

**CAN A CONDITIONAL ACCEPTANCE OF AN OFFER BE CONSIDERED A  
CONCLUDED CONTRACT?** *(Part 2 of 2... In continuation with earlier  
circulation)*

M/s. Padia Timber Company (P) Ltd. ("Appellant")	The Board of Trustees of Visakhapatnam Port Trust through its Secretary ("Respondent" or "Respondent- Port Trust")
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**Facts of the Case**

- The Respondent- Port Trust floated a tender for supply of wooden sleepers. The tenders were due to be opened on 01.08.1990;
- Pursuant to the aforesaid tender the Appellant submitted its offer **with a specific condition** that inspection of the sleepers would have to be conducted only at the depot of the Appellant;
- The Appellant did not accepted certain clauses of the tender and made a counter proposal and in accordance with the terms and conditions of the tender, the Appellant deposited Rs. 75,000/- towards earnest deposit, along with its quotation;
- After the tenders were opened, certain discussions took place between the Appellant and the tender committee of the Respondent-Port Trust and the Appellant made it clear to the Respondent- Port Trust, that if the Respondent-Port Trust required inspection at the site of the Respondent-Port Trust, the Appellant would charge 25% above the quoted by the Appellant.
- The Respondent-Port Trust had accepted the offer of the Appellant, **and imposed the further condition** that the Appellant would have to transport the Wooden Sleepers to the General Stores of the Respondent-Port Trust by road, at the cost of the Appellant and the final inspection would be made at the General Stores of the Respondent –Port Trust.
- The Appellant was not accepting the terms and conditions and rejected the proposal of the Respondent-Port Trust and requested that the earnest money deposited by the Appellant be returned.
- Thereafter, a purchase order was issued to the Appellant from the office of the Respondent-Port Trust, requesting the Appellant to supply Broad Gauge Track Sleepers and Broad Gauge Special Sleepers as per the latest Indian Railway Standards, on the terms and conditions specified in the Purchase Order and the Special Conditions of purchase appended thereto;
- the Respondent Port Trust through a letter of intent requested the Appellant to supply the materials ordered as per the purchase order and that if supply is not made as per the purchase order the Earnest Deposit

of Rs. 75,000 would be forfeited;

- In response, the Appellant wrote a letter contending that that there was no concluded contract between the Appellant and the Respondent-Port Trust and once again requested that the earnest money deposited be refunded;
- According to the Appellant the negotiations between the Appellant and the Respondent-Port Trust did not fructify into a concluded contract, since the Respondent-Port Trust did not accept the conditions of the Appellant fully and the Appellant did not agree to the terms and conditions of the Respondent-Port Trust;
- The Respondent-Port Trust filed suit against the Appellant seeking damages for breach of contract.
- The Trial court held that the Respondent-Port Trust had invited tenders for supply of wooden sleepers, pursuant to which the Appellant had submitted its bid and the Respondent-Port Trust had accepted the offer of the Appellant.
- The Trial court rejected the contention of the Appellant that the Appellant has revoked its offer before acceptance thereof by the Respondent-Port Trust **and held that there was a concluded contract between the Appellant and the Respondent-Port Trust**
- Trial court found that there was a concluded contract, but the Appellant had admittedly not supplied the wooden sleepers to the Respondent-Port Trust.
- ***On appeal to High Court by the Appellant, the High Court dismissed the appeal filed by the Appellant holding that the Trial Court had, on consideration of the entire evidence and materials available on record decreed the suit filed by the Respondent-Port Trust and dismissed the claim of the Appellant;***
- *Aggrieved by order Appellant filed an appeal with the Hon'ble Supreme Court wherein it was held:-*
  - ❖ It is a cardinal principle of the law of contract that the offer and acceptance of an offer must be absolute. When the acceptor puts in a new condition while accepting the contract already signed by the proposer, the contract is not complete until the proposer accepts that condition.
  - ❖ The High Court over-looked the main point that, in the response to the tender floated by the Respondent-Port Trust, the Appellant had submitted its offer conditionally subject to inspection being held at the depot of the Appellant. *This condition was not accepted by the Respondent-Port Trust unconditionally.*
- The Respondent-Port Trust agreed to inspection at the Depot of the Appellant, but imposed a further condition that the goods would be finally inspected at the showroom of the Respondent-Port Trust. *This*

*condition was not accepted by the Appellant.*

- Therefore, ***there being no concluded contract, there could be no question of any breach on the part of the Appellant or of damages and the earnest deposit of the Appellant is liable to be refunded within four weeks with interest @ 6% per annum from the date of institution of suit till the date of refund thereof.***

The appeal is, accordingly, allowed

The acceptance of a conditional offer with a further condition results in a concluded contract only when the other party accept the counter offer made by one party.

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Thanks and Regards  
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