

A STEEL AUTHORITY OF INDIA LIMITED AND OTHERS.

v.

SALEM STAINLESS STEEL SUPPLIERS AND ORS.

3RD NOVEMBER, 1993

B [KULDIP SINGH AND P.B. SAWANT, JJ.]

C *Contract Act, 1872 : Sections 3 and 7—Offer and acceptance—Steel Authority of India—Price circular offering discount scheme—Issue of—Clarification sought by certain traders—Reply furnished by Authority—Offer by the traders—Exchange of correspondence—Authority rejecting offer of traders—Effect of—Held no concluded contract emerges and so benefit of discount not available.*

D The appellant-Steel Authority of India issued a price circular dated March 17, 1989 offering a discount scheme with a view to give a thrust to the off-take stainless steel of thinner gauges.

E Respondent No.3-a Treading Company, sought certain clarifications and the same were furnished by the Authority by its letter dated December 2, 1989. Thereafter six traders, including respondents 1 to 4, sent a letter dated December 4, 1989 to the Authority stating that they had formed a group and wanted to avail the additional discount on the basis of their combined off-take as a group. They also suggested a formula for the distribution of the discount, on the basis of their combined off-take, amongst the individual members of the group.

F The Authority sent a telegram on December 19, 1989 in reply to the effect that the matter was still under consideration and till such time a final decision was taken the scheme regarding group off-take could not operate. The said traders addressed another letter to the Authority offering to withdraw their suggestion for the disbursement of the discount amount in the manner suggested by them in their earlier letter. The G Authority by its letter dated 23.1.1990 reiterated the contents of its telegram and further informed that the suggestion made by the traders in their letter was not acceptable to the Authority as it was contrary to the scheme.

H The respondents filed a writ petition before the High Court contend-

ing that they had already stated lifting material and as such a direction may be issued that the discount benefit be disbursed to them. The writ petition was allowed by a Single Judge primarily on the ground that the clarifications given by the Authority by its letter dated December 2, 1989 were binding on the Authority. A

The appeals preferred by the Authority against the judgment of the Single Judge were dismissed by the Division Bench of the High Court. Hence these appeals. B

Allowing the appeal, this Court,

HELD : 1. The price discount scheme under the circular dated March 17, 1989 was for "any customer" and not for "group of customers". The circular did not permit a group of customers not related to each other by constitution to avail the benefit of the scheme on the basis of their combined off-take. The respondents could not have availed the benefit of the scheme jointly unless and until the scheme as a whole was amended and made applicable to all the customers of the Authority by issuing a fresh circular informing all concerned about the change in the scheme. [584-E] C D

2. It was for the first time on December 4, 1989 that the six traders made an offer and expressed their desire to avail the benefit of the circular on the basis of their combined off-take. Prior to that there was no communication from the traders as a group to the Authority with regard to the admissibility of any such discount to them under the circular. The methodology suggested by the traders to share the discount was not envisaged under the circular. The said method was even not in accordance with the letter dated December 2, 1989 written by the Authority. The Authority rejected the offer of the traders by its telegram dated December 19, 1989 and the letter dated January 23, 1990. No concluded contract can, thus, be deciphered from the correspondence between the parties. E F

[584-F-H & 585-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1051-1054 of 1991. G

M.P. Sharma and S.R. Grover for the Appellant.

B.D. Sharma for the Respondent.

The Judgment of the Court was delivered by H

A KULDIP SINGH, J.

Steel Authority of India (the Authority), the appellant herein, issued a price circular dated March 17, 1989 (the circular) offering a discount scheme with a view to give a thrust to the off-take stainless steel of thinner gauges. The circular stated as under :—

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"(a) For an off-take of over 400 mts. per month of thinner gauges namely 0.3, 0.4, 0.5 and 0.63 taken together by any customer from any region will entitle them for an additional discount of Rs. 2000 PMT over and above the normal monthly discount on the incremental quantity :

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(b) A bonus incentive of addl. Rs. 2000 PMT would be admissible at the end of 6 monthly period provided the off-take is over 400 mts. in each of the 6 months. This additional incentive will be applicable on the incremental quantity in excess of 2400 mts. during the period of 6 months.

