

(2014) 05 DEL CK 0297
In the Delhi High Court
Case No : W.P. (C) 663/2014

Madhya Pradesh State Electricity Board APPELLANT
Vs
Punjab and Sind Bank and Others RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 2(g)

Citation : (2014) 05 DEL CK 0297

Hon'ble Judges : Vibhu Bakhru, J; S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Sakesh Kumar, Advocate for the Appellant; Rajender Wahi, Advocate for R-1 and Ms. Suparna Srivastava, Advocate for R-3 and 4, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

S. Ravindra Bhat, J.—By the present petition, Madhya Pradesh State Electricity Board (MPSEB) impugns an order dated 15.10.2013 passed by Debt Recovery Appellate Tribunal (DRAT). In terms of Madhya Pradesh Reorganization Act, 2000, State of Chhattisgarh claims to be a necessary/interested party in the matter and submits that it has moved an application for impleadment before DRAT, which is pending. In these circumstances, the learned counsels appearing for State of Madhya Pradesh, State of Chhattisgarh and also the counsel for the Punjab and Sind Bank were heard.

2. In view of the nature of the order this Court proposes to pass, a detailed factual narrative is not undertaken.

3. Before coming into force of the Madhya Pradesh Reorganization Act, 2000, Madhya Pradesh Electricity Board (MPEB) was existing in the undivided State of Madhya Pradesh. MPEB had issued certain bonds which were secured and unsecured being SLRs (Statutory Liquidity Ratio series) and non-SLR series in various denominations. The Punjab & Sind Bank subscribed to SLRs bonds to the

tune of Rs. 29.21 crores and non SLRs bonds to the tune of Rs. 5 crores. Therefore, subscribing to bonds aggregating to an amount of Rs. 34.21 crores.

4. With the enactment of the Act, the State of Madhya Pradesh was divided into two states and a new state i.e. State of Chhattisgarh was formed on 01.11.2000. With effect from 01.01.2001, the State of Chhattisgarh constituted its own Electricity Board i.e. the Chhattisgarh State Electricity Board and the State of Madhya Pradesh constituted a separate Electricity Board i.e. the Madhya Pradesh State Electricity Board (MPSEB) and the same was informed to the Government of India. In terms of Section 58(4) of the Act, the Central Government was empowered to make an order for distribution of assets and liabilities. On 23.05.2003, the Central Government passed a provisional order enabling the successor Boards to take over the assets and liabilities of the MPEB and by a final notification on 04.11.2004, the assets, rights, liabilities including the long term liabilities were apportioned between the newly constituted MPSEB and the Chhattisgarh State Electricity Board in the ratio of 90:10, respectively. This was apparently challenged by the MPSEB before the Supreme Court in a writ petition, which was dismissed by the Supreme Court on 13.09.2006.

5. In 2008, the respondent bank instituted proceedings u/s 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (OA No. 92/2008) claiming Rs. 64.99 crores together with cost and interest at the rate of 15% P.A. On 15.02.2010, the DRT allowed the said original application and decreed the claim against MPSEB and Chhattisgarh State Electricity Board in the ratio of 80:20. The decree was carried in appeal by both the newly constituted Boards; MPSEB and Chhattisgarh State Electricity Board. The contentions urged before the DRAT were that the amounts claimed could not be said to be "debt" in terms of the definition contained in Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the same could not be adjudicated under the said Act. This argument was pressed by the Madhya Pradesh State Electricity Board as negated by the DRAT. The DRAT granted partial relief to the parties holding that the overdue interest upto 15% directed by the DRT to be paid on the assessment of such liability which had not been adjudicated. To that extent, DRAT also took note of the Central Government's order and notification of 04.11.2004 and directed a modification to the Recovery Certificate to incorporate the fact of such order mandating a ratio of 90:10, as far as the liability of the parties is concerned. MPSEBs appeal before this Court against the order of DRAT.

6. After the impugned order was made, the State of Chhattisgarh made an application for its recall and modification which is stated to be pending.

7. It is submitted before this Court that both the Boards; MPSEB and Chhattisgarh State Electricity Board have deposited amounts to the tune of Rs. 44,02,92,711/- and Rs. 11,01,16,862/- respectively with the bank in terms of statement of the account received upto September, 2010 and acknowledged by the respondent bank.

8. In view of the subsequent developments, this Court is of the opinion that given the fact that the bonds matured at the time when the matter was pending before the DRAT, relegating the dispute for further adjudication would be fruitless. However, only two questions need to be considered i.e. the liability that accrue in respect of the post maturity period if any, and secondly, the liability if any of the State of Chhattisgarh in view of its contention that it had deposited the full amount payable in accordance with its share of liability as per the Central Government's notification of 04.11.2004. Since neither the decision of the DRT nor the DRAT have addressed the question as to post maturity liability of the two Boards, that aspect would have to be gone into by the DRT. Likewise, the State of Chhattisgarh states that, infact, it has discharged its liability in entirety, if so, the date on which satisfaction could be accorded would require adjudication after hearing the parties.

9. In these circumstances, the matter is remitted to the DRT for adjudication on the above two issues. Considering that the original application was filed in 2008, the DRT shall endeavour to finally decide the issue within six months from today. The counsel for the parties shall be present before the DRT for further directions towards fixing the date of hearing and other proceedings on 27.05.2014. The Recovery Certificate is set aside and fresh Recovery Certificate shall be drawn in the light of the adjudication by the DRT pursuant to the present order.

10. The writ petition is partly allowed in the above terms.