

# MSTC Ltd. v. Union Bank of India & Ors.

MSTC Ltd.

...Appellant

Union Bank of India & Ors.

...Respondent

**Case No: Appeal No. 67/2007**

**Date of Judgement: 05/09/2023**

**Judges:**

Mr Justice Ashok Menon, Chairperson

**For Appellant: Mr Harjot Singh Alang, i/b M/s. Raval-Shah & Co., Advocate.**

**For Respondent: Mr O.A. Das, Advocate.**

**Download Court Copy [CLICK HERE](#)**

**Facts:**

This is an appeal filed by MSTC Ltd. (formerly known as Metal Scrap Trading Corporation Ltd.) before the Debts Recovery Appellate Tribunal (DRAT), Mumbai. The appeal is against the judgment and order dated 03.03.2005 passed by the Debts Recovery Tribunal (DRT) in Original Application (O.A.) No. 2355 of 1999. The respondents in the appeal are: a) Union Bank of India (Respondent No. 1) b) Aditya Mills Ltd. (Respondent No. 2) c) State Bank of India (SBI) (Respondent No. 3) Aditya Mills Ltd. (Respondent No. 2) was a company carrying on business in textiles and also dealing in steel under the name "Kanoria Steels," a sole proprietorship. At the request of Aditya Mills Ltd., Union Bank of India (Respondent No. 1) opened an irrevocable Letter of Credit (LC) on 25.09.1981 for one year (till 24.09.1982) in favor of MSTC

for Rs. 9 lakhs, which was later enhanced to Rs. 13,50,000/-, with a margin money of Rs. 1,35,000/-. Aditya Mills Ltd. requested Union Bank to amend the LC by deleting the name "Kanoria Steels" and substituting it with "Aditya Mills Ltd.," which was done, and MSTC was informed about it. On 15.06.1982, MSTC, through SBI (Respondent No. 3), presented a sight draft for Rs. 80,14,697.69 in the name of "Kanoria Steels" to Union Bank's Calcutta branch for a consignment of melting scrap of stainless steel. Union Bank's Calcutta branch made the payment to SBI "under reserve" and forwarded the documents to its Mumbai branch. Aditya Mills Ltd. refused to accept the documents as they were not in its name, and Union Bank's Mumbai branch asked its Calcutta branch to seek a refund from SBI. Instead of refunding, SBI presented the documents after correcting the name to "Aditya Mills Ltd.," which Union Bank did not accept, citing Uniform Customs and Practice (UCP) rules. After several reminders, SBI refused to refund the amount, stating that the documents were resubmitted after rectification. Union Bank appropriated the margin money of Rs. 1,35,000/- and amounts from the current accounts of Aditya Mills Ltd. (Rs. 1,64,504.40) and Kanoria Steels (Rs. 1,17,563.21), and also paid demurrage charges of Rs. 2,50,000/-. After adjustments, a sum of Rs. 6,54,442.48 was outstanding, and Union Bank claimed Rs. 10,81,310.42 (including interest) from the defendants.

**Arguments by Union Bank of India (Respondent No. 1):**

Union Bank filed the Original Application against all three defendants for recovery of Rs. 10,81,310.42. Union Bank claimed that payment was made to SBI "under reserve," indicating that SBI was obligated to refund the amount on demand. Union Bank argued that it was justified in returning the documents to SBI and seeking a refund since the payment was made "under reserve" by its Calcutta branch.

**Arguments by Aditya Mills Ltd. (Respondent No. 2):**

Aditya Mills Ltd. contended that they were never consulted before Union Bank paid the amount to SBI. The documents were never

presented to Aditya Mills Ltd. till the second week of January 1982, by which time the consignment had deteriorated and attracted demurrage charges of over Rs. 2 lakhs. Hence, it was not worthwhile for Aditya Mills Ltd. to take delivery of the goods. Aditya Mills Ltd. refused to accept the documents, which were furnished beyond the period of the Letter of Credit.

**Arguments by SBI (Respondent No. 3):**

SBI raised the issue of territorial jurisdiction, contending that the cause of action took place in Calcutta, and hence the DRT in Mumbai had no jurisdiction. SBI argued that the documents were rectified and resubmitted to Union Bank well within the validity period of the Letter of Credit. SBI claimed that the delay in submitting the rectified documents by Union Bank to Aditya Mills Ltd. resulted in the loss, for which SBI was not liable.

**Arguments by MSTC Ltd. (Appellant):**

MSTC Ltd. argued that the documents were presented through SBI before the expiry of the Letter of Credit, and the errors were rectified within time. MSTC Ltd. contended that Union Bank ought to have forwarded the documents to Aditya Mills Ltd. within time, and only if Aditya Mills Ltd. refused to accept them due to errors could Union Bank have sought a refund. Making the payment with the endorsement "under reserve" without even referring the matter to Aditya Mills Ltd., at whose instance the Letter of Credit was issued, was arbitrary, unilateral, unjustified, and unreasonable. The rectified/amended documents were submitted by SBI to Union Bank well within time, and there was no embargo in handing over the documents to Aditya Mills Ltd. for claiming the imported goods. The error in mentioning "Kanoria Steels" instead of "Aditya Mills Ltd." was an inadvertent error, and for all practical purposes, both were the same business entity, as admitted in the Original Application. MSTC Ltd. argued that if Aditya Mills Ltd. was exonerated from liability, the same reasons should have exonerated MSTC Ltd. as well, and hence the Original Application against MSTC Ltd. should be dismissed.

### **Court's Observations and Order:**

The court observed that the only question for consideration was whether Union Bank was justified in claiming a refund of the amount paid by its Calcutta branch to SBI "under reserve." Despite being informed about the amendment to the Letter of Credit, the name "Kanoria Steels" was mentioned in the documents instead of "Aditya Mills Ltd." Aditya Mills Ltd. could not have taken delivery of the goods with the wrong name mentioned, and hence there was no point in forwarding the documents to Aditya Mills Ltd. Union Bank could not be faulted for returning the documents to SBI with a request for refund since the payment was made "under reserve" by its Calcutta branch. The court relied on the Supreme Court decision in United Commercial Bank vs. Bank of India, AIR 1981 SC 1426, which held: a) Where contracts for the supply of goods are entered through banks, the paying bank must strictly adhere to the terms of the Letter of Credit and is not concerned with the sales contract. b) If the goods described in the documents tendered to the bank are not identical to those specified in the Letter of Credit, the paying bank is duty-bound to refuse payment to the beneficiary. c) A payment "under reserve" in banking transactions means that the recipient may not deem the money as their own but must be prepared to return it on demand. d) There is no provision in the Uniform Customs and Practice (UCP) for rectifying the documents and re-presenting them. The court rejected MSTC Ltd.'s reliance on the Supreme Court decision in Govind Rubber Ltd. vs. Louis Dreyfus Commodities Asia Pvt. Ltd., (2015) 13 SCC 477, as it dealt with the interpretation of an arbitration clause in a commercial document and was not applicable to the present case. The court found no reason to interfere with the findings of the DRT in the impugned judgment. The appeal filed by MSTC Ltd. was dismissed as being devoid of merits.

### **Cases Cited:**

United Commercial Bank vs. Bank of India, AIR 1981 SC 1426

Govind Rubber Ltd. vs. Louis Dreyfus Commodities Asia Pvt. Ltd.,

(2015) 13 SCC 477

**Sections and Laws Referred:**

Section 19(1)(c) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (regarding territorial jurisdiction of Debts Recovery Tribunals)

Uniform Customs and Practice (UCP) for Documentary Credits (specific provisions not mentioned)