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(c) Benefits under (a) and (b) above will be applicable to any customer including trade and their associate concerns both on direct despatch from plant as well as quantities lifted from stock-yard of any region, irrespective of the region to which the customer is attached."

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The circular was issued by the Calcutta office of the Authority.

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Standard Metal Trading Company, respondent 3 herein, by its letter dated November 27, 1989 sought clarifications as to whether the subject discount would be available on the quantities lifted by a "group of dealers not related to each other by Constitution" and how the said discount would be disbursed to the individual dealers. A request was also made that the period of operation of scheme under the circular, be extended to one year as against six months. The Authority by its letter dated December 2, 1989 furnished the necessary clarifications, to respondent 3, which are as under:—

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"Kindly refer to your letter dated 27th November, 1989 and 1st December, 1989 on the above subject. We wish to clarify as under:—

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1. The quantity discount under the subject scheme will be paid on quantities lifted together by a group of dealers/actual users who are not related to each other by constitution provided they declare their intention to join together for committing combined off-take as per the scheme. A

2. The scheme will be applicable on quantities lifted by a group of dealers not related to each other by constituting dealing at different regions. B

3. After the completion of the current month on the basis of actual off-take the quantity as per the eligibility may be passed on to any one of the constituents or alternatively on pro-rata basis to all the constituents subject to the entitled group. What they want. C

4. Guarantee for, continuation of the scheme can be given for a minimum period of 6 months from the month in which off-take commences. D

We also expect an increase in the off-take of material by the dealers in the Southern Region.

We also wish to make it clear that indents as per the existing procedure should be given well in advance to enable us to complete the despatch of material." E

Thereafter six traders, including respondents 1 to 4, sent a letter dated December 4, 1989 to the Authority stating that they had formed a group and wanted to avail the additional discount on the basis of their combined off-take as a group. They also suggested a formula for the distribution of the discount, on the basis of their combined off-take, amongst the individual members of the group. F

The proposal of combined off-take by a group of traders was not warranted by the circular. The formula of distribution of discount amount amongst the individual members of an unorganised group was also not envisaged under the circular. In any case such formula was not even in accordance with the clarifications given by the Authority in its letter dated December 2, 1989. G

The Authority sent a telegram dated December 19, 1989, to all the six H

A traders including respondents 1 to 4 intimating them that the matter was still under consideration and till the time a final decision in that respect was taken the scheme regarding group off-take could not operate. The relevant part of the said telegram is extracted as under :

B "YOUR SUGGESTION, INTER ALIA, FOR MANNER OF
ADJUSTMENT OF DISCOUNT UNDER THE SCHEME TO
INDIVIDUAL TRADERS WAS TAKEN UP WITH SSP
AUTHORITIES AND REQUIRES FURTHER EXAMINA-
TION (.) THIS WILL HAVE TO BE SORTED OUT BEFORE
COMMENCING OPERATION OF THE SCHEME (.) THE
C MATTER IS BEING PUT UP TO THE COMPETENT
AUTHORITY FOR NECESSARY CLARIFICATIONS AND
APPROVAL (.) UNTIL SUCH TIME APPROVAL IS
RECEIVED WE ARE UNABLE TO OPERATE THE SCHEME
AS REFERRED TO ABOVE (.) "

D

(Emphasis added)

After the receipt of the telegram dated December 19, 1989 the group of traders addressed a letter dated December 30, 1989 to the Authority offering to withdraw their suggestion for the disbursement of the discount amount in the manner suggested by them in their letter dated December 4, 1989.

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The proposal made by the six traders as contained in their letter dated December 4, 1990 was considered by the Authority and it was found that under the scheme contained in the circular, there was no provision for the disbursement of discount benefits to a group of customers. The modification of scheme, as proposed by the respondents, was not found practicable. Accordingly, by the letter dated January 23, 1990, addressed to each of the six traders, the Authority reiterated the contents of its telegram dated December 19, 1989 and further informed them that the suggestion made by the traders in their letter dated December 4, 1989 was not acceptable to the Authority, *inter alia*, for the reason that the said suggestion was contrary to the scheme contained in the circular.

