

State Bank of India v. Vedsidha Products , 2022

PLRonline 0197 (DRAT)

BEFORE
MUMBAI

THE DEBTS RECOVERY APPELLATE TRIBUNAL,

AT:

Present: Mr. Justice Ashok Menon, Chairperson

State Bank of India v. Vedsidha Products Pvt. Ltd.

Misc. Appeal No. 51/2019

20/06/2022

OTS - Proposal was accepted on payment of stipulated amounts on a stipulated date - The Bank had agreed to give a 15% incentive and if the amount was not paid on that stipulated date, then the incentive had to be reduced to 12% in case the amount was paid at a later date - Loanee paid the amount by way of a cheque and not cash - There was no stipulation whatsoever to make payment in cash - The cheque was credited to the loan account of the borrower in the Bank only 2 days later because of the intervening holidays - The bank insists that he is entitled to only a 12% incentive and not a 15% incentive - Held, that on payment by cheque before the stipulated date, the Respondent was entitled to a 15% incentive as agreed upon by both the sides in the OTS proposal - RDB Act S. 19(25)

Ms. Shradha Patil, i/b M/s. Indialaw LLP,
Advocate for Appellant. Mr. A. H. Lohiya, Advocate for Respondents.

Order

1. This Appeal is filed by the State Bank of India (SBI for short) challenging the order dated 10.12.2018 of the D.R.T., Nagpur, in Interim Application (I.A. for short) No. 1133/2018 in Original Application (O.A. for short) No. 253/2017 on the files of that Tribunal u/s 20 of the Recovery of Debts & Bankruptcy Act, 1993, (RDB Act for short). The aforementioned application on which the impugned order was passed was filed u/s 19 (25) the RDB Act by the Defendant Nos.1 to 3 in the O.A. Respondent No.1 herein is a Private Limited Company and is the original first Defendant in the O.A. The rest of the Respondents are original Defendant Nos.2 to 7 who are the guarantors in the transactions that took place between the Appellant Bank and the first Respondent Company. Mortgages were also created by Respondent Nos.1, 2, and 4. Credit Facilities were sanctioned from time to time to the first Respondent company and a total of Rs.26.40 Crores was advanced. The Respondents had executed Acknowledgement Deeds and Revival Letter confirming the balance due from them on different dates. However, the Respondents defaulted payment of the amounts due from them, and resultantly, the Account of the first Respondent company was declared as Non Performing Assets (N.P.A. for short) on 24.09.2013. The Respondents

were repeatedly called upon by the SBI to regularize the credit facilities and the account. Ultimately, a legal notice was issued on 04.08.2016 seeking payment of the amount due together with interest. The Respondents did not respond positively to the Demand Notice and hence the SBI was constrained to file O.A. No. 253 of 2017 before the D.R.T., Nagpur, claiming a total sum of Rs.27,78,83,041/. The Original Application is in Exhibit 'C'.

2. The Defendants / Respondents appeared and filed their Written Statement on 24.07.2018. The SBI had also filed an application at NCLT, Mumbai, against the first Respondent for initiating the Corporate Insolvency Resolution Process. In 2018 the SBI launched the One Time Settlement Scheme (the OTS for short) and the first Respondent was found eligible. The Respondents have also filed I.A. No. 816/2018 in the aforesaid proceedings before the D.R.T. to give directions to the SBI to accept the OTS proposal given by the Respondents. The Bank filed a reply to that application. After hearing both sides the Ld.P.O. rejected that application vide order dated 10.09.2018 at Exhibit 'G', returning I.A. No. 816/2018 for want of maintainability, but at the same time observed that there was the likelihood of settlement and, therefore, asked the parties to file settlement papers.

3. The Respondents filed Writ Petition No. 6099 of 2018 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, seeking to quash and set aside the order of the Ld. P.O. dated 10.09.2018 at Exhibit 'G' and to direct the D.R.T. to decide the aforesaid I.A. on merits. The Hon'ble High Court remanded the I.A. No. 816/2018 and observed that given the decision in *Avinash D. Deshmukh v. Central Bank of India through its Branch Manager, 2008 LawSuit (Bom) 97*, the Tribunal has jurisdiction to consider whether the guidelines apply to the matter before it and if so, whether the matter should have been settled as per those guidelines. The judgment of the Hon'ble High Court is at Exhibit 'H'.

