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ACCEPTANCE OF CONDITIONAL OFFER

A. Introduction:

Supreme Court (“**SC**”), in the case of *Padia Company Private Limited*¹ (“**Company**”), held that an additional condition imposed after the acceptance of a conditional offer does not result in a concluded contract, regardless that the additional condition is accepted by the opposite party.

B. Brief Facts:

1. Board of Trustees of Visakhapatnam Port Trust (“**VPT**”) floated a tender on 17th July 1990 for supply of wooden sleepers (“**Goods**”) with a condition that VPT will not pay for separate transit insurance. Supplier was responsible for the delivery of the recover return freight charges Goods in good condition. If they were found defective, VPT reserved the right to reject the delivered Goods and recover return freight charges.
2. The Company submitted its offer but rejected VPT’s condition. It instead made a counter proposal with condition that inspection of the Goods will be conducted at the Company’s depot as per VPT’s requirements. As per tender terms, the Company deposited Rs. 75,000 towards earnest money deposit (“**EMD**”) along with its quotation.
3. The Company agreed to supply the Goods to VPT as per its inspection standards. The Company reiterated that if VPT insisted that the inspection of Goods must be conducted at its site, then the Company would charge 25% over the rate quoted for supply of the Goods.
4. VPT accepted the Company’s offer. Though VPT agreed to the inspection of the Goods in the Company’s premise, it imposed a further condition they must be transported at Company’s cost and VPT would conduct final inspection of the Goods in its premises.
5. On 30th August the Company rejected VPT’s conditions and requested the return of the EMD. However, VPT placed purchase order with the Company on the same day. VPT followed up with the Company to supply the Goods, failing which the EMD would be forfeited.
6. The Company contended that there was no concluded contract between the parties as there was no complete acceptance of the terms of the offer and requested the refund of the EMD. According to VPT, the terms and conditions stated in the purchase order constitute a binding contract.

¹ *Padia Timber Company (P) Ltd. v. The Board of Trustees of Visakhapatnam Port Trust VPT*: MANU/SC/0006/2021.
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7. The parties approached the Trial Court where it was held that a contract was concluded² between the parties when the tender submitted by the Company was accepted by VPT and further the acceptance of purchase order was completed when the same was issued by VPT. It ordered in favour of VPT, which was before the High Court where it was dismissed. The Company appealed before SC.

C. Conclusion:

Summary of SC's observations in the judgment are:

1. *“It is a cardinal principle of the law of contract that the offer and acceptance of an offer must be absolute. It can give no room for doubt.³ The offer and acceptance must be based or founded on three components, i.e., certainty, commitment, and communication. An acceptance with a variation is nothing but a counter proposal which must be fully accepted by the other party before a contract is concluded.”⁴*
2. Acceptance of offer can be absolute or conditional. If conditional, the offer can be withdrawn at any time until absolute acceptance has been completed.⁵
3. Lower courts had completely overlooked the fact that the conditional offer submitted by the Company to inspect the Goods at its premises was not accepted unconditionally by VPT. Though VPT agreed to the inspection condition, it further imposed a condition that the final inspection of the Goods will be conducted in its premises. This condition was not accepted by the Company.
4. Therefore, no contract is concluded between the parties and the EMD is liable to be refunded to the Company.

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² Section 4 of the Indian Contract Act, 1872 (“ICA”).

³ Section 7 of the ICA.

⁴ *Haridvar Singh v. Bagun Sumbrui and Ors.* MANU/SC/0017/1972.

⁵ *Union of India v. Bhim Sen Walaiti Ram* MANU/SC/0087/1969.