(2025) 01 DRAT CK 1672

In the Debts Recovery Appellate Tribunal, Chennai

Case No : RA No. 40 Of 2017

Indus Ind Bank Ltd — APPELLANT

Vs

M/s Pyramid Saimira Threatre Ltd & Ors — RESPONDENT

Date of Decision : 06-01-2025

Acts Referred:

Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 20
Contract Act, 1872 — Section 62

Citation : (2025) 01 DRAT CK 1672

Hon'ble Judges : G. Chandrasekharan, Chairperson

Bench : Single Bench

Advocate : M/s Ramalingam & Associates, N. Prabhavathy

Final Decision : Allowed

Judgement

G. Chandrasekharan, Chairperson

1. This appeal is filed under Section 20 of RDDB & FI Act, challenging the order of dismissal of OA 145/2010 as against D2 passed by Ld. Presiding Officer, DRT-I, Chennai on 8.6.2016.

2. The appellant bank filed OA 145/2010 to recover a sum of Rs.2,89,59,633,75p i.e., a sum of Rs.1,15,49,349.12p due under Cash Credit Limit and Rs.1,74,10,284.25p due under Short Term Loan with future interest at 19% per annum with monthly rests from 17.6.2010 till date of realization in full along with costs of this application. After full fledged trial, Ld. Presiding Officer, DRT-1, Chennai found that appellant is entitled to the said claim from Defendants 1, 3 and 4 and claim against D2 was dismissed for the reason that D2 is not a party to the revised guarantee agreement and thus by virtue of Section 62 of Indian Contract Act, liability if any of D2 stood extinguished by operation of law. Challenging the said finding, this Appeal is filed.

3. Ld. Counsel for appellant bank submitted that loan in favour of first respondent (first defendant in OA) was sanctioned as per Sanction dated

7.11.2007. When the loan was sanctioned, 2nd respondent was also one of the directors of the first respondent. R2 along with other directors had executed guarantee deed on 24.11.2007. As per clauses 4 and 7 of the Guarantee Deed, guarantor namely R2 along with other guarantors agreed that bank shall be entitled to give temporary and extra Overdraft or other advances to the borrowers and to provide the payments made by the borrowers towards recovery of any moneys advanced/disbursed by the bank to the borrowers from time to time and it was also agreed that guarantors consent to the bank making any variance, change or modification that the bank may think fit in the terms of the bank’s contract with the borrowers to the Bank determining, enlarging or varying any credit facility to the borrower. Guarantors also agreed that they shall not be discharged from liability to the bank. Thus, Ld. Counsel submitted that these conditions make it expressly clear that guarantors including R2 are bound to pay amounts guaranteed.

4. In continuation of his submissions, Ld. Counsel for the bank submitted that appellant bank, consequent to the formation of consortium and bank being inducted with a cash credit facility of Rs.100 lakhs, was pleased to inform that first respondent was sanctioned with restructured loan facility to the effect that a Cash Credit Facility of Rs100 lakhs has been carved out of the existing Short Term Loan of Rs.1000 lakhs availed by the company in November, 2007 and the Cash Credit Limit will be made available to the company upon execution of the joint consortium documents by all the banks.

5. In terms of restructuring of the existing short term loan, which is carved out from the existing short term loan sanctioned in the year 2007, second respondent cannot say that second respondent is exonerated from its liability and discharge of loan amount. It is not a case of novation of contract. Second respondent is still liable on the basis of the personal guarantee executed by him on 24.11.2007. Thus, Ld. Counsel submitted that finding of the Ld. Presiding Officer in discharging the proceedings against R2 is not correct and not in accordance with law and prayed the Tribunal to set aside the order of the Ld. Presiding Officer as against R2 and allow the appeal fixing the liability on R2 as well.

6. In support of his submissions, Ld. Counsel for appellant bank produced judgment of Hon’ble Supreme Court of India in re Lata Construction and others Vs. Dr. Rameshchandra Ramniklal Shah and another reported in (2001) SCC 586.

7. In reply, Ld. Counsel for R2 submitted that on the basis of sanction letter dated 7.11.2007 and personal guarantee given by second respondent on 24.11.2007, no amount was disbursed by the appellant bank. Loan amount was disbursed on 27.6.2008, subsequent to the substitution of loan agreements by sanction letter dated 27.3.2008 followed by execution of loan documents like agreement for short term loan, agreement of hypothecation to secure working capital facilities, agreement for credit facilities against collateral security of deposit accounts, all dated 20.1.2009 and guarantee deed executed by

Guarantors Shri P.A. Swaminathan and Mr. N Narayanan, R3 and R4 on 20.1.2009. R2 is not a party to all these documents. These documents clearly show that by entering into these documents in pursuance of sanction proceedings dated 27.3.2008, bank and other respondents had substituted earlier agreements and guarantee deeds between the bank and the borrower with a new set of agreements of guarantee deeds. It is a clear case of novation, therefore, Ld. Presiding Officer, rightly found that R2 cannot be made liable for paying loan amount claimed. It is submitted that before execution of loan agreements on 20.1.2009, R2 resigned from the post the Director on 21.4.2008. Thus, Ld. Counsel for R2 prayed for confirming the order of Ld. Presiding Officer and for the dismissal of this appeal.