4. Consequent to the directions given by the Hon'ble High Court, the D.R.T. heard I.A. No 816/2018 based on the OTS scheme, and fresh orders were passed on 28.09.2018 directing the SBI to file calculations of the OTS amount in tune with the RBI Guidelines. That order is at Exhibit 'I'. The D.R.T. does not have authority/jurisdiction to direct the Bank to treat the loan availed by the Respondent under a specific clause of doubtful assets i.e. D3 Category and a specific direction in Exhibit 'I' was to treat the loan of the Defendants in D3 Category was beyond the scope of the Tribunal. On 09.10.2018, the Ld. P.O. passed an order with specific directions to accept the offer of the OTS for a sum of Rs.18,20,87,904/- as per the offer letter dated 18.08.2018. The Ld.

P.O. thereafter directed the SBI to accept the payment as per the letter dated 11.10.2018 and also further directed to defer the NCLT proceedings, which, according to the Appellant, is not by the law.

5. Thereafter the Respondents filed the subject application IA. No. 1133/2018 for granting an additional incentive of 15% and to place on record the recoveries appropriated towards principal and interest from 24.09.2018 to 31.03.2018 which according to the SBI is contrary to the RDB Act.

6. Upon hearing the application, the Ld. P.O. on 10.12.2018 passed the impugned

order granting an additional incentive of 15% claimed by the Respondents and directed the Appellant Bank to issue a 'No Dues Certificate' and to release the property on receiving the entire OTS amount. The impugned order is at Exhibit 'N'. The Bank had opposed the application on the ground that the first Respondent does not qualify for a 15% incentive since full payment was received by the Bank only on 13.11.2018 beyond the stipulated date. Therefore, the Appellant seeks reversal of the impugned order.

7. The Respondents filed a reply to the Appeal stating that as per the OTS scheme dated 12.10.2018, a particular amount was to be deposited within one month from 12.10.2018 for availing of a 15% incentive. The respondents allegedly deposited a cheque for the amount on 09.11.2018 with the Bank. The fact that the amount was credited in the loan account of the bank only on 13.11.2018 which was after the expiry of one month period stipulated for availing of the 15% incentive is not correct because what was required as per the proposal to avail of 15% incentive was to pay the amount within one month from 12.10.2018 and the cheque for the entire amount was deposited on 09.11.2018, the date of delivery of the cheque is within the time stipulated, essential for compliance of the proposal. The Respondent would also draw the attention of this Tribunal to note that the OTS does prevent the deposit amount through a cheque and when the Respondents have complied with terms and conditions, it cannot be said that they did not pay the amount on time to avail of 15% incentive. Under the circumstances, the Respondents state that there is no substance in this Appeal and hence it may be dismissed.

8. Heard Ms Shradha Patil, Advocate for Appellant, and Mr. A. H. Lohiya, Advocate for Respondents.

9. The only question that arises for consideration in this appeal is whether there was substantial compliance with the OTS proposal by the first Respondent by making payment in time to avail 15% incentive as per the OTS sanction letter dated 12.10.2018. The first Respondent was obliged to deposit a sum of Rs.10.40 Crores within one month from 12.10.2018. The Appellant argues that the amount must be reflected in the loan account within one month from the date of sanction to avail 15% incentive, and it should have got credited to the loan account by 12.11.2018. It is admitted by the Appellant that the first Respondent had deposited a cheque for the amount due, on 09.11.2018 but the cheque was realized by the Bank only on 13.11.2018, which was two days after the due date and, therefore, it cannot be said that the amount was paid within one month from the date of sanction. For availing necessary pre-condition of an additional incentive of 15% it was incumbent upon the borrowers to pay the amount on time. Having failed to do so, they are not entitled to the incentive, is the argument of the Appellant.

10. On the other hand, the Respondents argue that there was substantial compliance by depositing the cheque in the Bank on 09.11.2018, before the expiry of the time as per the sanction letter dated 12.10.2018 and, therefore, they are entitled to a 15% incentive.

