

24th February, 2021

CONDITIONAL ACCEPTANCE OF AN OFFER- WHETHER CONCLUSION OF CONTRACT - PADIA TIMBER COMPANY CASE

Basic facts

Pursuant to the invitation of bids by the respondent/Port Trust, for the supply of wooden sleepers, the appellant submitted a bid, but without accepting all the terms of the respondent, and subject to conditions. Along with the bid the appellant had also deposited the Earnest Money Deposit (EMD). The conditions of the appellant were not agreeable to the respondent, and the latter communicated the same to the former, also insisting on its own terms, to which the appellant had not agreed. However, the respondent, issued a purchase order, which was not honoured by the appellant, and the respondent filed a suit for damages, alleging breach of contract by the appellant. The appellant filed a suit for return of EMD, contending that there was no concluded contract between the parties. Whereas, the respondent contended that there was a concluded contract, and that the appellant committed breach by not supplying as per the purchase order. The suits were jointly tried.

Issues

The legal issues involved were:

Whether a conditional acceptance of a proposal, results in the conclusion of a contract?

Whether award of damages u/s. 74, requires proof of actual loss, and whether the respondent took steps to mitigate losses?

Whether prior approval of the Board of Trustees u/s. 34 (1) proviso of the Major Port Trusts Act, 1963, is a condition precedent for creation of a valid contract by the Port Trust?

Trial court – Completion of communication of offer/acceptance v. Conclusion of a contract

The trial court found that there was conclusion of a valid contract between the parties, since the respondent/Port Trust accepted the bid submitted by the appellant, and issued a purchase order. The trial court found that, the contract got concluded when the respondent issued its letter of intent cum purchase order. The trial court decreed the suit by the respondent and awarded damages against the appellant, and

dismissed the suit filed by the appellant for refund of EMD. The trial relied upon s. 4 of the Indian Contract Act, 1872, to hold that the acceptance of the appellant's bid was completed, when it was received by the respondent, without considering the crucial requirement that for the acceptance to be complete, it should be unconditional and unqualified.

For the completion of acceptance, and the consequent conclusion of a contract, the acceptance should be an unconditional one of the terms of the proposal, and not a conditional acceptance, which amounts to a counter proposal. For the counter proposal to result in a concluded contract, it should be accepted unconditionally. The trial court erred in ignoring the decisive fact that neither the respondent unconditionally accepted the terms of the respondent, nor the respondent unconditionally accepted the counter proposal made by the appellant. The trial erred in not considering and applying s. 7 of the Contract Act, and by only applying s. 4 of the Act, to hold that receipt of the appellant conditional acceptance of the respondent's terms, resulted in the conclusion of the contract, when in fact the appellant had not accepted the appellant's conditional acceptance or the counter proposal. Section 4 of the Act only provides for completion of communication of offer & acceptance, and not the conclusion of a contract, in the context of the right to revoke the offer/acceptance before it is completed, and not about the conclusion of a contract, which under s. 7 requires both parties to agree on the same thing (consensus ad idem) or meeting of minds.

High Court

The High did not consider and answer all the legal issues raised by the appellant. The appellant had challenged the validity of the contract due to absence of any prior approval by the Board of Trustees of the respondent/Port Trust. The appellant contended that in the absence of the prior approval, mandatory u/s. 34(1) proviso, Major Port Trust Act, 1963, there cannot be any enforceable contract between the appellant and the respondent.

Despite the admission by the respondent's witness, the



Neha Maniktala

Associate, MCO Legals
B.B.A., LLB
Symbiosis Law School
Noida

Expertise:

Corporate/Commercial Arbitration

✉ neha.m@mcolegals.co.in

High Court resorted to a fallacious reasoning contrary to the facts and evidence, to find that there was a valid concluded contract, without properly addressing the issue as to whether the conditional acceptance by the appellant of the respondent's terms, or whether the disagreement with the conditions of the appellant by the respondent, resulted in a valid acceptance and consequent conclusion of the contract. Nor did the High Court consider the issue of absence of the prior approval of the Board of Trustees of the respondent/Port Trust, of the contract, for it to be enforceable. The High Court upheld the findings of the trial court, without addressing the decisive legal questions raised by the appellant.

Thus, the issue as to whether there was any unqualified/unconditional acceptance of the offer of the respondent by the appellant, so as to result in a concluded contract, was not properly considered by the trial court and the High Court.

Conditional acceptance & conclusion of contract

The Supreme Court, referring to s. 7 of the Indian Contract Act, 1872, held that, conditional acceptance of an offer, does not amount to an acceptance, and would not result in the formation or conclusion of a binding contract [Haridwar Singh v. Bagun Sumbrui, (1973) 3 SCC

889; UOI v. Bhim Sen Walati Ram, (1969) 3 SCC 146]. In the facts, both the appellant and respondent conditionally accepted each other's offer, resulting in neither party 'accepting' the other's offer. It was held that a conditional acceptance of an offer, is a counter-offer, which has to be accepted by the original proposer, for the conclusion of a contract. Since, the conditions subject to which the appellant had submitted its bid, were not accepted by the respondent, resulting in the absence of consensus ad idem, there was no concluded contract. It was held that the trial court and the High Court were in error in not considered the foundational issue of conclusion of a contract by offer and acceptance of the offer, and that a conditional acceptance of the offer, does not result in the conclusion of a binding contract. It was further held that, if the offer has not been accepted unconditionally, there is no conclusion of contract, in which case, there cannot be a breach of a contract, which never got concluded.

Since the fundamental issue of conclusion/formation of contract was answered in the negative, the Supreme Court found all the other issues academic and unnecessary to be considered, and the concurrent findings of the trial court and High Court, were set aside, and the appellant's suit for refund of EMD was decreed.