

Appeal No. of 1981
Matter No.626 of 1977
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION.
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In the Matter of :
State Financial Corporation Act, 1951 ;
And

In the Matter of :
An application under Sections 31 and 32
of the said Act ;

Between

S.B.FOUNDRY LIMITED, an existing company
within the meaning of Companies Act, 1956
having its registered office at No.1A,
Vanasitart Row in the town of Calcutta
within the jurisdiction of this Hon'ble
Court. Petitioner/Appellant.

- Versus -

1. WEST BENGAL FINANCIAL CORPORATION a
body corporate established by the State
Financial Corporation Act 1951 having its
head office at No.4, Kiran Shankar Roy
Road in the town of Calcutta within the
jurisdiction of this Hon'ble Court.

2. SHEO SANKAR PANDEY an officer of the
West Bengal Financial Corporation working
for gain at No.4, Kiran Shankar Roy Road
within the jurisdiction of this Hon'ble
Court. ;... . . . Respondents.

TERMS OF SETTLEMENT

By consent of the parties the following order is
passed in the pending appeal :

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1. Messrs Ram Chandani Pvt.Ltd. a company within the meaning of the Companies Act, 1956 having its Registered office at 17-A, Everest House, 46, Chowringhee Road, Calcutta-700 071 is added a party respondent in this appeal.
2. The Receiver appointed herein Mr. Robi Goho (Bar-at-Law) shall sell and Messrs Ram Chandani Pvt.Ltd. or its nominee or nominees shall purchase property mortgaged by the appellant under registered Indenture of Mortgage Deed dated 12th December, 1972 to the West Bengal Financial Corporation respondent No.1 and morefully described in the Schedule annexed herewith and marked 'A' with the buildings and structures thereon and also the machinery and equipments lying therein 'as is where is' basis for total consideration of Rs. 20,27,954-18 p.
3. Out of the said sum of Rs. 20,27,954-18 p. the said Messrs Ram Chandani Pvt.Ltd. shall pay a sum of Rs. 15,00,000/- by cheque drawn in favour of the Respondent No.1 (West Bengal Financial Corporation) within two weeks from the date of this order and the balance sum of Rs. 5,27,954-18 p. shall be paid by the said Messrs Ramchandani Pvt.Ltd. to the respondent No.1 in five equal annual instalment of Rs.1,05,000/- each and the last instalment would be for Rs. 1,07,954-18 p. . The first of such instalment would be paid on the anniversary of this order and every subsequent instalments shall be paid on the same date of each and every succeeding year with interest thereon at the rate of 13½% per cent per annum on the reducing balance to be computed after the expiry of two weeks from the date of this order and such interest shall be paid quarterly by 31st March, 30th June, 30th September and 31st December. First of such interest

will be payable on 30th June, 1987. In case of default of payment of the principal sum or any of the annual instalments and interest thereon by Quarterly payment as aforesaid the interest shall be calculated on the compound basis.

4. The Receiver shall apply for obtaining necessary permission to all the statutory or body corporate for the purpose of obtaining permission and effecting the registration as aforesaid in favour of Messrs Ram Chandani Pvt.Ltd. and the said Messrs Ram Chandani Pvt.Ltd. will bear all costs, charges and expenses therefor.

5. In default of conveying and registering the property in favour of M/s. Ram Chandani Pvt.Ltd. in terms of the Clause 2 herein and in default of obtaining any permission by the Learned Receiver in terms of clause 4 hereinabove, the West Bengal Financial Corporation shall refund to M/s. Ram Chandani Pvt.Ltd. the sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs) or any other further sum or sums which shall be paid by M/s. Ramchandani Pvt.Ltd. and West Bengal Financial Corporation shall hold the money till the conveyance is registered.

6. As a security for payment of the sum of Rs. 5,27,954-18 p. and interest thereon at the agreed rate, the said Ramchandani Pvt.Ltd. shall arrange a personal Guarantee of Mr. H.F. Ramchandani for the said sum of Rs. 5,27,954-18 p. in favour of the respondent No.1 on the terms and to be stipulated by the respondent No.1.

7. In default of the payment of any of the annual instalments or any interest thereon the respondent No.1 will

be entitled to in addition to its all other rights available in law immediately execute this order as a decree without recourse to any suit or legal proceedings and/or enforce the personal guarantee of Mr. H.P. Ramchandani above. Upon execution of such guarantee and payment of Rs. 15,00,000/- the Receiver shall put the said Messrs Ramchandani Pvt. Ltd. in possession.

