(2010) 12 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No. 5309 of 2010

Inteltek Automation Pvt. Ltd. and Others APPELLANT

Vs

Indusind Bank Ltd. and Another RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 12(5)

Citation : (2011) 3 BC 326 : (2011) 1 BomCR 592 : (2010) 259 ELT 652 : (2011) 1 MhLj 935

Hon'ble Judges : D.Y. Chandrachud, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : S.K. Jain, for the Appellant; Vandana D. Jaisingh, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—The First Respondent filed an application before the Debts Recovery Tribunal at Pune against the Petitioners for the recovery of an amount of Rs. 2.12 crores together with future interest. On 3 February 2010, the First Respondent moved an application under Rule 12(5) of the Debts Recovery Tribunal (Procedure) Rules, 1993 on the basis that in their balancesheet for the year ending 31 March 2005, the Petitioners had admitted an outstanding liability of Rs. 1.58 crores to the First Respondent. Consequently, an order was sought that pending hearing and final disposal of the Original Application, the Petitioners be directed to deposit an amount of Rs. 1.58 crores, failing which a Recovery Certificate for the admitted amount be issued. The Petitioners filed a reply to the application. In the reply, the Petitioners specifically set up a defence that the notes appended by the Auditors to the balancesheet clearly showed that there was a dispute on the liability of the Petitioners, both with respect to the claim of interest and principal. Hence, according to the Petitioners, there was no admission in the balancesheet on the basis of which an order of deposit could be passed or a Recovery Certificate could be issued. The Petitioners inter alia relied upon the following notes contained in the report of the Auditors which forms a part of the balancesheet:

There is dispute between the company and its bankers Indusind Bank Ltd over the issue of charging of interest and payment to bankers of interest and principal on Term Loan Rs. 1.50 crores. The company has not provided for interest on these bank borrowings. The bankers have approached appropriate court of law for recovery of its due.

Also Para F of the Auditors report also states

There is a dispute between the company and its Bankers Indusind Bank Ltd over the issue of charging of interest and payment to Bankers of Interest and Principal on Term Loan Rs. 1.50 crores. The Company has not provided for interest on these bank borrowings. The Bankers have approached appropriate court of law for recovery of its due.

2. The Debts Recovery Tribunal, by its order dated 23 April 2010, directed the Petitioners to deposit an amount of Rs. 1.58 crores within one month failing which, it directed that an interim recovery certificate would be issued. The Tribunal, while dealing with the notes of the Auditors, was of the view that it was only the element of interest which had not been ascertained and provided for. In other words, the view of the Tribunal was that the figures reflected in the balancesheet as of 31 March 2005 reflect the outstanding dues towards the principal payable by the Company to the First Respondent. This, according to the Tribunal, was an admitted amount. Relief was accordingly granted as prayed. In Appeal, the Debts Recovery Tribunal has confirmed the view of the Tribunal.

3. Counsel appearing for the Petitioners submitted that the Tribunal could not have read one part of the balancesheet in isolation and if the report of the Board of Directors and the Auditor''s report are properly appreciated, it would be apparent that there is no admission of liability. Counsel submitted that the Tribunal and the Appellate Tribunal ignored the principles of law laid down by the Supreme Court under which it is only where there is a plain admission that a decree analogous to that under Order XII, Rule 6 of Code of Civil Procedure, 1908 can be passed.

4. Rule 12 (5) of the Debts Recovery Tribunal (Procedure) Rules, 1993 provides as follows:

Where a Defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such Defendant to pay the amount, to the extent of the admission, by the applicant within a period of one month from the date of such order failing which the Tribunal may issue a certificate in accordance with Section 19 of the Act to the extent of amount of debt due admitted by the Defendant.

5. In the present case, the question before the Tribunal and indeed in these proceedings is, whether the Petitioners have made an admission in full or part of

the amount of debt due to the First Respondent. The report of the Directors for the year ending 31 March 2005 contains, at the outset, the following statement:

Here is dispute between the company and it''s bankers over the issue of charging of interest and payment to bankers of interest and principle. The company has not provided for interest on bank borrowings. The bankers have approached appropriate court of law for recovery of it''s dues.

6. Then again the compliance certificate which forms part of the report submitted with the balancesheet by the Company Secretary on 25 August 2005 contains the following statement:

The Company, being a private company, the borrowings made during the financial year do not attract provisions of Section 293 (1)(d) of the Act. In case of one of the loan from Bank the matter of repayment is in dispute and court matters are going on.

7. The Auditor''s report also of 25 August 2005 expressly refers to the circumstance that there was a dispute pending between the company and its bankers over the charging of interest and the payment to the bankers of the interest and the principal. The relevant reference in that regard in the Auditor''s report reads as follows:

Remark:

There is dispute between the Company and its bankers Indusind Bank Ltd., over the issue of charging of interest and payment to bankers of interest and principal on Term Loan Rs. 1.50 crores. The Company has not provided for interest on these bank borrowings. The bankers have approached appropriate court of law for recovery of its due.

