BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 55/2007

Between

Trent Ltd. … Appellant/s

V/s.

Kotak Mahindra Bank Ltd. & Ors. …Respondent/s

Mr Pervez M Rustomkhan, Advocate for Appellant.
Mr Rohit Gupta along with Mr D. Chaurasia, i/b M/s. M. K. Ambalal & Co., Advocate for Respondent No. 1 Bank.

-: Order dated: 23/08/2023:-

The 8th Defendant in the Original Application (O.A.) No. 50 of 2004 on the files of the Debts Recovery Tribunal-II, Mumbai(D.R.T.), is the Appellant which is aggrieved by the judgment dated 03.07.2006 and, hence in appeal.

2. The facts and brief are thus:

The O.A. was filed by the 1st Respondent Kodak Mahindra Bank Ltd. for recovery of debt due from Defendants Nos. 1 and 2. Amounts lying with Defendants Nos. 3 to 7 in the account maintained by Defendants Nos. 1 and 2 and from Defendants Nos. 8 to 10 are sought to be recovered from them. The Applicant is the assignee of the debt from ICICI Bank Ltd., the original creditor.

The 1st Defendant is a sole proprietorship belonging to the 2nd Defendant. 14 Hundies aggregating ₹1,35,71,440/-was discounted by the 2nd Defendant drawn on and accepted by Hindustan Lever Ltd.(HLL). A sum of ₹13,162,140.25 was dispersed by way of a

cheque to the 3rd Defendant, Standard Chartered Bank, and credited into the account maintained in the name of the 1st Defendant operated by the 2nd Defendant. On 27.12.2000, the ICICI Bank contacted HLL and was shocked to learn that the 1st Defendant had not made any supplies to them and no Hundies were drawn or much less accepted by them. It was understood that the documents submitted by the 2nd Defendant for the 1st Defendant were forged and fabricated. An F.I.R. was lodged on the criminal complaint filed, and a case was registered. Investigation revealed that the 2nd Defendant had issued 9 pay orders for varied amounts to different parties from out of the money that was paid by the ICICI Bank by discounting the bills. Some of the money is still lying in the account of the 1st Defendant. Notice was issued by the investigating officer to Defendants Nos. 3 to 7 to stop payment of money lying in the deposit of the account maintained by the 1st Defendant. The Applicant applied to the Additional Chief Metropolitan Magistrate under section 457 of the CrPC seeking the release of the amount. Since the money was released into the account of the 1st Defendant on misrepresentation and fraud played upon by the 2nd Defendant, the ICICI Bank called upon the 1st Defendant to repay the amount. There was no positive response and hence, the O.A. was filed.

3. The 3rd Defendant M/s Standard Chartered Bank filed a written statement stating that the 2nd Defendant in the name of the 1st Defendant had a banking relationship with it since 1997 and the cheque issued by the Applicant Bank was credited to the account maintained by the 1st Defendant. The cheque was cleared on the same

date it was presented, and on the next day, nine pay orders were issued on request made by the 1st Defendant to various parties including Defendants Nos. 4, 8, 9 and 10 for various amounts. The 1st Defendant also withdrew a sum of over ₹14 lakhs by issuing three self-drawn cheques. A sum of ₹28 lakhs is still lying in the account maintained in the name of the 1st Defendant. The bank account has been frozen as a consequence of the orders of the investigating officer. The 3rd Defendant would contend that it is not liable to pay any interest to the Applicant since the money lying in the deposit was not utilised by it.

4. The 4th Defendant IDBI Ltd. has also filed a written statement contending that Defendants Nos. 1 and 2 had availed bills discounting facility from them as well. The discounted bills were found to be fake. A police complaint has been filed by the 4th Defendant as well. That apart, O.A. No. 92/2001 was filed by the 4th Defendant which was also allowed by the D.R.T.

5. The 6th Defendant Central Bank of India filed a written statement contending that the account has a sum of ₹14,430/- as the balance after transferring the amount to the creditor's account.

6. The 8th Defendant which is the Appellant, is a company that has filed a written statement stating that being a third party, no amount can be claimed by the Applicant Bank from them. The company had discounted 21 Hundies aggregating ₹2,03,71,922/-for goods allegedly purchased by HLL. ₹58,26,229/- alone was received towards the aforesaid amount which is due from the first Defendant. The company has approached the court for cancellation of the order passed by the

police to freeze its account.