8. Upon payment of the instalment as stated hereinabove for the said sum of Rs. 5,27,954-18 p. with interest thereon and cost and charges the West Bengal Financial Corporation shall release the guarantee executed by Mr. H.P. Ramchandani.

9. It is made clear that so far the other properties and assets (Sodepore Properties covered under the mortgage deed dated 7th May, 1971) which are ~~entire~~ securities of the respondent No.1 except the mortgaged property described in Schedule 'A' hereof will continue to remain the subject matter of the present appeal and will not be affected in any manner whatsoever by this present order .

10. The original title deeds relating to the immoveable property mentioned in Annexure 'A' hereof at present in the custody of the respondent no.1 shall continue to be in the custody of the respondent no.1 until the entire amount payable in terms of this order is paid and/or liquidated by the said Messrs Ramchandani Pvt. Ltd. Upon payment of

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the entire amount as provided by this order, the Title Deeds relating to the immovable properties mentioned in Schedule 'A' herof will be made over by the respondent No.1 to the said Messrs Ramchandani Pvt.Ltd.

11. The draft of the proposed conveyance approved by the parties is annexed hereto and marked with the letter 'B'.

S. B. Founding Draft
by the firm of
H. B. Ramchandani
Director

Ramchandani Private Limited
by the firm of
H. B. Ramchandani
Managing Director

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Annexure "A"

Part-I

ALL THAT pieces or parcels of land within
Mouza Doharia 'Pargana Anwarpur' Thana and Sub Registration
Office Barasat within the District of 24-Parganas' Touzi No
146, J.L.No.45 R.S.No.132 comprising the following plots :-

Khatian no.	Dag No.	Area	Nature of land	Annual rent payable to the Superior Lan lord the State of West Bengal.
238	1356	.51		
(Present 979)	1357	.30		
	1358	.54		
	1359	.25		
	1360	.48		
	1363	.20		
	1364	.23		
	1365	.17		
	<u>1362</u>	.22		
	<u>1662</u>			
	<u>1363</u>	.45		
	<u>1663</u>			
	1374	.21		
	1375	.20		
	1384	.20		
	1385	.18		
	1386	.27		
	1387	.26		
	1388	.12.		
	1389	1.46		
	<u>734/310</u>			
	1390	.75		

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Khatian No.	Dag No.	Area	Nature of land	Annual rent payable to the Superior Land lord the State of West Bengal.
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	622	.50		
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	623	.16		
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	1361	.30		
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	Total...	<u>8.00</u>		
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THIS INDENTURE made this day of
One thousand Nine hundred and Eighty-Seven BETWEEN
ROBI GOHO son of Late Sarada Churn Goho residing at
637 Block 'O', New Alipore, Calcutta, a member of the Calcutta
Bar Library Club, by religion Hindu, Receiver appointed
in Matter No. 626 of 1977 in the High Court at Calcutta in the
matter of an application under Sections 31 and 32 of the State
Financial Corporation Act, 1951 (West Bengal Financial Corpora-
tion & Ors. Vs. S. B. Foundry Ltd. & Ors.) hereinafter referred to
as "the Receiver" (which expression shall unless repugnant to
the context or meaning thereof include its successor in office,
representative and assigns) of the FIRST PART AND M/S. RANCHANDANI
PRIVATE LIMITED, a Company incorporated under the provisions
of the Companies Act, 1956 having its Registered office at
No. 46C, Chowringhee Road, Calcutta-700 071 hereinafter referred
to as "the Purchaser" (which expression shall unless repugnant
to the context or meaning thereof include its successors,
representatives and assigns) of the Second Part AND
S. B. FOUNDRY LIMITED, a company incorporated under the
provisions of the Companies Act, 1956 having its Registered
Office at No. 1/A, Vansighat Row in the town of Calcutta
hereinafter referred to as "the Company" (which expression
shall unless repugnant to the context or meaning thereof
include its successors, representatives and assigns) of the
Third Part (hereinafter referred to as "the Confirming Party").

WHEREAS By an Indenture of Conveyance dated 12th December
1972 executed between Probhat Kumar Paul and Sibananda Prosad
Shah described therein as Joint Receivers of the One Part
and Eastern National Engineering Works Limited (Liquidation)
described ..