11. In the impugned order the Ld. P.O. had referred to the email dated 09.11.2018 annexed, which was sent by the first Respondent to the Bank informing the Bank that he is going to transfer the remaining amount as soon as possible due to the intervening holidays

in the bank, the withdrawal of funds is getting delayed. Defendant No.1 had also requested the Bank to inform the exact amount to be deposited for availing 15% additional incentive. However, the Applicant Bank neither responded to that email nor was the exact amount payable disclosed. There was no response to the intimation regarding the transfer of the amount on 09.11.2018. The first respondent thereafter deposited a cheque No. 896504 drawn on Indus Ind Bank dated 09.11.2018 payable to the Bank's account and deposited it in the Appellant Bank. On 10.11.2018 and 11.11.2018 being Saturday and Sunday respectively, the Bank was closed. In addition to that, there were also holidays on 07.11.2018 and 08.11.2018 on account of Diwali. On 14.11.2018, the Appellant Bank informed the first Defendant that a total sum of Rs.4,04,83,760/- was credited and requested him to pay the balance amount as per the OTS proposal. The payment of Rs.10.40 Crores by way of the cheque was not disclosed by the Bank. The first Defendant had paid the amount by way of a cheque drawn and deposited on 09.11.2018 to avail 15% incentive since the Bank had not disclosed the exact amount payable on that date, and cautiously, he had made some excess payment and also requested a refund of the excess amount, vide Annexure-4. It is only on 28.11.2018 that the Bank respond to the first Defendant vide an email stating that he does not qualify for the incentive of 15% since the full amount payable on the stipulated date was not received and that it was received only on 13.11.2018. The Ld. P.O. observed that the fact that the amount did not come to the account on the stipulated date even though a cheque was deposited before that date would not disqualify the first Defendant from availing 15% incentive. The fact that the Bank did not encash the cheque because of the intervening holidays, is not a reason to penalize the first Defendant for the circumstances which were beyond his control. The delay in encashing the cheque is attributable exclusively to the Bank. The act of the Bank is described as arbitrary and an attempt to arm-twist the first Defendant. The incentive on the calculation at the rate of 15% would come to Rs.2,54,92,306/- and because of just one day's delay the Bank states that Defendant is entitled to an incentive of only 12%, reducing it to Rs.2,03,93,845/-. The Ld. P.O. relied on the decision of the Hon'ble High Court of Judicature at Bombay in *Kirloskar Brothers v. Commissioner of Income Tax AIR 1952 BOM 306; Vardhaman Chemicals, Nagpur v. Commissioner of Central Excise and Customs 2002 (3) Mh.L.J. 187; Shri Sunil Sitaram Mahajan v. Suryakant Pandurang Badave 2018(4) AIR BOM 742* and decision of the Hon'ble Supreme Court in *K. Saraswathy v. P. S. S. Somasundaram Chettiar AIR 1989 SC 527*. The Ld. P.O. also referred to Sections 9 and 10 of the General Clauses Act to decide the application in favour of the First Defendant.

12. In the decision of *Vardhaman Chemicals* (Supra), the question that was decided by the Hon'ble High Court of Bombay was the claim of the assessee therein to avail the benefit of the scheme where payment has to be made within the stipulated date. The assessee had paid the amount by delivery of a cheque for the amount but there was a delay in crediting the cheque to the account and, therefore, he was not given the benefit of the scheme for non-payment of the amount within time. The Division Bench of the Hon'ble High Court of Bombay held that a cheque unless dishonoured, is payment. The payment takes effect from the delivery of the cheque but is defeated by happening of the condition i.e. non-payment at maturity. Since the cheque, in that case, was delivered to the payee by the Assessee before the stipulated date, it operated as payment and will have to be construed as an extinguishment of the debt payable. In the earlier decision of the Hon'ble High Court of

Bombay in *Kirloskar Brothers Ltd. (Supra)*, M. C. Chagla, Hon'ble Chief Judge, had also gone to consider whether the contention of mere receipt of the cheque can be receipt of the income or not, for Income Tax, and it was held thus:

“. if he accepts the cheque then he has paid, although the payment may not be unconditional discharge. But the only condition is that, if the cheque is not cashed, then the liability of the debtor will continue; but if the cheque is cashed, then payment is not on the date when the cheque is cashed, but it is on the date when the cheque was given to the creditor. Therefore, if we were to apply to the principles of commercial practice, the assessee company was paid and it received the payment on the date when it received the cheque from the Government of India and not on the date when the cheque was cashed by the bank.”

