

MSTC Ltd. v. Standard Chartered Bank

MSTC Ltd.

...Appellant

Standard Chartered Bank

...Respondent

Case No: Appeal No. 10/2023

Date of Judgement: 07/08/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Gaurav Joshi Senior Counsel along with Mr Rohit Gupta, Ms Anamika Singh and Ms Nashrin Shaikh, Advocate.

For Respondent: Mr Dinyar Madon Senior Counsel along with Mr Tushad Cooper Senior Counsel, Ms Radhika Gupta and Ms Rashika Bajpai, i/b M/s Khaitan & Co., Advocate.

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Facts:

Standard Chartered Bank (SCB) filed an Original Application (O.A.) No. 43 of 2012 before the Debts Recovery Tribunal-I, Mumbai (D.R.T.) against MSTC Ltd. for recovery of ₹191,03,54,070.96 including principal amount of ₹144,16,24,008.39 and interest of ₹47,41,56,060.63 due as on 06/03/2012 along with future interest at 12.25% per annum. SCB filed an Interlocutory Application (I.A.) No. 302 of 2017 under Rule 12(5) of the Debts Recovery Tribunal (Procedure) Rules, 1994 seeking a direction from the D.R.T. to MSTC Ltd. to pay ₹222,51,00,000/- admitted as due in its annual reports. The D.R.T. allowed the application vide order dated 16/09/2017 and directed MSTC Ltd. to pay ₹222,51,00,000/- to SCB within 30 days. MSTC Ltd.

challenged this order before the Debts Recovery Appellate Tribunal (DRAT).

Arguments by MSTC Ltd. (Appellant):

The application for judgment on admission was filed at a belated stage when the O.A. was due for final hearing after evidence. There is a serious dispute regarding facts and maintainability of the O.A. itself. MSTC Ltd. has categorically denied SCB's claim in the balance sheets relied upon. The amounts shown as liabilities are receivables purchased by SCB under a Receivables Purchase Agreement which SCB had insured with ICICI Lombard. However, ICICI Lombard repudiated SCB's claim. Instead of initiating action against ICICI Lombard, SCB illegally converted the outstanding as a debt due from MSTC Ltd. MSTC Ltd. has challenged SCB's claim before the D.R.T. and also filed a case against SCB and ICICI Lombard before the Alipore Court. The term "contingent liability" has been misconstrued. It means liabilities that may be incurred depending on an uncertain future event. MSTC Ltd. has merely stated in its annual reports that certain monies may be payable to SCB in the pending O.A. before the D.R.T. As per accounting standards, MSTC Ltd. is obligated to disclose all liabilities, whether actual or contingent, in its accounts. Showing an amount as a liability in the balance sheet does not mean that it cannot be disputed. The notes to accounts and auditor's reports, which explain the dispute, should be read along with the balance sheets.

Arguments by Standard Chartered Bank (Respondent):

The wording of Section 19(5-B) of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 is mandatory, requiring the D.R.T. to order payment of the admitted amount. MSTC Ltd.'s financial statements constitute an admission of liability, based on the Supreme Court's decision in Uttam Singh Duggal vs. United Bank of India & Ors. (2000) 7 SCC 120 and the Bombay High Court's decision in Ultramatrix Systems Pvt. Ltd. vs. State Bank of India & Ors. 2007 (4) Mh. L.J. 847. MSTC Ltd.'s annual reports from 2011-2012 to 2016-2017 consistently show the liability towards SCB, even after the O.A. was filed. The liability is reflected under "short-term borrowings" in the balance

sheets, and the statutory auditor has remarked that MSTC Ltd. has defaulted in repaying dues to SCB. The Comptroller & Auditor General of India has not dissented from the auditor's comments on MSTC Ltd.'s financial statements. In its affidavit, MSTC Ltd. has not contested the correctness of its financial statements and has reiterated the statements made therein. MSTC Ltd.'s defences are frivolous, and it has not offered any explanation for the "liability" accounted as "short-term borrowings". The Indian Accounting Standard (Ind AS) 37 defines the distinction between "liability", "provision", and "contingent liability", and MSTC Ltd.'s financial statements clearly show the amount as a "real liability".

Court's Opinions:

The essential question is whether SCB is entitled to a decree on admission under Rule 12(5) of the D.R.T. Rules (now Rule 12(8)) and Section 19(5-B) of the Recovery of Debts & Bankruptcy Act, 1993. For a statement in a balance sheet to be accepted as an admission, it has to be clear, unambiguous, and unequivocal. Admission is the best form of evidence, but the whole admission, including any explanation or rider, must be considered. MSTC Ltd. has been disputing SCB's claim on various grounds, including territorial jurisdiction and the nature of the debt. Merely mentioning the claim in the balance sheets as a liability cannot amount to an unambiguous or unequivocal admission when the notes accompanying the statements explain the pending litigation. There is no clear admission in MSTC Ltd.'s pleadings. The intention behind granting a decree on admission is to hasten the disposal of matters where there is no possibility of a contest arising due to the admission. In the present case, the parties have been litigating for over a decade, and MSTC Ltd.'s explanations in the notes to the balance sheets negate an unequivocal admission. The D.R.T. was not justified in admitting the recitals in the balance sheets as an unequivocal admission of liability to grant a decree on admission. The impugned order of the D.R.T. is set aside, and I.A. No. 302 of 2017 is dismissed. The D.R.T. is directed to dispose of the O.A. as expeditiously as possible, considering its age of over a decade.

Cases Cited:

Uttam Singh Duggal vs. United Bank of India & Ors. (2000) 7 SCC 120

Ultramatrix Systems Pvt. Ltd. vs. State Bank of India & Ors. 2007 (4) Mh. L.J. 847

Inteltech Automation Pvt. Ltd. & Ors. vs. IndusInd Bank Ltd. & Anr. 2011 (1) Mh. L.J. 935

Shantez & Anr. vs. Applause Bhansali Films Pvt. Ltd. Company, Mumbai & Ors. 2009 (4) Mh.L.J. 37

Pankaj Unit No. 1 Housing Development Company Pvt. Ltd. & Anr. vs. Oshiwara Land Development Company Pvt. Ltd. & Anr. 2014 SCC OnLine Bom 203

Microcosm Metal & Energy vs. State Bank of India 2015 SCC OnLine Bom 7896

Bareilly Electricity Supply vs. The Workmen & Ors. 1971 (2) SCC 617

Assets Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr. (2021) 6 SCC 366

Sections and Laws Referred:

Rule 12(5) of the Debts Recovery Tribunal (Procedure) Rules, 1994 (now Rule 12(8))

Section 19(5-B) of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993

Order XII Rule 6 of the Code of Civil Procedure, 1908

Sections 128 and 129 of the Companies Act, 2013

Indian Accounting Standard (Ind AS) 37