20.If no objection had been made by Appellant herein in regard to the admissibility of the said document, he, at a later stage, cannot be permitted to turn round and*

> *contend that the said document is inadmissible in evidence.*
>
> *21. The Appellant having consented to the document being marked as an exhibit has lost his right to reopen the question."*

Counsel for the Respondent has contended that in the aforesaid two judgments, the Hon'ble Supreme Court has categorically held that once document has been marked as an exhibit and the trial has proceeded all long on the footings that the documents was exhibited in the case as has been used by the parties in examination and cross-examination of the witness then Section 36 of the Act comes into play and there is no place for Section 35 of the Act for the purpose of discarding the said documents.

14. Insofar as the decision in M/*s. N.N.Global Mercantile Private Limited (supra)* is concerned, there is no reference in respect of Section 36 of the Act especially on the issue that a document, which is not duly stamped, deserves to be discarded in terms of Section 35 of the Act, has been admitted during the proceedings by the other party who had the opportunity to challenge the veracity and admissibility of the said document then as to whether the said document has to be ignored. As matter of fact, as we have already referred to the question which has been posed in the matter of M/*s. N.N.Global Mercantile Private Limited (supra)* which was pertaining to the admissibility of an Arbitration Agreement which has not been duly stamped but there was no such issue involved that if the Arbitration Agreement, not been duly stamped, has been produced in

evidence and admitted by the other party, then it can be ignored despite Section 36 of the Act. In this regard, the decision taken by the Hon'ble Supreme Court both in the case of *Javer Chand And Others (supra), and Shyamal Kumar Roy (supra)* are on the point as in those cases it has been held that once a document has been relied upon, produced in evidence, opportunity is granted to the other side to object to its admissibility and the said document has not been objected to at all and the decision has been taken on the basis of the said document, it cannot be, thereafter, rejected or ignored. We will go with the decision rendered in the case of *Shyamal Kumar Roy (supra) and Javer Chand And Others (supra)* and thus in such circumstances, we hold that it is a case where section 36 of the Act would apply with full force and section 35 of the Act would not apply. No other point has been raised.

15. As a consequence of our discussion, we do not find any merit in the present appeal which is hereby dismissed though without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Raushan/Ravi