7. The 9th Defendant filed a written statement contending that she has received ₹9,63,970/- from the first Defendant towards the amount due.

8. The 10th Defendant contended that various bills drawn by the first Defendant were discounted by it a sum of ₹1,39,29,848/- is due and towards that the first Defendant had paid only ₹14,33,634/-. Six postdated cheques given by the first Defendant towards the amount due were dishonoured. The 10th Defendant is also entitled to get a huge amount from Defendants Nos. 1 and 2.

9. The main contention that arose for consideration before the D.R.T. was whether the Applicant could claim the amount from the Defendants other than Defendants Nos. 1 and 2 as a debt due to it. The Ld. Presiding Officer concluded that the amounts due from Defendants Nos. 1 and 2 were distributed to the rest of the Defendants and that would not alter the nature of the transaction and would remain a debt and hence, allowed the O.A.

10. The 8th Defendant is aggrieved and hence, in appeal.

11. The Ld. Counsel for the Appellant contends that just like the Applicant, bills were discounted by the Appellant as well and more amount than what is due to the Applicant is actually due to the Appellant. Whatever amount that is transferred to the Appellant by Defendants Nos. 1 and 2 is towards the liability due to the Appellant and is therefore, to be appropriated by the company towards the outstanding debt due to it. The Applicant cannot claim any amount from the Appellant since there is no privity of the contract between

the Applicant and the company.

12. There is no doubt that the Applicant had discounted forged Hundies produced by the first Defendant and wrongly credited the amount into the account of the first Defendant maintained with the Standard Chartered Bank. The first Defendant thereafter distributed the amounts received from the Applicant to various other Defendants. There is no doubt that the scope of the word 'debt' defined in Sec. 2 (g) of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 ('RDDB & FI', for short) is very wide. When an amount has been wrongly credited into the account of Defendants Nos. 1 and 2 and a demand is made to repay that amount, the appropriation of that amount by Defendants Nos. 1 and 2 amounts to unjust enrichment. Such an obligation to repay or return the money received by fraud or misrepresentation is a liability constituting 'debt' within the meaning of the word defined in Sec. 2(g).

13. The Ld. Counsel for the first Respondent has relied upon the decision in *Eureka Forbes Ltd vs. Allahabad Bank & Ors (2010) 6 SCC 193* where the Hon'ble Supreme Court held thus:

> "50. In this background, let us read the language of Sec. 2 (g) of the Recovery Act. The plain reading of the section suggests that the legislature has used a general expression in contradistinction to specific, restricted or limited expression. This obviously means that, the legislature intended to give wider meaning to the provisions. Larger area of jurisdiction was intended to be covered under this provision so as to ensure attainment of the legislative object i.e. expeditious recovery providing provisions for taking such measures which would prevent the wastage of securities available with the banks and financial institutions.
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> 51. We may notice some of the general expressions used by the framers of law in this provisions:
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> (a) *any liability;*
>
> (b) claim as due from *any person;*

(c) during the course of *any business activity* undertaken by the bank;

(d) where secured or unsecured;

(e) and lastly legally recoverable.

52. All the above expressions used in the definition clause clearly suggest that the expression 'debt' has to be given general and wider meaning; just to illustrate, the word 'any liability' as opposed to the word 'determine liability' or 'definite liability' or 'any person' in contrast to ' from the debtor'. The expression 'any person' shows the framers do not wish to restrict the same in its ambit or application. The legislature has not intended to restrict to the relationship of creditor or debtor alone. General terms, therefore, have been used by the legislature to give the provision a wider and liberal meaning. These are generic or general terms. Therefore, it will be difficult for the Court, even on cumulative reading of the provisions, to hold that the expression should be given a narrower or restricted meaning. What will be more in consonance with the purpose and object of the Act is to give this expression a general meaning on its plain language rather than apply unnecessary emphasis or narrow the scope and interpretation of these provisions, as they are likely to frustrate the very object of the Act."

14. From a reading of the judgment, it is adequately clear that the word 'debt' under Sec. 2(g) of the RDDB & FI Act is incapable of being given a restricted or narrow meaning. The maxim *nullus commodum capere potest de injuria sua propria* has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulation.

The fact that the Appellant is also due to get money from the first Defendant is no reason to cling on to the money which was wrongfully transferred to them by the wrongdoer. I find no reason to interfere with the impugned judgment.

The appeal has no merits and is, therefore, dismissed.

Sd/-
Chairperson

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