8. In support of his submissions, Ld. Counsel for R2 pressed into service judgment of Division Bench of Hon’ble High Court of Madras in re M/s Blue Star Limited represented by its authorized signatory S. Ganesh Vs Andhra Bank, Adayar Branch, Chennai and others for the proposition that when a case of novation is made out, no liability can be fastened on the basis of original contract.

9. I have considered the rival submissions and perused the record.

10. It is not in dispute that first respondent obtained Short Term Loan from appellant bank through sanction letter dated 7.11.2007 to the tune of Rs.1000.00 lakhs. In support of this loan transaction and as per the decision of the Board of Directors, 3rd respondent had executed Agreement for Hypothecation of movable assets on 24.11.2007, Agreement for credit facilities against collateral security of deposit accounts on 24.11.2007 and on the same day, respondents 2 to 4 have also executed guarantee deed guaranteeing the loan availed by first respondent in their personal capacities. In this regard, Directors have also sent a letter to the appellant bank on 21.11.2007.

11. On 27.3.2008, there was a letter sent by the bank to 3rd respondent intimating that consequent to the formation of consortium and the bank being inducted with a Cash Credit Limit of Rs.100.00 lakhs, carved out of the existing Short Term Loan of Rs.1000.00 lakhs availed by first respondent in November, 2007. As per the terms and conditions of Short Term Loan of Rs.1000.00 lakhs availed by first respondent in the year 2007, there was a modification of this amount; that Rs.100.00 lakhs was converted into Cash Credit and Rs.900.00 lakhs as Short Term Loan. For this Cash Credit Facility of Rs.100.00 lakhs, personal guarantors are respondents 3 and 4. The personal guarantee for Short Term Loan of Rs.900.00 lakhs was continued, with the guarantee of all the respondents including the second respondent. On the date of this modification in Rs.1000 lakhs existing loan i.e., on 27.3.2008, second respondent was still a Director. No doubt, second respondent is not a signatory to any of the documents like Agreement for short term loan, Agreement for hypothecation to secure working capital facility, Agreement for credit facility against collateral security of deposit accounts and the Guarantee Deed that has been executed on 20.1.2009. Obvious reason is that R2 resigned from the post of Director through resignation

letter dated 14.4.2008 and that was approved by the Registrar of Companies vide Form 32 with effect from 21.4.2008.

12. The issue now is whether in view of resignation of the second respondent from directorship on 14.4.2008 and that he is not a party to any of the loan agreements executed on 20.1.2009, can he be fastened with loan liability or not.

13. As narrated above, reading of Sanction Letter dated 7.11.2007 and 27.3.2008 shows that short term loan of Rs.1000 lakhs sanctioned vide letter dated 7.11.2007 was modified as a Cash Credit loan of Rs.100 lakhs and Short Term Loan of Rs.900 lakhs vide sanction letter dated 27.3.2008. The guarantee of second respondent for short term loan of Rs.900 lakhs was continued with express terms and conditions. As per the guarantee deed dated 24.7.2007, guarantors gave consent to bank for making any variance/change/modification that the bank may fit in the terms of bank's contract with the borrowers, to the bank determining, enlarging or varying any credit facility to the borrower as clearly mentioned in Clause 7 of the Guarantee Deed.

14. As per this clause in the guarantee deed, second respondent along with other Directors had given consent for making any variance/change/modification of the terms of contract between the bank and the borrowers. Even in the sanction letter dated 27.3.2008, out of Rs.1000 lakhs short term loan 100 lakhs was treated as Cash Credit Facility and Rs.900 lakhs was treated as short term loan retaining the guarantee of the directors including the second respondent.

15. At no stretch of imagination, subsequent modifications of terms of loan agreement and the execution of documents can be considered as substitution or novation of the earlier loan agreement between the bank and the respondents entered into in the year 2007. Reading of the judgment of Hon'ble Supreme Court of India in re Lata Construction and others Vs. Dr. Rameshchandra Ramniklal Shah and another reported in (2001) SCC 586 makes it clear that "in case of substitution of new contract in place of old contract and if the terms of two contracts are inconsistent and they cannot stand together, subsequent contract cannot be said to be in substitution of the earlier contract". Relevant portion is extracted for ready reference.

"One of the essential requirements of `Novation'; as contemplated by Section 62, is that there should be complete substitution of a new contract in place of the old. It is in that situation that the original contract need not be performed. Substitution of a new contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. A substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the two contracts are inconsistent and they cannot stand together, the subsequent contract cannot be said to be in substitution of the earlier contract."

16. From the facts narrated above and the judgment of Hon'ble Supreme Court of India referred above, this Tribunal has no hesitation in holding that there is no

substitution or a novation of the earlier loan agreement entered into in the year 2007 with subsequent modification of loan agreement entered into in the year 2008.

17. In view of this matter, finding of the Ld. Presiding Officer that 2nd respondent is not liable to make payment towards loan liability is not correct. Therefore, that part of the order is liable to be set aside and it has to be held that R2 along with other respondents is also liable to make payment determined in the order of the Ld. Presiding Officer dated 8.6.2016.

18. Accordingly, Order of Ld. Presiding Officer, DRT-I, Chennai dated 8.6.2016 passed in OA 145/2010 with regard to the part dismissing the OA claim against respondent No.2 is set aside and it is held that R2 is also liable with other respondents for the payment of amounts determined in the order dated 8.6.2016 passed in OA 145/2010.

19. In the result, Appeal RA 40/2017 is allowed . Parties should bear their own costs.

20. Pending IAs, if any, stand closed.