
(2017) 11 DEL CK 0566

In the Delhi High Court

Case No : Civil Writ Petition No. 9896, 9914 Of 2017

M/S Continental Construction Ltd

APPELLANT

Vs

State Bank Of India And Ors

RESPONDENT

Date of Decision : 09-11-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 1

Citation : (2017) 11 DEL CK 0566

Hon'ble Judges : Sanjiv Khanna, J; Prathiba M. Singh, J

Bench : Division Bench

Advocate : Aryama Sundaram, Nivedita Sharma, Shanta Devi Raman, Suruchi Mittal, Palak Mishra, Arihant Jain, S. L. Gupta, Sharan Kumar

Final Decision : Disposed Of

Judgement

Sanjiv Khanna, J

1. Learned counsels for the parties have been informed that the spouse of one of us (Sanjiv Khanna J.) has some shares in the State Bank of India.

Learned counsel for the parties state that they have no objection if this Bench hears the present writ petitions.

2. Continental Construction Limited and Mohinder Verma, legal representative of late C.L. Verma, have filed the afore-captioned writ petitions, which are interconnected and hence are being disposed of by this common order.

3. M/s Continental Construction Limited, is a company incorporated under the Companies Act, 1956. The petitioner company had availed of bridge finance/overdraft facility from State Bank of India, London, United Kingdom, made available against counter guarantees issued by the State Bank of India, Overseas Branch, New Delhi.

4. The undisputed position is that the State Bank of India, London had invoked the aforesaid bank guarantees and was paid by the State Bank of India, Overseas Branch, New Delhi.
5. It is the case of the State Bank of India, Overseas Branch, New Delhi, the respondent bank, that they had paid US\$ 114,080,799.82 to the State Bank of India, London. The State Bank of India, Overseas Branch, New Delhi was to receive 50% of the said amount from the Export and Import Bank of India (EXIM, for short) and 50% from the petitioner company. The guarantors, which as per the respondent bank included late C.L. Verma, now represented by his legal representatives, Chander Verma and M.S. Bassi. They were jointly and severally liable.
6. As the petitioner company and the guarantors' had failed to pay the said dues, the account was declared a Non-Performing Asset (NPA).
7. The State Bank of India, Overseas Branch, New Delhi filed OA No. 38/1998 before the Debt Recovery Tribunal (DRT) on 5 February, 1998, for recovery of Rs. 89.21 crores with pendent lite and future interest, costs etc.
8. The aforesaid OA had a chequered history. By final order dated 26th May, 1999, the OA was allowed for Rs.89.21 crores plus interest @ 15% per annum with half yearly rests, which was challenged by the petitioner company and the guarantors, in appeals before the Debt Recovery Appellate Tribunal (DRAT). During pendency of the said appeals, the petitioner company filed a writ petition before the Delhi High Court against an interim order. The said writ petition was allowed vide order dated 5th September, 2011, which had the effect of setting aside the final order dated 26th May, 1999 passed by the DRT. An order of remand was passed to the DRT to adjudicate the OA afresh after recording evidence. However, all attachments and other interim protections in favour of the respondent bank continued.
9. During the pendency of the recovery proceeding before the DRT, there was second round of litigation in the High Court on the question of right of cross-examination, but the prayer made by the guarantors was rejected. The order was upheld, as the Supreme Court did not interfere.
10. DRT by order dated 25th May, 2015 has decided OA No. 38/1998 and has, inter alia, held that the respondent bank is entitled to recovery of Rs.89.21 crores with interest @ 15% per annum on half yearly rests with effect

from 5th May, 1998 till payment. Costs of Rs.2,50,000/- was jointly and severally imposed. Decision specifically records that legal heirs of late C.L. Verma would be liable to the extent of property inherited by them.