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The respondents filed a writ petition before the Madras High Court contending that they had started lifting material since December 4, 1989 and as such they sought a direction from the High Court that the discount

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benefit be disbursed to them. The writ petition was allowed by a learned single Judge of the High Court by the judgment dated April 17, 1990 primarily on the ground that the clarifications given by the Authority by its letter dated December 2, 1989 were binding on the Authority. The Authority filed appeals against the judgment of the Learned Single Judge. A Division Bench of the High Court by the impugned judgment dated October 9, 1990 dismissed the appeal. These appeals by the Steel Authority of India are against the judgment of the Division Bench of the High Court.

The Division Bench of the High Court upheld the findings of the learned single Judge on the following reasoning :

"Thus, the entitlement for the discount and the willingness to avail such discount are quite separate and distinct in the sense that while discount is on the quantity lifted and thus these dealers or actual users who qualified under the circular automatically became entitled to discount, the claim on behalf of those who joined in a group was required to be indicated for the purpose of working but some formula under which the discount amount could be equitably distributed among them. Such equitable distribution could be in the manner indicated in the clarification as well as left to the dealers who decided how they would inter se distribute the discount amongst themselves. They indicated a formula in a subsequent letter dated 4.12.1989. It appears however, that nothing was said why the formula indicated by them was not accepted by the appellants. The learned single judge has rightly taken notice of this aspect of the matter to conclude that when the writ petitioners are a group of business people who had joined together and had in fact lifted quantities in excess of 400 metric tonnes in the month of December 1989, and when they projected a claim for a discount based on the scheme which is still in force, the refusal on the part of the appellants to implement the scheme cannot be permitted. We are satisfied that there has been no mistake committed by the learned single judge in accepting the promise under the circular of the entitlement of discount as clarified under letter dt. 2.12.89. The right under the circular was not in the nature of a contract which depended upon the acceptance or otherwise of the offer of the appellants by the dealers."

- A It is obvious that the High Court did not allow the writ petitions on the ground that a binding contract had concluded between the parties but solely on the ground that under the price circular dated March 17, 1989 the respondents were entitled to the discount. We agree with the High Court that the respondents could claim the discount only in terms of the price circular and not on the basis of any contract purported to have been concluded as a result of the correspondence exchanged between the parties. We are, however, of the view that High Court fell into patent error in appreciating the scope and extent of the circular. A bare reading of the circular makes it clear that the benefit thereunder was available to "any customer" and not to a group of customers. Suppose there are 20 traders in the city of Madras and each one of them lifts 300 tonnes of steel per month. The off-take being less than 400 tonnes per month, individually none of them would be entitled to the benefit of the scheme. Can they claim that since jointly they have lifted 6000 tonnes of steel which is more than 400 tonnes in a particular month they are entitled to the discount under the scheme for the off-take over and above 400 tonnes. Accepting such a claim would be making mockery of the scheme under the circular. As mentioned above the price discount scheme under the circular was for "any customer" and not for "group of customers". The circular did not permit a group of customers not related to each other by Constitution to avail the benefit of the scheme on the basis of their combined off-take. The respondents could not have availed the benefit of the scheme jointly unless and until the scheme as a whole was amended and made applicable to all the customers of the Authority by issuing a fresh circular informing all concerned about the change in the scheme.

- F Even otherwise there could be no concluded contract between the parties. It was for the first time on December 4, 1989 that the six traders made an offer and expressed their desire to avail the benefit of the circular on the basis of their combined off-take. Prior to that there was no communication from the traders as a group to the Authority with regard to the admissibility of any such discount to them under the circular. The methodology suggested by the traders to share the discount was not envisaged under the circular. The said method was even not in accordance with the letter dated December 2, 1989 written by the Authority. The Authority rejected the offer of the traders by its telegram dated December 19, 1989 and the letter dated January 23, 1990. No concluded contract can,

thus, be deciphered from the correspondence between the parties. Looked A
from any angle, the High Court fell into patent error in directing the
Authority to extend the benefit of the circular to the respondents.

We allow the appeals, set aside the judgment of the learned single B
Judge dated April 17, 1990 and of the Division Bench of the High Court
dated October 9, 1990 and dismiss the writ petitions filed by the respon-
dents before the High Court with costs throughout. We quantify the costs
as Rs. 20,000.

N.P.V.

Appeals allowed.