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described therein as "the Company" of the Second Part and S.B. Foundry Ltd. therein described as "the Purchaser" and for the consideration mentioned therein the Joint Receivers in terms of the order of the Hon^{ble} High Court at Calcutta dated 1st August, 1972 transferred, conveyed, assigned and assured and the confirming party referred to therein duly confirmed unto and to the use and benefit of the Purchaser referred to therein free from all encumbrances ALL THESE lands, structures, machineries and other properties of the company and more fully described in the Schedule mentioned and described therein Part I, Part II and Part III and also described in the Part I and II of the Schedule hereunder.

AND WHEREAS by an Indenture of ----- Mortgage dated 12th December 1972 executed by and between S.B. Foundry Ltd. referred to therein as the company and party of the one part and West Bengal Financial Corporation of the other part and for the consideration mentioned therein the said S.B. Foundry Ltd. duly covenant with the Corporation that the company will pay to the Corporation the principal sum viz. the sum of ₹. 9,00,000/- by instalments fully stated therein and the company duly granted, conveyed and transferred, assigned and assured unto the Corporation by way of mortgage ALL THESE piece and parcel of land fully described in Part I, Part II and Part III of the Schedule referred to therein and in default of payment of all or any of the part of the principal sum or interest in performance or observance of any of the covenants and conditions of the said deed of Mortgage the Corporation shall be entitled to enter into and to take possession of

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the mortgaged premises and to possess and use and enjoy the same and to receive the rent and income and profits and benefits thereof without interruption or hindrance of the company.

AND WHEREAS in terms of the said Deed of ----- Mortgage the company defaulted in payment of the instalments of principal sum and interest payable under the said Indenture of Mortgage dated 12th December 1972 and as such committed defaults of the terms and conditions of the said Deed of Mortgage and the Corporation instituted proceedings in the Hon'ble High Court at Calcutta for enforcement of the said Mortgage Deed under the State Financial Corporation Act, 1951 being Matter No. 626 of 1977 (West Bengal Financial Corporation & Anr. Vs. S.B. Foundry & Ors.)

AND WHEREAS on or about 12th July 1977 ----- the Corporation filed an application, inter alia, for sale of the land, buildings, machineries and other assets mortgaged and/or charged in favour of the Corporation pursuant to the said Deed of Mortgage dated 12.12.1972.

AND WHEREAS by an order dated 12th July ----- 1977 Mr. P.K. Bose, Bar-at-Law and Mr. R.K. Chandra, Advocate were appointed as Joint Receivers with the direction to take possession of the mortgaged property and to make an inventory thereof.

AND WHEREAS by an order dated 6.9.77 the ----- Hon'ble High Court at Calcutta directed the said Jt. Receivers to sell the lands, buildings, machineries and other assets mortgaged and/or charged in favour of the Corporation in terms

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of the said Deed of Mortgage dated 12.12.72.

AND WHEREAS By an order dated 20th June, 1979 the said Jt.Receivers were discharged and Mr.K.P. Chatterjee, Secretary of the West Bengal Financial Corporation, was appointed as Receiver in place and stead of the said Jt. Receivers.

AND WHEREAS by an order dated 28th November 1979 the Hon'ble Mrs.Justice Indira Khastgir was pleased to direct the Receiver namely. Sri K.L.Chatterjee, to sell the properties in terms of earlier order.

AND WHEREAS on an application in the said Matter No.626 of 1977 on 17th August 1983 the said Robi Goho was appointed as Receiver on the terms and conditions contained therein with direction to sell the mortgaged property.

AND WHEREAS The purchaser approached the Receiver through the Corporation for an absolute sale of Madhyamgram Unit of the S.B.Foundry Ltd.free from all encumbrances at and for the price of Rs.15,00,000/-.

AND WHEREAS The Corporation approved the said offer of the Purchaser.

AND WHEREAS The Purchaser agreed to purchase the property fully described in the Schedule of part I & II written hereunder at or for the price of Rs.15,00,000/- and the Corporation agreed to grant, convey and transfer the said property fully described in the part I & II of the Schedule referred to hereinafter absolutely and for ever free from all

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encumbrances whatsoever without any lien and/or charge.

AND WHEREAS By an order dated/passed by the Hon'ble
Mr. Justice , the Receiver ,
party of the one part, has been directed to transfer, convey,
grant, assign and assure unto the Purchaser absolutely and for
ever free from all encumbrances ALL THAT lands, buildings and
other properties being 'Madhyamgram Unit' of the said company
at or for the price of Rs.15,00,000/-.