8. The Auditor''s report then provides that "The impact of the interest, if charged and amount repayable including the principal and interest is not ascertained and interest not provided for.". The Auditor''s report further goes on to state thus:

Based on our Auditor procedures and on the information and explanations given by the management, we are of the opinion that the company has disputed the repayment of dues amounting to Rs. 1.50 crores availed from Indusind Bank. The dispute is from 30 March 2002 and was not cleared until 31 March 2005.

9. In Note 16 to the report of the Auditors, it is stated that "the term loan from Indusind Bank Rs. 1.50 crores is disputed as explained in point F remark.". Similarly, in Note 17, it has been stated that "In view of the dispute between company bankers over the issue of cash credit/Term loan from Indusind Bank Rs. 1.50 crores, we are unable to comment on application of funds by the Company.". Now, it is in this background that Schedule "C" to the Statement of Accounts would have to be evaluated. Schedule "C" which is entitled, "Secured Loan from Banks" refers to a Cash Credit of Indusind Bank Ltd. Of Rs. 1.13 crores and a term loan of Rs. 44.74 lacs.". The mere disclosure of these figures

in the Schedule cannot be read disassociated from the specific statement contained in the report of the Board of Directors and in the Notes of the Auditors which form part of the accounts. The Auditors'' report in fact makes it clear that there was a dispute between the company and its bankers over the issue of the charging of interest and payment to the bankers of the interest and the principal on the term loan. Both the Tribunal and the Appellate Tribunal have completely ignored this aspect of the matter.

10. Rule 12 (5) enables the Tribunal to order a Defendant to pay the amount in respect of which the Defendant makes an admission. The admission may be in respect of the full or a part of the amount of debt due to the Bank or a financial institution. The provisions of Rule 12(5) could not have been resorted to, in the facts of this case, where, for the reasons already noted earlier, there was no unequivocal admission of liability on the part of the Petitioners. Both the Tribunal and the Appellate Tribunal proceeded on the basis that there was an admission of liability in respect of the principal and what is disputed is only the element of interest. This, as the Auditors'' notes would show, is not a correct reading or appreciation of the audit report. The audit report has made it abundantly clear at several places which have been extracted above that there was a dispute both in regard to the interest charged and on the repayment of the principal.

11. Order XII, Rule 6 of the Code of Civil Procedure, 1908 empowers the Court, where admissions of fact have been made either in a pleading or otherwise, to make an order or give a judgment having regard to such admissions. While construing this provision, the Supreme Court in Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others, held that the object of Order XII, Rule 6 is to provide to a party a remedy to obtain a speedy judgment where a claim is admitted. The Supreme Court held that where the other party has made a plain admission entitling the claimant to succeed and where, there is a clear admission of facts, the provisions would squarely be attracted. In that case, the Supreme Court noted that the denial was evasive and that the learned trial Judge was justified in holding that there was an unequivocal admission of the contents of the documents. What was denied was the extent of the admission but the increase in the liability was admitted. Similarly, in a case which was decided by a Division Bench of this Court in Ultramatix Systems Pvt. Ltd. Vs. State Bank of India and Others, the Division Bench while adverting to Rule 12(5) held that a statement contained in the balancesheet and Profit and Loss Account would be an admission of liability unless a subsequent balancesheet was filed to show either that the amount has been paid or was not due and payable and/or any other material is produced to hold otherwise. In that case, there was an express admission of the amount due and payable in the balancesheet. There was no specific denial in the pleadings. In the case before us, however, as noted earlier, the facts stand completely on a different footing. The audit report which forms part of the balancesheet for the year ending 31 March 2005 clearly notes that the claim for interest and principal is in dispute. There is a specific denial in the pleadings.

12. For these reasons, we are unable to accept the contention which found favour with the Tribunal and in Appeal before the Appellate Tribunal. No case was made out either for the passing of an order of deposit or for the issuance of an interim recovery certificate under Rule 12(5). As a result, the petition would have to be allowed and is accordingly allowed by setting aside the impugned order of the Debts Recovery Appellate Tribunal dated 24 June 2010. The application filed by the First Respondent on 3 February 2010 for an order of deposit of Rs. 1.58 crores pending the hearing and final disposal of the Original Application and for the issuance of an interim recovery certificate upon failure to deposit would, therefore, stand dismissed. While doing so, we clarify that the Tribunal shall hear and dispose of Original Application No. 96/2004 filed by the First Respondent independently on its own merits.

13. Rule is made absolute accordingly. There shall be no order as to costs.