Respondent bank would be entitled to adjust fixed deposit receipt or another amount available with them in the account of the petitioner company with

accrued interest. Lastly, order of attachment, in respect of land measuring 57 kanals 9 marlas situated at 14/2, Mathura Road, Faridabad (Faridabad

land, for short) together with built up commercial property known as Continental House, Nehru Place, New Delhi alongwith super structure thereon,

was made absolute. Recovery certificate was directed to be issued.

11. The petitioner company, Mohinder Verma, Chander Verma and M.S. Bassi have preferred an appeal before the DRAT, which is pending and is yet to be decided.

12. The writ petition by the petitioner company arises from the order dated 9th October, 2017 disposing of the interim application seeking stay of the

recovery proceedings before the Recovery Officer pending decision of the appeal. The impugned order dismisses the interim application after

extensively referring to the case law relating to the power of the Appellate Court/ Forum under Order XLI, Rule 1 of the Code of Civil Procedure,

1908 (Code, for short) and the fact that public money has to be recovered.

13. We have heard learned counsel for the petitioner company and Mohinder Verma at great length and also perused the papers/documents including

additional documents Annexures P-12 to 14 filed with the application CM No. 40315/2017, for placing them on record.

14. The primary contention raised by the two petitioners is on the basis of the deed of assignment dated 10th March, 1995 (indenture, for short)

executed between the petitioner company, the President of India, (acting in exercise of executive powers of the Government of India), EXIM and

State Bank of India, Overseas Branch. In particular, reference was made to paragraphs 11 to 15 of the aforesaid indenture and also the clauses

relating to assignment of debt and payment thereof in form of bonds, which were issued by the Government of India through RBI and the right of the

Government of India to collect the project receivables due and payable to the petitioner company.

15. The deed of assignment/ indenture dated 10th March, 1995 relied upon by

the petitioner company refers to several figures and other details, including the figure of Rs.164 crores, which was due and payable to the respondent bank in Rupees loans as on 31st March, 1994. In paragraph 12, it refers to receivables of Rs.335 crores (converted exchange value in Indian Rupees) described as project receivables. This amount of Rs.335 crores is thereafter bifurcated between Export Credit Guarantee Corporation (ECGC), EXIM and the respondent bank to the tune of Rs.157 crores, Rs.89.47 crores and Rs.89.20 crores, respectively.

16. On the basis of the aforesaid indenture, the two petitioners urge that the aforesaid OA for recovery of Rs.89.21 crores, should have been dismissed as the entire amount due and payable to the respondent bank was to be paid in terms of the indenture by the Government of India. It is submitted by the two petitioners that an amount of Rs.52 crores has been realized by the respondent bank on encashment of the FDR after the decision of the DRT dated 25th May, 2015. The respondent bank can sell two floors of Continental House and the sale price realised. Value of the two floors, it is asserted is more than Rs.200 crores.

17. Learned counsel for the respondent bank, who is present on advance notice, has contested the aforesaid submissions and has submitted that the indenture dated 10th March, 1995 was not specifically relied upon before the DRT and DRAT and the indenture is being misread and misinterpreted.

He submits that full credit of payment from the Government of India, and payment received from both EXIM and ECGC has been given. After accounting for these payments, Rs.89.21 crores was due and payable, and therefore OA was filed. The petitioner company, and the guarantors had issued two confirmations accepting their liability on 29th September, 1995 and 16th July, 1996. Valuations are denied, as being exorbitant.

18. The two petitioners dispute the confirmations.

19. We have considered the aforesaid contentions, and feel that these are matters of merits. For the present we observed that the two petitioners have accepted and admitted that they did not specifically rely upon the indenture dated 10th March, 1995 as a complete answer to the claim of the respondent bank. The decision of the DRT dated 25th May, 2015 goes into several issues raised, including the statement of accounts and the amounts, which are due and payable. We would record at this stage that the Indenture

dated 10th March, 1995 refers to the figure of Rs.164 crores as the amount due to the respondent bank as on 31st March, 1994. The controversy and disputes, which arises for consideration, primarily relates to the rate of interest, which is claimed as due and payable. The respondent bank asserts that they had in all paid US\$ 114,080,799.82 to the State Bank of India, London. These payments were made on different points of time from 19th February, 1993 to 6th February, 1995 i.e. even after 31st March, 1994. Why and for what reason, the two petitioners, did not raise this specific plea and contention, predicated an indenture dated 10th March, 1995 before the DRT cannot be fathomed and is unexplained.