NOW THIS INSTRUMENT WITNESSETH as it has been agreed
by and between the parties that in pursuance of the said
order dated and in consideration of the said
sum of Rs.15,00,000/- the Vendor doth hereby grant, transfer
convey, assign and assure and the Confirming party doth
hereby confirm unto and to the use of the benefit of the
Purchaser free from all encumbrances ALL THESE lands,
buildings, machineries and other properties being Madhyamgram
Unit of the Company sold by the Receiver and more fully
described in the Schedule hereunder written or HOWSOEVER
OTHERWISE the said property or part thereof now are or is
or at any time or times HERETOFORE were or was situated,
tenanted, butted, bounded, called, known, numbered,
described or distinguished TOGETHER WITH ALL AND SINGULAR
land and building erected thereon in respect of the
Madhyamgram Unit of the said company and other erection
and/or voucher thereon and thereunto belonging and with the
same usually held, used, occupied or enjoyed AND all ~~wagax~~, ways
paths, passages, drains, lights, privileges, easements, appendages
and appurtenances whatsoever to the said lands, tenements,
hereditaments and premises belonging or in anywise -

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appertaining or reputed or known to be part or parcel or member
 thereof which now is, or are or heretofore were or was holden
 used occupied or enjoyed therewith and the reversion or
 reversions, remainder or remainders, rents, issues and
 profits thereof and all the estate, right, title, interest
 property, claim and demand of the Vendor into, out of,
 and upon the said premises and every part thereof and all
 deeds, documents and muniments of title relating to the
 same TO HAVE AND TO HOLD the said land, tenements, hereditaments
 and premises hereinbefore expressed to be hereby granted
 conveyed, transferred or assured or expressed or intended
 so to be unto the Purchaser absolutely free from all
 encumbrances and for ever and the Vendor doth hereby covenant
 with the Purchaser that he the Vendor hath good right, full
 power and absolute authority to grant, convey, transfer and
 assure the said premises and every part thereof unto the
 Purchaser in manner aforesaid and that the Purchaser shall
 or may at all times hereafter peaceably and quietly possess
 and enjoy the same and every part thereof and receive and rea-
 lise the rents, issues and profits thereof without any eviction,
 interruption, claim or demand whatsoever by the Vendor or any
 person claiming lawfully or equitably through, under or in
 trust for him And that free and clear and freely and clearly
 and absolutely acquitted exonerated and released or
 otherwise by and at the costs and expenses of the Vendor and
 well and sufficiently indemnified of from and against all
 manner of claims, charges, liens, debts, attachments,
 dispendens and encumbrances whatsoever created made done
 occasioned or suffered by the vendor or by any person or
 persons claiming as aforesaid And the Vendor doth hereby
 further covenant with the purchaser that the Vendor and all
 persons ..

having or lawfully or equitably claiming through under or in trust for the vendor as aforesaid shall and will from time to time and at all times hereafter at the request and costs of the Purchaser or ^{person and} of persons requiring same cause to be done or executed all such acts, deeds, matters and things whatsoever and further better and more perfectly assuring the said premises and every part thereof unto the purchaser in manner aforesaid as shall or may be reasonably required.

THE SCHEDULE ABOVE REFERRED TO:

Khatian number.	Bag No.	Area	Nature of land	Annual rent payable to the Superior Landlord the State of West Bengal.
238	1356	.51		
(Present 979)	1357	.30		
	1358	.54		
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	1663	.45		
	1374	.21		
	1375	.20		
	1384	.24		
	1385	.18		
	1386	.27		
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Khatian Number.	Dag No.	Area	Nature of land	Annual rent payable to the Superior Landlord the State of West Bengal.
	1387	.12		
	1389	1.46		
734/310	1390	.75		
	622	.50		
	623	.16		
	1361	.30		
	Total ..	<u>8.00</u>		

IN WITNESS WHEREOF the Vendor hath hereunto set
and subscribed his hand and Seal the day month and year
first above written.

SIGNED SEALED AND DELIVERED

by the abovenamed Vendor in
the presence of ;

DATED THIS

DAY OF

1987

BETWEEN

ROBI GOHO .. FIRST PART
PA. CHANDANI PVT. LTD.
.. SECOND PART

AND
S. B. FOUNDRY LTD.
.. THIRD PART AND
CONFIRMING PA-

CONVEYANCE

B. SE. MITRA,

Appeal No. of 1981
Matter No.626 of 1977
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

MESSRS S.B. FOUNDRY LIMITED.

...Appellant.

-Versus -

WEL F BENGAL FINANCIAL CORPORATION & ANR.

.... Respondents.

TERMS OF SETTLEMENT

Fox & Mondal, &
Solicitors & Advocates
12, Old Post Office St
Calcutta.