13. In the decision of *Akhil Fabrics Pvt. Ltd. and Shri. Sunil Pran Mehra, of Mumbai, Indian Inhabitant v. Central Bank of India 2017 LawSuit (Bom) 1051*, the Division Bench of the Hon'ble High Court of Bombay observed that it is settled law that every organ of the State is required to adhere to the principles of reasonableness, equity, fairness, and good conscience. The act of the Respondent Bank which is a nationalized bank and as such the State within the meaning of Article 12 of the Constitution of India cannot take the ground to revoke the settlement unilaterally for the reasons that the mode of payment was different.

14. In a catena of other decisions of the Hon'ble Apex Court i.e. *Virender Singh Hooda v. State of Haryana AIR 2005 SC 137*, and *Tamil Nadu Housing Board v. N. Balasubramaniam (2004) 6 SCC 85*, while considering the question of payment of taxes paid by cheque, and same is honoured, it was held that it is the date of presentation of the cheque which date of payment for interest u/s 234C of Income Tax Act. In *K. Saraswathy (Supra)*, the Hon'ble Supreme Court has held that payment by cheque realized subsequently on the cheque being honoured and encashed relates to the date of the receipt of the cheque, and in law, the date of payment is the date of delivery of the cheque. It was also held that payment by cheque is an ordinary incident of present-day life, whether commercial or private and unless it is specifically mentioned that payment must be in cash, there is no reason why payment by cheque should not be taken to be due payment if the cheque is subsequently encashed in the ordinary course. In the later decision of the Hon'ble High Court of Bombay in *Shri. Sunil Sitaram Mahajan (Supra)* also the payment by way of cheque of the auction amount was held to be acceptable and the Hon'ble Division Bench has relied upon the decision of the Hon'ble Supreme Court referred to earlier.

15. The learned counsel for the appellant has relied upon a decision of the Hon'ble High Court of Jharkhand in *Shanti Jaiswal v. State Bank of India & Ors. 2014 SCC OnLine Jhar 1825*, wherein it was observed that u/s 27 of the DRT Act, there is a provision which provides an opportunity to the borrower to pay the certified amount. It does not give power to the P.O., D.R.T, to accept any amount less than the certified amount. The DRT Act does not confer a power upon the DRT or the R.O. to accept an amount less than the certified amount. The Respondent borrower argued that the settlement between the parties took place before the auction sale was finalized, and much before the sale confirmation in favour of the petitioner, and therefore, no fault can be found in the order setting aside the auction

sale. This contention was not accepted by the Hon'ble High Court of Jharkhand. The facts in the above-cited decision are different from the facts in hand, and therefore, have no application to the instant case, where the OTS proposal was accepted on payment of stipulated amounts on a stipulated date. The Bank had agreed to give a 15% incentive and if the amount was not paid on that stipulated date, then the incentive had to be reduced to 12% in case the amount was paid at a later date. The Respondent herein had paid the amount by way of a cheque and not cash. There was no stipulation whatsoever to make payment in cash. The cheque was credited to the loan account of the borrower in the Bank only 2 days later because of the intervening holidays. The bank insists that he is entitled to only a 12% incentive and not a 15% incentive.

Whether that has to be accepted is the point that arises for the consideration before this Tribunal.

16. Given the overwhelming decisions of the Hon'ble Supreme Court and also the Hon'ble High Court of Bombay, I have no hesitation in holding that on payment by cheque before the stipulated date, the Respondent was entitled to a 15% incentive as agreed upon by both the sides in the OTS proposal. I find no infirmity in the impugned order of the Ld. P.O. of D.R.T., Nagpur, and hence, the Appeal merits no consideration and deserved to be dismissed.

17. In the result, the appeal is dismissed with costs.

18. All Miscellaneous Applications, if any, are dismissed as infructuous.

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