20. Counsel for the petitioners referring to Annexure P-2 to the writ petition had drawn our attention to the figure of Rs.14.19 crores. It is submitted that this amount was due and payable on 31st March, 2008. Reference was made to the letter dated 28th March, 2013, enclosed as Annexure P-9, written by the respondent bank that the total outstanding amount was Rs.12.73 crores. The said argument and documents as per the respondent bank are being misread. The figure of Rs.14.19 crores, as per Annexure P-2, paragraph (vii) specifically states that the figure mentioned in the said paragraph does not include interest of 15%, compounded at quarterly rests upto 31st March, 1995 and half yearly rests thereafter. As per the respondent bank, the total amount due and payable by the petitioner company with the interest was Rs.889 crores on 3rd August, 2015. This amount is after giving credit of Rs.52 crores on encashment of the FDR. This is an amount for which Recovery Certificate has been issued. Similarly, the notice dated 28th March, 2013 does not include interest, and states that the outstanding amount was Rs.12.73 crores plus interest. Counsel for the respondent bank has drawn our attention to the findings of the DRT in the decision dated 25th May, 2015 on the aforesaid aspect. Our attention is also drawn to the agreement dated 6th February, 1995 executed between the petitioner company, the respondent bank and EXIM, one month before the indenture dated 10th March, 1995. This agreement specifically records and quantifies the dues of the respondent bank as Rs.189.48 crores and dues of EXIM as Rs. 191.68 crores.

21. On the question of liability of the Government of India, learned counsel for

the respondent bank has drawn our attention to the letter dated 2nd February, 1998, which was filed before the DRT. This letter, according to the respondent bank, is clear that the Government of India was not to meet the entire liability of petitioner company to the respondent Bank, EXIM, etc. Counsel for the respondent bank has submitted that in a number of cases similar assignment/ indentures were executed, albeit decrees have been passed.

22. We have referred to the facts and figures in some detail as it was impressed and asserted by the two petitioners that no dues are payable and the impugned order was passed without appreciating and understanding the controversy, for the entire dues were the liability of the Government of India and has been paid.

23. The respondent bank has submitted that in 2009 the petitioner company had transferred an amount of Rs.128 crores to four demerged companies.

This transfer of money had taken place during the pendency of the proceedings before the DRT and while the stay order was in operation. High Court has not granted approval for demerger. In fact demerger approval was never sought. The respondent bank was not a party to the order the Company Law Board and had not accepted transfer of money or demerger.

24. Another contention raised by the counsel for the respondent bank is that at every stage obstructions and hurdles are created and till today the respondent bank has not been able to sell and dispose of Faridabad land. With great difficulty, the respondent bank has been able to take possession of the ground floor and a part of the basement of the Continental House. Other portions of Continental House are in possession of the petitioner company or the demerged companies.

25. In view of the aforesaid discussion, we do not think that ground or a case for setting aside of the impugned order and for grant of stay of the recovery proceedings has been made out. However, it is stated that arrest warrants against Mohinder Verma have been issued. It is submitted that arguments before the DRAT in the appeal(s) have commenced and are being heard. Further, on a suggestion given, the petitioner company has agreed to pay a sum of Rs.50 crores, without prejudice to the rights and contentions in appeal(s), in five equal instalments of Rs.10 crores each. The first instalment, it is stated, would be paid by 20th November, 2017 and the next two after a gap of seven days. Last two instalments would be paid

after a gap of ten days from payment of the last instalment. Further, the petitioner company has given their consent, without prejudice to the rights and contentions, for sale of Faridabad land and for the ground floor and part of the basement in the building known as 'Continental House', Nehru

Place. In addition, the petitioner company has agreed that they would within one week inform the respondent Bank about another floor in the building

known as 'Continental House' and vacant possession of the said floor would be given to the respondent bank within four weeks thereafter. The

respondent bank would take proceedings for sale of the said floor also. It is stated that the petitioner company and Mohinder Verma would cooperate.

26. We perceive and believe that the arguments in the appeal(s) preferred by the petitioner and others including Mohinder Verma would be heard

expeditiously and preferably within the period stipulated for payment of the installments. In case the arguments get prolonged and go beyond period of

50 days from 20th November, 2017, it will be open to the DRAT to ask the petitioner company to make further deposits, and the DRAT shall pass

orders as may be deemed appropriate and necessary. One of the reasons why we have passed this order is to ensure that the parties do not indulge in

procrastination and delay adjudication. The OA was filed in 1998 and every endeavour must be made to dispose of the appeal(s) expeditiously and

within the shortest possible time.

27. The petitioner company would be bound by the statement made and abide by the same. Attachment and other protective orders would continue

and operate, till modified or vacated by DRAT.

28. Mohinder Verma is the son of late C.L. Verma. Mohinder Verma has not given any personal guarantee. Mohinder Verma will be liable to the

extent he has inherited the estate of late C.L. Verma.

29. In paragraph 4 of the writ petition Mohinder Verma claims having filed an affidavit of assets stating that he had not received anything till date from

the property (sic, estate) of his father late C.L. Verma. Reliance is placed on the reply filed by Mohinder Verma to show cause notice before the

Recovery Officer. The said reply, we observe, does not mention or state that Mohinder Verma had not inherited any property from late C.L. Verma.

30. During the course of hearing before us, affidavit of Mohinder Verma attested on 15th January, 2016 was referred to. This affidavit refers to

CS(OS) No. 1512/2006, filed by Pushpa Baswan and others in the High Court of Delhi, and states that late C.L. Verma had expired 1t8h on January,

2000 and final decree in terms of compromise/settlement and final order was passed on 21st April, 2015. Copy of the said order has not been enclosed

with the present writ petition.

31. Counsel for the respondent bank has therefore rightly submitted that Mohinder Verma has not furnished the list of assets inherited from late C.L.

Verma and vague and obscure statements have been made. On instructions, the petitioner states that Mohinder Verma will file an affidavit in this

Court and before the DRAT, giving full detail of the assets, i.e. all moveable and immovable properties inherited from late C.L. Verma. The affidavit

will be filed within two weeks.

32. Subject to filing of the affidavit by Mahinder Verma and the petitioner company making payment of Rs. 50 crores within the time stipulated (or a

further amount as may be directed by the DRAT) and also handing over possession of the other floor in the Continental house within the time, the

warrants of arrest issued by the Recovery Officer dated 27th October, 2017 against Mohinder Verma will not be executed till further order/ direction

of the DRAT.

33. In case the petitioner company, i.e., M/s Continental Construction Limited fails to abide by their commitments with regard to the payments etc. to

be made or fails to hand over physical vacant possession of one floor in the building Continental House to the respondent bank, the limited protection

would be deemed to be vacated. We clarify that in such an event, the arrest warrants against Mohinder Verma issued by the Recovery Officer can

be executed. In case a fresh warrant is required to be issued, the Recovery Officer will be entitled to issue the same.

34. Our attention was drawn to certain orders passed against the Recovery Officer /Presiding Officer, in respect of the other guarantors. We are not

referring to these orders, as parties adversely affect have invoked statutory remedies.

35. We clarify that observations made in the present order are for the purpose of disposal of the present writ petitions and would not be construed as

conclusive observation on merits in favour or against the petitioner or the respondent bank. The DRAT will independently apply its mind to the facts in

issue and decide the appeal expeditiously.

The writ petitions are disposed of.

Dasti under signature of the Court Master.